

No. 1-11-2670

**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. 10 CR 3360
	)	
SCORPIO STEWART,	)	Honorable
	)	Lawrence E. Flood,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE QUINN delivered the judgment of the court.  
Presiding Justice Harris and Justice Simon concurred in the judgment.

**ORDER**

¶ 1 *Held:* Where the parties stipulated to the distance from the offense to a particular school building, evidence was sufficient to sustain conviction for possessing with intent to deliver controlled substances within 1,000 feet of a school; defendant was not subject to \$200 DNA fee; defendant's conviction affirmed and fee vacated.

¶ 2 Following a bench trial, defendant Scorpio Stewart was convicted of possession of cocaine and heroin, with intent to deliver, within 1,000 feet of the real property comprising any school, and sentenced to two concurrent eight-year terms in prison. On appeal, defendant contends that his conviction should be reduced because the evidence was insufficient to prove that "Delano School" qualified as a "school" under the Illinois Controlled Substances Act (Act).

(720 ILCS 570/407(b)(1) (West 2010)). Additionally, defendant contends the trial court erred in imposing a \$200 DNA fee. We affirm defendant's conviction and vacate the fee.

¶ 3 At trial, Officer Matthew Bouch testified that on January 17, 2010, he was conducting surveillance when he observed, on two separate occasions, individuals approach defendant at 3835 West Monroe in Chicago and give him money. Then, defendant went to a window sill at 3832 West Monroe, retrieved an item from a plastic bag, returned to 3835 West Monroe, and gave the individuals the item from the plastic bag. After the second transaction occurred, Officer Bouch and his partners went to 3835 West Monroe and detained defendant. Officer Bouch directed one of his partners, Officer James Gallagher, to retrieve the plastic bag from the window sill at 3832 West Monroe. After Officer Bouch saw the plastic bag contained Ziploc bags of suspected crack cocaine and heroin, defendant was taken into custody. Officer Bouch further testified that Delano School is within the vicinity of 3835 West Monroe, located at 3939 West Adams Street. Officer John Lipka testified that he recovered \$221 from a custodial search of defendant after his arrest.

¶ 4 Twenty-eight-year-old defendant testified to a different version of the events. Defendant and two friends were sitting in his car on the 3800 block of Monroe, smoking marijuana. Police officers arrived, pulled all three individuals out of the car, searched defendant, and found \$221 in his pocket, which defendant stated was given to him by his grandmother. Defendant and his friends sat in a squad car while officers searched the surrounding area. After defendant was taken to the police station, he learned he was being charged with drug possession.

¶ 5 The parties agreed to two stipulations as part of the trial. First, the parties stipulated that a chemist would testify that the contents of the substances tested positive for cocaine and heroin, and that a proper chain of custody was maintained at all times.

¶ 6 The second stipulation concerned Delano School. The parties had the following exchange:

"Ms. GREKSTAS [Assistant State's Attorney]: It is further stipulated that if Investigator Cullom\*\*\*an investigator with the Cook County State's Attorney's Office, were called to testify, he would testify that he was requested to measure the distance from 3835 West Monroe in Chicago, Cook County, Illinois to the Delano School located at 3939 West Adams in Chicago, Cook County, Illinois.

That he went to 3835 West Monroe and measured the distance to the Delano School at 3939 West Adams. That he found the distance to be 629 feet and that the measurement was made using a calibrated measuring device known as a Rolotape, Model 400, which has been authorized for use by the State's Attorney's office, and the measuring device was calibrated by the reporting Investigator both before and after the measurement using a ten-foot pre-measured interval.

So stipulated?

Mr. GIRALAMO [Defense Attorney]: So stipulated."

¶ 7 The trial court found defendant guilty of possession of two controlled substances with intent to deliver within 1,000 feet of the real property comprising any school. The trial court found Officer Bouch's testimony to be unimpeached and did not believe defendant's testimony. The trial court found, taking all the evidence into consideration, "and the stipulation as to the

distance from the school," that the State had proven the charges beyond a reasonable doubt.

Defendant was sentenced to two concurrent eight-year prison terms.

¶ 8 On appeal, defendant first contends the State failed to prove beyond a reasonable doubt that "Delano School" qualified as a school under the Act. In particular, defendant argues that apart from the stipulation regarding the distance between Delano School and 3835 West Monroe, no further description of Delano School was presented at trial. The State did not introduce any evidence that Delano School was a public or private, elementary or secondary school, community college, college, or university.

¶ 9 When a defendant challenges the sufficiency of the evidence, the critical question is whether the record evidence could reasonably support a finding of guilt beyond a reasonable doubt. *People v. Williams*, 147 Ill. 2d 173, 233 (1991). This inquiry does not require a reviewing court to ask itself whether it believes the evidence at trial established guilt beyond a reasonable doubt, but 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. *Id.* It is not the reviewing court's function to retry the defendant. *People v. Sutherland*, 223 Ill. 2d 187, 242 (2006). The weight to be given to the witnesses' testimony, the credibility of the witnesses, resolution of inconsistencies and conflicts in the evidence, and reasonable inferences to be drawn from the testimony are the responsibility of the trier of fact. *Id.*

¶ 10 Under the Act, it is unlawful for a person to knowingly possess with intent to deliver a controlled substance, including cocaine and heroin. 720 ILCS 540/401(c)(1), (2) (West 2010). Section 407(b)(1) of the Act provides that a person who knowingly possesses a controlled substance with intent to deliver within 1,000 feet of the real property comprising any school is guilty of a Class X felony. 720 ILCS 570/407(b)(1) (West 2010). "School" is not defined within

the Act. *People v. Goldstein*, 204 Ill. App. 3d 1041, 1045 (1990). However, prior cases have defined "school" as any public or private, elementary or secondary school, community college, college, or university. *People v. Owens*, 240 Ill. App. 3d 168, 171 (1992), *Goldstein*, 204 Ill. App. 3d at 1048. This definition through judicial construction is considered the settled meaning. *People v. Young*, 2011 IL 111886, ¶ 16 (held that preschools are not included in the definition).

¶ 11 Here, we find that the content of the stipulation regarding Delano School was sufficient for the trial court to find that defendant's offense occurred within 1,000 feet of a qualifying school under the Act. The stipulation referred to "Delano School." The term "school" has been defined to encompass a wide range of possibilities—any public or private, elementary or secondary school, community college, college, or university. This definition is sufficiently broad to allow a rational fact finder to infer that Delano School would fall under the categories of schools covered by the Act. Cf. *People v. Foster*, 354 Ill. App. 3d 564, 568 (2004) (holding that a rational trier of fact could infer that New Hope Church was a church used primarily for religious worship, and therefore covered under the Act, because the structure was by name a "church").

¶ 12 Because defendant agreed to the stipulation regarding Delano School, we reject defendant's argument that his conviction has created an unconstitutional presumption. A stipulation is an agreement between the parties with respect to business before a court. *People v. Buford*, 19 Ill. App. 3d 766, 770 (1974). Stipulations relating to evidence should be construed to ascertain and give effect to the parties' intentions. *People v. Moore*, 335 Ill. App. 3d 616, 621 (2002). A stipulation waives the necessity of proof of all or part of a case. *Buford*, 19 Ill. App. 3d at 769 (quoting *People v. Polk*, 19 Ill. 2d 310, 315 (1960)). Here, the parties' stipulation went into significant detail about the distance between Delano School and the location of the offense, the process used for measuring that distance, and included two mentions of Delano School's

exact address. It is reasonable for a trier of fact to infer that the parties intended the stipulation to satisfy the entire element of "within 1,000 feet of the real property comprising any school," rather than just the distance between the two points. 720 ILCS 570/407(b)(1) (West 2010). It is true that additional evidence might have been offered as additional proof that Delano satisfied the definition of "school." However, defendant waived that requirement when he agreed to the stipulation as an alternative to the State providing additional evidence on this point.

¶ 13 Notably, the State on appeal points out that Delano School qualified as a school in prior case law (see *People v. Rucker*, 346 Ill. App. 3d 873, 879 (2004)) and is listed as an elementary school on the Chicago Public Schools website (Chicago Public Schools, <http://www.cps.edu/Schools/Pages/school.aspx?id=609881>). Defendant counters that this extraneous information cannot be considered because it was not presented at trial. Although this information showing the status of Delano School as an actual school was not presented at trial, it indicates a reason defendant entered into the stipulation, waiving the need to advance more evidence as to an established fact.

¶ 14 A different result is not warranted by defendant's reliance on *People v. Ortiz*, 2012 IL App (2d) 101261, where a police officer's testimony regarding the distance between a drug transaction and a church was found insufficient to prove that the transaction occurred between 1,000 feet of a church. *Ortiz* is not helpful to defendant because no stipulation was involved in that case. Here, defendant agreed to a stipulation that waived the need for such additional evidence about Delano School.

¶ 15 Viewing the evidence in the light most favorable to the prosecution, we find a rational fact finder could find that Delano School qualified as a "school" under the Act.

¶ 16 Defendant asserts and the State correctly concedes that we must vacate the \$200 DNA Identification System fee. 730 ILCS 5/5-4-3(j) (West 2010). A trial court may assess this fee

1-11-2670

only where the defendant is not currently registered in the DNA database. *People v. Marshall*, 242 Ill. 2d 285, 303 (2011). As defendant was already registered at sentencing and at present, we vacate the fee.

¶ 17 Affirmed as modified.