

No. 1-10-1785

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).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 09 C2 20667
)	
SERGIO CULLUM,)	Honorable
)	Larry G. Axelrod,
Defendant-Appellant.)	Judge Presiding.

JUSTICE KARNEZIS delivered the judgment of the court.
Presiding Justice Hoffman and Justice Rochford concurred in the judgment.

ORDER

¶ 1 *Held:* The evidence was sufficient to convict defendant of unlawful use of a weapon by a felon where a gun was found on the front passenger seat of a car where defendant had been the front-seat passenger and police testimony adequately ruled out the possibility that another occupant of the car reached for the front passenger seat before fleeing or being detained. Defendant's \$200 DNA analysis fee must be vacated as he was assessed this fee in an earlier case. Defendant is entitled to credit against his \$30 children's advocacy center fine for his pre-sentencing detention.

¶ 2 Following a bench trial, defendant Sergio Cullum was convicted in 2010 of unlawful use of a weapon by a felon (UUWF) and sentenced to eight years' imprisonment with fines and fees. On appeal, defendant contends that there was insufficient evidence for his conviction because the

State failed to prove that defendant possessed a gun found in a car that he had occupied with two other people when neither forensic evidence nor any confession tied him to the gun. The parties agree that defendant's \$200 DNA analysis fee must be vacated because he provided a DNA sample in an earlier case, and that he is entitled to credit against his \$30 children's advocacy center fine for his pre-sentencing detention.

¶ 3 At trial, police commander J. Parrott testified that he was patrolling on the night of September 24-25, 2009. At about 1:45 a.m., he saw a green sedan with several occupants enter an alley and followed it into the alley. The car turned off its headlights but drove on, and he stopped the car to investigate. When he shined a light on the car, the driver and the front-seat passenger immediately fled on foot, within a "couple [of] seconds" of the car stopping. As Commander Parrott approached the car on foot, the rear-seat passenger was still in the car on the right or passenger side. Commander Parrott could see clearly into the car and did not see the rear-seat passenger lean towards the front seat or otherwise make any furtive movements. When Commander Parrott reached the car, he saw a "large-frame" gun on the front passenger seat and detained the rear-seat passenger as he was exiting. Commander Parrott believed that he would have seen the rear-seat passenger put something on the front seat if he had done so. While he could not see both of the driver's hands before he fled the car, Commander Parrott did not see the driver or other occupants of the car make any lunge before the driver and defendant fled. Commander Parrott admitted on cross-examination that he did not see defendant holding a gun.

¶ 4 Based on Commander Parrott's radio description of the front-seat passenger, another officer arrested defendant nearby. Commander Parrott identified him as the front-seat passenger based on his clothing and general description. When Commander Parrott questioned defendant at the police station, he initially denied being in the car but then admitted that he had been the front-seat passenger. He denied that the gun was his and claimed that he did not know whose

gun it was. He told Commander Parrott that "he wasn't going to admit that the gun was his because that would cause him to go back to prison."

¶ 5 The State entered into evidence a certified copy of defendant's prior felony conviction. The parties stipulated that no useable fingerprints were found on the gun or its ammunition.

¶ 6 Following closing arguments, the court found defendant guilty of UUWF, finding that defendant was the front-seat passenger and the gun was found on the front passenger seat, while Commander Parrott did not see any movement that would suggest that another occupant of the car put the gun on the seat.

¶ 7 The court denied defendant's post-trial motion and sentenced him to eight years' imprisonment with fines and fees, including the \$200 DNA analysis fee and \$30 children's advocacy center charge. The mittimus reflected credit for pre-sentencing detention but the order assessing fines and fees did not. This appeal timely followed.

¶ 8 On appeal, defendant contends that there was insufficient evidence to convict him of UUWF where a gun was found in a car that he had occupied with two other people and neither forensic evidence nor a confession tied him to the gun.

¶ 9 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.

¶ 10 Here, defendant was the front-seat passenger of a car where a gun was found on the front passenger seat. While there had been two other occupants of the car, the evidence directly addressed the question of whether either of them could have placed the gun on defendant's seat in the few seconds from the stop to the discovery of the gun. The driver fled essentially simultaneously with defendant, so that the front passenger seat would have been occupied by defendant's body up to the moment of their flight, and the officer did not see the driver lunge towards the front passenger seat. The officer also testified to having a clear view into the car that would have allowed him to see the rear-seat passenger place the gun on the front seat had he done so, but he did not. Lastly, while defendant denied during interrogation that the gun was his, he also made the equivocal statement that he would not admit the gun was his for fear of returning to prison. Taking the evidence in the light most favorable to the State, as we must, we find sufficient evidence to convict defendant of UUWF.

¶ 11 The parties correctly agree that defendant's \$200 DNA analysis fee (730 ILCS 5/5-4-3(j) (West 2008)) must be vacated because he provided a DNA sample upon a prior felony conviction. Our supreme court recently held that the DNA analysis fee cannot be assessed under such circumstances. *People v. Marshall*, 242 Ill. 2d 285 (2011).

¶ 12 Lastly, the parties agree that defendant should receive credit against his \$30 children's advocacy center charge (55 ILCS 5/5-1101(f-5) (West 2008)) for his pre-sentencing detention. Fines are subject to a \$5 credit for each day of pre-sentencing detention (725 ILCS 5/110-14(a) (West 2008)) but not fees, and the children's advocacy center charge is a fine. *People v. McNeal*, 405 Ill. App. 3d 647, 679-81 (2010). As the mittimus reflects 270 days of pre-sentence detention, defendant is entitled to \$30 credit against his fine.

¶ 13 Accordingly, pursuant to Supreme Court Rule 615(b)(2) (eff. Aug. 27, 1999), the \$200

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DNA analysis fee is vacated. The clerk of the circuit court is directed to correct the order assessing fines and fees to reflect that vacatur and a \$30 credit for pre-sentencing detention. The judgment of the circuit court is affirmed in all other respects.

¶ 14 Affirmed in part, vacated in part, and order corrected.