2017 IL App (4th) 141086-U

NO. 4-14-1086

FILED
September 12, 2017
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

| | | |
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| THE PEOPLE OF THE STATE OF ILLINOIS, | ) | Appeal from |
| Plaintiff-Appellee, | ) | Circuit Court of |
| v. | ) | Adams County |
| BRITNEY M. HIGDON, | ) | No. 14CF218 |
| Defendant-Appellant. | ) | |
| | ) | Honorable |
| | ) | Scott H. Walden, |
| | ) | Judge Presiding. |

JUSTICE HOLDER WHITE delivered the judgment of the court.
Presiding Justice Turner and Justice Knecht concurred in the judgment.

**ORDER**

¶ 1 *Held*: The appellate court (1) affirmed in part, concluding (a) section 120(a) of the Methamphetamine Control and Community Protection Act (720 ILCS 646/120(a) (West 2014)) does not violate due process, and (b) the State presented sufficient evidence to prove defendant possessed a methamphetamine precursor with a prior conviction under the Act; and (2) vacated certain fines improperly imposed and recalculated the lump sum surcharge.

¶ 2 In April 2014, the State charged defendant, Britney M. Higdon, with two counts of possession of methamphetamine precursors without a prescription in violation of the Methamphetamine Control and Community Protection Act (Act) (720 ILCS 646/120 (West 2014)). Following a December 2014 stipulated bench trial, the trial court found defendant guilty and sentenced her to one year in prison.

¶ 3 Defendant appeals, asserting (1) the Act violates due process, (2) the State failed to prove her guilty beyond a reasonable doubt, and (3) the trial court improperly assessed $130 in fines. We affirm in part, vacate in part, and remand with directions.

¶ 4 I. BACKGROUND

¶ 5 The State filed a bill of indictment against defendant, alleging two counts of possession of methamphetamine precursors without a prescription (720 ILCS 646/120 (West 2014)). Under section 120(a) of the Act:

> "Whenever any person pleads guilty to, is found guilty of, or is placed on supervision for an offense under this Act, in addition to any other penalty imposed by the court, no such person shall thereafter knowingly purchase, receive, own, or otherwise possess any substance or product containing a methamphetamine precursor as defined in Section 10 of this Act, without the methamphetamine precursor first being prescribed for the use of that person in the manner provided for the prescription of Schedule II controlled substances under Article III of the Illinois Controlled Substances Act." 720 ILCS 646/120(a) (West 2014).

¶ 6 In response, defendant filed a motion to dismiss the indictment, asserting the Act was unconstitutional in that it violated due process by punishing wholly innocent conduct. The trial court denied the motion later that month.

¶ 7 Defendant subsequently waived her right to jury trial and, in December 2014, the case proceeded to a stipulated bench trial as to count I. The State elected to dismiss count II.

Defendant stipulated to the evidence but did not stipulate that the evidence was sufficient for a finding of guilty. The State then presented the following stipulated facts.

> "[T]he People would call Inspector James Brown, who was at that point employed by the West Central Illinois Drug Task Force. He would testify that on February 21st, 2014[,] he had received an e[-]mail alert from the NPLEx pseudoephedrine purchasing system. He would testify that he regularly gets these e[-]mail alerts when specific individuals purchase pseudoephedrine.
>
> He would further testify about that NPLEx pill log and the system, that it is kept in the normal course of business, that it's required to be kept by various pharmacies and providers of pseudoephedrine.
>
> He would additionally testify that on that February 21st date he received a check or an e[-]mail that [defendant] had purchased pseudoephedrine. He ran a check of the actual physical logs and confirmed that on February 21st, 2014[,] at 5:55 p.m. at Walmart here in Quincy, Illinois, [defendant] purchased a box of pseudoephedrine. He would testify that he required—he acquired Walmart video surveillance and observed [defendant] on the video surveillance making that purchase.
>
> Individuals from Walmart would testify as to the authenticity of the video, that it was being kept in working condition, and the video shows what it purported to have shown.

Additionally, we would present evidence by way of either judicial notice or a certified conviction that shows in 2009 the defendant was convicted of possession of methamphetamine. That case number is [Adams County case No.] 09-CF-460 and [defendant] was placed on probation in that case.

We would present evidence that at the time of February 21, 2014, judgment had entered on that previous case and that was an actual conviction at the time that she made the purchase of pseudoephedrine."

¶ 8 After considering the stipulated facts, the trial court stated:

"The court finds that, by virtue of the evidence purported to be offered through the stipulation, that the case of the People has been proven beyond a reasonable doubt both with respect to the prior offense and the new offense as set forth by the evidence; that it happened on February 21st here in Adams County; that the defendant purchased pseudoephedrine. She had no prescription and that's why it showed up on the logs, and that constitutes the offense."

Following the court's decision, defendant renewed her motion to dismiss, which the court denied.

¶ 9 That same day, the trial court sentenced defendant to one year of imprisonment and assessed certain fines. At defendant's request, the court issued an appeal bond pending this appeal.

¶ 10 II. ANALYSIS

¶ 11 On appeal, defendant asserts (1) the Act violates due process, (2) the State failed to prove her guilty beyond a reasonable doubt, and (3) the trial court improperly assessed $130 in fines.

¶ 12 A. Due Process

¶ 13 Defendant argues the Act violates due process because it (1) fails to require proof of a culpable mental state, and thus is capable of punishing wholly innocent conduct; and (2) punishes conduct more seriously than similar conduct under other statutory provisions.

¶ 14 Whether a statute is unconstitutional is a question of law we review *de novo*. *People v. Johnson*, 225 Ill. 2d 573, 584, 870 N.E.2d 415, 421 (2007). "All statutes are presumed to be constitutional, and the burden of rebutting that presumption is on the party challenging the validity of the statute to demonstrate clearly a constitutional violation." *People v. Greco*, 204 Ill. 2d 400, 406, 790 N.E.2d 846, 851 (2003). Where reasonably possible, we must construe a statute so as to affirm both its constitutionality and validity. *Id*. The party challenging the constitutionality of the statute "must establish that no set of circumstances exists under which the Act would be valid." (Internal quotation marks omitted.) *Id.* at 407, 790 N.E.2d at 851.

¶ 15 When a party's challenge to the constitutionality of a statute does not implicate a fundamental right, our inquiry is " 'whether the statute is reasonably designed to remedy the evils which the legislature has determined to be a threat to the public health, safety and general welfare.' " *People v. Lewis*, 2016 IL App (4th) 140852, ¶ 22, 78 N.E. 3d 967 (quoting *Heimgaertner v. Benjamin Electric Manufacturing Co.*, 6 Ill. 2d 152, 159, 128 N.E.2d 691, 695 (1955)). This standard is akin to the rational basis test, and we will uphold the statute so long as it bears a rational relationship to a legitimate State goal. *Id.*

¶ 16 1. *Wholly Innocent Conduct*

¶ 17 We first examine defendant's argument that the Act violates due process because it lacks a requirement of proof of a culpable mental state and, therefore, could punish wholly innocent conduct. Wholly innocent conduct is "conduct unrelated to the legislative purpose and devoid of criminal or devious intent." *Id.* ¶ 25. This court addressed this same issue in *Lewis*, and we continue to agree with our conclusion in that case.

¶ 18 In *Lewis*, this court stated:

> "Defendant argues the limitation outlined in section 120(a) is not rationally related to the legislative purpose because it does not require criminal intent, thereby subjecting wholly innocent conduct to a felony conviction. At the conclusion of this portion of his argument, defendant appears to argue the statute should require proof of criminal intent to use the precursor to manufacture methamphetamine. However, this conduct is already proscribed by section 20(a) of the [Act] (720 ILCS 646/20(a)(1) (West 2012)), which prohibits possession of a methamphetamine precursor with the intent to manufacture methamphetamine. Section 120(a) is a further limitation on possession of methamphetamine precursors by those with a proclivity to manufacture and/or abuse methamphetamine. Thus, the relevant question is not whether the statute should require criminal intent but, rather, whether the statute, as written, is a rational means of accomplishing the legislative purpose." *Id.* ¶ 24.

¶ 19 Defendant argues our holding in *Lewis* was incorrect, as the Act punishes wholly innocent conduct. Defendant indicates the wholly innocent conduct here could consist of the purchase of nonprescription pseudoephedrine, or other methamphetamine precursors, for legitimate health and medical uses. Defendant gives examples such as (1) a woman with a prior methamphetamine conviction purchasing a decongestant for her disabled husband, who cannot go to the pharmacy himself; and (2) a man with a prior methamphetamine conviction who acts as a caregiver for his elderly mother, purchasing her allergy or cold medication to alleviate her symptoms. However, prohibiting a person with a history of methamphetamine-related offenses from purchasing a methamphetamine precursor is the very conduct the legislature intended to punish. *People v. Williams*, 235 Ill. 2d 178, 212, 920 N.E.2d 446, 466-67 (2009).

¶ 20 Defendant's examples may create an inconvenience for those with prior convictions, but the Act does not prohibit the disabled husband or elderly mother from obtaining their pseudoephedrine through other legal means, nor does it prohibit those with prior convictions from obtaining cold or allergy medicines that do not contain pseudoephedrine. Moreover, defendant's examples fail to establish "no set of circumstances exists under which the Act would be valid." (Internal quotation marks omitted.) See *Greco*, 204 Ill. 2d at 407, 790 N.E.2d at 851.

¶ 21 As noted in *Lewis*, the legislature has determined that possession of a methamphetamine precursor by a person previously convicted under the Act is not innocent conduct. *Lewis*, 2016 IL App (4th) 140852, ¶ 26, 78 N.E.3d 976. "The statute only targets a limited group of individuals with a known proclivity for manufacturing and/or abusing methamphetamine." *Id.* ¶ 27. *Lewis* goes on to explain, "Section 120(a) only targets individuals who have shown a tendency to use methamphetamine precursors in a criminal manner, which—

given the extreme dangers posed by the manufacture and abuse of methamphetamine—demonstrates the need to stringently regulate possession of methamphetamine precursors by such individuals, even where the individual plans to use the precursor in an innocent fashion." *Id.*

¶ 22 Moreover, "the statute does not prohibit outright all possession or purchase of methamphetamine precursors by that limited group of individuals; rather, the statute merely requires a prescription to purchase or possess a methamphetamine precursor." *Id.* ¶ 28. Providing such limitations "weigh[s] in favor of rationality, and the prohibition itself is a rational method of combating methamphetamine manufacture and abuse. *** [A] statute 'does not become unreasonable merely because some purchasers without the intent to manufacture methamphetamine might violate its terms or suffer inconvenience.' " *Id.* (quoting *People v. Willner*, 392 Ill. App. 3d 121, 126, 924 N.E.2d 1029, 1034 (2009)). Section 120(a) of the Act places those with prior convictions on notice that they are prohibited from purchasing a methamphetamine precursor unless they possess a valid prescription; a defendant's intent in making such a purchase is irrelevant.

¶ 23 Defendant argues *Lewis* overstates the relevance of the prior conviction requirement, as the Act prohibits even possession of a small amount of a methamphetamine precursor for personal use. Thus, not every possession of a methamphetamine precursor under the Act demonstrates a proclivity for manufacturing methamphetamine. However, as the State points out, it is rational "to trust a person who lacks a methamphetamine conviction to acquire limited periodic quantities of pseudoephedrine pills" without a prescription while similarly placing no trust in an individual who has a methamphetamine conviction.

¶ 24 Defendant also argues that *Lewis* incorrectly determined that section 120 had a rational basis by determining the purpose of the provision was to prevent people from amassing

large quantities of methamphetamine precursors for the purpose of manufacturing methamphetamine for illegal distribution. According to defendant, a person with a prescription also has the ability to amass large quantities of pseudoephedrine. However, prescriptions are generally for a limited amount of medication and can be easily documented through the pharmacy, which would limit a person from amassing large quantities of prescription medication. Thus, a person with a prescription is far less able to amass large quantities of pseudoephedrine or other methamphetamine precursors. Moreover, we note that possession of methamphetamine precursors by a person with a prescription, or without a prior conviction, is governed by another statutory provision. See 720 ILCS 648/40 (West 2014) (setting forth the legal amount of a methamphetamine precursor a person may obtain within a 30-day period).

¶ 25 Defendant has failed to demonstrate there are no circumstances under which this Act would be valid. To the contrary, we conclude the statute "is reasonably designed to remedy the evils which the legislature has determined to be a threat to the public health, safety and general welfare." *Lewis*, 2016 IL App (4th) 140852, ¶ 22, 78 N.E. 3d 967 (quoting *Heimgaertner*, 6 Ill. 2d at 159, 128 N.E.2d at 695). We also conclude defendant failed to demonstrate the statute punishes wholly innocent conduct.

¶ 26 2. *Harsher Penalty*

¶ 27 Defendant next contends the Act violates due process because it imposes a much harsher penalty under the Act than it does for a violation of another statutory provision. Specifically, a person who violates section 120(a) of the Act by possessing any amount of a methamphetamine precursor is guilty of a Class 4 felony, whereas a person who violates section 40 of the Methamphetamine Precursor Control Act (720 ILCS 648/40(a)(1)(A) (West 2014)) by

possessing more than 7500 milligrams of pseudoephedrine within a 30-day period is guilty of only a Class B misdemeanor.

¶ 28 This court rejected the same argument in *Lewis*, holding:

> "Apparently, the legislature thought it less culpable for an individual with a prior conviction under the [Act] to, with a doctor's prescription, purchase between 7500 and 15,000 milligrams of pseudoephedrine or ephedrine within a 30-day period than to purchase any precursor without a prescription. That determination is entirely within the legislature's purview and does not render either provision an irrational method of combating methamphetamine manufacture and abuse." *Lewis*, 2016 IL App (4th) 140852, ¶ 40, 78 N.E. 3d 967

¶ 29 Defendant argues our decision in *Lewis* was erroneous and that it incorrectly found *People v. Bradley*, 79 Ill. 2d 410, 403 N.E.2d 1029 (1980), distinguishable from the case at bar. In *Bradley*, the supreme court compared two statutory provisions, where a defendant faced a harsher penalty for possession of a controlled substance than for delivery of the controlled substance. *Id.* at 418, 403 N.E.2d at 1032. The supreme court noted, "Clearly, the legislature intended that those who traffic in and deliver drugs should be subject to more severe sentences than those who merely possess them." *Id.* Accordingly, the supreme court found the defendant's conviction for possession of a controlled substance unconstitutional as it violated due process. *Id.* at 419, 403 N.E.2d at 1033.

¶ 30 As this court recognized in *Lewis*, *Bradley* is distinguishable. In *Bradley*, the defendant was punished more harshly for possessing a controlled substance than he would have

been for delivering it, in spite of the statute's stated purpose and objective to penalize most heavily those who delivered controlled substances, and not treat users with the same severity as deliverers of controlled substances. The present case does not set harsher penalties for those who possess methamphetamine precursors than those who intend to deliver it. Rather, as *Lewis* stated, "the legislature thought it less culpable for an individual with a prior conviction under the [Act] to, with a doctor's prescription, purchase between 7500 and 15,000 milligrams of pseudoephedrine or ephedrine within a 30-day period than to purchase any precursor without a prescription." *Lewis*, 2016 IL App (4th) 140852, ¶ 40, 78 N.E.3d 967. "The availability of different punishments for separate offenses based on the commission of the same acts does not offend the constitutional guarantees of equal protection or due process." (Internal quotation marks omitted.) *Id.* ¶ 38.

¶ 31 Accordingly, we conclude section 120(a) of the Act does not violate due process. We next turn to the sufficiency of the evidence.

¶ 32 B. Sufficiency of the Evidence

¶ 33 Defendant contends the State failed to prove her guilty beyond a reasonable doubt on two grounds—first, that it failed to prove she knowingly possessed a methamphetamine precursor and, second, that it failed to prove she lacked a valid prescription for the pseudoephedrine.

¶ 34 Where a defendant challenges the sufficiency of the evidence, we must ask 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 a crime beyond a reasonable doubt." *People v. Mandic*, 325 Ill. App. 3d 544, 546, 759 N.E.2d 138, 141 (2001). This standard applies to stipulated bench trials where the defendant stipulates to the facts but not to his guilt. See

*People v. Rowell*, 229 Ill. 2d 82, 98, 890 N.E.2d 487, 496 (2008). However, to the extent a defendant "questions whether the uncontested facts were sufficient to prove the elements of the offense, our review is *de novo*." *People v. Perkins*, 408 Ill. App. 3d 752, 757-58, 945 N.E.2d 1228, 1234 (2011). Questions of statutory interpretation are also subject to *de novo* review. *People v. Campa*, 217 Ill. 2d 243, 252, 840 N.E.2d 1157, 1164 (2005).

¶ 35 1. *Knowledge*

¶ 36 Defendant argues the State failed to prove she knowingly purchased a methamphetamine precursor, as required under section 120(a) of the Act (720 ILCS 646/120(a) (West 2014)). Although the factual basis presented to the trial court stated defendant knowingly purchased pseudoephedrine, defendant contends the State failed to prove she knew the pseudoephedrine constituted a methamphetamine precursor as required to sustain a conviction under the Act.

¶ 37 We rejected this argument in *People v. Laws*, 2016 IL App (4th) 140995, 66 N.E.3d 848. In *Laws*, we held:

> "An individual who purchases medication containing a methamphetamine precursor is on notice the medication contains the precursor because the ingredients are listed on the box or bottle containing the medication. The argument an individual is unaware a particular substance is a methamphetamine precursor is a mistake of law claim, which is no defense. Even if we interpreted the statute to require knowledge a methamphetamine precursor is contained in the substance possessed, defendant's argument he was unaware Sudafed contained pseudoephedrine or unaware

pseudoephedrine was a methamphetamine precursor would necessarily fail." *Id*. ¶ 23.

¶ 38 Defendant asserts, unlike the mistake-of-law claim presented in *Laws*, her claim on appeal is that she made a mistake of fact, and the State failed to prove she knew the pseudoephedrine was a methamphetamine precursor. In section 120(a), the statutory language specifically refers to section 10 of the Act as outlining the products considered to be methamphetamine precursors. 720 ILCS 646/120(a) (West 2014). Section 10 of the Act clearly defines pseudoephedrine, a product that defendant admits she knowingly purchased, as a methamphetamine precursor. See 720 ILCS 646/10 (West 2014). Contrary to defendant's argument, this is not a mistake of fact, but rather, a mistake of law. Even if defendant was unaware pseudoephedrine was a methamphetamine precursor, ignorance of the law does not excuse unlawful conduct. *People v. Izzo*, 195 Ill. 2d 109, 115, 745 N.E.2d 548, 552 (2001). We therefore continue to agree with our analysis in *Laws* and conclude the State proved defendant knowingly possessed a methamphetamine precursor.

¶ 39 2. *Prescription*

¶ 40 Defendant next asserts the State failed to prove she lacked a prescription for the pseudoephedrine. The State concedes it had to prove defendant lacked a prescription. However, in light of our recent decision in *People v. Brace*, 2017 IL App (4th) 150388, __ N.E.3d __, we decline to accept the State's concession.

¶ 41 At issue here is whether the lack of a prescription is an element of the offense, or whether it is an exception the State had no obligation to prove. "[I]n determining whether an exception to a criminal statute is an element to be proved by the State, we do not look solely at where the exception is positioned in the statute." *People v. Tolbert*, 2016 IL 117846, ¶ 15, 49

N.E.3d 389. Rather, "we must determine more generally whether the legislature intended the exception to be 'descriptive' of the offense, or whether the legislature intended only to withdraw, or exempt, certain acts or persons from the operation of the statute." *Id.*

> "The general rule in Illinois is that where an act is made a crime and there are exceptions embraced in the enacting clause creating the offense which affect the description of that offense, the State must allege and prove that the accused does not come within the exception. In other words, where the exception is descriptive of the offense it must be negatived in order to charge the accused with the offense. On the other hand, if the exception rather than being a part of the description of the offense, merely withdraws certain acts or persons from the operation of the statute, it need not be negatived, and its position in the act, whether in the same section or another part of the act, is of no consequence. Such exceptions are generally matters of defense." *People v. Ellis*, 71 Ill. App. 3d 719, 720-21, 390 N.E.2d 583, 585 (1979).

See also *People v. Rodgers*, 322 Ill. App. 3d 199, 202, 748 N.E.2d 849, 851 (2001).

¶ 42 In *Brace*, this court characterized the phrase "without the methamphetamine precursor first being prescribed" (720 ILCS 646/120(a) (West 2014)) as an exception to the statute that withdrew those with a prescription from operation of the statute. *Id.* ¶ 12. The court determined this "prescription exception" was not part of the body of the substantive offense as an element the State was required to prove. *Id.* ¶ 16. Therefore, whether defendant had a prescription was a matter of defense that the State had no burden to prove. *Id.*

¶ 43 In reaching its decision, *Brace* relies on *Ellis* and *Rodgers*. In *Ellis*, the defendant was convicted of driving while his license was revoked or suspended. *Ellis*, 71 Ill. App. 3d at 720, 390 N.E.2d at 584. The evidence included a document from the Secretary of State's office, indicating the defendant's license was revoked or suspended, but it also disclosed he was issued a restricted driving permit approximately two years before his arrest. *Id*. The statute at issue in *Ellis* read:

> "Any person who drives a motor vehicle on any highway of this State at a time when his driver's license or permit or privilege so to do or his privilege to obtain a license or permit under this Act is revoked or suspended as provided by this Act or any other Act, except as may be allowed by a restricted driving permit issued under this Act, shall be guilty of a Class A misdemeanor and shall be imprisoned for not less than 7 days." *Id*. at 720, 390 N.E.2d at 585.

See also Ill. Rev. Stat. 1977, ch. 95 1/2, ¶ 6-303(a).

¶ 44 On appeal, the defendant in *Ellis* argued the State had the burden of demonstrating he lacked a restricted driving permit. *Ellis*, 71 Ill. App. 3d at 720, 390 N.E.2d at 585. This court rejected the defendant's argument, concluding, "the exception merely withdraws persons with restricted driving permits from the operation of the statute and in no sense is descriptive of the offense." *Id.* at 721, 390 N.E.2d at 585. In other words, whether the defendant possessed a restricted driving permit was a defense, not an element the State was required to prove.

¶ 45 In *Rodgers*, the appellate court similarly held that the State was not required to prove the defendant lacked a restricted driving permit from another state. *Rodgers,* 322 Ill. App. 3d at 203, 748 N.E.2d at 852. The court noted, "[a]lthough an exception may appear within the statutory definition of an offense, it is 'part of the body' of the offense only if it is so incorporated with the language of the definition that the elements of the offense cannot be accurately described without reference to the exception." (Internal quotation marks omitted.) *Id.* at 202, 748 N.E.2d at 851. The *Rodgers* court concluded:

> "[I]f a defendant merely drives on a public highway while his license is revoked, he commits what is generally a criminal act. That is, in the typical case, the commission of the crime does not depend on the inapplicability of the exceptions. Thus, the exceptions do not bear on the elements of the offense; instead, they state only that *particular defendants* (those with, *e.g.*, restricted driving permits) are protected from liability. Because the exceptions merely withdraw certain persons from the scope of the statute, the State has no burden to disprove them." (Emphasis in original.) *Id.* at 203, 748 N.E.2d at 852.

¶ 46 We continue to affirm our holding in *Brace*. The language of section 120(a) indicates the General Assembly clearly indicated its intent to withdraw, or exempt, those who possess prescriptions from operation of the statute. 720 ILCS 646/120(a) (West 2014). The description of the criminal act is possession of a methamphetamine precursor with a prior conviction under the Act. The lack of a prescription is merely an exception that withdraws certain conduct from operation of the statute. Whether the defendant has a prescription is not so

incorporated within the language of the definition that the elements of the offense cannot be accurately described without reference to the exception. See *Rodgers*, 322 Ill. App. 3d at 203, 748 N.E.2d at 852. Because we conclude the possession of a prescription is merely an exception to the offense, the State was not required to prove defendant lacked a prescription for pseudoephedrine.

¶ 47 Accordingly, we conclude the State presented sufficient evidence to support defendant's conviction.

¶ 48 C. Fines and Fees

¶ 49 Defendant contends the trial court improperly assessed two fines that must be vacated and, as a result, the lump sum surcharge fine must be reduced. The State concedes the fines were improperly imposed, and we accept the State's concession. Whether a defendant is eligible for an assessment is subject to *de novo* review. *People v. Warren*, 2016 IL App (4th) 120721-B, ¶ 99, 55 N.E.3d 117.

¶ 50 In this case, the trial court imposed a $100 methamphetamine law enforcement fine and a $10 Crime Stoppers fine. Under sections 5-9-1.1-5(a) and (b) of the Unified Code of Corrections (730 ILCS 5/5-9-1.1-5(a), (b) (West 2014)), a defendant is subject to a $100 methamphetamine law enforcement fine where:

> "[A] person has been adjudged guilty of a methamphetamine related offense involving possession or delivery of methamphetamine or any salt of an optical isomer of methamphetamine or possession of a methamphetamine manufacturing material as set forth in Section 10 of the Methamphetamine Control and Community Protection Act with

the intent to manufacture a substance containing methamphetamine or salt of an optical isomer of methamphetamine[.]"

Because (1) defendant did not possess or deliver methamphetamine in this case and (2) the trial court did not find defendant intended to manufacture methamphetamine, the $100 methamphetamine law enforcement fine must be vacated. See also *Lewis*, 2016 IL App (4th) 140852, ¶ 18, 78 N.E.3d 967 (vacating the methamphetamine law enforcement fine where the defendant was convicted of possessing a methamphetamine precursor).

¶ 51 The trial court also imposed a $10 Crime Stoppers fine. However, this fine is only applicable in instances where the defendant receives a community-based sentence. 730 ILCS 5/5-6-3(b)(12) (West 2014); *People v. Beler*, 327 Ill. App. 3d 829, 837, 763 N.E.2d 925, 931 (2002). Because defendant received a prison sentence, she is not subject to this fine. We therefore vacate the $10 Crime Stoppers fine.

¶ 52 Finally, defendant asserts that vacating the fines requires the lump sum surcharge to be recalculated. Where a defendant has been convicted of a crime, an additional penalty—a lump sum surcharge—shall be imposed of "$10 for each $40, or fraction thereof, of fine imposed." 730 ILCS 5/5-9-1(c) (West 2014). Defendant was initially charged $210 for the lump sum surcharge. However, because we have reduced defendant's fines by $110, we must also reduce the lump sum surcharge. Accordingly, we reduce defendant's lump sum surcharge by $20 to reflect a total of $190.

¶ 53 III. CONCLUSION

¶ 54 For the foregoing reasons, we affirm the trial court's judgment but vacate the $100 methamphetamine law enforcement fine and the $10 Crime Stoppers fine. Because we have reduced the fines, we remand this case for the recalculation of the lump sum surcharge to reflect

a reduction to $190. As part of our judgment, we grant the State its $50 statutory assessment against defendant as costs of this appeal. 55 ILCS 5/4-2002 (West 2016).

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