

NOTICE
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2011 IL App (4th) 100502-U

Filed 9/12/11

NO. 4-10-0502

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
ANTHONY JONES,)	No. 07CF674
Defendant-Appellant.)	
)	Honorable
)	Kevin P. Fitzgerald,
)	Judge Presiding.

JUSTICE POPE delivered the judgment of the court.
Justices Turner and McCullough concurred in the judgment.

ORDER

¶ 1 *Held:* (1) The trial court did not err in denying defendant's motion to suppress where the stop was not unreasonably prolonged.

(2) The evidence presented was sufficient to convict defendant of unlawful possession of heroin with intent to deliver.

(3) The \$8,500 street-value fine is vacated, and the cause is remanded for the imposition of a fine in the appropriate amount.

¶ 2 Following an April 2008, stipulated bench trial, defendant, Anthony Jones, was convicted of (1) unlawful possession of a controlled substance with intent to deliver (heroin) (720 ILCS 570/401(a)(1)(A) (West 2006)), (2) unlawful possession of a controlled substance (heroin) (720 ILCS 570/402(a)(1)(A) (West 2006)), (3) unlawful possession of cannabis with intent to deliver (more than 2,000 but less than 5,000 grams, a Class 1 felony) (720 ILCS 550/5(f) (West 2006)), and (4) unlawful possession of cannabis (720 ILCS 550/4(f) (West

2006)). In May 2008, the trial court sentenced defendant to concurrent terms of 12 years' imprisonment.

¶ 3 Defendant appeals, arguing (1) the trial court erred in denying his motion to suppress, (2) the State failed to prove he unlawfully possessed the heroin with intent to deliver beyond a reasonable doubt, and (3) the evidentiary basis for the \$8,500 street-value fine was insufficient. We affirm as modified and remand with directions.

¶ 4 I. BACKGROUND

¶ 5 On June 28, 2007, the State charged defendant with unlawful possession with intent to deliver more than 15 but less than 100 grams of heroin (count I), unlawful possession of more than 15 but less than 100 grams of heroin (count II), unlawful possession with intent to deliver more than 2,000 but less than 5,000 grams of cannabis (count III), and unlawful possession of more than 2,000 but less than 5,000 grams of cannabis (count IV).

¶ 6 On November 5, 2007, defendant filed a motion to suppress, arguing the drugs were obtained by an illegal stop, search, seizure, detention, and arrest in violation of his fourth- and fourteenth-amendment rights.

¶ 7 A. Defendant's Testimony

¶ 8 During the November 27, 2007, hearing on defendant's motion to suppress, defendant testified he was traveling on Interstate 55 from Chicago to Springfield with his fiancée, Denise Williams, on June 26, 2007. According to defendant's testimony, they had a short verbal dispute over changing drivers. Defendant pulled the vehicle over, and Williams got out to smoke. Williams then began walking down the highway. Williams was outside of the vehicle for approximately 10 to 15 minutes. Defendant pulled the vehicle back out onto the roadway,

caught up with Williams, pulled the vehicle back onto the side of the road, and asked Williams to get back into the car. Williams got into the car, and the two drove off. Defendant testified a police officer pulled him over approximately eight miles later. Defendant testified the officer asked defendant if he could search defendant's vehicle. Defendant said no.

¶ 9 B. Officer Demoss' Testimony

¶ 10 Pontiac police officer Brad Demoss testified he was driving south on I-55 to attend canine training with his dog in Bloomington, Illinois, on June 26, 2007. On the way to training, Demoss observed a parked car on the shoulder of the road and a female, later identified as Williams, walking past the driver's side door and down the solid white line along the highway. Demoss testified the previously parked vehicle pulled out into the right lane and cut in front of Williams. A male, later identified as defendant, got out of the vehicle, and the two proceeded to have an argument on the shoulder of the interstate. Demoss pulled off the interstate and onto the shoulder and watched the two from his rearview mirror. Demoss testified he knew they were having an argument because "[t]hey were throwing their hands in the air, back of each other, and I could see their heads moving around as if they were yelling." After the argument, the two got back in the vehicle and proceeded south. Demoss testified he followed defendant's vehicle, advised the State Police of his observations, and requested a backup unit. He was concerned a domestic-violence situation had occurred.

¶ 11 Officer Lee Stevens advised Demoss he would assist Demoss. After Stevens caught up to Demoss's squad car, Demoss pulled defendant's vehicle over. Demoss approached Williams and spoke with her. Stevens went to the driver's side to speak with defendant. Williams told Demoss everything was okay, they were just "fussing," and that nothing had turned

physical. Demoss testified he did not speak with defendant before State Police trooper Shadd Gordon arrived on the scene. Demoss testified the investigation was turned over to Gordon at that point because it was his jurisdiction. Gordon proceeded to speak with defendant. During their conversation, Gordon asked Demoss to use his canine to conduct a free-air sniff of defendant's vehicle. Demoss testified the time between Gordon's request of the free-air sniff until it was completed was only a matter of seconds. Defendant's vehicle had four doors. Demoss testified the canine alerted on the rear driver's side door and on the rear seam of the front passenger door. A search of the vehicle revealed approximately 5 1/2 pounds of cannabis. Later, a search of defendant's person revealed 29 grams of heroin secreted in defendant's crotch.

¶ 12 C. Trooper Gordon's Testimony

¶ 13 Trooper Gordon testified he was responding to a "rolling domestic" when he arrived on the scene. Gordon testified he spoke with Demoss, who told him what information he had gathered from Williams. Gordon then spoke to Williams, asking her what happened. Williams told Gordon she and defendant were in a small dispute over driving, and she proceeded to walk down the interstate before getting back into the vehicle. Demoss then stopped them. Gordon then spoke with defendant. According to Gordon's testimony, defendant was initially "very over friendly" in answering his questions.

¶ 14 Gordon testified Officer Stevens, who was standing at the vehicle beside Gordon, informed Gordon during his questioning of defendant of defendant's excessive criminal history, which included numerous drug convictions. Gordon asked defendant if he had ever been arrested for domestic battery or anything of that nature. Gordon testified defendant became very hesitant to answer the questions and took a "long time" to do so after Gordon asked defendant about his

criminal history. Defendant eventually stated he had not been arrested for domestic battery but had been arrested for robbery and larceny. Gordon asked defendant how long ago had he been arrested. Defendant again hesitated but finally stated it was "a while ago." When Gordon asked what "a while ago" meant, defendant replied, "back in February." Gordon then asked defendant if his arrest had been for a drug offense. After hesitating again, defendant responded he had been arrested in February 2007 for a "drug conviction."

¶ 15 Gordon also testified regarding the manner with which defendant answered the question. According to Gordon, defendant "was turning his head, he would not look at me in the eye or anything, [he] turned his head away from me and hesitated, but he finally [did] reply that yes it was for drugs." After defendant replied in that manner, Gordon asked defendant if there was anything in the vehicle he should be concerned about. Defendant again "hesitated" and "looked out the passenger side window of the vehicle and stated there was nothing in the vehicle [Gordon] should be concerned about." Gordon then asked defendant for permission to search the vehicle. Defendant "hesitated again, looked out the passenger side window, would not look at [Gordon]" before he finally replied, "no." It was at that point Gordon requested Demoss perform the free-air sniff with his canine. Gordon testified the canine alerted on the vehicle and a subsequent search revealed a green laundry bag in the rear of the vehicle containing six Ziploc bags with cannabis in them. Gordon testified he also found approximately \$490 in cash in defendant's pocket.

¶ 16 Gordon testified he spoke with Williams for probably 5 to 10 minutes and with defendant for a total of "[p]robably 10 to 15 minutes." Up until the time Stevens informed Gordon of defendant's criminal history, all of Gordon's questions involved defendant's possible

past domestic incidents. Gordon testified just five minutes had elapsed between the time he asked defendant if he had been arrested for domestic battery and his request to search the vehicle. Gordon also testified while defendant eventually answered Gordon's questions, defendant "paused for probably 30 seconds to a minute on each one." According to Gordon, defendant's hesitancy in answering his questions, combined with defendant's drug history, made Gordon suspicious and led to him asking defendant for consent to search the vehicle.

¶ 17 Following the hearing, the trial court found the following:

"The Court believes this is a close case, but the Court believes and finds the testimony of the trooper as credible in terms of the timing and the actions observed. The Court finds that all of the factors cited by the State, cited by the trooper in his testimony, the defendant's criminal history, his hesitation in answering questions, his inability to maintain eye contact, and his inaccurate answers regarding criminal history independently would not rise to the level of reasonable suspicion, but the Court finds based on the totality of the circumstances that the trooper had a reasonable suspicion to continue to detain the defendant for probably another minute while the dog[,] which was on the scene[,] was walking around the car. Once it alerted, they had reasonable suspicion and probable cause to go further and conduct the search.

So, for all of those reasons, [defendant's] Motion to Suppress is denied."

¶ 18 On April 3, 2008, the parties filed a stipulation, which stated, *inter alia*, defendant admitted the cannabis and heroin were his and he sold cannabis to support his heroin habit. Following the stipulated bench trial, defendant was convicted on all four charged counts. At sentencing, the possession counts merged with the delivery counts, and the trial court sentenced defendant as stated.

¶ 19 This appeal followed.

¶ 20 II. ANALYSIS

¶ 21 On appeal, defendant argues (1) the trial court erred in denying his motion to suppress, (2) the State failed to prove he unlawfully possessed the heroin with intent to deliver beyond a reasonable doubt, and (3) the evidentiary basis for the \$8,500 street-value fine was insufficient. Specifically, defendant contends (1) the evidence should have been suppressed where police unreasonably prolonged the stop, (2) the State failed to present any evidence of his intent to deliver the heroin, and (3) no evidence was presented upon which the court could base the street-value fine.

¶ 22 The State argues (1) the trial court properly denied defendant's motion to suppress where (a) the stop was not unreasonably prolonged and, in the alternative, (b) the stop was properly broadened into an investigative detention, and (2) the evidence presented properly established defendant's intent to deliver heroin. However, the State concedes no evidentiary basis existed for the street-value fine imposed and agrees with defendant remand is necessary for the imposition of a new fine.

¶ 23 A. Defendant's Motion to Suppress

¶ 24 Defendant argues the trial court erred in denying his motion to suppress.

Specifically, defendant contends Gordon's questions regarding defendant's criminal history unreasonably prolonged the stop.

¶ 25 The State argues the stop was not unreasonably prolonged where Gordon asked just a few questions unrelated to the original stop and defendant's hesitation in answering those questions by 30 seconds to a minute per question extended the stop. In the alternative, the State contends the stop was properly extended into an investigative detention because Gordon had discovered specific articulable facts giving rise to a reasonable suspicion defendant had committed a crime.

¶ 26 *1. Plain-Error Doctrine*

¶ 27 The State argues defendant has forfeited his argument on appeal because he did not file a posttrial motion raising the issue of the trial court's denial of his motion to suppress. While defendant concedes he forfeited the issue, he maintains review is still appropriate under Illinois Supreme Court Rule 615(a) (eff. Jan. 1, 1967). "Plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the trial court." *People v. Cosby*, 231 Ill. 2d 262, 272, 898 N.E.2d 603, 610 (2008) (quoting Ill. S. Ct. R. 615(a) (eff. Jan. 1, 1967)).

¶ 28 The plain-error doctrine allows a reviewing court to consider an unpreserved and otherwise forfeited error when "(1) the evidence is close, regardless of the seriousness of the error[;] or (2) the error is serious, regardless of the closeness of the evidence." *People v. Herron*, 215 Ill. 2d 167, 187, 830 N.E.2d 467, 479 (2005). However, before we consider the plain-error doctrine, we must determine whether the trial court committed any error. *People v. Piatkowski*, 225 Ill. 2d 551, 565, 870 N.E.2d 403, 411 (2007).

¶ 29

2. Standard of Review

¶ 30

In reviewing a motion to suppress on appeal, we are presented with mixed questions of law and fact. *People v. Terry*, 379 Ill. App. 3d 288, 292, 883 N.E.2d 716, 720 (2008). "[The] trial court's findings of historical fact are reviewed for clear error, giving due weight to any inferences drawn from those facts by the [court]." *People v. Harris*, 228 Ill. 2d 222, 230, 886 N.E.2d 947, 953 (2008). Great deference is accorded a trial court's factual findings, and those findings will be reversed only if against the manifest weight of the evidence. *Cosby*, 231 Ill. 2d at 271, 898 N.E.2d at 609 (quoting *People v. Luedemann*, 222 Ill. 2d 530, 542, 857 N.E.2d 187, 195 (2006)). "A reviewing court, however, remains free to undertake its own assessment of the facts in relation to the issues and may draw its own conclusions when deciding what relief should be granted." *Luedemann*, 222 Ill. 2d at 542, 857 N.E.2d at 195. Thus, we review the trial court's ultimate ruling as to whether suppression was warranted *de novo*. *Harris*, 228 Ill. 2d at 230, 886 N.E.2d at 954.

¶ 31

3. Fourth Amendment

¶ 32

Both the United States and Illinois Constitutions protect citizens from unreasonable searches and seizures. U.S. Const., amend. IV.; Ill. Const. 1970, art. I, § 6 (establishing the people's right to be secure in their "persons, houses, papers[,] and other possessions against unreasonable searches [and] seizures"). Our supreme court has interpreted the search-and-seizure clause of the Illinois Constitution in a manner consistent with the United States Supreme Court's fourth-amendment jurisprudence. See *People v. Caballes*, 221 Ill. 2d 282, 335-36, 851 N.E.2d 26, 57 (2006).

¶ 33

In this case, defendant neither challenges the basis for the initial stop of the

vehicle nor the nature of Gordon's questions. Instead, defendant, relying primarily on *People v. Baldwin*, 388 Ill. App. 3d 1028, 904 N.E.2d 1193 (2009), argues the stop was impermissibly prolonged. See *Harris*, 228 Ill. 2d at 235, 886 N.E.2d at 956 (while a stop may be initially lawful, it can violate the fourth amendment where it is prolonged beyond the time reasonably necessary to complete its purpose); see also *Baldwin*, 388 Ill. App. 3d at 1033, 904 N.E.2d at 1198 (police conduct occurring during an otherwise lawful seizure does not render the seizure unlawful unless it unreasonably prolongs the duration of the detention). Thus, the question in this case is whether Gordon unreasonably prolonged the stop such that defendant was unlawfully detained.

¶ 34 In examining the length of the stop, no bright-line rule has been adopted to indicate when a stop has been unreasonably prolonged. *Baldwin*, 388 Ill. App. 3d at 1034, 904 N.E.2d at 1199. Instead, the duration of the stop must be justified by the nature of the offense and "the ordinary inquiries incident to such a stop." *Illinois v. Caballes*, 543 U.S. 405, 408 (2005); *People v. Driggers*, 222 Ill. 2d 65, 73, 853 N.E.2d 414, 419 (2006). Courts "employ a contextual, totality of the circumstances analysis that includes consideration of the brevity of the stop and whether the police acted diligently during the stop." *Baldwin*, 388 Ill. App. 3d at 1034, 904 N.E.2d at 1199.

¶ 35 In *Baldwin*, an officer stopped a vehicle for a lane violation; the defendant was the passenger. *Baldwin*, 388 Ill. App. 3d at 1034, 904 N.E.2d at 1199. The officer testified he initially smelled the faint odor of alcohol coming from the vehicle, but he did not smell it on the driver or passengers. *Baldwin*, 388 Ill. App. 3d at 1029, 904 N.E.2d at 1194. During the stop, the officer became suspicious of the defendant because he appeared nervous and would not look

at the officer. *Baldwin*, 388 Ill. App. 3d at 1029, 904 N.E.2d at 1195. In addition, the officer observed the defendant was breathing heavily and kept his right hand by his side. *Baldwin*, 388 Ill. App. 3d at 1029, 904 N.E.2d at 1195. The officer testified he thought the defendant may have been hiding something--possibly a weapon--in his hand. *Baldwin*, 388 Ill. App. 3d at 1029, 904 N.E.2d at 1195. However, the officer did not frisk the defendant or ask him if he was holding anything. *Baldwin*, 388 Ill. App. 3d at 1029, 904 N.E.2d at 1195. Instead he returned to his squad car to run the driver's and the defendant's information. *Baldwin*, 388 Ill. App. 3d at 1029, 904 N.E.2d at 1195.

¶ 36 Approximately 2 1/2 minutes later, the officer returned to the vehicle. *Baldwin*, 388 Ill. App. 3d at 1029, 904 N.E.2d at 1195. No evidence was presented to show the officer discovered any issue with the defendant's or the driver's information. *Baldwin*, 388 Ill. App. 3d at 1029, 904 N.E.2d at 1195. Approximately 40 seconds after returning to the vehicle, the officer asked the driver to step out of the vehicle. *Baldwin*, 388 Ill. App. 3d at 1029, 904 N.E.2d at 1195. The officer then proceeded to speak with the driver at the rear of the vehicle for 3 minutes and 15 seconds. *Baldwin*, 388 Ill. App. 3d at 1029, 904 N.E.2d at 1195. The officer asked the driver about the odor of alcohol he detected inside the vehicle. *Baldwin*, 388 Ill. App. 3d at 1029, 904 N.E.2d at 1195. The driver told the officer (1) he had just been playing in a band at a benefit being held in a bar, (2) he had been sober for 10 or 11 years, and (3) he too had noticed the odor. *Baldwin*, 388 Ill. App. 3d at 1030-31, 904 N.E.2d at 1195. After a number of unsuccessful attempts to gain the driver's consent to search the vehicle--which the officer blamed on the driver's unwillingness to give a "yes or no" answer--the officer told the driver he was going to call for a canine unit, which he did 30 seconds later. *Baldwin*, 388 Ill. App. 3d at 1030,

904 N.E.2d at 1196. The canine unit arrived two minutes after that. *Baldwin*, 388 Ill. App. 3d at 1030, 904 N.E.2d at 1196. The canine alerted on the vehicle, and the officer recovered a cannabis pipe from the defendant's person. *Baldwin*, 388 Ill. App. 3d at 1030, 904 N.E.2d at 1196. The trial court granted the defendant's motion to suppress, and the State appealed. *Baldwin*, 388 Ill. App. 3d at 1031, 904 N.E.2d at 1196.

¶ 37 The Third District affirmed, finding the officer was ready to conclude the original purpose of the stop after approximately 4.5 minutes. *Baldwin*, 388 Ill. App. 3d at 1035, 904 N.E.2d at 1199. By the time the canine unit arrived, 14 minutes had elapsed since the officer's camera began recording. *Baldwin*, 388 Ill. App. 3d at 1035, 904 N.E.2d at 1199. The Third District concluded a 14-minute stop was unreasonable when the initial purpose of the stop concluded after 4.5 minutes. *Baldwin*, 388 Ill. App. 3d at 1035, 904 N.E.2d at 1199.

¶ 38 However, the facts of this case are distinguishable from those in *Baldwin*. Here, Gordon testified he spoke with defendant for 10 to 15 minutes. Gordon testified the questioning unrelated to the original purpose of the stop took approximately five minutes. Thus, the portion of the stop relating solely to investigating a possible domestic incident comprised all but 5 minutes of that 10- to 15-minute period. Further, once defendant denied Gordon's request for permission to search the vehicle, Gordon asked for the free-air sniff from the canine unit already on the scene. Demoss testified it took a matter of seconds between when Gordon requested the free-air sniff until it was completed.

¶ 39 More important, while the officer's conduct in *Baldwin* prolonged the stop, defendant's hesitancy in answering the questions unrelated to the stop caused the delay in this case. Gordon testified defendant took anywhere between 30 seconds to a minute to answer the

few questions he asked unrelated to the initial stop. See *Muehler v. Mena*, 544 U.S. 93, 101 (2005) (an officer's inquiries into matters unrelated to the justification for the stop do not convert the encounter into something other than a lawful seizure, so long as the *inquiries* do not measurably extend the stop's duration). Here, defendant's answers--not Gordon's questions--prolonged the encounter. Defendant cannot reasonably claim the delay *he* caused impermissibly prolonged the stop such that his fourth-amendment rights were violated.

¶ 40 Defendant's detention, considered in light of his hesitancy in answering Gordon's questions, was not prolonged. Thus, the trial court did not err in denying defendant's motion to suppress. Because we do not find the court erred, we do not reach the issue of plain error.

¶ 41 B. Sufficiency of the Evidence

¶ 42 Defendant argues the State failed to prove beyond a reasonable doubt he possessed the heroin with intent to deliver. Specifically, defendant contends while he admitted he sold cannabis to support his heroin addiction, no evidence, aside from the amount, showed defendant intended to sell the heroin. We disagree.

¶ 43 1. *Standard of Review*

¶ 44 When reviewing a challenge to the sufficiency of the evidence in a criminal case, the relevant inquiry is whether, when 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. Pollock*, 202 Ill. 2d 189, 217, 780 N.E.2d 669, 685 (2002). The trier of fact has the responsibility to determine the credibility of witnesses and the weight given to their testimony, to resolve conflicts in the evidence, and to draw reasonable inferences from that evidence. *People v. Ortiz*, 196 Ill. 2d 236, 259, 752 N.E.2d 410, 425 (2001). A court of

review will not reverse a conviction on grounds of insufficient evidence unless the evidence presented at trial was so "unreasonable, improbable[,] or unsatisfactory that it raises a reasonable doubt of defendant's guilt." *People v. Evans*, 209 Ill. 2d 194, 209, 808 N.E.2d 939, 947 (2004).

¶ 45 "The requirement that a defendant's guilt be proved beyond a reasonable doubt does not mean that inferences flowing from the evidence should be disregarded." *People v. Schmalz*, 194 Ill. 2d 75, 81, 740 N.E.2d 775, 778 (2000).

¶ 46 *2. Intent To Deliver*

¶ 47 To sustain a conviction for possession of a controlled substance with intent to deliver, the State must prove (1) the defendant knew the controlled substance was present, (2) the controlled substance was within the defendant's immediate control or possession, and (3) the defendant intended to deliver the controlled substance. *People v. Robinson*, 167 Ill. 2d 397, 407, 657 N.E.2d 1020, 1026 (1995). We note defendant does not dispute he knowingly possessed the heroin. Instead, defendant argues only the State did not prove he possessed the heroin with the intent to deliver beyond a reasonable doubt.

¶ 48 Direct evidence of the intent to deliver drugs is rare and must usually be proved by circumstantial evidence. *Robinson*, 167 Ill. 2d at 408, 657 N.E.2d at 1026. Factors Illinois courts have found probative of intent to deliver include (1) the quantity was too large to be viewed as being for personal consumption; (2) the high purity of the drugs; (3) the possession of weapons; (4) the possession of large amounts of cash; (5) the possession of police scanners, beepers, or cellular telephones; (6) the possession of drug paraphernalia; and (7) the manner in which the substance was packaged. *Robinson*, 167 Ill. 2d at 408, 657 N.E.2d at 1026-27.

"Whether the inference of intent is sufficiently raised is determined on a case-by-case basis and

the enumerated factors are not exclusive." *People v. Stewart*, 366 Ill. App. 3d 101, 110, 851 N.E.2d 672, 680 (2006); see also *People v. Bush*, 214 Ill. 2d 318, 327, 827 N.E.2d 455, 461 (2005) (list of factors cited in *Robinson* is not exhaustive but contains examples to consider as probative of intent to deliver).

¶ 49 Defendant argues the State presented no evidence to show the amount of heroin he possessed was more than would reasonably be used for personal consumption. Defendant contends the only possible indication he intended to deliver the drugs would have been the quantity of the heroin (27.5 grams), which he maintains is insufficient to prove intent. Defendant also alleges the State failed to present evidence of any *Robinson* factors that would support the inference of his intent to deliver. We disagree. While the quantity of controlled substance alone can be sufficient to prove an intent to deliver, "[t]he smaller the quantity of controlled substance in a defendant's possession, the greater the need for additional circumstantial evidence of intent to deliver." *People v. White*, 221 Ill. 2d 1, 16, 849 N.E.2d 406, 416 (2006). The record reflects sufficient facts from which the trier of fact could reasonably conclude defendant had the requisite intent to deliver the heroin.

¶ 50 In this case, the amount of cash recovered from defendant (\$490) supports an inference of defendant's intent to deliver. See *People v. Beverly*, 278 Ill. App. 3d 794, 802-03, 663 N.E.2d 1061, 1067 (1996). Further, the heroin was found with a large amount of cannabis (2,524.7 grams) defendant admitted he was distributing. See *People v. Schaefer*, 133 Ill. App. 3d 697, 703, 479 N.E.2d 428, 433 (1985) (finding the presence of a large amount of cannabis the defendant intended to distribute supported the inference the defendant also intended to deliver the controlled substance). The fact defendant stated he sold cannabis to support his heroin habit

and maintained the cash recovered was only from the sale of cannabis does not preclude the inference defendant also sold heroin. See *Bush*, 214 Ill. 2d at 326, 827 N.E.2d at 460 (under the sufficiency-of-the-evidence standard, "a reviewing court must allow all reasonable inferences from the record in favor of the prosecution").

¶ 51 Further, while defendant argues the heroin was for his personal use, the police did not find any paraphernalia related to personal consumption. "The lack of drug paraphernalia for personal consumption leads to the inference that defendant was intent on delivering the cocaine." *People v. Johnson*, 334 Ill. App. 3d 666, 678, 778 N.E.2d 772, 782 (2002). Finally, the heroin was discovered secreted in defendant's crotch. See *People v. Berry*, 198 Ill. App. 3d 24, 30, 555 N.E.2d 434, 438 (1990) (finding the lack of user paraphernalia combined with a large amount of cash and the defendant's underwear cache for concealing the controlled substance was sufficient to establish the defendant's intent to deliver the controlled substance).

¶ 52 Considering the evidence in the light most favorable to the State, a rational trier of fact could have found the evidence sufficient to prove defendant had the intent to deliver the heroin. The evidence was not so unreasonable, improbable, or unsatisfactory that it raises a reasonable doubt of defendant's guilt.

¶ 53 C. Street-Value Fine

¶ 54 Defendant argues the evidentiary basis for the \$8,500 street-value fine was insufficient. The State agrees with defendant and concedes no evidentiary basis was shown for the street-value fine imposed and remand is necessary for the imposition of a new fine. We accept the State's concession and agree.

¶ 55 Section 5-9-1.1(a) of the Unified Code of Corrections (Unified Code) provides

when a person has been found guilty of a drug-related offense involving delivery of a controlled substance, a trial court must impose, in addition to other penalties, a fine not less than the full street value of the controlled substance seized. 730 ILCS 5/5-9-1.1(a) (West 2006). Street value is determined by the trial court "on the basis of testimony of law enforcement personnel and the defendant as to the amount seized and such testimony as may be required by the court as to the current street value of the *** controlled substance seized." 730 ILCS 5/5-9-1.1(a) (West 2006). "Although the amount of evidence necessary to adequately establish the street value of a given drug varies from case to case, the trial court must have a concrete, evidentiary basis for the fine imposed." *People v. Reed*, 376 Ill. App. 3d 121, 129, 875 N.E.2d 167, 175 (2007).

¶ 56 In this case, the State concedes no evidentiary basis existed for the fine. Instead, the prosecutor simply requested a street-value fine in the amount of \$8,500 and the trial court imposed it. Following our review of the record, we agree with the State and accept its concession. Accordingly, we vacate the \$8,500 street-value fine and remand the cause for the imposition of a fine in the appropriate amount.

¶ 57 III. CONCLUSION

¶ 58 For the reasons stated, we vacate the \$8,500 street-value fine and remand with directions to impose a fine in the appropriate amount consistent with section 5-9-1.1(a) of the Unified Code. We note the written sentencing judgment reiterates an incorrect citation from the amended information citing to section 5.2(a) (delivery of cannabis on school grounds, a Class 1 felony) rather than section 5(f) of the Cannabis Control Act. We direct the trial court to correct this citation in issuing its amended sentencing judgment. We otherwise affirm the trial court's judgment. Because the State successfully defended a portion of the criminal judgment, we grant the State its \$50 statutory assessment against defendant as costs of this appeal. See *People v.*

Smith, 133 Ill. App. 3d 613, 620, 479 N.E.2d 328, 333 (1985) (citing *People v. Nicholls*, 71 Ill. 2d 166, 178, 374 N.E.2d 194, 199 (1978)).

¶ 59 Affirmed as modified; cause remanded with directions.