

Exploring The Links In The Chain Of Custody

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The chain of custody has significant implications for the entire criminal justice system and those that work within the system. The chain of custody may involve: the first officer on the scene, the investigator, crime scene technician, coroner / medical examiner, pathologist, property and evidence control officer, laboratory personnel, prosecutor and defense attorney.

The importance of the chain of custody should be realized when one considers the relative importance of physical evidence in investigating and prosecuting criminal cases. The U.S. Supreme Court, in a leading case on physical evidence, stated:

“Physical evidence cannot be wrong; it cannot perjure itself; it cannot be wholly absent. Only its interpretation can err. Only human failure to find it, study and understand it, can diminish its value.” (Harris vs. United States, 1947).

“Only human failure to ... understand it, can diminish its value”. Understanding this essential element of an investigation and prosecution requires understanding the management of physical evidence and how it can be wrong, can perjure itself, or may become absent; in part due to the lack of physical security and documented chain of custody.

Chain of custody: The chain of custody is a process used to maintain and document the chronological history of physical evidence. This process should result in a product: the formal documentation of the process. Chain of custody documentation should include: the name or initials of the individual collecting the evidence, dates the items were collected, each person or entity subsequently having custody of the evidence, dates that custody of the items was transferred, agency and case number, victim's or suspect's name, and a brief, yet specific, description of the item.

Modification of police agencies informal evidence handling procedures may be necessary, but the laws relating to evidence handling and management must always be followed. Many major police investigations are based primarily upon physical-circumstantial-evidence; therefore, the chain of custody has become an increasingly more important element in prosecuting criminal cases. This will ensure the integrity of the evidence and reduce allegations of tampering, theft, planting and contamination of evidence.

Chain of Custody Issues

There are many issues associated with the chain of custody. These issues commence with the initial identification of an item as having potential evidentiary value and continue through until the final disposal of the item.

One of the most important functions of the law enforcement agency's evidence property control system is to maintain a chain of custody over evidence placed into the system. The chain of custody, as a process, consists primarily of the signing in and out of all movements of evidence between persons or locations outside of the property control room. One must consider also the viewing or repackaging of physical evidence within the evidence room creates chain of custody issues.

The chain of custody relates to the total accounting for evidence and the continuity of possession. The chain is made up of all individuals who have had custody of the evidence since its acquisition by the police agency: Investigator, Evidence Technician, Property Officer, Laboratory Technician, Defense Attorney and Prosecutor. Each individual in the chain of custody has a responsibility for the particular piece of evidence to include its safe-keeping and preservation while it is under his or her control.

The chain of custody is necessary in order to establish the legal sufficiency of evidence once it has come into the custody of the police agency. That is to say, the evidence has not been lost, that no tampering of the evidence has occurred, and the evidence has not become contaminated, either by other evidence stored nearby, or the container in which the evidence is stored.

In a practical sense, the maintenance of the chain of custody allows the investigating officer or expert witness to testify with confidence in court that the evidence is, at the time of introduction at trial, in the same form as it was at the time it was taken into police custody. "Any disruption in the chain of custody may cause evidence to be inadmissible. Even if admitted, a disruption can weaken or destroy its probative value. Accordingly, the rule is to have the least possible number of persons handle the evidence." (Osterburg and Ward, 1992).

The figure below depicts the various issues associated with the "life-cycle" of the chain of custody from a law enforcement perspective.

Life Cycle of Evidence

	Issues
Custody	
Initiating Chain	
Maintaining Chain	Adequate documentation
Physical Condition (of evidence)	
Original Condition	
Packaging	Contamination Cross-contamination
Repackaging	

Access

Limitations on access

Contamination

Possession

Where stored

Access

Limited through physical security

Storage

Contamination

Laboratory Testing

Chain maintained?

Contamination

Destructive Testing

Sample availability

Destruction

Same item / substance as taken into custody?

Maintaining the Chain of Custody

The chain of custody is established and maintained by adhering to the following standards:

- Limiting the number of persons handling evidence from the time it is secured;

When the evidence leaves the possession of an officer, he /she must record in his notes to whom the evidence was given, the date and time, and the reason it was turned over. The chain of custody should be kept as short as possible—limiting the number of persons that handle or have access to the evidence. This will make errors less likely than when multiple people are involved in processing, analyzing and storing the evidence.

- Individuals who handle the evidence initially should affix their names, badge numbers and assignment to the package containing the evidence;

A signed receipt should be obtained from the person accepting the evidence.

- A receipt should be signed by the investigator when the item is returned to him or her;

- The investigator, after an item has been returned to him, should determine if the item is in the same condition as when it was discovered.

Any change in the physical appearance or characteristics of the evidence must be called to the attention of the court. (U. S. Department of Justice, undated)

A Question of Good Faith

The defendant abducted a ten year-old boy from a carnival, took him to a house and sexually assaulted him. The boy was later taken to a hospital by police. Tests were performed using a sexual assault kit. After receipt of the boy's underwear and t/shirt, which contained semen stains, the police failed to refrigerate these items.

It was not until two years later that the underwear and t/shirt were examined forensically. Neither the clothing nor the test results from the sexual assault kit conclusively connected the defendant Youngblood with the crime. Nevertheless, Youngblood was convicted on the basis of other evidence; including the eyewitness identification by the boy.

On appeal to the United States Supreme Court, Youngblood argued if the boy's clothing had been properly preserved by the police, it may have exculpated him. The United States Supreme Court addressed the issue of whether the defendant's due process rights had been violated by the police mishandling of the evidence. The simple majority focused on the "good faith efforts" of the police officers in preserving the evidence. Chief Justice Rehnquist stated it is unfair to "impose on the police an undifferentiated absolute duty to retain and to preserve all material that might be of conceivable evidentiary significance.

A good faith standard limits the police officer's duty to preserve evidence and protect the defendant in cases where the police themselves, by their conduct, indicate the evidence could form a basis for exonerating the defendant." (Arizona v. Youngblood, 1988)

Thus, under the good faith standard, if police actions indicate they realize the probative value of evidence that may potentially be used to determine the defendant's innocence, and they maliciously destroy the evidence, there is a presumption the evidence would have exonerated the defendant. If the police officer is merely negligent in failing to preserve evidence, there is no due process violation if he or she is acting in good faith.

Circumstantial Evidence. Circumstantial evidence is a fact that can be used to infer another fact. It is not direct evidence from a witness who saw or heard something but rather an inference based upon other available evidence. The law makes no distinction between the weight given to either direct or circumstantial evidence. Since the majority of major police investigations are based primarily upon physical-circumstantial-evidence, the chain of custody has become an increasingly more important element in prosecuting criminal cases.

Field Collection Procedures

Policy: Prior to the removal of any evidence at a crime scene, an evidence custodian should be designated, and initiate and maintain a chain of custody for all evidence collected.

Procedure: Throughout an investigation field investigation procedures to preserve the chain of custody should require:

1. Document the location of the scene and time of arrival of the investigator at the scene;
2. Develop a crime scene visitor log, witness list, and document the times of

arrival and departure of personnel at the crime scene;

3. Determine custodian(s) of evidence, determine who is responsible for the physical collection of specific types of evidence. This may include collection priorities for fragile and degradable evidence;

4. Determine who will function as the evidence officer;

5. Document the collection of evidence by recording its location at the scene, time of collection, and time and location of disposition;

6. Identify, secure, and preserve evidence with proper containers, labels, and preservatives.

This information may be necessary later to document not only the chain of evidence, but also specific techniques used in collecting, labeling and preserving evidence and the integrity of the evidence can be assured. In addition, prompt transfer of evidence to the evidence officer and proper transport to the laboratory or evidence storage facility will reduce the likelihood of a challenge to the integrity of the evidence. The investigator must be knowledgeable of and follow State, and Federal laws for the collection of evidence to ensure its admissibility.

Photographic and Written Documentation

The photographic and written documentation of evidence prior to collection allows the investigator to create a permanent historical record of that evidence. Such documentation includes written notes, audio/videotapes, printed forms, sketches and/or photographs that form a detailed record of the crime scene, the evidence collected, and actions taken during the search of crime scene.

In a criminal case the prosecution failed to show that the controlled substance involved in the crime (cocaine) was maintained in a proper chain of custody, where there was a gap [in the chain of custody] between police possession of the substance and crime lab testing. (U.S. v. Cannon)

In another case, an appeals court ruled the lower court did not error in admitting audiotapes into evidence even though the record lacked proof of a chain of custody. The appellate court ruled that the lack of proof did not render the tapes inadmissible where eyewitnesses to transactions on tapes testified the tapes accurately depicted the transactions in question. (U.S. v. Brown, 1998).

In this specific instance, oral testimony was permitted to overcome an inadequate chain of custody. This should not, however, be relied upon in all instances. In many cases testimony cannot speak authoritatively to the absence of evidence contamination or manipulation.

Biological Evidence

The chain of custody relating to a specimen or object analyzed requires the specimen or object was in fact derived or taken from the particular person or place alleged: "the chain of custody is an essential quantum of proof in any case involving bullets, cartridge cases and weapons, fingerprints, hair, stained clothing, drugs and urine, blood or breath specimens." (Moenssens et al, 1973) A New York trial court ruled that

DNA evidence to be offered at trial must be accompanied by chain of custody documents to adhere to pre-trial procedures. (People v. Castro)

In these instances the chronicle of custody includes:

- The initial possession of the specimen, sample or object by an officer
- The journey to the laboratory
- The method of storage at the laboratory prior to analysis
- The possession of the unused portion of the specimen or the object after analysis up to the time of trial (Doran, 1998, 44-50)

DNA Evidence

When the DNA profile of a sample from a crime scene is found to match an offender profile in a data bank, the match may substantiate probable cause for an arrest or a search warrant to obtain a new blood sample—a reference sample—for confirmation. Later, at trial, the chain of custody for all samples becomes subject to subpoena and challenge. As was witnessed in the OJ Simpson trial, the defendant has access to samples and the analyses performed on them as well as to the chain of custody.

Because of the significant value of DNA in proving or disproving the guilt of a defendant, states are now requiring that biological evidence—physical evidence containing body fluids—be retained, in some instances permanently, for certain prosecutions. This evidence may be used later to disprove the guilt of the accused, or aid in the solution of unsolved crimes through comparison with forensic DNA databases. Such a requirement necessitates a complete chain of custody, as well as proper storage conditions to maintain the evidentiary value of the evidence.

The Chain of Custody In Court

A manual for trial attorneys suggests several predicate—foundation—questions be asked of the expert witness. These questions are necessary to establish a foundation for the introduction of the evidence.

A review of these questions reveals the importance of maintaining a complete and accurate chain of custody.

The prosecutor:

"I now hand you [a piece of evidence] and ask you to examine it and state whether you have ever seen it before?

From whom did you receive it?

How?

Did you place any identifying marks on it?

At the same time you received the [piece of evidence] did you receive anything else

[a comparison sample]?

What [else did you receive]?

Did you make any examination of those items?

Following your examination, what was done with the items?

Was it in your care, custody, and control until its return to the [law enforcement agency]?

When you returned them, were they in the same condition as when you received them?"

(National Association of District Attorneys, 1999)

Defense Strategies and The Chain of Custody

Motion For Preservation of Evidence. The American Bar Association's Standards for Criminal Justice suggests the defense should seek a court order directing that all evidence be preserved and that defense counsel have access to insure the defendant is afforded a fair trial. (See also, Goodwin v. Balcom, 1982)

In the "motion for preservation of evidence", the defendant seeks accessibility to any and all evidence collected and used by government experts in testing, including the residue remaining from the tests. The failure of the police to preserve the evidence after an order of preservation raises a due process issue.

As was stated previously in *Arizona v. Youngblood*, the Court held the failure of the police to preserve potentially useful evidence was not a denial of due process of law absent defendant's showing of bad faith on the part of the police. It should be pointed out that the facts in *Youngblood* did not include a defense request to preserve the evidence while it was still in existence. The failure to maintain evidence after an order to preserve such evidence may very well have different consequences.

Government withholding of evidence has long been held by the United States Supreme Court to be a violation of due process *Brady v Maryland*, (1963). A thorough inventory of evidence, an exacting chain of custody maintained pursuant to written police department procedures, and a careful review of evidence status before it is disposed of may be the only means of refuting an allegation of withholding of evidence.

The failure to preserve evidence, even if non-intentional, or in bad faith, can lead to a determination that evidence was improperly withheld. As Tenth Circuit Court of Appeals stated

To establish a *Brady* violation, the defense must prove that the prosecution suppressed the evidence, the evidence would have been favorable to the accused, and the suppressed evidence was material. [*Brady*, 1963. at 1196-97]. However, with respect to the first element, we have held that negligent or inadvertent suppression of evidence is nonetheless suppression for *Brady* purposes. (emphasis added) (*United States v. Montoya*, 1983).

It has been argued that it is bad faith for a government agency to provide no reliable system for the preservation of evidence. (*United States v. Bryant*, 1971). The trial judge in *Bryant* stated the only way to protect *Brady* evidence before the defendant requests it is to require the government to safeguard potentially exculpatory evidence.

The Tenth Circuit Court of Appeals in *United States v. Molina-Cuartes*, (1991), expressed its displeasure with the prosecution for the mishandling of evidence. That case involved a discrepancy between the weight of the narcotics seized and the

weight of the narcotics weighed for sentencing purposes. The court said, “[w]e find this careless disregard for evidence preservation deplorable and suggest to the Government it should not allow this sort of disappearance to be repeated.” (at 349-50).

Traditional Evidentiary Tests - General Rules

The general, and most basic, rules applied to all forms of physical evidence in the federal courts, and in most state courts, are found in Rules 401-403 of the Federal Rules of Evidence.

To be admissible, evidence must be relevant (Fed. R. Evid. 402). Relevance is defined as “the tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence” (Fed. R. Evid. 401).

Secondly, the probative value of the evidence must outweigh the potential for creating prejudice or confusion. Rule 403 reads:

Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence (Fed. R. Evid. 403).

Chain of Custody and Property Audits

Another purpose of the chain of custody is to support physical audits of the property control system. In order to audit the movement, location and disposition of property and evidence, it is necessary that exact records be maintained. Chain of custody entries on the Property Inventory form provide a significant portion of the information required to trace property movements and final disposition.

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