THIRD DIVISION
March 9, 2011

No. 1-09-2837

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 14856
	)	
SAMUEL WRIGHT,	)	Honorable
	)	Joseph G. Kazmierski, Jr.,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE STEELE delivered the judgment of the court.

Justices Neville and Murphy concurred in the judgment.

O R D E R

HELD: Where the evidence was sufficient to convict defendant of possession of a controlled substance with intent to deliver within 1,000 feet of a public park, the trial court's judgment was affirmed; where defendant was entitled to pre-sentence incarceration credit to offset the controlled substance assessment, his sentence was modified.

Following a bench trial, defendant Samuel Wright was convicted of possession of a controlled substance with intent to deliver within 1,000 feet of a public park and sentenced to seven

years' imprisonment. On appeal, defendant asserts that the evidence was not sufficient to prove that he possessed narcotics within 1,000 feet of a public park. He also contends that the trial court failed to give him presentence custody credit against the controlled substance assessment and improperly imposed a DNA analysis fee against him. We affirm as modified.

The record shows that on July 18, 2008, police executed a search warrant at defendant's residence, 1206 West 52nd Street in Chicago, which was across the street from Sherman Park. After executing the warrant, defendant was found in possession of narcotics, $452, two scales, proof of residence, and a filter used to smoke crack cocaine. He was subsequently arrested and charged with possession of a controlled substance with intent to deliver within 1,000 feet of a public park.

As relevant to this appeal, the evidence at trial showed that Officer Gerald Lee testified that at about 12:10 p.m. on July 18, 2008, he executed a search warrant at the first floor of 1206 West 52nd Street, which was directly across the street from Sherman Park. Officer Lee estimated that the park was about 30 to 50 feet from the front door of the residence in question because the width of a street in Chicago is 30 feet. After Officer Lee entered the front door of the apartment, he went into the bedroom and saw two individuals, including defendant. Defendant was seated on two milk crates with a pile of cocaine in

front of him on the bed, and was beginning to smoke crack cocaine. Defendant was subsequently arrested.

Following argument, the trial court found defendant guilty of possession of a controlled substance with intent to deliver within 1,000 feet of a public park. In so finding, the court held that the State proved its case beyond a reasonable doubt because a scale was present and defendant was observed in possession of a controlled substance. The court further held that the location where these items were recovered were within 1,000 feet of a public park. The court stated that even without an actual measurement, Officer Lee's observations that the park was no more than 30 to 50 feet away from the residence was sufficient to prove that element of the offense. The court subsequently sentenced defendant to seven years' imprisonment, credited him with 387 days of presentence custody, and imposed a $3,000 controlled substance assessment and a $200 DNA analysis fee against him.

On appeal, defendant contends that the State failed to prove beyond a reasonable doubt that he possessed narcotics within 1,000 feet of a public park. He specifically maintains that the evidence was insufficient because no measurement was taken between the residence in question and the park.

When faced with a challenge to the sufficiency of the evidence, the relevant inquiry is whether, after viewing 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. Ross*, 229 Ill. 2d 255, 272 (2008). Here, defendant maintains that the facts are not in dispute, and thus, this is a question of law that should be reviewed *de novo*. *People v. Smith*, 191 Ill. 2d 408, 411 (2000) (where the facts are not in dispute, a defendant's guilt is a question of law, which the court reviews *de novo*).

An inference is a factual conclusion that can be rationally drawn by considering other facts. *People v. Rizzo*, 362 Ill. App. 3d 444, 449 (2005). Here, Officer Lee estimated the distance between the residence and the park by considering other facts, *i.e.*, the width of a Chicago street. Therefore, a question of fact has been presented here. Accordingly, we apply the sufficiency of the evidence test set forth above.

In order to meet its burden for the Class X felony at issue, the State must prove beyond a reasonable doubt that defendant possessed narcotics within 1,000 feet of a public park. See 720 ILCS 570/401(c)(2) (West 2008); 720 ILCS 570/407(b)(1) (West 2008).

Here, viewing the evidence in the light most favorable to the State, it showed that defendant possessed cocaine at his residence, which was across the street from a public park. Officer Lee testified that the width of a Chicago street was

about 30 feet, and thus, the park was about 30 to 50 feet from the front door of defendant's residence. Although the trier of fact may not have known the width of a Chicago street or the exact distance between the park and the bedroom where the narcotics were found, a rational trier of fact could have found that the distance element was satisfied based on Officer Lee's testimony that it was well within 1,000 feet. Therefore, the State proved this element beyond a reasonable doubt. See *People v. Clark*, 231 Ill. App. 3d 571, 577 (1992) (finding police testimony that the distance between where defendant was selling drugs and a school was equivalent to the distance from home plate to second base sufficient to prove that the distance was well within 1,000 feet).

In reaching this conclusion, we find *People v. Sparks*, 335 Ill. App. 3d 249 (2002), *People v. Edmonds*, 325 Ill. App. 3d 439 (2001), and *People v. Lipscomb*, 173 Ill. App. 3d 416 (1988), which defendant cites, do not warrant a different result. In these cases, various methods were used to prove the distance element of the offense. See *Sparks*, 335 Ill. App. 3d at 252 (a police officer using a rotary wheel measuring device); *Edmonds*, 325 Ill. App. 3d at 441-42 (a police officer using a calibrated measuring instrument); *Lipscomb*, 173 Ill. App. 3d at 417 (land surveyor testified to the distance of the school). However, *Sparks*, *Edmonds*, and *Lipscomb* do not preclude other types of

evidence to prove the distance element of the offense. Here, Officer Lee's testimony was sufficient to prove the distance element. Furthermore, *People v. Knaff*, 196 Ill. 2d 460 (2001), also cited by defendant, is distinguishable from the case at bar because the conviction on appeal was for the lesser-included offense of unlawful delivery of a controlled substance; thus, the element of distance was not an issue. See *Knaff*, 196 Ill. 2d at 467.

We further reject defendant's argument that even if a precise measurement was not necessary, Officer Lee's testimony regarding Sherman Park was too vague to sustain a conviction beyond a reasonable doubt. Defendant specifically maintains that Officer Lee's testimony does not provide enough information about the park boundaries, its exact location, or dimensions to prove that it was within 1,000 feet of his residence. In making this argument, defendant relies on *People v. Morgan*, 301 Ill. App. 3d 1026 (1998), where this court found sufficient evidence to prove an area was a public park when an officer testified regarding the location of the area, its public nature, and its dimensions. See *Morgan*, 301 Ill. App. 3d at 1031.

In this case, however, the State was not required to specify the exact location of the park, but was only required to show that it was within 1,000 feet from the location where defendant possessed narcotics with the intent to deliver them. Officer

Lee's testimony that defendant's residence was across the street from the park in question was certainly sufficient to prove that defendant was within 1,000 feet of Sherman Park. Moreover, *Morgan* held that the police officer's testimony was sufficient to establish the location as a public park. *Morgan*, 301 Ill. App. 3d at 1031-32. Here, we also find that the State, through the testimony of Officer Lee, proved beyond a reasonable doubt that defendant possessed narcotics within 1,000 feet of a public park.

Defendant next maintains, and the State agrees, that he is entitled to a $5 per day credit for the 387 days he spent in pre-sentence incarceration pursuant to section 110-14(a) of the Code of Criminal Procedure (725 ILCS 5/110-14(a) (West 2008)), for a monetary credit of $1,935 against the $3,000 controlled substance assessment (720 ILCS 570/411.2(I) (West 2008)). Consistent with *People v. Jones*, 223 Ill. 2d 569, 592 (2006), we find that defendant's controlled substance assessment is subject to reduction by presentence incarceration.

Defendant finally contests the $200 DNA analysis fee, arguing that it cannot be imposed because he was assessed the fee upon a prior conviction. This court, however, has determined that the DNA analysis fee may be assessed for any qualifying convictions or dispositions, which by the statute (730 ILCS 5/5-4-3(a),(j) (West 2008)), include felony offenses, regardless of whether the fee was previously assessed. *People v. Hubbard*, 404

Ill. App. 3d 100, 102-03 (2010); *People v. Grayer*, 403 Ill. App. 3d 797, 801-02 (2010); *People v. Marshall*, 402 Ill. App. 3d 1080, 1083 (2010), *appeal allowed*, No. 110765 (September 29, 2010); *contra People v. Rigsby*, No. 1-09-1461 (Ill. App. Dec. 3, 2010).

In *Hubbard*, *Grayer*, and *Marshall*, we noted that the statute does not expressly require a fee for every felony conviction, but also does not expressly limit the taking of DNA samples or the assessment of the analysis fee to a single instance. *Hubbard*, 404 Ill. App. 3d at 102; *Grayer*, 403 Ill. App. 3d at 801; *Marshall*, 402 Ill. App. 3d at 1083. We found that the statutory language links assessment of the fee to the defendant's obligation to provide a DNA sample, but rejected the argument that additional DNA samples would serve no purpose. *Grayer*, 403 Ill. App. 3d at 801, disagreeing with *People v. Willis*, 402 Ill. App. 3d 47, 61 (2010), and *People v. Evangelista*, 393 Ill. App. 3d 395, 399 (2009). This court further found no significant inconvenience in collecting a new DNA sample whenever a defendant is newly convicted of a qualifying offense. *Hubbard*, 404 Ill. App. 3d at 103; *Grayer*, 403 Ill. App. 3d at 801.

We find no reason to depart from our holdings in *Hubbard*, *Grayer*, and *Marshall*, and thus find that the $200 DNA analysis fee was properly assessed against defendant because he was convicted of a qualifying felony offense, and because the fee may be imposed regardless of whether it was previously assessed.

For the foregoing reasons, we find that defendant is entitled to a $5 per day custody credit of $1,935 to be applied against the $3,000 controlled substance assessment and affirm his conviction in all other respects.

Affirmed as modified.