

No. 1-09-2191

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 08 CR 18234
	)	
LYNN BROWN,	)	Honorable
	)	John T. Doody, Jr.,
Defendant-Appellant.	)	Judge Presiding.

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PRESIDING JUSTICE QUINN delivered the judgment of the court.  
Justices Murphy and Steele concurred in the judgment.

**ORDER**

¶ 1 *Held:* There was sufficient evidence that defendant committed the offense of delivery of a controlled substance. Defendant's \$200 DNA analysis fee must be vacated where it was assessed for a prior offense.

¶ 2 Following a jury trial, defendant Lynn Brown was convicted of delivery of a controlled substance (less than one gram of cocaine) within 1,000 feet of a school and sentenced to 10 years' imprisonment with fines and fees. On appeal, defendant contends that the evidence was insufficient to convict him beyond a reasonable doubt. He also challenges the assessment of the \$200 DNA analysis fee (730 ILCS 5/5-4-3 (West 2008)), contending that it may be assessed only once while he was assessed the fee upon a prior felony conviction.

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¶ 3 At trial, police sergeant Tyrone Bates testified that, on the afternoon of September 5, 2008, he was working with several police officers, including Kevin Drumgoole, Robin McGhee, and Nelson Gonzalez, to catch narcotics sellers near 16<sup>th</sup> Street between Central Park and Drake Avenues. Sergeant Bates and the named officers, except for Officer Gonzalez, were in unmarked cars and wearing civilian clothing. From his parked car, Sergeant Bates saw defendant about 50 feet away with two or three other men. Defendant was wearing a tan or yellow checkered hooded sweatshirt over a white t-shirt, jeans, and boots. After a few minutes, Sergeant Bates told Officer Drumgoole by radio to go to defendant and attempt to purchase narcotics. Officer McGhee was watching the area from another vantage, and Sergeant Bates could not see her but could speak with her by radio. When defendant moved out of Sergeant Bates' sight, Officer McGhee reported her observations.

¶ 4 After about two or three minutes, defendant came back into Sergeant Bates' view, approaching two other men and briefly huddling with them in conversation before walking away again. Sergeant Bates slowly followed defendant by car and saw him take off his sweatshirt and t-shirt, laying them down inside the fence of a residence. In Sergeant Bates' experience, drug dealers sometimes remove or change their clothing after selling drugs to a suspected undercover officer in order to disguise their appearance. Defendant then walked down the street, shirtless, to a grocery store. Sergeant Bates told the officers to arrest him there, and when defendant was removed from the store about two minutes later, he was wearing a white t-shirt. While there was another car parked between defendant and Sergeant Bates as defendant left the store, Sergeant Bates was in a sport utility vehicle and could see over that car. Sergeant Bates did not recover, or instruct the officers to recover, the sweatshirt or t-shirt defendant that had been wearing because the "area became swarmed with people" after the arrest and he felt it was unsafe to recover the clothing.

¶ 5 Officer Robin McGhee testified that she was parked when she saw defendant and several other people near 16th and Drake. Defendant was wearing a yellow checkered hooded sweatshirt, jeans, and boots. He met with a group of men, then walked away. Officer Drumgoole approached defendant and parked near him. Officer McGhee was parked directly across from where Officer Drumgoole stopped. Defendant approached Officer Drumgoole's car, spoke with him briefly through the open car window on the passenger side, and then handed him something. Officer McGhee did not see Officer Drumgoole hand anything to defendant, but he had been issued money with recorded serial numbers for the purpose of buying narcotics. When Officer Drumgoole drove away, reporting by radio that he had purchased narcotics, defendant walked over to two men and had a brief conversation with them. Officer McGhee did not notice anything passed between defendant and the men. Defendant then walked away, taking off his sweatshirt and shirt as he walked before passing out of Officer McGhee's sight.

¶ 6 Officer Kevin Drumgoole testified that, at Sergeant Bates' instruction and following the description by Sergeant Bates and Officer McGhee, he approached defendant to purchase narcotics. When Officer Drumgoole stopped his car near 16th and Drake, defendant approached him without being called over. Through the open passenger-side window, Officer Drumgoole asked defendant if he knew where he could get "blows," or heroin. Defendant replied that he did not but did have "C," or cocaine. When Officer Drumgoole asked if it was any good, and defendant replied that it was "straight," Officer Drumgoole asked for four "dime" or \$10 bags. Defendant gave him four small bags of a substance he suspected was cocaine, and he paid defendant with recorded money, specifically two \$10 bills and a \$20 bill. Officer Drumgoole drove away and then informed the other officers by radio that he had purchased drugs. About 10 minutes later, Officer Drumgoole returned to the area and, from about 20 feet away but without leaving his car, identified defendant as the man who sold him the four bags. Defendant had been

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wearing a hooded sweatshirt but was now wearing only a t-shirt. At the police station, Officer Drumgoole inventoried the four bags. To his knowledge, the recorded money was not recovered.

¶ 7 Officer Nelson Gonzalez testified that he and another officer approached the store at 16<sup>th</sup> and Central Park at Sergeant Bates' instruction to arrest defendant pursuant to the description relayed by radio. They exited the gray police sedan and, upon entering the store, Officer Gonzalez saw defendant putting on a white t-shirt. After defendant was arrested, Officer Gonzalez searched the store for the recorded money but did not find it. To his knowledge, the money was not found.

¶ 8 Forensic chemist Denise Sylvester testified that she tested two of the four items purchased by Officer Drumgoole and found that they weighed .154 gram and .096 gram and contained cocaine. The parties stipulated that the location of the alleged drug transaction was measured to be 479 feet from a particular school.

¶ 9 The court denied defendant's motion for a directed verdict.

¶ 10 Rami Badawi, operator of a store at 16<sup>th</sup> and Central Park, testified that he was working there on the afternoon in question when defendant came in. Badawi could not recall what defendant was wearing that day, but did recall that he purchased a white t-shirt for \$5 in cash and immediately put it on. Police officers then entered the store and arrested defendant, and Badawi agreed to allow the officers to search his cash register.

¶ 11 Latonya Brown, defendant's sister, testified that, on the day in question, defendant and Brown were walking to their grandmother's home. Defendant was shirtless because he had no clean shirts, so he stopped at the store at 16th and Central Park to buy a shirt for their visit. Defendant was walking just ahead of Brown, who did not see him speak or interact with anyone on his way to the store. As defendant was in the store and Brown stood outside, a gray sedan stopped and the occupants went into the store. A short time later, they led defendant -- now

wearing a white t-shirt -- to the car. When Brown asked why defendant was being arrested, they did not answer. Brown denied that there was a crowd on the street after defendant's arrest.

¶ 12 Following closing arguments and deliberations, the jury found defendant guilty of delivery of a controlled substance within 1,000 feet of a school.

¶ 13 Defendant made a post-trial motion challenging the sufficiency of the trial evidence, and the court denied the motion. Following evidence in mitigation and arguments, the court sentenced defendant to 10 years' imprisonment with fines and fees. Defendant's motion to reconsider his sentence as excessive was denied, and this appeal timely followed.

¶ 14 On appeal, defendant contests the sufficiency of the evidence that he committed delivery of a controlled substance, contending that the police observations of the alleged transaction were so unreasonable and improbable as to constitute reasonable doubt.

¶ 15 When presented with a challenge to the sufficiency of the evidence, this court must determine whether, after taking the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Beauchamp*, 241 Ill. 2d 1, 8 (2011). On review, we do not retry the defendant and we accept all reasonable inferences from the record in favor of the State. *Beauchamp*, 241 Ill. 2d at 8. The trier of fact is not required to disregard inferences that flow normally from the evidence nor to seek all possible explanations consistent with innocence and elevate them to reasonable doubt. *People v. Jackson*, 232 Ill. 2d 246, 281 (2009). A conviction will be reversed only where the evidence is so unreasonable, improbable, or unsatisfactory that a reasonable doubt of the defendant's guilt remains. *Beauchamp*, 241 Ill. 2d at 8.

¶ 16 Here, defendant argues that the failure to recover the recorded money or any narcotics upon his arrest, and the "dubious accounts of the seller's activities following the transaction" were "incredible, questionable, and contrary to human experience." However, the State's evidence, and reasonable inferences therefrom, plausibly explain these purportedly exculpatory

facts. Defendant met with two men after the transaction, and though Officer McGhee did not see anything pass from defendant to the men, Sergeant Bates described defendant and the two men huddled together and Officer McGhee's testimony did not preclude an exchange or hand-off. Sergeant Bates explained why someone would, as defendant did, take off his sweatshirt and shirt and walk to a nearby store to buy a new shirt: drug dealers who suspect that they just sold narcotics to an undercover officer change clothing to try to disguise their appearance.

¶ 17 A reasonable finder of fact could infer that defendant realized, or learned from the two men, that he sold drugs to an officer and took precautions against being arrested or convicted: handing over the money and any narcotics, and changing his clothes. The urgency of the moment -- the need to act quickly under considerable pressure -- explains why defendant would take off a white t-shirt but then purchase and don another. While defendant notes that "[t]here was no evidence presented that during the controlled buy, [defendant] became aware that Drumgoole was an undercover officer," it is reasonable to infer that defendant or the two men saw Officer McGhee, Sergeant Bates, or both, and surmised that the police were observing defendant. Taking the evidence in the light most favorable to the State, as we must, we find sufficient evidence to convict defendant beyond a reasonable doubt.

¶ 18 Defendant also contends that he could not be assessed the \$200 DNA analysis fee in the instant case because he was assessed the fee upon a prior conviction. Our supreme court has recently determined<sup>1</sup> that the DNA analysis fee may not be assessed under such circumstances. *People v. Marshall*, 242 Ill. 2d 285 (2011). The fee is thus vacated.

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<sup>1</sup>We initially found that assessment of the fee here was proper. However, in denying defendant leave to appeal, the supreme court has ordered us to vacate our order of March 23, 2011, and reconsider in light of *Marshall*. *People v. Brown*, No. 112244 (September 28, 2011).

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¶ 19 Accordingly, pursuant to Supreme Court Rule 615(b)(2) (eff. Aug. 27, 1999), the \$200 DNA analysis fee is vacated. The judgment of the circuit court is affirmed in all other respects.

¶ 20 Affirmed in part and vacated in part.