

No. 1-09-2674

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).

FIRST DIVISION
March 14, 2011

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. 08 CR 14760
)	
LEMUEL JOHNS,)	Honorable
)	Catherine M. Haberkorn,
Defendant-Appellant.)	Judge Presiding.

JUSTICE LAMPKIN delivered the judgment of the court.
JUSTICES Hoffman and Rochford concurred in the judgment.

O R D E R

Held: The evidence was sufficient to sustain defendant's conviction of aggravated battery beyond a reasonable doubt; the order imposing a DNA analysis fee was not void, as the trial court was authorized by statute to levy the fee; and the DNA analysis fee was not a fine for which defendant was entitled to presentencing custody credit. The court system fee was improper because it did not relate to defendant's conviction. The trial court's judgment was affirmed, and the mittimus corrected.

Following a bench trial, defendant Lemuel Johns was found guilty of aggravated battery and resisting or obstructing arrest,

then sentenced to seven years' imprisonment. On appeal, defendant challenges the sufficiency of the evidence to sustain one of the two counts of aggravated battery. Defendant also challenges certain fines and fees. We affirm.

Following a scuffle with Chicago police, defendant was arrested and then charged with two counts of aggravated battery. Count 1 alleged that he caused bodily harm to Officer Vega by striking him "about [the] body." Count 2 alleged that he made contact of an insulting or provoking nature with Officer Vega by striking him "about the face and head." Defendant also was charged with two counts of resisting and obstructing arrest from Officers Vega and Ibarra.

The evidence at trial revealed that defendant and his companions were blocking traffic while making gang signs near a "shrine" commemorating the recent death of the Maniac Latin Disciples leader. The officers handcuffed defendant and his two companions together, leaving defendant's right hand free. Officer Vega testified that defendant punched him in the chin, then with his left arm struck him in the head and placed Officer Vega in a headlock. Officers Otero and Ibarra testified that defendant, after striking Officer Vega in the face, began to choke him. Defendant then grabbed Officer Vega's ear, pulled him down, and a struggle ensued. Officers Vega and Ibarra, along with defendant, fell to the ground. Defendant eventually landed

on Officer Ibarra's leg.

Officer Vega suffered a sore neck, chin, and head and lacerations to his neck, ear, and hands. The State presented photographs of the injuries, which Officer Vega identified. Officer Ibarra suffered a fractured knee. She, too, identified photographs of the injury.

After being advised of his *Miranda* rights, defendant admitted to both Detective Goduto and an assistant State's Attorney that he had "wrestled" with police.

Two defense witnesses testified that one officer made a racist statement to defendant, then beat him, and a struggle between a number of police officers and defendant ensued.

The trial court found that the officers testified "clearly and convincingly" and their testimony was corroborated by the photographs displaying their injuries. Accordingly, the court found defendant guilty as charged. The court denied defendant's motion for a new trial, declared that the counts for obstructing and resisting arrest would merge with the two aggravated battery counts, and sentenced defendant to two concurrent terms of seven years' imprisonment. Defendant appealed.

Defendant does not now challenge the sufficiency of the evidence to sustain Count 2, that he struck Officer Vega about the face or the head, but contends the evidence was insufficient to sustain Count 1, that he struck Officer Vega about the body.

Contrary to defendant's assertion that a *de novo* standard of review should apply in this case, we review defendant's challenge to the sufficiency of the evidence under the reasonable doubt standard. *People v. Givens*, 364 Ill. App. 3d 37, 43 (2005). Under that standard, we will reverse a conviction only where the evidence is so unreasonable, improbable, or unsatisfactory as to justify reasonable doubt of defendant's guilt. *People v. Jackson*, 232 Ill. 2d 246, 281 (2009). The relevant question is whether, considering the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *Jackson*, 232 Ill. 2d at 280.

In order to sustain the conviction on Count 1, the State was required to show that defendant intentionally or knowingly and without legal justification caused bodily harm to Officer Vega by striking him about the body. 720 ILCS 5/12-4(18) (West 2008).

The evidence, viewed in a light most favorable to the State, shows that defendant not only struck Officer Vega about the face and head, but on his neck. Given that evidence, as well as the officers' testimony regarding the ensuing struggle and defendant's confession to "wrestling" with Officer Vega, a reasonable factfinder could have found that defendant struck Officer Vega about the body. Accordingly, we reject defendant's narrow interpretation of "body" to exclude the neck. We cannot

say the evidence was so unsatisfactory as to raise a reasonable doubt of defendant's guilt.

Defendant next challenges the imposition of the \$200 DNA analysis fee. He argues that the relevant statute, subsection 5-4-3(j) of the Unified Code of Corrections (730 ILCS 5/5-4-3(j) (West 2008)), contemplates the collection of but one DNA sample and but one fee; because he already submitted DNA on a prior conviction, he argues the fee is inapplicable.

The State responds that defendant forfeited review of this issue by failing to raise it before the trial court. Defendant counters that the ordered fee is void because the trial court lacked the statutory authority to levy it, and a void order may be challenged at any time.

This court has repeatedly held that imposition of the fee is authorized in a case such as the present. See *People v. Adair*, 1-09-2840, slip op at 19-20 (Dec. 10, 2010); *People v. Bomar*, Nos. 3-08-0985 & 3-08-0986, slip op. at 15-16 (Oct. 15, 2010); *People v. Hubbard*, 404 Ill. App. 3d 100, 103 (2010); *People v. Grayer*, 403 Ill. App. 3d 797, 802 (2010); *People v. Marshall*, 402 Ill. App. 3d 1080, 1083 (2010), *appeal allowed*, 237 Ill. 2d 577 (2010); *but see People v. Rigsby*, 1-09-1461, slip op. at 5 (Dec. 3, 2010), and cases cited therein (holding that only one DNA analysis and one fee is necessary per qualifying offender). These decisions reasoned that while section 5-4-3 does not

expressly require a fee for every felony conviction, it also does not preclude multiple DNA fees following a conviction in separate cases. Further, the decisions found that taking a defendant's DNA upon conviction of a qualifying offense provides fresh samples, subject to new methods of collecting, analyzing, and categorizing DNA and, additionally, that the fees may be used to cover a variety of additional costs incurred by the State crime lab. Unless and until our supreme court rules otherwise, we will continue to abide by these well-reasoned decisions. The order therefore is not void, and defendant has forfeited review of his claim. See *Marshall*, 402 Ill. App. 3d at 1082.

Defendant argues, in the alternative, that the DNA analysis fee is really a fine for which he is entitled to presentencing custody credit. See 725 ILCS 5/110-14(a) (West 2008).

This district has found that the DNA analysis fee is "compensatory and a collateral consequence of defendant's conviction," and thus a fee rather than a fine, so that "the credit stated in section 110-14 *** cannot be applied." *People v. Tolliver*, 363 Ill. App. 3d 94, 97 (2006); see also *Adair*, 1-09-2840, slip op. at 22 (holding same); *People v. Williams*, No. 1-09-1667, slip op. at 11-12 (Dec. 2, 2010) (holding same); but see *People v. Long*, 398 Ill. App. 3d 1028, 1034 (2010) (holding opposite). We see no reason to depart from these decisions.

1-09-2674

Finally, defendant contends, and the State correctly concedes, that the \$5 court system fee for individuals who violate the Illinois Vehicle Code or a similar local provision (55 ILCS 5/5-1101(a) (West 2008)), was improperly assessed because it does not relate to his aggravated battery conviction. We therefore vacate the \$5 fee. We order the clerk of the circuit court to correct the mittimus to reflect a total of \$525.

We affirm the judgment of the circuit court of Cook County in all other respects.

Affirmed; mittimus corrected.