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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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THE PEOPLE OF THE STATE	)	Appeal from the Circuit Court
OF ILLINOIS,	)	of Kane County.
	)	
Plaintiff-Appellee,	)	
	)	
v.	)	No. 10-CF-62
	)	
AGUSTIN VELASQUEZ, JR,	)	Honorable
	)	Timothy Q. Sheldon,
Defendant-Appellant.	)	Judge, Presiding.

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PRESIDING JUSTICE BURKE delivered the judgment of the court.  
Justices Hutchinson and Birkett concurred in the judgment.

**ORDER**

¶ 1 *Held:* The trial court abused its discretion by imposing a street value fine that it believed was mandatory and bore no relation to the evidence presented at trial. We vacate the imposition of the \$200,000 fine and remand the cause for a determination of an appropriate street value fine.

¶ 2 Following a bench trial, the trial court convicted defendant, Agustin Velasquez, Jr., of possessing a controlled substance with intent to deliver, sentenced him to 15 years' imprisonment, and imposed a street value fine of \$200,000. Defendant contends on appeal that the trial court abused its discretion in imposing the \$200,000 street value fine, as it was assessed on the State's erroneous representation at sentencing. We hold that the trial court abused its

discretion in imposing the \$200,000 fine. Accordingly, we vacate the fine and remand the cause for a determination of an appropriate street value fine. In all other respects the judgment is affirmed.

¶ 3

### I. BACKGROUND

¶ 4 Defendant was charged with committing the offense of unlawful possession of a controlled substance with intent to deliver 1,500 or more pills containing in them any amount of Benzylpiperazine (BZP or Ecstasy), a controlled substance, in violation of section 401(a)(7.5)(D)(ii) of the Illinois Controlled Substances Act (Act) (720 ILCS 570/401(a)(7.5)(D)(ii) (West 2010)).

¶ 5 Detectives Theodore Kotlarz and Mario Elias found approximately 30,000 pills while conducting a “trash pull” behind defendant’s residence. Defendant was later arrested, and he confessed ownership of the pills. Kotlarz testified that defendant told him that he had intended to sell the pills but could not find buyers. Defendant also revealed that he had been fronted the pills for \$4 each.

¶ 6 Edward McGill, an Illinois State Police Crime Lab forensic scientist and narcotics testing and identification expert, received approximately 2,000 of the 30,000 pills. The pills had different markings on them. He separated the pills into four groups based on design, and then performed presumptive and conclusive tests on them. He used a representative sample of some, but not a representative sample from all four of the groupings, to reach the conclusion that defendant possessed 1,500 pills containing BZP.

¶ 7 Detective Elias explained that defendant likely possessed the pills with intent to sell because of the packaging and the large amount. He also testified that the street value of the 30,000 pills would be \$300,000 to \$600,000 on a per-pill basis of \$10 to \$20.

¶ 8 The trial court found defendant guilty of possessing at least 1,500 pills containing BZP with intent to deliver. The State requested the minimum prison sentence of 15 years and asked the court to issue a fine based on the street value estimated by Detective Elias at trial.

¶ 9 At sentencing, the State misstated the detective's testimony and indicated that the mandatory minimum street value for the pills was \$200,000. The court asked if this amount was mandatory and if the court had no discretion, to which the State affirmatively responded. After imposing the minimum prison sentence of 15 years, the court imposed a \$200,000 street value fine apparently based on the 30,000 pills seized. Defendant timely appeals.

¶ 10

## II. ANALYSIS

¶ 11 The sole issue on appeal is whether the trial court erroneously imposed on defendant a street value fine of \$200,000, pursuant to section 5-9-1.1(a) of the Unified Code of Corrections (Code) (730 ILCS 5/5-9-1.1(a) (West 2010)). Defendant argues that the street value fine must be based on only 1,500 pills, not 30,000, since the chemist related his random sampling to that amount based on a statistical formula. The State agrees that the assessment was erroneous but for a different reason. The State claims that a street value fine of \$200,000 was not based on the detective's testimony.

¶ 12 To obtain a conviction under the charging statute, the State must present proof that defendant possessed at least 1,500 pills containing BZP. See 720 ILCS 570/401(a)(7.5)(D)(ii) (West 2010). When an individual is found guilty under the Act, the court must issue a fine that is "not less than the full street value of the cannabis or controlled substance seized." 730 ILCS 5/5-9-1.1(a) (West 2010). The court must determine the street value by using 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. *Id.* As our

supreme court has stated, the statute requires an evidentiary basis for a street value fine. *People v. Lewis*, 234 Ill. 2d 32, 46 (2009). Such an “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.” *Lewis*, 234 Ill. 2d at 46. “[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.” *Lewis*, 235 Ill. App. 3d 1003, 1006 (1994).

¶ 13 Police seized approximately 30,000 pills of various colors and various distinct markings. Some of the pills, 1,910 of them to be exact, were selected by a police officer and sent to the police lab for testing. Three of the four marking combinations within the selection were tested.

¶ 14 Detective Elias estimated the full street value of each pill seized from defendant to be \$10 to \$20. Defendant told Kotlarz that he had been fronted the pills for \$4 each. At sentencing, the State asked for the minimum sentence, and the court agreed, saying, “A minimum sentence under the law is appropriate.” The court imposed the minimum prison term and then asked the prosecutor again about the street value fine.

“THE COURT: So it’s mandatory between \$200,000 and \$600,000?”

MS. ORLAND [Prosecutor]: That is my understanding, yes.

THE COURT: That’s mandatory. This Court has no discretion?

MS. ORLAND: That is correct.

THE COURT: The court will assess that then at \$200,000.”

¶ 15 Here, the prosecutor misstated the detective’s testimony and incorrectly indicated that the mandatory minimum street value for the pills was \$200,000. The trial court then proceeded under the faulty assumption that this amount was the mandatory minimum and that the amount was based on the evidence. The court imposed a \$200,000 street value fine, apparently based on

the 30,000 pills seized. Clearly, the trial court abused its discretion by imposing a street value fine that it believed was mandatory and which bore no relation to the evidence presented at trial. See *People v. Bond*, 405 Ill. App. 3d 449, 513-14 (2010); *People v. Galmore*, 382 Ill. App. 3d 531, 535-36 (2008) (holding that where evidence established that drugs had a value of \$1,000 to \$1,500, it was plain error to impose a \$10,000 street value fine).

¶ 16 Therefore, we vacate the \$200,000 fine, and remand the cause for a determination of an appropriate street value fine based either on the previous trial testimony or evidence presented at the hearing on remand. The street value fine must be based on relevant and reliable evidence as to what amount of drugs was seized. In that regard, the trial court must determine to what extent the chemist's testimony supports a finding concerning what amount of the pills which were seized constituted a controlled substance based upon a representative testing of a homogenous substance. See *People v. Kaludis*, 146 Ill. App. 3d 888, 895-96 (1986) (if substance is homogeneous, it permits expert to render his opinion as to entire substance, including those portions not tested).

¶ 17 **III. CONCLUSION**

¶ 18 For the reasons stated, the judgment of the circuit court of Kane County is vacated in part, and the cause is remanded for proceedings consistent with this disposition. In all other respects, the judgment is affirmed.

¶ 19 Affirmed in part, vacated in part, and remanded with directions.