

No. 1-09-0606

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 18699
	)	
WAYNE JOHNSON,	)	Honorable
	)	Charles P. Burns,
Defendant-Appellant.	)	Judge Presiding.

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ORDER

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

¶ 1 *HELD*: Trial court did not err in assessing defendant a \$10 Arrestee’s Medical Costs Fund fee, but \$200 DNA analysis fee is vacated in light of *People v. Marshall*, 242 Ill. 2d 285 (2011).

¶ 2 Following a bench trial defendant, Wayne Johnson, was found guilty of delivery of a controlled substance (720 ILCS 570/401(d)(I) (West 2006)) and sentenced to six years in prison. The trial court also entered a monetary judgment in the amount of \$835 for various fees, fines, and costs. On appeal, defendant does not contest the sufficiency of the evidence to sustain his

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conviction but contends that the trial court erred in assessing a \$10 Arrestee's Medical Costs Fund fee (730 ILCS 125/17 (West 2008)), because there was no evidence that he was injured during his arrest or while in custody. He also asserts that he should not have been assessed a \$200 DNA analysis fee (730 ILCS 5/5-4-3(j)(West 2006)), because he had prior felony convictions and therefore, has already been subjected to DNA analysis and paid the \$200 analysis fee.

¶ 3 On July 14, 2010, this court issued an order affirming the trial court's judgment imposing the \$10 Medical Costs Fund Fee and the \$200 DNA analysis fees. The Illinois Supreme Court directed that we vacate our opinion and reconsider in light of *People v. Marshall*, 242 Ill. 2d 285 (2011). In *Marshall*, our supreme court ruled the DNA fee statute permits a DNA analysis fee only "where that defendant is not currently registered in the DNA database." *Id.* at 303. Upon reconsideration, we affirm the trial court's assessment of a Medical Costs Fund fee but vacate the DNA fee.

¶ 4 Defendant's conviction stems from his September 11, 2008, arrest for delivering 0.2 grams of cocaine to an undercover Chicago police officer. The trial court found defendant guilty of delivery of a controlled substance and based on his prior felony convictions sentenced him to six years in prison, the minimum sentence for a Class X offense. The court also assessed mandatory court fines and fees totaling \$835, including a \$10 assessment for the Arrestee's Medical Cost Fund and a \$200 DNA analysis fee. At sentencing, the trial court informed defendant that as a convicted felon he would have to give a DNA sample to the state police for its DNA database. The judge then asked defendant, "Do you have any questions regarding my

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sentence, sir?,” to which defendant responded “No, sir.” Defendant did not file a motion to reconsider the sentence but did file a timely appeal.

¶ 5 On appeal, defendant does not contest the trial court’s determination of guilt and argues only that this court should vacate the \$10 assessment for the Arrestee’s Medical Costs Fund and the \$200 DNA analysis fee. These issues involve questions of statutory interpretation, which this court reviews *de novo*. *People v. Caballero*, 228 Ill. 2d 79, 82 (2008).

¶ 6 Defendant first argues that this court should vacate the \$10 Arrestee’s Medical Costs Fund fee that was assessed pursuant to section 17 of the County Jail Act (730 ILCS 125/17 (West 2008)). Section 17, which was amended effective August 2008, prior to defendant committing his offense, provides in pertinent part:

“When medical expenses are required by any person held in custody, the county shall be entitled to obtain reimbursement from the County Jail Medical Costs Fund to the extent moneys are available from the Fund. To the extent that the person is reasonably able to pay for that care, including reimbursement from any insurance program or from other medical benefit programs available to the person, he or she shall reimburse the county.

The county shall be entitled to a \$10 fee for each conviction or order of supervision for a criminal violation, other than a petty offense or business offense.

The fee shall be taxed as costs to be collected from the defendant, if possible, upon

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conviction or entry of an order of supervision. The fee shall not be considered a part of the fine for purposes of any reduction in the fine.

All such fees collected shall be deposited by the county in a fund to be established and known as the County Jail Medical Costs Fund. Moneys in the Fund shall be used solely for reimbursement to the county of costs for medical expenses and administration of the Fund.” 730 ILCS 125/17 (West 2008).

¶ 7 Defendant asserts that pursuant to the plain language of the statute counties may assess a fee to offset or reimburse for medical expenses that an arrestee accrues as a result of injuries during his arrest or while in custody. However, defendant contends that the assessment can only be used for reimbursement of medical expenses relating to injuries suffered by that arrestee and that a court may not impose a fee to cover the expenses for any and all convicted persons who are arrested. Therefore, defendant asserts, where, as here, no evidence was presented that a defendant suffered any injury during his arrest or while in custody or that Cook County incurred any expense relating to a defendant’s medical care or treatment, the \$10 fee is not authorized.

¶ 8 After this court initially issued its order affirming the assessment of the \$10 fee, our supreme court issued an opinion in *People v. Jackson*, 2011 IL 110615, 955 N.E.2d 1164, 353 Ill. Dec. 353 (2011), which controls this issue. In that case, the supreme court held that section 17 authorizes a \$10 medical cost assessment regardless of whether a defendant actually received medical services. *Id.* In light of *Jackson*, the trial court properly assessed the \$10 fee.

¶ 9 Defendant next argues that the trial court erred in assessing a \$200 fee for DNA analysis,

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pursuant to section 5-4-3 of the Corrections Code (730 ILCS 5/5-4-3 *et seq.* (West 2006)), because he was previously convicted of a felony and therefore, has already been subject to DNA analysis and paid the \$200 fee.<sup>1</sup> In *Marshall*, the supreme court agreed with the defendant's reading of the DNA analysis fee statute that it permits the \$200 fee only "where that defendant is not currently registered in the DNA database." *Marshall*, 232 Ill. 2d at 303. We therefore vacate the \$200 DNA analysis fee imposed on the defendant.

¶ 10 For the foregoing reasons, we affirm the assessment of the \$10 Medical Costs Fund fee and vacate the \$200 DNA analysis fee.

¶ 11 Affirmed in part and vacated in part.

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<sup>1</sup> Initially, defendant presented this argument without documentation. Upon submitting a petition for rehearing on August 10, 2010, however, defendant also submitted a report from the Illinois State Police Indexing Lab reflecting that he was required to submit his DNA and was assessed a fee for doing so.

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