

NOTICE
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2012 IL App (4th) 101037-U

Filed 4/9/12

NO. 4-10-1037

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	McLean County
RICKY LEWIS TALLEY,)	No. 09CF1028
Defendant-Appellant.)	
)	Honorable
)	Charles G. Reynard,
)	Judge Presiding.

JUSTICE APPLETON delivered the judgment of the court.
Justices Cook and Knecht concurred in the judgment.

ORDER

¶ 1 *Held:* (1) Even though two of the witnesses against defendant were admitted drug addicts, the evidence was sufficient to prove defendant guilty of unlawful delivery of a controlled substance (720 ILCS 570/401(d)(i) (West 2008)), considering that other evidence corroborated these witnesses' testimony.

(2) The DNA analysis fee is unauthorized by section 5-4-3 of the Unified Code of Corrections (730 ILCS 5/5-4-3 (West 2008)) because, as a result of a previous conviction, defendant's DNA already was on file with the Illinois State Police.

¶ 2 A jury found defendant, Ricky L. Talley, guilty of a single count of unlawful delivery of a controlled substance (720 ILCS 570/401(d)(i) (West 2008)). The trial court sentenced him to 12 years' imprisonment and ordered him to pay a deoxyribonucleic acid (DNA) analysis fee in the amount of \$200 (see 730 ILCS 5/5-4-3(j) (West 2008)). (Because of his criminal record, defendant was eligible for Class X sentencing (see 730 ILCS 5/5-5-3(c)(8) (West 2008) (text of section

effective until July 1, 2009)), even though the charged offense was a Class 2 felony (720 ILCS 570/401(d) (West 2008)). The prison term for a Class X felony was not less than 6 years and not more than 30 years (730 ILCS 5/5-8-1(a)(3) (West 2008) (text of section effective until June 1, 2009)), whereas, normally, the prison term for a Class 2 felony was not less than 3 years and not more than 7 years (730 ILCS 5/5-8-1(a)(5) (West 2008) (text of section effective until June 1, 2009)).)

¶ 3 Defendant appeals on two grounds. First, he argues the State failed to prove him guilty, beyond a reasonable doubt, of unlawful delivery of a controlled substance, because the two primary witnesses to the alleged delivery, Rebekah Best and Angla Gipson, admitted being drug abusers and at least one of them, Best, had agreed to cooperate with the State in return for leniency in a criminal case against her. (The briefs and some of the witnesses at trial say that Gipson's first name is Angela. We learn from Gipson's testimony, however, that her first name actually is Angla. We will make the correction in this order, referring to her by her correct first name.) When we regard all the evidence, however, in a light most favorable to the prosecution, we are unconvinced it would be impossible for any rational trier of fact to find the elements of unlawful delivery of a controlled substance to be proved beyond a reasonable doubt, especially considering that the testimony of Best and Gipson was corroborated by other evidence—including defendant's possession of the prerecorded buy money and his own confession.

¶ 4 Second, defendant argues we should vacate the DNA analysis fee of \$200, listed in a "Supplemental Sentencing Order," because his DNA already was on file with the Illinois State Police as a result of a previous conviction and it was unnecessary to analyze his DNA again. The State agrees, and so do we.

¶ 5 Therefore, we affirm the trial court's judgment in part and vacate it in part, and we remand this case with directions. We vacate the DNA analysis fee, but we otherwise affirm the judgment. Also, we remand this case with directions to issue an amended "Supplemental Sentencing Order" reflecting the elimination of the DNA analysis fee.

¶ 6 I. BACKGROUND

¶ 7 In the jury trial, which occurred in May 2010, the State called five witnesses. Two of the witnesses, Rebekah Best and Angla L. Gipson, were participants in the cocaine transaction (which, unbeknownst to Gipson at the time, was a controlled buy). The remaining witnesses, Jonathan Cleveland, James M. Ferguson, and Stephen Petrillo, were police officers for the city of Normal, Illinois. The witnesses testified substantially as follows.

¶ 8 A. Rebekah Best

¶ 9 Since December 8, 2009, Best had been serving a prison term for forgery. She had committed the forgery by writing prescriptions for herself (she had, as she put it, "a long history of substance abuse issues").

¶ 10 In February 2009, when the Normal police arrested Best for the forgery, they suggested she work for them as a confidential source. At first, she declined. But after reflecting further on the 10-year extended term of imprisonment she could receive by reason of her prior convictions, she changed her mind. Hoping to receive "[a] reduction in sentence," she contacted a detective named Cleveland and agreed to be a confidential source.

¶ 11 One thing that was expected of Best, as a confidential source, was to suggest someone from whom she could buy drugs (in a controlled buy). She suggested Angla Gipson, "a pretty desperate drug addict" from whom she had bought cocaine 8 or 10 times in the past.

¶ 12 The controlled buy from Gipson happened on April 29, 2009. In preparation for the controlled buy, a police officer drove by Gipson's residence and visually confirmed that she was home. The police then patted Best down and thoroughly searched her boyfriend's truck, taking everything out of the truck and putting everything back in. Then Cleveland gave her some cash. She drove to Gipson's apartment, with the police following at a discreet distance. When Best arrived, Gipson happened to be standing outside.

¶ 13 Best and Gipson entered into an agreement. Best would buy \$80 or \$100 of crack cocaine (Best could not remember the dollar amount), and in return for acting as a go-between in this transaction, Gipson would receive \$20 worth of the cocaine. After Best and Gipson agreed on these terms, Best gave Gipson the cash. Gipson made a phone call and went to meet someone at Aldi's, leaving Best in the living room by herself.

¶ 14 Five or ten minutes later, Gipson returned and told Best "they were coming [t]here," to the apartment. She requested Best to go into the back bedroom so that Best would not see the visitors and the visitors would not see her. "That's a normal drug activity," Best explained in her testimony. "Nobody wants to know anybody new."

¶ 15 While in the back bedroom, Best made a phone call to Cleveland, "letting him know what was taking so long." Best heard people come into the apartment. She heard voices. Gipson came into the bedroom—Best did not know why—and went back out. A couple of minutes later, after the visitors left, Gipson told Best the coast was clear, and Best returned to the living room. Gipson handed Best three or four Baggies of crack cocaine, and Best gave Gipson a twenty-dollar rock. Gipson invited Best to smoke some cocaine with her, but then Gipson changed her mind and told Best to leave.

¶ 16 Best went out to her boyfriend's truck and called Cleveland, as she had agreed to do. Cleveland told her to meet him two or three blocks up the road. Best drove to where he was, and she gave him the crack cocaine.

¶ 17 B. Jonathan Cleveland

¶ 18 It was on April 13, 2009, that Best signed up to be a confidential source. She named Gipson as a person from whom she could buy drugs. Cleveland testified:

"Ms. Best told me that [Angla] Gipson was strictly a user. She had a habit and a cocaine addiction, but she did have access to different people in the community that provided her with cocaine. According to Ms. Best, Ms. Gipson purchased cocaine on a regular basis. She had a pretty bad habit, and there were several different people that would provide her with cocaine if she went over there to call."

¶ 19 Cleveland made arrangements to do a controlled buy from Gipson, using Best as the confidential source. The first step was to make sure "the situation [was] as sterile as possible." A female police officer searched Best, making sure she had no drugs, contraband, or cash on her person. The police also searched Best's vehicle. Next, Cleveland made a photocopy (People's exhibit No. 2) of the five twenty-dollar bills that Best would use to make the purchase. At noon on April 29, 2009, he gave Best the cash.

¶ 20 Best then drove from the police station directly to Gipson's house. The police followed her, keeping their eyes on her the whole time and making sure she did not stop anywhere or meet anyone along the way. When Best arrived at Gipson's apartment, Cleveland as well as a detective named Van Holan watched her exit her vehicle. Van Holan, stationed on the south side

of the apartment building, watched Best enter Gipson's apartment. Cleveland drove to the north side of the apartment building, where he established surveillance.

¶ 21 Neither Cleveland nor any of the other police officers could see into Gipson's apartment, and there were no remote listening devices (*i.e.*, no one was wearing a wire).

¶ 22 Fifteen or twenty minutes later, Cleveland heard Van Holan report on the radio that Gipson had come out of the apartment and had got into her vehicle. Other detectives watched Gipson drive to the parking lot of Aldi's. Cleveland remained where he was, keeping surveillance on Gipson's apartment, because he knew that Best was still inside. After meeting no one at Aldi's, Gipson drove back to her apartment and went back inside.

¶ 23 Shortly thereafter, Cleveland saw a green automobile—a Pontiac, he seemed to recall—pull up to Gipson's apartment. A black woman got out of the driver's side, and a large black man got out of the passenger's side. Cleveland identified defendant, in court, as the man who had gotten out of the passenger's side. The woman and the man entered Gipson's apartment and soon afterward left the apartment and returned to the green car. The green car drove away, and the police followed it, keeping it under surveillance.

¶ 24 A short time later, Cleveland saw Best leave Gipson's apartment and return to her vehicle. Using her cell phone, Best called Cleveland; she told him that cocaine had been delivered to Gipson and that Gipson had in turn delivered it to her. Cleveland radioed that information to the take-down units, who then stopped the green car and arrested its occupants.

¶ 25 As Best drove away from Gipson's residence, Cleveland "immediately established a tail car right behind her vehicle so [he] knew she made no further stops and had no contact with anyone else." He followed her directly to the parking lot of Family Video, where she handed over

to him the crack cocaine. The police did another search of Best and her vehicle at that time and found no other contraband.

¶ 26 Cleveland later weighed the crack cocaine. With its packaging included, it was ".55 grams of a hard off-white chunky substance that field-tested positive for the presence of crack cocaine." He sealed the cocaine into an envelope and secured the envelope in an evidence locker. (At trial, the parties stipulated to the chain of custody. They also stipulated that a forensic scientist, Michelle Dierker, had tested and weighed the substance and had found that it was 0.1 grams of cocaine.)

¶ 27 One of the members of the take-down unit, Detective Ferguson, handed over to Cleveland the items he had seized from defendant when arresting him. Those items included the prerecorded buy money: the five twenty-dollar bills that Cleveland had photocopied before giving them to Best. The serial numbers matched those in the photocopy.

¶ 28 Cleveland then met with defendant in the interview room of the police station. He informed defendant that their conversation would be audio-recorded and video-recorded, and he read him his rights. Defendant agreed to continue with the interview. People's exhibit No. 4 was a digital versatile disc (DVD) of the interview, and People's exhibit No. 4A was a transcript of the interview. Copies of the transcript were handed out to the jury members so they could follow along while the DVD was played.

¶ 29 Initially, in the interview, defendant professed ignorance as to why the police had arrested him. He denied selling any cocaine, and he insisted that the cash the police had found on his person was the proceeds of his disability check.

¶ 30 Eventually, though, after Cleveland repeatedly explained to defendant that there had

been a controlled buy and that the cash they had recovered from defendant was police money with prerecorded serial numbers (Cleveland showed him the photocopy), defendant finally admitted to Cleveland, "Yeah, *** I did it man. I did, I, I did it man. I did it. Be up front with you man." Again he told Cleveland, "I made that mistake and I'm going to be up front. Yeah, I did it." And yet again he said, "[Y]ou know I done confessed to it." Defendant urged Cleveland, however, to let his girlfriend go because she had nothing to do with it. Cleveland replied that he could make that happen.

¶ 31 After defendant confessed, the camera was turned off, and he and Cleveland discussed "what type of intelligence information [defendant] may know that could be beneficial to him." Defendant signed up to be a confidential source.

¶ 32 In the beginning, defendant kept in contact with Cleveland fairly often, once a week. And on June 9, 2009, defendant attempted to make a controlled buy, but no drugs were obtained; either the person had moved, or he no longer wished to deal with defendant. As time passed, though, defendant became increasingly difficult to get a hold of, and consequently, Cleveland obtained a warrant for his arrest.

¶ 33 Cleveland explained at trial:

"I had no contact with [Mr. Talley] except perhaps one phone call between June and November. The phone number that he gave me no longer was working. I had a phone number for his mother where he was supposedly staying. I contacted and left messages for Mr. Talley, but at no point in time did he return a call. Mr. Talley said he was having some trouble because his name was hot from

getting arrested by the police officers, and thought perhaps he might be working for them. In a seven-month period or five-month period there was no contact between Mr. Talley or no attempts between—from him to try to contact me or any other members of my office."

¶ 34 As for Best, she pleaded guilty to the charge of forgery, and Cleveland testified in her sentencing hearing, making the trial court aware of all the assistance she had rendered as a confidential source. The court sentenced her to two years' imprisonment. By Cleveland's understanding, "she also had a very extensive criminal background involving the same type of charges."

¶ 35 C. James M. Ferguson

¶ 36 Immediately after the controlled buy, a detective named Ryan pulled over the green Pontiac Bonneville in which defendant was riding, and Ferguson pulled up behind Ryan's vehicle. Ryan went to the driver's side of the green car, where the female driver was, and Ferguson went to the passenger's side, where defendant was.

¶ 37 As Ferguson approached the passenger's side of the green car, defendant already had his hands up and was looking back toward Ferguson. Ferguson noticed some loose cash lying on defendant's lap. He ordered defendant out of the car, and as defendant got out, the cash fell off his lap and onto the floorboard.

¶ 38 Ferguson searched defendant's person. He found more cash in defendant's pocket, but he found no contraband. He put the cash from the floorboard, the cash from defendant's pocket, and all the other property he had seized from defendant in a manila envelope and turned the envelope

over to Cleveland.

¶ 39 D. Stephen Petrillo

¶ 40 When Petrillo heard, over the radio, that a green and tan Jeep Cherokee (Gipson's vehicle) had left the apartment building, he followed the Jeep to Aldi's. The Jeep parked at Aldi's, and Petrillo observed a woman sitting in the Jeep. The woman did not get out; she just sat there. "She was there for a short while," Petrillo testified, "and then she left." He followed her back to West Olive Street, where Gipson's residence was located.

¶ 41 E. Angla L. Gipson

¶ 42 Two or three years before the trial, Gipson began using crack cocaine. She used it two or three times a week until she quit seven or eight months before the trial. Then she relapsed about three months before the trial.

¶ 43 While living on West Olive Street, Gipson procured cocaine for people. She knew three sources. She testified: "Someone would ask me to get it, and I would call someone, and they would bring it, and I would get a piece of it."

¶ 44 The afternoon of April 29, 2009, Best came over to Gipson's apartment and asked her to obtain \$100 of crack cocaine for her. Gipson did not know ahead of time that Best would be coming over. It was not unusual, however, for Best to drop by unexpectedly. Gipson telephoned "Rick" (whom she identified, in court, as defendant). She had known defendant for six months, and he had supplied her with cocaine on five or six previous occasions. She told him on the phone that she "had \$100.00 for somebody." He told her to meet him at Aldi's.

¶ 45 Gipson drove to Aldi's, taking the cash with her, while Best waited inside her apartment. Defendant changed his mind about transacting the business at Aldi's. He telephoned

Gipson and told her he did not feel comfortable there, because he had seen a white truck that aroused his suspicion. So, he told Gipson he wanted to do the deal in her apartment instead.

¶ 46 Gipson returned to her apartment. At defendant's request, she told Best to go into the back bedroom. Defendant and his girlfriend went into the kitchen, and Gipson followed them there. He laid the crack cocaine on the kitchen table, and Gipson laid the \$100, in twenties, on the table. Defendant picked up the cash, and he and his girlfriend left. Gipson gave the cocaine to Best, keeping a twenty-dollar bag for herself.

¶ 47 As of the day of the controlled buy, Gipson had gone without cocaine for two weeks. She smoked the \$20 of crack after Best left. It made her high for three hours.

¶ 48 Afterward, the police arrested Gipson, and she signed up to be a confidential source. She worked for the police in that capacity on a couple of occasions. Her record has remained clean of felony convictions.

¶ 49

II. ANALYSIS

¶ 50

A. The Sufficiency of the Evidence

¶ 51 For six reasons, defendant contends that the evidence is insufficient to prove him guilty, beyond a reasonable doubt, of the charged offense of unlawful delivery of a controlled substance. First, he observes that Best and Gipson both were, by their own admission, drug addicts. He argues that drug addiction can warp a witness's perceptions and memory and weaken the witness's power and inclination to tell the truth. See *People v. Bazemore*, 25 Ill. 2d 74, 77 (1962).

¶ 52 The State's case, however, did not rest solely on the credibility of Best and Gipson. Cf. *Bazemore*, 25 Ill. 2d at 76 ("Where, as here, the State's case rests solely upon the credibility of an admitted narcotics addict, a trial court, and in the final analysis this court, must carefully and

closely scrutinize the testimony of the witness.") Other evidence—compelling evidence—corroborated their testimony: Cleveland's observation of defendant entering and leaving Gipson's apartment during the controlled buy, the prerecorded currency on defendant's lap, and defendant's own confession.

¶ 53 Defendant argues that his confession could have been merely a ruse to get his girlfriend off the hook. He characterizes her as "an alternate suspect." To be sure, defendant's girlfriend, the driver of the green car, was a suspect, but we see no reason to regard her as a suspect *alternative* to defendant. It appears they were in it together. Just because defendant bargained for her release, it does not follow that he thereby sacrificed himself, or that he confessed to a felony of which he was innocent. Rather, given the overwhelming evidence against him, he could have realized that continuing to deny his involvement in the drug deal was simply untenable. If one confesses—even if the confession is nothing more than an acknowledgment of the obvious—one might as well try to obtain, in return, whatever benefits one can. That was what defendant did by asking Cleveland to let his girlfriend go.

¶ 54 Second, defendant says: "The evidence here indicates that both of the State's primary witnesses, Best and Gipson, were under the influence of drugs during the criminal event in question." One could dispute defendant's characterization of Best and Gipson as "*the* *** primary" witnesses for the State. (Emphasis added.) Cleveland and Ferguson were important witnesses, too—perhaps every bit as important as Best and Gipson. In any event, we are unaware of any evidence that either Best or Gipson were actually under the influence of drugs during the controlled buy. In fact, Gipson testified that, at the time of the controlled buy, she had gone without cocaine for the preceding two weeks. Being a drug addict and being currently under the influence of drugs are, of course, two

different things.

¶ 55 Third, defendant notes that Best was not fitted with a remote listening device and that, consequently, the police neither saw nor heard what went on inside Gipson's apartment. Nevertheless, Gipson saw what went on inside the apartment, and Best did too, except when she was in the back bedroom; and the corroborating evidence makes it hard to doubt that they told the truth on the stand. It is difficult to imagine a plausible innocent explanation for defendant's driving away from Gipson's apartment with a lapful of prerecorded currency, after which Best emerged from Gipson's apartment with Baggies of crack cocaine.

¶ 56 Fourth, defendant says that Best "was a chronic drug abuser who worked as an informant for the police so that she could secure a lenient sentence for her own criminal conviction." True, but at the time of defendant's trial, Best already had secured this lenient sentence: she already had been sentenced to two years' imprisonment. Because she already had been sentenced, it is unclear how her testimony in the present case could have been influenced by a desire to "secure a lenient sentence."

¶ 57 Fifth, defendant argues that because Gipson had no felony convictions on her record at the time of trial, one could reasonably infer that she "received some kind of protection or leniency from prosecution for testifying in Ricky Talley's case, given Gipson's active participation in the drug trade." In order to accept the theory, however, that Gipson falsely implicated defendant in order to save her own skin, one seemingly would have to believe that Best and Gipson made a charitable donation to defendant in the form of \$100 in prerecorded currency when he and his girlfriend happened to stop by Gipson's apartment while a controlled buy was in progress. Granted, defendant raises the possibility that his girlfriend was the wrongdoer and that he was innocent. But if

defendant's girlfriend was the only drug trafficker and defendant was an entirely neutral passenger (if, to his surprise, she tossed the cash into his lap as they were leaving Gipson's apartment in the green car), it is unclear why Gipson would implicate defendant instead of his girlfriend. It is unclear what Gipson would have to gain from falsely accusing defendant as opposed to truthfully accusing his girlfriend.

¶ 58 Sixth, defendant remarks that when the police pulled over the green car in which he was riding, they found no contraband. That is true—because defendant had converted it into cash, or so the jury could have reasonably inferred.

¶ 59 In sum, defendant is correct that "testimony by an informant who himself [or herself] abuses unlawful substances and who participates in an undercover operation to minimize punishment for his [or her] own illegal activity should be closely scrutinized." *People v. Anders*, 228 Ill. App. 3d 456, 464 (1992). But, as defendant admits in his brief, "when this testimony is partially corroborated, the reasonable doubt threshold can be overcome." *Id.* In this case, the testimony of Best and Gipson is abundantly corroborated, and when we regard all the evidence in a light most favorable to the prosecution, we are unconvinced that it would be impossible for a rational trier of fact to find the elements of unlawful delivery of a controlled substance to be proved beyond a reasonable doubt (see *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *People v. Siguenza-Brito*, 235 Ill. 2d 213, 224 (2009)), namely, that defendant knowingly delivered a substance containing cocaine (see 720 ILCS 570/401(d)(i) (West 2008)).

¶ 60 B. The DNA Analysis Fee

¶ 61 The parties agree that, at the time of his conviction, defendant's DNA already had been collected and analyzed in connection with a 2004 McLean County case. They further agree

that, under *People v. Marshall*, 242 Ill. 2d 285, 303 (2011), section 5-4-3 of the Unified Code of Corrections (730 ILCS 5/5-4-3 (West 2008)) authorizes a trial court to order the taking, analysis, and indexing of a qualifying offender's DNA and the payment of the analysis fee only if the offender is not currently registered in the DNA database. Consequently, we vacate the DNA analysis fee of \$200.

¶ 62

III. CONCLUSION

¶ 63 For the foregoing reasons, we affirm the trial court's judgment in part and vacate it in part, and we remand this case with directions. We vacate the DNA analysis fee, but we otherwise affirm the judgment. Also, we remand this case with directions to issue an amended "Supplemental Sentencing Order" reflecting the elimination of the DNA analysis fee. As part of our judgment, we award the State its \$50 statutory assessment as costs of this appeal.

¶ 64

Affirmed in part and vacated in part; cause remanded with directions.