

**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).

2012 IL App (3d) 100885-U

Order filed May 17, 2012

---

IN THE APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2012

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of the 12th Judicial Circuit, Will County, Illinois
Plaintiff-Appellee,	)	
v.	)	Appeal No. 3-10-0885
	)	Circuit No. 09-CF-2789
RAYMONE STEPHENS,	)	Honorable
Defendant-Appellant.	)	Richard C. Schoenstedt, Judge, Presiding.

---

JUSTICE CARTER delivered the judgment of the court.  
Justices Holdridge and Wright concurred in the judgment.

---

**ORDER**

¶ 1 *Held:* In a case involving a defendant convicted of unlawful possession of cannabis with intent to deliver, the appellate court held that the evidence was sufficient to prove that the defendant possessed the intent to deliver. With regard to sentencing, the appellate court vacated the defendant's \$200 deoxyribonucleic acid (DNA) analysis fee because his DNA sample had already been taken and indexed in the past. The appellate court also vacated the defendant's \$2,000 street-value fine and remanded the case for the State to present evidence of street value and for the circuit court to impose a new street-value fine.

¶ 2 The defendant, Raymone Stephens, was convicted of unlawful possession of cannabis with intent to deliver (720 ILCS 550/5(d) (West 2008)). The circuit court sentenced the

defendant to 5½ years of imprisonment and imposed numerous costs, including a \$200 deoxyribonucleic acid (DNA) analysis fee and a \$2,000 street-value fine. On appeal, the defendant argues that: (1) the State failed to prove he intended to deliver the cannabis; (2) the circuit court erred when it imposed a \$200 DNA analysis fee; and (3) the circuit court erred when it imposed a \$2,000 street-value fine.

¶ 3

### FACTS

¶ 4 On December 24, 2009, the defendant was charged by indictment with unlawful possession of cannabis with intent to deliver (720 ILCS 550/5(d) (West 2008)). On September 13, 2010, the case was called for a jury trial. The defendant's cousin, Michael Edmonds, testified that on December 4, 2009, he was awakened around 1:30 or 2:00 a.m. by a call from the defendant. Following up on a previously sent text message, the defendant asked Edmonds if he had asked the defendant's mother about using her car to drive to Chicago. Edmonds replied in the negative, and the defendant asked Edmonds if he would use his car to drive the defendant to Chicago. The defendant offered Edmonds a tank of gas and \$60 for the ride. They agreed to leave Bloomington for Chicago around 7:00 or 8:00 a.m.

¶ 5 Edmonds went back to sleep and woke up around 6:00 or 6:30 a.m. His brother, Marx, asked Edmonds if he would take Marx's girlfriend home and offered Edmonds some money for gas. Edmonds agreed, and the three departed in Edmonds' car. Edmonds dropped off Marx's girlfriend around 6:45 a.m. and drove with Marx to the defendant's residence. Edmonds picked up the defendant and Tyla Johnson, who was the defendant's girlfriend. After stopping for gas, Edmonds drove toward Chicago.

¶ 6 Around 9:00 a.m., they arrived in Harvey, Illinois. Johnson directed Edmonds where to

go, and Edmonds stopped the car on a street outside a residence. They waited in the car for about an hour before Johnson asked to use Edmonds' phone. After Johnson used the phone, all four individuals went inside the residence. Edmonds received a call and he passed the phone to Johnson. Johnson left the residence and re-entered approximately five minutes later carrying a black shoe box. Johnson showed Edmonds, Marx, and the defendant the contents of the box, which was two bulk bags of cannabis. Johnson took the cannabis into the kitchen and returned shortly thereafter with the bags of cannabis wrapped in aluminum foil.

¶ 7 The four individuals left the residence and walked to the car. Marx and the defendant sat down in the car, and Edmonds opened the trunk for Johnson. Johnson placed several bags and the foil-wrapped cannabis in the trunk. Edmonds sprinkled baby powder onto a shirt and wrapped the foil in the shirt. Edmonds used a screwdriver to open a speaker box that was in the trunk. Edmonds placed the shirt in the trunk and resealed the speaker box.

¶ 8 After stopping for gas, Edmonds drove back toward Bloomington. On Interstate 80, an unmarked police car pulled over Edmonds. The officer asked Edmonds to step out of the car, and Edmonds complied. The officer told Edmonds he had been speeding. During the stop, Edmonds partially fabricated a story that they had driven to Harvey to pick up Johnson because she was pregnant; he also stated that Johnson's parents were unaware of the pregnancy and did not know the father, and they were taking her and the father back to Bloomington. At some point during the stop, the officer "basically said he had a good idea there was something in the car." Edmonds told the officer that there was cannabis in the speaker box in the trunk. The officer located the cannabis and arrested the four individuals.

¶ 9 Edmonds stated that he pled guilty to unlawful possession of cannabis with intent to

deliver and received probation in exchange for his testimony in the defendant's trial.

¶ 10 During trial, the parties entered into two stipulations, which were read to the jury. The parties stipulated that the seized cannabis weighed 203 grams and that a proper chain of custody was maintained with regard to the cannabis.

¶ 11 Brett Schaeffer, a lieutenant with the Will County Sheriff's Department, testified and was qualified as an expert in the investigation, identification, possession, and distribution of cannabis. Schaeffer testified that while it can be difficult to determine from case-to-case whether a given amount of cannabis is intended for personal use, he stated that the typical maximum amount of cannabis that people purchase for personal use is 28 grams. The cannabis seized in this case was in two bulk bags of approximately 100 grams each, and Schaeffer opined that the cannabis was not for personal use. Schaeffer was asked about the particular facts of the case, and he opined that the circumstances indicated to him that the cannabis was obtained with the intent to be divided and redistributed, even if four people were in possession of the 203 grams of cannabis.

¶ 12 When the State attempted to elicit testimony from Schaeffer regarding the street value of the cannabis seized in the case, defense counsel objected. The circuit court sustained the objection.

¶ 13 Romeoville police officer Matthew Bejgrowicz also testified on behalf of the State. Bejgrowicz testified that he interviewed the defendant at the police station after the arrest. Bejgrowicz testified that, "[the defendant] basically stated that, in summary, he had arranged to drive up to Chicago with a female, Tyla Johnson, and be driven by Michael Edmonds to purchase an amount of cannabis for which they were going to bring back to, I believe it was Bloomington." The interview was not recorded; it was a verbal interview between the defendant, Bejgrowicz,

and another police officer.

¶ 14 After deliberations, the jury returned a guilty verdict.

¶ 15 On November 16, 2010, the circuit court held a sentencing hearing. During the hearing, the State presented no evidence on the street value of the cannabis, but requested that the court impose a \$2,000 street value fine "based on the weight of the cannabis that was recovered." The court sentenced the defendant to 5½ years of imprisonment and imposed numerous costs, including a \$200 DNA analysis fee and a \$2,000 street value fine. The defendant appealed.

¶ 16 ANALYSIS

¶ 17 On appeal, the defendant argues that: (1) the State failed to prove he intended to deliver the cannabis; (2) the circuit court erred when it imposed a \$200 DNA analysis fee; and (3) the circuit court erred when it imposed a \$2,000 street-value fine.

¶ 18 The defendant's first argument on appeal is that the State failed to prove that he intended to deliver the cannabis. Specifically, the defendant contends that the cannabis seized in this case was possessed by four individuals, so dividing the 203 grams equally could result in amounts intended for personal consumption.

¶ 19 When a defendant challenges the sufficiency of the evidence to convict, we view the evidence in the light most favorable to the State and assess whether any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt. *People v. Collins*, 106 Ill. 2d 237, 261 (1985).

¶ 20 In relevant part, section 5 of the Cannabis Control Act prohibits the possession of cannabis with the intent to deliver. 720 ILCS 550/5 (West 2008). A violation of this section is a Class 3 felony when the amount possessed is more than 30 grams but less than 500 grams. 720

ILCS 550/5(d) (West 2008). The only element of the crime that the defendant challenges is the intent to deliver element.

¶ 21 "Because direct evidence of intent to deliver is rare, such intent must usually be proven by circumstantial evidence. [Citation.] Consequently, this issue involves the examination of the nature and quantity of circumstantial evidence necessary to support an inference of intent to deliver." *People v. Robinson*, 167 Ill. 2d 397, 408 (1995). One factor that is probative of intent to deliver is whether the size of the controlled substance seized is much larger than what would be for personal consumption. *Robinson*, 167 Ill. 2d at 408.

¶ 22 Our review of the record reveals that the evidence, taken in the light most favorable to the State, supported the jury's finding of guilt. Edmonds testified that the defendant contacted him about driving him to Chicago. Edmonds agreed to do so in exchange for a tank of gas and \$60. Edmonds' brother accompanied him, the defendant, and the defendant's girlfriend, Tyla Johnson, on the ride. When they arrived in Harvey, Johnson used Edmonds' phone. After all four individuals entered the house, Johnson left the house and came back with the cannabis, eventually wrapping it in aluminum foil. Edmonds stashed the cannabis in the speaker box in his trunk after wrapping the cannabis in a shirt sprinkled with baby powder, and the four individuals headed back toward Bloomington.

¶ 23 A stipulation entered into evidence established that the seized cannabis weighed 203 grams. Officer Schaeffer was qualified by the circuit court as an expert on the investigation, identification, possession, and distribution of cannabis. Schaeffer testified that the typical amount of cannabis purchased for personal consumption was 28 grams. Schaeffer opined that the two bulk bags seized in this case, which totaled 203 grams of cannabis, was not for personal

use, but would have been divided and redistributed. Schaeffer also testified that even if the cannabis would have been divided equally between all four individuals in the car, his opinion was that the amount of cannabis was not consistent with personal consumption. Under these circumstances, we hold that a rational trier of fact could indeed have found that the amount of cannabis was too large to indicate personal consumption, and that he therefore possessed the cannabis with intent to deliver.

¶ 24 The defendant's second argument on appeal is that his \$200 DNA analysis fee should be vacated. The defendant claims that he has already had his DNA sample taken and indexed with the State police after a previous conviction.

¶ 25 There is nothing in the record on appeal to support the defendant's claim that his DNA sample was taken in the past. However, the defendant has appended a document to his brief that purports to be confirmation from the Illinois State Police DNA Indexing Laboratory that the defendant's DNA was taken on March 2, 2004, following a conviction for aggravated battery, and that the sample was received and analyzed. While the defendant has not provided any documents from that case indicating that he was assessed the \$200 DNA analysis fine and has not filed a motion to supplement the record on appeal with the State Police document or any other documents, we note that the State does not contest the authenticity of the State Police document. We will take judicial notice of the State Police document. See *People v. Grayer*, 403 Ill. App. 3d 797, 799 (2010) (*abrogated on other grounds, People v. Marshall*, 242 Ill. 2d 285 (2011)).

¶ 26 In *Marshall*, our supreme court held that the circuit court can only order the taking of a qualified offender's DNA, and assess the accompanying \$200 DNA analysis fee, when the qualified offender is not currently registered in the DNA database. *Marshall*, 242 Ill. 2d at 303.

Because the defendant in this case has already had his DNA sample taken and registered in the DNA database, the court erred when it ordered a new sample to be taken and when it assessed the \$200 DNA analysis fee. Accordingly, we vacate the portion of the court's order requiring the defendant to submit to DNA testing and to pay a \$200 DNA analysis fee.

¶ 27 The defendant's third argument on appeal is that the circuit court erred when it imposed a \$2,000 street-value fine on him at sentencing. The defendant points out that the State merely requested the \$2,000 street-value fine and did not present any evidence to support that calculation at the sentencing hearing. The defendant acknowledges that he has forfeited this argument on appeal by failing to raise the issue below, but argues that the matter can be reviewed under the plain error doctrine. We agree that plain error occurred and we will address the merits of the defendant's argument. See *People v. Lewis*, 234 Ill. 2d 32, 48 (2009) ("[p]lain-error review is appropriate because imposing the [street value] fine without any evidentiary support in contravention of the statute implicates the right to a fair sentencing hearing").

¶ 28 Section 5-9-1.1(a) of the Code of Criminal Procedure of 1963 provides:

"When a person has been adjudged guilty of a drug related offense involving possession or delivery of cannabis or possession or delivery of a controlled substance as defined in the Cannabis Control Act, the Illinois Controlled Substances Act, or the Methamphetamine Control and Community Protection Act, in addition to any other penalty imposed, a fine shall be levied by the court at not less than the full street value of the cannabis or controlled substances seized.

'Street value' shall be determined by the 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 cannabis or controlled substance seized." 730 ILCS 5/5-9-1.1(a) (West 2008).

This section requires there to be an evidentiary basis in the record for the circuit court to comply with the statute's mandate. *Lewis*, 234 Ill. 2d at 46. "The 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."<sup>1</sup> *Lewis*, 234 Ill. 2d at 46.

¶ 29 The record reflects that there was no evidence of street value presented in this case upon which the circuit court could base the \$2,000 street value fine it imposed at sentencing.

Accordingly, we vacate the portion of the court's sentencing order that imposed a \$2,000 street-value fine and remand the case for the court to impose a new street-value fine after receiving evidence from the State on street value, as is required by the statute and applicable case law. See *Lewis*, 234 Ill. 2d at 49.

¶ 30 **CONCLUSION**

¶ 31 For the foregoing reasons, we affirm the defendant's conviction for unlawful possession

---

<sup>1</sup> *Lewis* clearly defeats the State's argument that the defendant should be estopped from raising his argument because he invited error by objecting to evidence of street value the State attempted to present at trial. Evidence of street value was not required to convict the defendant of unlawful possession of cannabis with intent to deliver (720 ILCS 550/5(d) (West 2008)), and the bar imposed by the court on street value evidence at trial in no way precluded the State from presenting evidence of street value at sentencing. See *Lewis*, 234 Ill. 2d at 46 (noting that evidence of street value may, but does not have to, come from evidence presented at trial).

of cannabis with intent to deliver. We also vacate two aspects of the defendant's sentence: (1) the \$200 DNA analysis fee; and (2) the \$2,000 street-value fine. In all other respects, we affirm the defendant's sentence. We also remand the cause with directions for the circuit court to receive evidence from the State on street value and to impose a new street-value fine based on that evidence.

¶ 32 The judgment of the circuit court of Will County is affirmed in part and vacated in part, and the cause is remanded with directions.

¶ 33 Affirmed in part and vacated in part; cause remanded with directions.