



the credit for the amount).

¶ 3

### FACTS

¶ 4 The defendant was charged by amended information with the offense of controlled substance trafficking. The amended information alleged that the defendant knowingly brought more than 100 grams but less than 400 grams of a substance containing cocaine into the state of Illinois with the intent to deliver the same, in violation of sections 401.1(a) and 401(a)(2)(B) of the Illinois Controlled Substances Act (the Act) (720 ILCS 570/401.1(a), 401(a)(2)(B) (West 2010)). On February 22, 2011, a jury trial was held, at which the following testimony and evidence was adduced. Christopher Kaufman testified that on the night of July 16, 2010, he was employed by the Cairo police department. He and fellow officer Christopher Smith were patrolling between 10 and 10:30 p.m., when they observed a green Honda make a right turn onto Seventh Street without using a turn signal. Kaufman followed the vehicle, which stopped at a stop sign and made another turn onto Commercial Avenue without using a turn signal. Subsequently, Kaufman initiated a traffic stop. Kaufman testified that, once stopped, he noticed two individuals who were "focused on the center of the vehicle like they were trying to hide something." Kaufman approached the driver's side door with caution while Smith proceeded to the passenger's side.

¶ 5 Kaufman testified that the defendant, who was driving, produced his driver's license but failed to produce an insurance card. Upon questioning by Smith, the defendant and his passenger denied the presence of anything illegal. Both men got out of the vehicle when Smith requested to search it. As the defendant exited the vehicle, Kaufman informed him that he was going to conduct a pat-down for the officers' safety to make sure he had no weapons on him. Kaufman testified that the defendant did not respond, but stuck both of his hands down the front of his shorts. When Kaufman ordered the defendant to remove his hands, he removed one hand but left the other in his shorts. Accordingly, the defendant was

instructed to lie on the ground until his hands were secured. When the defendant returned to his feet, Kaufman and Smith observed a large bulge on the front of the defendant's left leg inside his shorts. Kaufman conducted a pat-down and a hard object fell out of the bottom of the defendant's shorts, which Kaufman caught. He noted that it appeared to be a rock of crack cocaine. The defendant was placed under arrest and transported to the Cairo police department.

¶ 6 Kaufman testified that, upon arrival at the police department, the defendant informed the officers that they had not retrieved all of the crack cocaine from his shorts. As the officers escorted him from the patrol car to the building, a clear plastic bag containing a white substance appearing to be crack cocaine fell out of the defendant's shorts. Preliminary testing of all the substances yielded a positive result for crack cocaine.

¶ 7 Kaufman testified that the defendant was read his *Miranda* rights and signed a waiver of those rights. Subsequently, the defendant informed Kaufman and Smith that he had been with his cousin, who received a phone call from an individual wanting three ounces of crack cocaine. The defendant told his cousin that he knew where they could get it. Accordingly, they drove to Kentucky, picked up the cocaine, and brought it back to Cairo, Illinois.

¶ 8 Christopher Smith testified that he was employed by the Cairo police department on July 16, 2010. Smith was present throughout the events to which Kaufman testified, and he corroborated Kaufman's testimony regarding those events. Smith added that after the defendant waived his *Miranda* rights, he informed Smith and Kaufman that he and Jerry Hardamon went to Fulton, Kentucky, picked up the cocaine, and brought it back to sell and deliver to someone in Cairo. Smith testified that the bag of cocaine which fell from the defendant's shorts as the officers escorted him into the police station contained seven smaller bags, each containing cocaine, which indicated to Smith that it was packaged to sell. Smith added that when the defendant was arrested, the inventory of the items on the defendant's

person yielded, *inter alia*, \$551 cash.

¶ 9 Richard Chaklos testified that he is employed by the Illinois State Police at the Southern Illinois Forensic Science Center. Chaklos tested the substances that were in the defendant's possession and concluded that it was all indeed cocaine. Chaklos testified that the cocaine obtained during the traffic stop weighed 83.2 grams (the first amount) and that the cocaine obtained outside the police station weighed 17.5 grams (the second amount), with a total net weight of 100.7 grams. Chaklos emphasized that this is a large amount in comparison to a typical street-level amount of one-tenth of one gram.

¶ 10 After deliberations, the jury returned a guilty verdict. Following a sentencing hearing on March 16, 2011, the defendant was sentenced to 27 years in the Illinois Department of Corrections, followed by a 3-year period of mandatory supervised release. The defendant was also fined, *inter alia*, the street value of the cocaine in the amount of \$20,120. The defendant filed a timely notice of appeal. Additional facts will be provided in the analysis of the issues on appeal.

¶ 11

#### ANALYSIS

¶ 12 As a threshold matter, we note that the State concedes that the defendant is entitled to \$5 for each of the 244 days he was confined in jail, to be credited against the street value fine imposed by the trial court, thereby obviating the need to address the defendant's issue regarding the same on appeal. The two remaining issues are (1) whether the State proved beyond a reasonable doubt that the defendant transported more than 100 grams but less than 400 grams of a substance containing cocaine into the state of Illinois with the intent to deliver the same, in violation of sections 401.1(a) and 401(a)(2)(B) of the Act (720 ILCS 570/401.1(a), 401(a)(2)(B) (West 2010)), and (2) whether the trial court erroneously imposed on the defendant a street value fine of \$20,120.

¶ 13

*I. Controlled Substance Trafficking*

¶ 14 The first issue on appeal is whether the State proved beyond a reasonable doubt that the defendant transported more than 100 grams but less than 400 grams of a substance containing cocaine into the state of Illinois with the intent to deliver the same, in violation of sections 401.1(a) and 401(a)(2)(B) of the Act (720 ILCS 570/401.1(a), 401(a)(2)(B) (West 2010)). "In reviewing the sufficiency of the evidence to sustain a verdict on appeal, 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.'" (Emphasis in original.) *People v. Cooper*, 194 Ill. 2d 419, 431 (2000) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *People v. Thomas*, 178 Ill. 2d 215, 231-32 (1997); *People v. Howery*, 178 Ill. 2d 1, 38 (1997)).

¶ 15 Section 401.1(a) of the Act provides that "any person who knowingly brings or causes to be brought into this State for the purpose of \*\*\* delivery or with the intent to \*\*\* deliver a controlled substance other than methamphetamine or counterfeit substance in this or any other state or country is guilty of controlled substance trafficking." 720 ILCS 570/401.1(a) (West 2010). Section 401(a)(2)(B) provides a range of sentencing to be imposed when the amount of such controlled substance weighs more than 100 grams but less than 400 grams. 720 ILCS 570/401(a)(2)(B) (West 2010). The defendant disputes both the amount of cocaine that is chargeable as controlled substance trafficking as well as his intent to deliver.

¶ 16

*a. Amount*

¶ 17 First, the defendant contends that there is no evidence that he obtained the second amount of cocaine in Kentucky and brought it into Illinois. He cites his confession that his cousin received a phone call from someone requesting three ounces of cocaine, after which they drove to Kentucky, picked up the cocaine, and brought it back to Illinois. He claims that his confession only applies to the first amount which weighed 83.2 grams (roughly three

ounces) and proves nothing with regard to the second amount of 17.5 grams. Accordingly, the defendant argues that the State did not prove beyond a reasonable doubt that he transported the combined total of 100.7 grams from Kentucky to Illinois, and that his conviction should be vacated and the cause remanded for a new sentencing hearing based on the first amount, which falls under the purview of a different section of the Act with regard to the appropriate range of sentencing.

¶ 18 The State counters that circumstantial evidence in this case proves that the defendant obtained all of the cocaine in Kentucky and brought it into Illinois with the intent to deliver it there. The same standard of review, 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, "is applied by the reviewing court regardless of whether the evidence is direct or circumstantial \*\*\* and circumstantial evidence meeting this standard is sufficient to sustain a criminal conviction." *People v. Norris*, 399 Ill. App. 3d 525, 531 (2010). Moreover, "[p]roof beyond a reasonable doubt does not require the exclusion of every possible doubt, and a conviction may be sustained upon wholly circumstantial evidence if it leads to a reasonable certainty the defendant committed the crime." *People v. Shevock*, 335 Ill. App. 3d 1031, 1037 (2003).

¶ 19 In this case, although the defendant informed the officers that his cousin received a request for three ounces of crack cocaine, a reasonable trier of fact could infer that the defendant obtained the second amount during the same transaction as the first amount. When viewed in a light most favorable to the State, the fact that the buyer requested three ounces of crack cocaine could reasonably be inferred as what merely motivated the defendant to travel to Kentucky. It does not place a limit on the amount of cocaine that the defendant could procure once he arrived there. Other facts lend credence to this conclusion. The defendant told the officers that he and his cousin drove to Kentucky, picked up cocaine, and

brought it back to Illinois for delivery. The first and second amounts of cocaine were in close proximity to each other, as the defendant shoved all of it into his shorts during the traffic stop. In addition, the defendant told the officers as they were escorting him into the station that they did not get all of the "stuff," after which the second amount fell out of his shorts. Moreover, during the defendant's confession, he did not segregate the two amounts as distinct from each other. In looking at the evidence in a light most favorable to the State, we find that a reasonable trier of fact could conclude that all 100.7 grams of the cocaine came from the same source in Kentucky and was brought into Illinois by the defendant.

¶ 20

*b. Intent to Deliver*

¶ 21 Besides disputing the total amount of cocaine chargeable for purposes of controlled substance trafficking, the defendant attempts to segregate the two amounts with regard to his intent to deliver. In particular, he argues that the State did not prove beyond a reasonable doubt that he intended to deliver the second amount rather than using it personally. "Because direct evidence of intent to deliver is rare, such intent must usually be proven by circumstantial evidence." *People v. Robinson*, 167 Ill. 2d 397, 408 (1995). "Consequently, this issue involves the examination of the nature and quantity of circumstantial evidence necessary to support an inference of intent to deliver." *Id.* "In controlled substance prosecutions, many different factors have been considered by Illinois courts as probative of intent to deliver." *Id.*

¶ 22 "Such factors include whether the quantity of controlled substance in [the] defendant's possession is too large to be viewed as being for personal consumption [citation], the high purity of the drug confiscated [citation], the possession of weapons [citation], the possession of large amounts of cash [citation], the possession of police scanners, beepers or cellular telephones [citations], the possession of drug paraphernalia [citation], and the manner in which the substance is packaged [citation]." *Id.*

¶ 23 In reviewing those factors applicable to the case at bar, Richard Chaklos testified that the typical street-level amount of cocaine is one-tenth of one gram, to which the cocaine in the defendant's possession was large in comparison. As already established, a reasonable trier of fact could have concluded that the State proved beyond a reasonable doubt that the defendant purchased the total amount of 100.7 grams of cocaine in the same transaction from the source in Kentucky. However, we will entertain, *arguendo*, the defendant's attempt to separate the second amount for purposes of his intent to deliver. In doing so, we still find evidence sufficient to support the inference of an intent to deliver beyond a reasonable doubt.

¶ 24 According to officer Christopher Smith, the second amount of cocaine weighed 17.5 grams, which, even without considering the first amount, is significantly larger than the typical street-level weight of one tenth of one gram. In addition to the weight of the cocaine, other evidence could lead to the conclusion that the defendant intended to deliver it rather than use it personally. Smith also observed that the second amount consisted of seven individual packages, which, in addition to the weight, indicated that it was ready to sell. The defendant also had \$551 cash on him at the time of his arrest. Moreover, noteworthy is the fact that, as mentioned above, the defendant averred that he went to Kentucky and picked up cocaine to deliver in Illinois. In so stating, he never distinguished the two amounts.

¶ 25 Despite this evidence, the defendant cites numerous cases in an attempt to support his argument that the State did not prove beyond a reasonable doubt that he intended to deliver the second amount of cocaine rather than using it for himself. After reviewing these cases, we conclude that each is factually distinguishable from the case at bar when applying the above factors. "In light of the numerous types of controlled substances and the infinite number of potential factual scenarios in these cases, there is no hard and fast rule to be applied in every case." *Robinson*, 167 Ill. 2d at 414. This court "has established rational guidelines and general parameters in its consideration of the circumstantial evidence

necessary to prove intent to deliver controlled substances." *Id.* at 414-15. In applying these principles to the case at bar and in looking at the evidence in a light most favorable to the State, we find that a reasonable trier of fact could conclude that the State proved beyond a reasonable doubt that the defendant intended to deliver all of the cocaine in his possession, not just the first amount. See *Norris*, 399 Ill. App. 3d at 531. Because a reasonable trier of fact could conclude that the defendant procured all of the cocaine in Kentucky and brought it into Illinois with the intent to deliver it there, we affirm the jury's verdict and find the subsequent sentence proper on that basis. See *id.*

¶ 26

## *II. Street Value Fine*

¶ 27 The final issue on appeal is whether the trial court erroneously imposed on the defendant a street value fine of \$20,120, pursuant to section 5-9-1.1 of the Unified Code of Corrections (730 ILCS 5/5-9-1.1 (West 2010)). "[T]he trial court is vested with discretion in imposing a fine under section 5-9-1.1, which will not be altered on review absent an abuse of that discretion." *People v. Lewis*, 235 Ill. App. 3d 1003, 1006 (1994). The defendant contends that the trial court was required to receive evidence regarding the street value of the cocaine and failed to do so. Accordingly, the defendant requests the street value fine to be vacated and the cause remanded for a new sentencing hearing on that issue. The defendant is correct that "[t]here must be some evidentiary basis for street value in the record for the court to comply with the statutory mandate of imposing a fine at least equal to the street value of the controlled substance." (Internal quotation marks omitted.) *People v. Blankenship*, 406 Ill. App. 3d 578, 597 (2010). However, "[t]he evidentiary basis may be provided by testimony at sentencing, a stipulation to the current value, or reliable evidence presented at a previous stage of the proceedings." (Emphasis in original; internal quotation marks omitted.) *Id.*

¶ 28 The trial judge understood these principles, as he noted firsthand that "there are

certain things that are required in any sentence regarding an offense of this type." He added that "the amount of the street value is a matter that could be disputed, or it could be the type of thing that can be stipulated to." He then took a recess to allow counsel to confer to see if there was any dispute as to, *inter alia*, street value. After the recess, when questioned by the trial judge whether there were any facts in dispute, the State's Attorney replied, "I don't know that there are any facts in dispute, your Honor." Defense counsel made no objection to that point. The State's Attorney added, "I believe that from the testimony from Richard Chaklos deduced at trial that the agreement would be that the street value of the amount in question is \$20,120, and so that the assessment by the court can be that or \$500,000." Again, defense counsel did not object. In making its sentencing recommendation, the State asserted, "I believe that the defendant should be fined at least the amount of the street value of \$20,120 \*\*\*." Once more, defense counsel made no objection. When defense counsel later made his sentencing recommendation, in obvious reference to the earlier stipulation, he stated, "[T]he defense recommends 18 years along with the street value assessment of the \$20,000, the \$100 laboratory fee, and the \$3,000 assessment and just take mercy on the defendant." While defense counsel did not articulate the precise figure of \$20,120, it is obvious he was referring back to the earlier agreed-to amount. Although the defendant argues on appeal that he stipulated only to the quantity of the cocaine and not the street value, the record speaks otherwise, and we reject his contention.

¶ 29 As a final note, in a supplemental brief, the defendant cites *Southern Union Co. v. United States*, \_\_\_ U.S. \_\_\_, 132 S. Ct. 2344 (2012), which he contends stands for the proposition that the sixth amendment right to a jury trial as set forth in *Apprendi v. New Jersey*, 530 U.S. 466 (2000), "applies to sentencing questions when the court imposes a fine above what the jury verdict allows." To that regard, the defendant argues that because the jury did not decide the street value of the cocaine, the defendant was denied his right to a jury

trial on that issue and the cause should be remanded for a new jury trial. We disagree.

¶ 30 Although *Southern Union Co.* held that the rule in *Apprendi* applies to criminal fines (\_\_\_ U.S. at \_\_\_, 132 S. Ct. at 2348-49), the defendant's interpretation of *Southern Union Co.* is inaccurate and incomplete. First, as the defendant cites in his brief in reference to *Southern Union Co.* that "*Apprendi* applies to sentencing questions when the court imposes fines above what the jury verdict allows," the complete citation, as spelled out in *Southern Union Co.*, is that *Apprendi* "guards against [ ] judicial factfinding that enlarges the *maximum punishment* a defendant faces beyond what the jury's verdict *or the defendant's admissions* allow." (Emphases added.) \_\_\_ U.S. at \_\_\_, 132 S. Ct. at 2352. This is inapplicable to the case at bar, as the fine the trial judge imposed is precisely what the defendant admitted by stipulation. Moreover, the defendant was not subjected to the maximum punishment, much less anything *beyond* the maximum punishment, as the street value fine imposed was \$20,120 and the Act allows a fine "not to exceed \$500,000." See 720 ILCS 570/401(b) (West 2010). Accordingly, we disagree with the defendant's assertion that he was denied a right to a jury trial on the issue of the street value fine. Because the street value fine of \$20,120 was set pursuant to a stipulation between the parties, the trial court did not abuse its discretion in imposing the fine in that amount.

¶ 31 For the foregoing reasons, we affirm the defendant's conviction, the March 16, 2011, judgment that sentenced him to 27 years in the Illinois Department of Corrections, with a 3-year mandatory supervised release, and the street value fine of \$20,120. We remand the case with directions for the trial court to enter a correct sentencing order reflecting a credit against the street value fine in the amount of \$5 for each of the 244 days the defendant was confined in jail.

¶ 32 Affirmed and remanded with directions.