

erred in denying his motion to quash arrest and suppress statements. For the following reasons, we affirm the judgment of the trial court.

¶ 3 BACKGROUND

¶ 4 At trial, defendant filed a motion to quash arrest and suppress evidence. Over the State's objection, the trial court heard the motion simultaneously with the trial. The basis of defendant's motion was that his arrest should be quashed because he was arrested without probable cause and there were no exigent circumstances to excuse the lack of a warrant.

¶ 5 Joseph Curico, an attorney, testified that he lived at 1421 North Astor in Chicago. At about 8:00 a.m. on June 23, 2009, he went to his garage and found his 2006 Mercedes Benz CL500 and many of his power tools missing. His gym bag, which was in his trunk, and a cellular phone that he left in the car were also missing. There was damage to the front door of his coach house, which is above his garage. Curico immediately asked his wife to call T-Mobile, his cellular telephone service provider, to request that his service be curtailed. Later that day, T-Mobile faxed a report of the recent calls that had been made from Curico's cell phone. The last call was made on June 23, 2009, at 2:47 a.m. to 773-437-9341. This report was entered into evidence.

¶ 6 Curico went to his office the following day and requested that his paralegal perform a reverse search of the phone number last called from his phone to see to whom the phone number was registered. His paralegal printed out the results of the search. Based on the results of the search, Curico asked Clarence Bowers, one of his employees, to go to 847 North Lawndale to look for his Mercedes. Curico received a call from Bowers and based on that conversation went to 847 North Lawndale. Bowers was there with a police officer he had flagged down. Curico

proceeded to his vehicle and opened the trunk with a spare key. Inside, he saw "most, if not all, of the materials that were taken from [his] garage at 1421 North Astor." The only items that were not there were his gym bag, a pressure washer, a leaf blower and a power saw.

¶ 7 The next day, Curico learned that the building immediately east of his garage, 1418 North Lake Shore Drive, had a surveillance camera posted at the rear of the building, "which portrayed the rear of [Curico's] building, the garage, and the entrance into [Curico's] backyard." The Chicago police department was notified of the existence of this surveillance camera. A copy of the video, obtained by the Chicago police, was shown to Curico at trial.

¶ 8 Curico viewed the video and the State paused the video at several points, asking Curico to identify the still images portrayed. Curico indicated that:

"There are a number of things it portrays. First of all, it is the alley immediately behind my home, running in a northerly and southerly direction * * *. But additionally, there is the apron of the building at 1418 North Lake Shore Drive with the vehicle parked immediately to the north. Additionally, it portrays the rear garage door, opening up on to the alley parallel to our home. It portrays the entrance to our backyard with this right here, that's a 2 or 3-inch oak door, solid, and three garbage receptacles."

The video was started and stopped again when an individual appeared and entered the doorway leading to the yard of Curico's home. Curico testified that the video then showed his 2006 Mercedes Benz being driven out of the garage heading south in the alley behind his residence. The video then showed the Mercedes stopped and an individual enter Curico's garage through the open garage door. The individual pressed the remote for the overhead garage door. Next the video showed the individual leave the garage and head toward the stopped Mercedes in the alley.

Finally, the video showed the Mercedes heading southbound toward Schiller. Curico testified that neither he nor any of his family members were driving the Mercedes in the video. Curico testified that he never gave defendant or any other individual permission to enter his garage, access his coach house or drive his vehicle on June 23, 2009.

¶ 9 John Jackson testified that he worked as a custom operation manager with the cellular wireless provider Cricket Communications. He received a subpoena requesting hard copies of records containing the information for the customer with the telephone number 773-437-9341. Cricket's subpoena compliance group processed the subpoena and pulled up the data on the phone number requested. Jackson received a document entitled "MDN Search Results" for the phone number in the subpoena which contained the following customer information: Nolen Henigan, 2100 West Warren Boulevard, Chicago. Jackson testified that the customer provided the address listed on the account and that it could be a billing address. The court admitted the report into evidence.

¶ 10 Detective Purdy testified that he received an assignment on July 8, 2009, to investigate a burglary that occurred at 1421 North Astor on the morning of June 23, 2009. After reviewing the original report, he contacted Curico. Detective Purdy learned about the burglary, the missing Mercedes, power tools, cell phone and gym bag. He also learned that a call had been made from Curico's missing cell phone to the number 773-437-9341 at 2:47 a.m. on June 23, 2009 and that Curico was asleep at that time, did not place the call and did not recognize the number. Detective Purdy also learned that Curico saw pry marks on the door of his coach house above the garage. Curico also informed Detective Purdy that he conducted a computer search of the phone number called from his phone at 2:47 a.m. and that the search came back to Nolen Henigan who

lived at 847 North Lawndale in Chicago. Curico sent one of his employees to that location to look for his vehicle and his employee found the vehicle parked at 853 North Lawndale. Curico's employee flagged down a patrol car and the vehicle was recovered. Detective Purdy learned that Curico was at the scene and identified and recovered some items that were missing from his garage and from his vehicle.

¶ 11 On July 9, 2009, Detective Purdy conducted his own investigation at Curico's house. Detective Purdy viewed Curico's residence, his garage and his coach house. Detective Purdy testified that he saw fresh pry marks on the coach house's door frame and believed that the marks were from an attempted forceful entry. Photographs that were taken of the door frame were admitted into evidence.

¶ 12 Later that day, Detective Purdy went to the building directly across the alleyway from Curico's resident and spoke with the doorman about viewing any security tapes of the alleyway from the morning of June 23, 2009. Detective Purdy met with the building manger the following day to review the building's surveillance tapes from the early morning hours on June 23, 2009.

When asked what he observed on the tape, Detective Purdy testified:

"What I believe, to the best of my recollection, is I observed a male black in the alley. I believe at one point I see him on a bicycle. I then see him on foot. I see him exit out of the Curico resident, which from the rear is a garage, brick wall with a brick doorway, wooden door. I see this male black individual exit outside of the gate and re-enter the compound, if you would, at that address. And I then see the overhead garage door, the service door to the garage open, the victim's Mercedes Benz pull out into the alley. I see a male black exit from the vehicle and re-enter

the garage, I believe from the garage closing the overhead door, enter back into the Mercedes and leave the area out of view."

Detective Purdy obtained a copy of the video.

¶ 13 The next day, Detective Purdy conducted his own computer search with respect to the phone number that was called from Curico's phone at 2:47 a.m. on June 23, 2009. Detective Purdy obtained a copy of Curico's phone records and entered the phone number into the Accurint Law Enforcement Data Search. From this database, Detective Purdy learned that the phone number belonged to Nolen Henigan at 847 North Lawndale, basement apartment. Using the information he received, he searched the offender database I-CLEAR by entering defendant's name and found "a Nolen Henigan that matched the overall physical appearance of the person on the video, height, weight and ethnicity" who lived at 847 North Lawndale.

¶ 14 Thereafter, Detective Purdy along with two other detectives proceeded to the basement apartment at 847 North Lawndale and knocked on the door. Two individuals, a male and a female, answered the door. Detective Purdy testified that the overall appearance of the male was consistent with the person he observed on the surveillance tape and identified this person as defendant. Detective Purdy asked defendant for identification and he provided identification showing that he was Nolen Henigan. Detective Purdy arrested defendant and defendant refused his request for consent to search his apartment.

¶ 15 Detective Purdy testified that no one had seen defendant inside of Curico's car. Although the car was processed for DNA and fingerprints, nothing was determined from that evidence. Cigarette butts found in the car were not sent to a forensics lab.

¶ 16 After he was arrested, Detective Purdy spoke with defendant at Area 3. After he was

advised of his *Miranda* rights, defendant admitted that he had a drug problem and from time to time would steal things to sell to buy drugs and pay other bills. Defendant told Detective Purdy that he would take his bike onto a CTA bus and ride the bus. Once he exited the bus he would ride his bike around and look for property to take. According to Detective Purdy, defendant stated that he entered Curico's yard by climbing the brick wall and entered the unlocked garage. He put numerous power tools into the trunk of the unlocked car. The keys were inside the car so he drove the car out of the garage. He drove home because he couldn't find anyone to buy the tools. Defendant did not remember using the phone but stated that he was under the influence of narcotics at the time. Detective Purdy's conversation with defendant was not videotaped nor was defendant's statement reduced to writing.

¶ 17 Defendant did not testify. Defendant argued that his motion to quash and suppress should be granted as he was arrested at his home without probable cause, a warrant or exigent circumstances. The court denied the motion. After closing argument, the court found defendant guilty of both counts of burglary and one count of possession of a stolen motor vehicle and sentenced him as a Class X offender to 12 years' imprisonment. It is from this judgment that defendant appeals.

¶ 18 ANALYSIS

¶ 19 Defendant argues that the trial court erred when it denied his motion to quash arrest and suppress evidence because the State failed to prove that the officers had probable cause to arrest defendant and there were no exigent circumstances to justify his warrantless arrest. In response, the State contends that defendant has forfeited these issues by not raising this issue with specificity in his posttrial motion. Alternatively, the State contends that defendant's arrest was

supported by probable cause and that exigent circumstances were not necessary because defendant's arrest occurred in this doorway.

¶ 20 To preserve an issue on appeal, a party must raise an objection at trial and include the objection in a posttrial motion. *People v. Enoch*, 122 Ill. 2d 176, 186 (1988). Defendant maintains that he raised the issue of lack of probable cause to arrest in his motion to suppress, at trial, and in his post-trial motion, and therefore it was preserved for appeal. In his motion to suppress, defendant argued that his conduct prior to his arrest, could "not reasonably be interpreted by the arresting officers as constituting probable cause that petitioner had committed or was about to commit a crime." Defendant's posttrial motion did not specifically raise the issue of lack of probable cause, but did argue that the trial court erred in denying his motion to quash arrest and suppress evidence.

¶ 21 We reject the State's argument that defendant forfeited this issue in light of our supreme court's recent decision in *People v. Cregan*, 2014 IL 113600, wherein the court held that where, as in the case at bar, defendant appeals the trial court's denial of her motion to quash arrest and suppress evidence based on an alleged fourth amendment violation, this claim is not forfeited despite the failure to include it in a post-trial motion. *Id.*, ¶ 16, 20 (citing *People v. Enoch*, 122 Ill. 2d 176, 190 (1988)). Forfeiture is inapplicable, the *Cregan* court explained, where the unpreserved claim involves a constitutional issue that was properly raised at trial and may be raised later in a postconviction motion. *Cregan*, 2014 IL 113600, ¶ 20. It is a matter of judicial economy to decide the issue here, "rather than requiring a defendant to raise it in a separate postconviction petition." *Id.* at ¶ 18. As defendant has not forfeited his claim, we will address the merits of his argument.

¶ 22 Probable Cause

¶ 23 The review of a trial court's ruling on a motion to suppress involves mixed questions of law and fact. *People v. Gherna*, 203 Ill. 2d 165, 175 (2003). A reviewing court gives great deference to the trial court's factual findings and will reverse those findings only if they are against the manifest weight of the evidence. *Id.* However, the trial court's legal determination as to whether suppression is warranted will be reviewed *de novo*. *Id.*

¶ 24 The Fourth Amendment generally requires that an officer obtain a warrant supported by probable cause before arresting an individual. *People v. Johnson*, 237 Ill. 2d 81, 89 (2010). However, a warrantless arrest does not violate the Fourth Amendment if "the arresting officer has probable cause to believe that the person to be arrested is committing or has committed a crime." *People v. Wetherbe*, 122 Ill. App. 3d 654, 657 (1984). Probable cause to arrest exists when the facts known to the officer at the time of the arrest are sufficient to lead a reasonably cautious person to believe that the arrestee has committed a crime. *People v. Wear*, 229 Ill. 2d 545, 563-64 (2008). A court must examine the totality of the circumstances surrounding the arrest to determine whether probable cause existed. *People v. Love*, 199 Ill. 2d 269, 279 (2002). A probable cause analysis only requires that there was a "probability of criminal activity, rather than proof beyond a reasonable doubt." *People v. Lee*, 214 Ill. 2d 476, 485 (2005); *Love*, 199 Ill. 2d at 279.

¶ 25 Here, the totality of the facts known to Detective Purdy when he arrested defendant support a finding of probable cause. Detective Purdy was assigned to investigate the burglary at Curico's residence. Based on his conversation with Curico, Detective Purdy knew that a call had been made on June 23, 2009, at 2:47 a.m. from the cell phone that was missing from Curico's

Mercedes to 773-437-9341. Curico told Detective Purdy that he did not place the call or recognize the number. Curico told Detective Purdy that his paralegal had conducted a search to determine who the number belonged to and the search revealed defendant's name and the address 847 North Lawndale. Curico's employee went to 847 North Lawndale and found Curico's Mercedes parked next door at 853 North Lawndale. Detective Purdy knew that a patrol unit responded to 853 North Lawndale to recover Curico's vehicle and that Curico subsequently identified items inside the vehicle as some of those that were taken from his garage. Detective Purdy then obtained a surveillance video from the building directly across the alley from Curico's garage. When asked to describe what he saw on the video, Detective Purdy testified:

"What I believe, to the best of my recollection, is I observed a male black in the alley. I believe at one point I see him on a bicycle. I then see him on foot. I see him exit out of the Curico resident, which from the rear is a garage, brick wall with a brick doorway, wooden door. I see this male black individual exit outside of the gate and re-enter the compound, if you would, at that address. And I then see the overhead garage door, the service door to the garage open, the victim's Mercedes Benz pull out into the alley. I see a male black exit from the vehicle and re-enter the garage, I believe from the garage closing the overhead door, enter back into the Mercedes and leave the area out of view."

¶ 26 Detective Purdy also testified that he conducted his own search of the phone number 773-437-9341 using the Accurint Law Enforcement Data Search. He learned from his independent search that the number belonged to defendant at the basement apartment at 847 North Lawndale. Detective Purdy then entered defendant's name into the I-CLEAR offender database and found

that defendant matched the overall physical appearance of the person on the video. Detective Purdy, along other officers, went to the basement apartment at 847 North Lawndale and knocked on the door. Two individuals, one of whom was Nolen Henigan, answered the door. His overall appearance was consistent with the person on the video and who, when asked, produced identification bearing the same name.

¶ 27 Considering the totality of the facts known to Detective Purdy at the time, we can confidently conclude that a reasonably cautious person would believe that the defendant had committed a crime. Therefore, the trial court properly denied defendant's motion to quash arrest and suppress evidence.

¶ 28 Exigent Circumstances

¶ 29 Defendant claims that even if Detective Purdy had probable cause to arrest him, in order to enter defendant's home without a warrant, Detective Purdy needed both probable cause and exigent or compelling circumstances. Defendant claims that the record reflects that there were no exigent circumstances to justify Detective Purdy's warrantless arrest of defendant at his home. The State responds that defendant's argument must fail where the record establishes that Detective Purdy did not enter defendant's residence but arrested defendant in his doorway.

¶ 30 A police officer's nonconsensual and warrantless entry into a private residence or its surrounding curtilage to effectuate an arrest is presumptively unreasonable absent exigent circumstances. *People v. McNeal*, 175 Ill. 2d 335, 344 (1997). While each case must be decided on its own facts, factors that are considered relevant to a determination of the presence of exigent circumstances include the following: (1) whether the offense under investigation was recently committed, (2) whether there was any deliberate or unjustifiable delay by the officers during

which time a warrant could have been obtained, (3) whether a grave offense is involved, particularly one of violence, (4) whether the suspect was reasonably believed to be armed, (5) whether the police officer was acting upon a clear showing of probable cause, (6) whether there was a likelihood that the suspect would have escaped if not swiftly apprehended, (7) whether there was a strong reason to believe that the suspect was on the premises, and (8) whether the police officer's entry, though nonconsensual, was made peaceably. *People v. Abney*, 81 Ill. 2d 159, 168 (1980). Courts have also found exigent circumstances where police are in "hot pursuit" of a suspect who flees from a public place into his residence. *United States v. Santana*, 427 U.S. 38 (1976). This list is not intended to be exhaustive but provide guidance in determining whether the officer acted reasonably. *McNeal*, 175 Ill. 2d at 345. Whether an officer acted reasonably is determined by the totality of the circumstances at the time the entry was made. *Id.* The burden is on the State to prove that exigent circumstances existed to justify the warrantless arrest. *Id.*

¶ 31 Citing *United States v. Santana*, 427 U.S. 38 (1976), the State claims that a warrantless arrest upon probable cause of an individual in a public place, such as a doorway, does not violate the fourth amendment and therefore an analysis of exigency is unnecessary. In *Santana*, officers went to the defendant's home on information that the defendant had marked money in her possession which had just been used to make a heroin buy. When officers arrived at the defendant's residence, they saw the defendant standing in the doorway holding a brown bag that they suspected contained narcotics. When officers approached her and announced their office, the defendant retreated into the vestibule of her home. The officers followed through the open door and caught the defendant in the vestibule. *Id.* at 45.

¶ 32 The *Santana* court upheld the arrest. The court characterized the threshold of defendant's doorway as a public place because the defendant knowingly and voluntarily exposed herself to the public by choosing to stand there.

"What a person knowingly exposes to the public, even in his own house or office, is not a subject of Fourth Amendment protection." *Katz v. United States*, 389 U.S. 347, 351, 88 S.Ct. 507, 511, 19 L.Ed.2d 576 (1967). She was not merely visible to the public but was as exposed to public view, speech, hearing, and touch as if she had been standing completely outside her house. *Hester v. United States*, 265 U.S. 57, 59, 44 S.Ct. 445, 446, 68 L.Ed. 898 (1924). Because the arrest was set in motion while the defendant was in this public place and because officers were in hot pursuit, the defendant could not defeat the arrest by simply escaping to the vestibule. " *Santana*, 427 U.S. at 43.

¶ 33 Although *Santana* does not deal directly with the issue of the validity of an arrest made where a suspect has come to the door in response to the police knocking, several Illinois cases have found such warrantless arrests to be lawful. In *People v. Gaines*, 220 Ill. App. 3d 310, 320 (1991), police went to the defendant's home based on information they received regarding his involvement in a sexual assault. The officers knocked on the door and the defendant opened the door. The defendant was arrested. The court found the defendant's warrantless arrest to be lawful given that he opened the door and consequently lost any expectation of privacy. Likewise, in *People v. Graves*, 135 Ill. App. 3d 727 (1985), the court found that when the defendant answered the door, even with the belief that it was a friend knocking and not the police, his warrantless arrest was not unlawful because he lost the expectation of privacy he could have expected inside his home. See also *People v. Smith*, 152 Ill. 2d 229 (1992); *People v.*

Pierini, 278 Ill. App. 3d 974 (1996); *People v. Wimbley*, 314 Ill. App. 3d 18 (2000).

¶ 34 While the record does not establish whether defendant stepped outside of his residence when he answered the door or remained inside while he spoke with Detective Purdy and produced his identification, the fact remains that defendant lost his expectation of privacy when he answered the door and availed himself to the public. There is no evidence that Detective Purdy ever crossed the threshold into defendant's residence nor is there any evidence that the arrest was not peaceful. Consequently, we find that defendant's arrest did not violate the fourth amendment where there was sufficient probable cause for the arrest and therefore the trial court did not err in denying defendant's motion to quash and suppress.

¶ 35 **CONCLUSION**

¶ 36 Based on the foregoing, we affirm the judgment of the trial court.

¶ 37 Affirmed.