

2011 IL App (1st) 092341-U  
No. 1-09-2341

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SECOND DIVISION  
JULY 19, 2011

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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 1274
	)	
MARVA CROWDER,	)	Honorable
	)	William T. O'Brien,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE CONNORS delivered the judgment of the court.  
Presiding Justice Cunningham and Justice Harris concurred in the judgment.

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**O R D E R**

*HELD:* Judgment entered on bench conviction of delivery of a controlled substance affirmed where defendant forfeited, and record does not support, argument that the trial court relied on inadmissible hearsay evidence; mittimus corrected to reflect proper number of days' credit to which defendant is entitled; and fines and fees order corrected to reflect vacatur of certain charges.

¶ 1 Following a bench trial, defendant Marva Crowder was found guilty of delivery of a controlled substance and sentenced to five years' imprisonment. He was also assessed various fines and fees, and granted credit for 343 days spent in presentence incarceration. On appeal, defendant seeks reversal of his conviction claiming that the circuit court improperly relied on inadmissible hearsay evidence to find him guilty. He also challenges the assessment of certain charges and the calculation of his presentence incarceration credit.

¶ 2 At trial, Chicago police officer Michael Maas testified that on the morning of December 20, 2007, he worked as an undercover buyer with a team of officers investigating narcotics sales. Prior to the assignment, Officer Maas and his sergeant obtained two \$20 bills from a Chicago police contingency fund for which the sergeant completed a "contingency fund voucher." A copy of that voucher, marked as an exhibit for identification, was shown to Officer Maas by the State. He testified that it was a true and accurate copy of the voucher and that there were two serial numbers marked on it. After he returned the copy to the State, Officer Maas testified that one of the bills bore serial number AG65737233I and the other number EL77823172E.

¶ 3 Officer Maas further testified that, about 2 a.m., he rode a bus to Belmont and Sheffield Avenues in Chicago while

in possession of the prerecorded \$20 bills. As he crossed the street, co-defendant Erick Jones, who is not a party to this appeal, approached him and asked "What do you need?" Officer Maas replied that he was looking to buy some "rocks" and co-defendant responded that he could get some rocks from his "guy" if Maas bought him a rock.

¶ 4           The two walked to the sidewalk at 820 West Belmont where they were met by defendant. Officer Maas did not see anyone else on the street or in the area at that time. Co-defendant told Maas to give him the money, and Maas handed co-defendant the two prerecorded \$20 bills, which he then handed to defendant. From an "arm's length" away, Officer Maas saw defendant retrieve, from his mouth, two clear plastic baggies each of which contained a white rock that later tested positive for cocaine. He handed the baggies to co-defendant, who then placed one of them in Officer Maas' palm. Officer Maas placed it in his pocket and walked away.

¶ 5           About two minutes later, Officer Maas met his partner and, radioed a description of defendant and co-defendant, including clothing, height, weight, position, and direction of travel, to enforcement officers, who then located and arrested defendant. Several minutes after that, Officer Maas drove past defendant and identified him to enforcement officers.

¶ 6 On cross-examination, Officer Maas testified that he was not familiar with a form labeled as a "prerecorded fund sheet," but was familiar with the contingency fund voucher that his sergeant had used when signing out the bills. In a police report, Officer Maas listed the last three digits of one of the bill's serial numbers as "322I," when it ended in "233I." The officer also noted that there were very few, if any, pedestrians on the street at that time.

¶ 7 On redirect examination, Officer Maas testified that he was present when his sergeant typed the serial number from the bill onto the fund voucher, and that the numbers were the same as those on the bills that he took.

¶ 8 Chicago police officer William Seski testified that he was an enforcement officer that night, and received the radio description of defendant. When he saw defendant walking in the neighborhood, he detained and searched him, and recovered the two prerecorded \$20 bills from his pocket. Prior to this assignment, Officer Seski wrote down the serial numbers of the prerecorded bills on a piece of paper. He recalled that the serial numbers on the bills he recovered from defendant matched those he had written on the piece of paper, but he did not have that paper with him in court.

¶ 9 At the close of testimony, the State moved to enter into evidence a copy of the contingency fund voucher and a copy

of the prerecorded \$20 bills. The court did not allow the voucher form, but allowed the copy of the bills.

¶ 10 After arguments were presented by respective counsel, the court found defendant guilty of delivery of a controlled substance. In doing so, the court noted that it was a "fairly simple case," where an undercover officer went out with two \$20 bills that had unique serial numbers that had been "placed down on a contingency found [sic] voucher." Officer Maas identified defendant, from whom he had bought the drugs and who had the prerecorded bills in his pocket moments after the drug buy. The court also noted that Officer Seski recovered the bills and "they matched the money that was secured by [the sergeant] from the contingency fund, matching the voucher."

¶ 11 Defendant filed a motion for a new trial, arguing, *inter alia*, reasonable doubt of his possession of the prerecorded funds. The court found the testimony of the officers credible, and noted that Officer Maas had taken out contingency funds, and their serial numbers had been recorded "according to the testimony." The court also noted that "a contingency fund voucher was generated and serial numbers from the bills from that fund were placed on this voucher. So there was some documentation as to the money that was used in the case."

¶ 12 The court then sentenced defendant to five years' imprisonment and assessed various charges. In calculating the

amount of time that defendant had spent in presentence custody, defense counsel agreed the 343 days was appropriate.

¶ 13 In this appeal from that judgment, defendant first contends that his conviction must be reversed because the guilty finding entered by the court rested upon its improper consideration of the inadmissible contents of the contingency fund voucher, which the State elicited as substantive evidence to link him to the sale of drugs.

¶ 14 The State responds, and defendant concedes, that he forfeited this argument for failing to contemporaneously object to, and raise it in, a posttrial motion. *People v. Williams*, 181 Ill. 2d 297, 322 (1998). Notwithstanding this procedural default, defendant asserts that his conviction should be reversed because the trial court's reliance on the inadmissible evidence constituted plain error. The first step in reviewing for plain error is determining whether error occurred. *People v. Piatkowski*, 225 Ill. 2d 551, 565 (2007).

¶ 15 It is axiomatic that hearsay evidence is generally inadmissible due to its lack of reliability (*People v. Olinger*, 176 Ill. 2d 326, 357 (1997)), and that admission of such evidence is within the sound discretion of the trial court (*People v. Thomas*, 171 Ill. 2d 207, 216 (1996)). Here, the court did not admit the fund voucher into evidence and the parties agree that it was inadmissible hearsay.

¶ 16           Nonetheless, defendant asserts that the trial court improperly relied upon the contents of the voucher as evidence in determining his guilt of the charged offense. He maintains that the evidence linking him to the sale of drugs was closely balanced, and that the incompetent evidence about the voucher's contents was the only factor linking him to the offense. Thus, he claims, reversal is warranted.

¶ 17           The State disagrees, claiming that the record shows that defendant's conviction was not dependant upon the information contained in the contingency fund voucher except to show that Officer Maas matched the serial numbers on the bills with those on the voucher. In addition, the State claims that this testimony was corroborated by Officer Selski, and that the trial court properly analyzed the admitted evidence and based its finding on it.

¶ 18           The record shows that the parties examined both Officer Maas and Officer Seski on this matter. Based on their own recollections, both officers testified that the serial numbers of the prerecorded \$20 bills used in the controlled buy that night matched those recovered from defendant. Neither officer had the fund voucher in front of him when giving that testimony, and at the close of evidence, the court denied the State's motion to admit the voucher into evidence. In announcing its finding, the court noted that "according to the testimony,"

the contingency funds had been taken out, their serial numbers recorded, and then recovered. At the hearing on defendant's motion for a new trial, the court noted that the fund voucher was generated and that "there was some documentation as to the money."

¶ 19 This record does not support defendant's assertion that the voucher constituted an inadmissible police report which was used as substantive evidence to link him to the drug sale. In *People v. Rivas*, 302 Ill. App. 3d 421 (1998), defendant similarly objected to the admissibility of a sheet containing information about prerecorded funds that were issued to effectuate a drug buy. This court found that the prerecorded funds sheet qualified as "a routine, ministerial, and non-evaluative matter the preparation of which would indicate trustworthiness," and even if improperly admitted, did not warrant reversal in light of the overwhelming evidence against him. *Rivas*, 302 Ill. App. 3d at 432. Here, as in *Rivas*, the police officers merely recorded the serial numbers of money to be used in a drug transaction, however, unlike in *Rivas*, the voucher was not admitted into evidence and the officers similarly testified to their actions in this undercover operation, including the use of the prerecorded bills. Accordingly, we find defendant's attempt to cast aspersions on the preparation of the

voucher, in order to distinguish it from the one prepared in *Rivas*, unpersuasive and unsupported by the record.

¶ 20 Moreover, the evidence of defendant's guilt was not closely balanced. Through the unimpeached testimony of Officer Maas, defendant was identified as the offender who sold the drugs to him (*People v. Bannister*, 378 Ill. App. 3d 19, 39 (2007) (testimony of a single witness, if positive and credible, is sufficient to convict)). During that 2 a.m. transaction, Officer Maas viewed defendant from an arm's length, and within 10 minutes, identified defendant as the person who tendered the contraband to him. Officer Seski testified that he arrested him and recovered two \$20 bills from him within minutes of the transaction, whose serial numbers matched those he had recorded.

¶ 21 The record then shows that the evidence relating to the bills was not used substantively to identify defendant, as was the police report in *People v. Williams*, 240 Ill. App. 3d 505 (1992), relied on, in part, by defendant. Rather, it was merely corroborative of Officer Maas' testimony. For these reasons, we are satisfied that the fund voucher was not "improperly" considered as substantive evidence, and find that defendant has not established error to warrant plain error analysis.

¶ 22 Defendant next contends, the State concedes, and we agree, that his mittimus does not correctly reflect the number of days of pre-sentence credit to which he is entitled. Defendant

was awarded 343 days of credit; however, the record shows that he is entitled to 362 days. Defendant was arrested on December 20, 2007, remained in custody until he posted bond on December 24, 2007, and was incarcerated again on August 8, 2008, where he remained until his sentencing on July 30, 2007. Pursuant to Illinois Supreme Court Rule 615(b)(1) (eff. Aug. 27, 1999), we order the clerk of the circuit court to correct defendant's mittimus to reflect 362 days of credit.

¶ 23 Defendant also asserts, the State concedes, and we agree, that the \$1,000 controlled substances assessment (720 ILCS 570/411.2(a)(3) (West 2008)) should be offset by his presentence credit. The supreme court has determined that the controlled substances assessment acts as a "fine" and is, thus, subject to reduction by credit for presentencing incarceration. *People v. Jones*, 223 Ill. 2d 569, 592 (2006). Accordingly, defendant is entitled to a credit to offset this assessment.

¶ 24 Defendant also contests the propriety of the assessment of the \$5 Court Systems fee (55 ILCS 5/5-1101(a) (West 2008)) and the \$25 Traffic Court Supervision fee (625 ILCS 5/16-104c (West 2008)) since he was not convicted of a vehicular or traffic violation. The State concedes, and we agree, that since defendant was not convicted of one of the enumerated offenses, the assessments were improper and we vacate them.

¶ 25 Finally, defendant contests the propriety of the \$200 DNA analysis fee (730 ILCS 5/5-4-3 (West 2008)) since he has previously been convicted of a felony and submitted a sample for DNA profiling and storage. Based on the supreme court's recent decision in *People v. Marshall*, No. 110765 (Ill. May 19, 2011), we agree and note that the circuit court's order imposing the \$200 DNA analysis fee is void, and therefore not subject to forfeiture for defendant's failure to raise this issue (*Marshall*, No. 110765, slip op. at 14, 15; *People v. Leach*, No. 1-09-0339, slip op. at 14 (Ill. App. May 31, 2011)), as asserted by the State.

¶ 26 The State also asserts that defendant failed to meet his burden of proving that he ever paid the cost of analysis associated with the previous collection of his DNA following his conviction of a previous felony. We disagree.

¶ 27 Although the common law record on appeal does not expressly show that defendant was assessed the DNA analysis fee in connection with either of his prior felonies, the requirement to collect DNA and charge the fee became effective on January 1, 1998 (730 ILCS 5/5-4-3 (West 1998)), and was, thus, in effect when defendant was convicted of his first felony in 2003. Because the Code mandates that anyone convicted of a felony must submit a DNA specimen and be assessed the fee, we presume that the circuit court imposed this requirement as part of defendant's

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sentence following at least one of his prior convictions. *Leach*, No. 1-09-0339, slip op at 14, citing *People v. Gaultney*, 174 Ill. 2d 410, 420 (1996). Accordingly, we find the record sufficient for the limited purpose of demonstrating that the DNA analysis charge has previously been assessed against defendant. *Leach*, No. 1-09-0339, slip op at 14-15.

¶ 28 We, therefore, vacate the \$5 Court Systems fee, the \$25 Traffic Court Supervision fee, and the \$200 DNA Analysis charge, order the mittimus corrected to reflect 362 days of presentence credit, and affirm the judgment of the circuit court of Cook County in all other respects.

¶ 29 Affirmed in part; vacated in part; mittimus corrected.