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2014 IL App (4th) 130254-U
NO. 4-13-0254

FILED
December 23, 2014
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT
OF ILLINOIS
FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Macon County
FLOYD E. BROWN,)	No. 11CF351
Defendant-Appellant.)	
)	Honorable
)	Timothy J. Steadman,
)	Judge Presiding.

PRESIDING JUSTICE POPE delivered the judgment of the court.
Justices Knecht and Turner concurred in the judgment.

ORDER

¶ 1 *Held:* Trial court did not err in denying defendant's motion to suppress as the State established the warrantless police entry by Springfield police officers into defendant's home was justified pursuant to the "emergency" exception to the warrant requirement based on the totality of circumstances in this case. Further, assuming, *arguendo*, a constitutional violation occurred, the evidence found in the residence was admissible pursuant to the inevitable-discovery rule.

¶ 2 On March 22, 2011, the State charged defendant, Floyd E. Brown, by information with three counts of residential burglary (720 ILCS 5/19-3(a) (West 2010)). On April 29, 2011, defendant filed a motion to suppress evidence found in his home based on the alleged illegal entry of Springfield police officers. The trial court held a hearing on the motion on July 27, 2011, and denied the motion the next day. On March 22, 2013, a stipulated bench trial was held, and the court found defendant guilty of the charges. The trial court sentenced defendant to 3 concurrent 13-year prison terms. After sentencing, defendant filed a posttrial motion *instanter*

and orally asked the court to reconsider its prior ruling on the motion to suppress based on the additional sworn testimony provided to the court for purposes of the stipulated bench trial. The trial court denied defendant's posttrial motion. Defendant appeals, arguing the court erred when it denied his motion to suppress. We affirm.

¶ 3

I. BACKGROUND

¶ 4

On April 29, 2011, defendant's attorney filed a motion to suppress any and all evidence seized from a residence located at 2123 North 17th Street in Springfield, Illinois, and any and all evidence derived from the illegally seized evidence. Defendant's motion was based solely on the warrantless entry of Springfield police officers into defendant's residence. On June 3, 2011, the State filed a response to defendant's motion to suppress. The State argued defendant's fourth amendment rights were not violated by the entry of the Springfield police officers because their entry fell within the community caretaking exception to the fourth amendment's general warrant requirement. In the alternative, the State argued even if their entry pursuant to community caretaking was improper, the evidence found in the residence is admissible pursuant to the inevitable discovery exception to the exclusionary rule.

¶ 5

On July 27, 2011, the trial court held a hearing on defendant's motion to suppress. Detective Troy Kretsinger of the Decatur police department testified he was involved in the investigation of 21 burglaries that occurred in what is referred to as the Shadow Lane Addition in Decatur between September 17, 2010, and February 9, 2011. Kretsinger described similarities in the burglaries. They occurred in the late afternoon or early evening. The perpetrator gained access through sliders, patio doors, or windows with a pry tool. Typically, small items were taken, including jewelry, coins, or cash.

¶ 6 Kretsinger testified he responded to a call in the 4500 block of North Butler Street in Decatur in the Shadow Lane Addition on February 9, 2011. A resident had reported the following: an unknown individual had parked a black Dodge Charger under a streetlight, walked to a neighbor's house, unscrewed a lightbulb in a motion-activated sensor, and then walked toward the rear of the home. The resident caught a brief glimpse of the man's face and reported he appeared to be Caucasian, wearing a black Carhartt-style jacket. Kretsinger responded to the report, observed the Charger, and obtained its license plate number. He also observed a person get into the vehicle. Kretsinger activated the red and blue lights on his unmarked police car, and the person driving the Charger fled.

¶ 7 Within 30 to 40 minutes, the police received a call from a family who discovered their residence had been burglarized at 4596 North Hale in the same area. Police also received reports of two attempts to enter homes in the same subdivision. The police determined the Charger was registered to Betty Simpson from Springfield.

¶ 8 Detective Barry Hitchens of the Decatur police department testified he heard radio traffic of a fleeing subject in a car registered to a Springfield address. He and another detective, Detective Jason Kuchelmeister, went toward Interstate 72 in hopes of locating and intercepting the vehicle and then drove toward Springfield. They learned Detective Charles Hendricks had contacted the Springfield police department to alert them of the situation. Springfield police informed Hendricks the vehicle in question was believed to be used by defendant, who was well known to the Springfield police department. (Defendant is Betty Simpson's son.)

¶ 9 While driving to Springfield, Detective Kuchelmeister called the Springfield police and told them they were on their way to Springfield and asked to be contacted if the vehicle was located. Springfield police later called back after locating the vehicle at 2123 North 17th Street. The two detectives went to that residential address and met three or four uniformed Springfield officers.

¶ 10 Springfield police sergeant David Wesselman testified he received a telephone call from Detective Hendricks of the Decatur police department on the night in question. Hendricks told Wesselman he was investigating a string of burglaries in Decatur and was looking for a suspect who had fled from police in a black Charger registered to Betty Simpson. Wesselman testified defendant was Simpson's son. Wesselman had known defendant for approximately 20 years and knew he had a substantial criminal history, which included violent crimes. Defendant was involved in a kidnapping six or seven months earlier, a drive-by shooting several years earlier, and had killed someone 10 years earlier.

¶ 11 Springfield police officer Jeff Paoletti was assigned to check the house on North 17th Street to see if the black Charger was there. Paoletti advised Wesselman the Charger was in the driveway of the home and a person was present. Paoletti testified he saw a light-skinned, black male exit the Charger and remove items from the trunk. The man then appeared to enter the residence through the rear door. After apparently realizing Paoletti was present, the man ran behind the car and to the front of the house where he entered a truck and sped away. While Wesselman was en route to the home, Paoletti advised him the person had fled the scene. Paoletti had secured the scene and the officers observed the rear door to the home was open. The officers were unaware who had fled or who was still at the home.

¶ 12 Wesselman testified it was bitterly cold, late at night, and in the middle of winter. Wesselman noted the open door, along with a person running from a home, was unusual. Further, Paoletti had seen what appeared to be the same man who fled try to approach the house from the rear. Once again, after seeing Paoletti, the man fled in the same truck.

¶ 13 The man was dressed in a black hooded coat with the hood pulled over his head. Based on the totality of the circumstances, including Wesselman's knowledge of defendant's history of violence, he decided to enter the home to check to make sure everything was okay and that no one inside was injured. Wesselman testified the Decatur police department had no impact on his decision to enter the home. According to Wesselman, he entered the home not to investigate any crime but to ascertain the welfare of any resident.

¶ 14 In plain view inside the home, the police officers observed jewelry boxes, jewelry, coins in little packets, and what appeared to be a firearm. Defendant's brief cites Detective Kuchelmeister's evidence-deposition testimony that he entered the home to take pictures of the items in the kitchen, which he sent to another Decatur police officer for possible identification by burglary victims, after the Springfield police officers had checked the residence. However, this evidence was not presented to the trial court at the suppression hearing, which was only concerned with the actions of the Springfield police officers. Defendant does not identify in his appellate brief whether the Decatur officers' entry was ever raised before or during his trial as a separate reason to suppress evidence found in the home.

¶ 15 In the trial court's written order denying defendant's motion to suppress based on the actions of the Springfield police officers, the court found:

"There is no doubt that the subjective purpose of the police officers being present at the residence in question was related to law enforcement, namely: assisting in the investigation of a burglary which had recently taken place in Decatur, as well as other related burglaries. The court must, however, view the circumstances of the entry into the residence from an objective standpoint to determine whether exigent circumstances existed and/or whether the police were acting in a community caretaking function. *People v. McDonough*, 238 Ill. 2d 260 (2010) [*sic*].

At the time entry was made, the police had knowledge of the following facts which were not directly related to investigating the burglaries: 1) it was a very cold night in February, 2) a door to the residence was left ajar, 3) there was an aggressive pit bull dog present inside the residence, 4) voices were heard from inside the residence, 5) the defendant was known to stay at the residence, 6) the defendant had a history of violent criminal behavior, including domestic violence, being involved in a drive-by shooting, participating in a homicide, as well as a kidnapping incident which occurred approximately 6 months earlier, 7) what appeared to be a handgun was lying on the floor inside the residence, 8) a male subject was observed walking toward the area behind the house, where the open door was located, 9) a male similar in appearance

was shortly thereafter observed running from the area of the residence, getting into a truck, and quickly departing, and 9) it was unknown if others were present inside the dwelling. Under these circumstances, it was reasonable for the officers to be concerned with the physical safety of others who may have been present inside the residence. In entering, the officers were performing a traditional law enforcement function other than the investigation of criminal activity, namely: checking on the welfare of others whose physical safety may have been in imminent peril. The entry was reasonable because it was undertaken to protect the safety of others. The State has met its burden in showing that exigent circumstances existed.

Much has been made regarding the issue of whether the voices heard by the police prior to entry were 'live' voices or the product of a radio transmission. Given all of the facts listed above, it is unreasonable, in this court's view, to rely on one single fact—the source of the voices—to, in itself, resolve the issues of whether the entry was reasonable. This court finds, regardless of the source of the voices, that exigent circumstances existed considering the totality of the circumstances."

As a result, the court denied defendant's motion to suppress.

¶ 16 In May 2012, defendant, now *pro se*, filed a motion to reopen the suppression hearing. According to defendant's motion, he did not receive a full and fair hearing on his motion to suppress because allegedly pertinent and significant evidence was not presented. Defendant further argued his attorney was ineffective for not presenting "crucial" witness testimony.

¶ 17 In an affidavit attached to his motion to reopen the suppression hearing, defendant argued the second entry into the home by the Decatur police officers should be reviewed separately from the initial entry by the Springfield officers. Defendant's appellate counsel did not reference either defendant's motion to reopen the suppression hearing or his affidavit in his briefs to this court.

¶ 18 At the June 13, 2012, hearing on defendant's *pro se* motion to reopen the suppression hearing, defendant presented no evidence, and the trial court denied his *pro se* motion. Defendant's appellate counsel does not identify, and this court did not locate, any motion to suppress based on the entry of the Decatur police officers after the Springfield police officers had already checked the house. (Although defendant's affidavit, which was attached to his *pro se* motion, referenced the Decatur police entry, the motion itself does not address it.)

¶ 19 On August 6, 2012, defendant filed three *pro se* motions to suppress. Defendant's primary complaint was the items seized from the house were not listed on the search warrant. On September 6, 2012, the trial court denied these motions. Defendant does not challenge the denial of these motions.

¶ 20 On March 22, 2013, the State and defendant jointly stipulated to facts for purpose of a bench trial. At this trial, defendant had retained new trial counsel. The trial court found

defendant guilty on all three counts of residential burglary. The court sentenced defendant to concurrent 13 year sentences in the Illinois Department of Corrections.

¶ 21 After the trial court sentenced defendant, defense counsel filed its posttrial motion *instanter*. Defense counsel then made the following argument to the trial court:

"Judge, in this particular action, we have filed our post-trial motions in order to allow the Court reconsideration of *the prior ruling as to the motion to suppress*. We believe given the additional sworn testimony by the police officers—Kuchelmeister, Woolsey, Paoletti, Wesselman, and Daubs—that the motion to suppress can be considered by the Court on a post-trial motion basis based on all the evidence at the conclusion of the trial.

In this particular instance, those five individuals could not have originally testified at the motion to suppress, and we believe the—by supplementing the record by their testimony, we believe that the Court should, if you will, *reconsider his prior motion to suppress* in two relationships. No. 1, that the particular officers do not meet the criteria of having been there originally for purposes of a protective sweep for public safety; and secondly, that the entry by the Decatur officers after the Springfield police officers did their sweep was without warrant and unjustified.

That's—that was done by officer Kuchelmeister and through his testimony, we show that, so that we would the [*sic*] ask

Court to reconsider that. Having said that, if the Court does favorably consider that motion to suppress, we believe that there is insufficient evidence upon which the defendant could be found [guilty] and, therefore, he should be acquitted under Paragraph 4 that is that there is reasonable doubt." (Emphases added.)

The court reaffirmed its findings with regard to defendant's motion to suppress and found nothing in the evidence depositions that would change its earlier findings. The court denied defendant's posttrial motion.

¶ 22 This appeal followed.

¶ 23 II. ANALYSIS

¶ 24 Defendant argues the trial court erred in denying his motion to suppress evidence.

When reviewing a trial court's ruling on a motion to suppress, we give the court's factual findings great deference and will not disturb those findings unless they are against the manifest weight of the evidence. *People v. Sorenson*, 196 Ill. 2d 425, 430-31, 752 N.E.2d 1078, 1083 (2001).

However, we review the court's ultimate ruling on a motion to suppress *de novo*. *Id.* at 431, 752 N.E.2d at 1083.

¶ 25 A warrantless intrusion into an individual's home is *per se* unreasonable unless an exception to the warrant requirement is determined to be applicable. *People v. Abt*, 269 Ill. App. 3d 831, 836, 646 N.E.2d 1341, 1345 (1995). When a defendant makes a *prima facie* case evidence was obtained by means of an illegal search or seizure, the State bears the burden of establishing the search was lawful. *People v. Gipson*, 203 Ill. 2d 298, 306-07, 786 N.E.2d 540,

545 (2003). However, the defendant still bears the ultimate burden of proof. *Id.* at 307, 786 N.E.2d at 545.

¶ 26 Defendant first argues the trial court erred in denying his motion to suppress because the police action in entering his home without a warrant to see if anyone was injured in the home did not fall under the protective sweep doctrine. However, we need not address this argument. As defendant recognizes, the court did not justify the entry based on the protective sweep doctrine.

¶ 27 Instead, based on the totality of the circumstances, including defendant's violent criminal history, the trial court found the State established sufficient exigent circumstances justifying the warrantless entry by Springfield police officers into the home to check on the well-being of anyone in the house whose physical safety may have been in imminent peril. However, defendant argues the factors relied on by the court were not sufficient to justify the warrantless entry into the home. We disagree.

¶ 28 Illinois courts have recognized "an 'emergency' exception to the search warrant requirement whereby police may make a warrantless entry into private premises if they reasonably believe an emergency exists which dictates the need for immediate action for the purpose of providing aid to persons or property in need thereof." *People v. Koniacki*, 135 Ill. App. 3d 394, 398-99, 481 N.E.2d 973, 977 (1985).

"Under the 'emergency' exception to the warrant requirement, the reasonableness of the belief that an emergency, a situation requiring immediate action, exists is determined by the entirety of all the circumstances known to the police at the time of

the entry. [Citations.] The purpose, to offer assistance to a citizen possibly imperiled, not to obtain evidence of a crime, justifies such a search." *Id.* at 399, 481 N.E.2d at 978.

Based on the totality of circumstances in this case, the Springfield officers' entry into the residence to check to see whether anyone inside needed assistance was reasonable based on the totality of the circumstances confronting the officers.

¶ 29 The Springfield officers knew defendant was connected to the house in question. They also knew defendant had a violent criminal history. A Dodge Charger defendant was known to drive was parked at the house. This same vehicle had fled from Decatur police that night. Decatur police believed the driver of the vehicle had been involved in a string of burglaries in Decatur. An individual, who appeared to be unloading items from the Charger into the house, ran from the house and fled in another vehicle as a police officer approached on foot. The man was in such a hurry to leave the area he did not close the door to the house, even though it was a very cold February evening. Based on the totality of the circumstances known to the police officers, it was reasonable under the "emergency" exception to the warrant requirement for the police to enter the home to check on the well-being of anyone who might have been inside. The trial court's finding the officers did not enter the home for the purpose of investigating criminal activity is not against the manifest weight of evidence in this case.

¶ 30 Defendant also argues the second entry into the residence by Decatur police officers to investigate a crime was illegal, regardless of whether the initial entry was justified under the emergency exception to the warrant requirement. According to defendant, Decatur police started to investigate a crime by taking pictures of the items on the counter and texting

them to a detective in Decatur. Detective Kuchelmeister admitted in a pretrial evidence deposition he entered the residence without a warrant for the purpose of taking pictures of potential evidence related to the burglaries.

¶ 31 However, as stated earlier, defendant's appellate counsel does not identify where defendant filed any kind of motion—either before or at his trial—asking the trial court to suppress evidence seized from the house based on the entry of the Decatur police officers. We found no such motion either. Further, defendant presented no evidence regarding the entry of the Decatur officers at the hearing on his motion to suppress.

¶ 32 Defendant, *pro se*, did take issue with his attorney not presenting certain evidence at the suppression hearing in his *pro se* motion to reopen the suppression hearing. Defendant argued this amounted to ineffective assistance of counsel. Further, in an affidavit he attached to the motion to reopen the suppression hearing, he argued the Decatur officers illegally entered his home after the Springfield officers entered and left. However, this affidavit was being used to support his motion to reopen the suppression hearing so he could introduce more evidence to support his prior motion regarding the actions of the Springfield officers. Moreover, when asked by the trial court if he had any evidence to present, defendant responded he only had the statements attached to his motion. As a result, the trial court, understandably, denied the motion to reopen the suppression hearing. The court stated:

"In this particular situation, the only affidavit the Court has is that of Mr. Brown himself. The defendant cannot attest to what other witnesses could have said if called to testify. Further, given the substance of the alleged purported testimony of the witnesses,

even if the Court were to consider what this testimony was, there's no showing that counsel's performance was objective—objectively deficient for failing to call witnesses. There was no general—or, genuine factual dispute regarding the motion. The Court can see nothing to be added by calling these additional witnesses.

The issue presented during the motion was purely a question of law, was it exigent circumstances or not; so, even for the sake of argument if somehow [defendant's first attorney's] performance was deficient, still, there has been no demonstration that the outcome on the motion to suppress would have been different."

¶ 33 Because defendant did not ask the trial court to suppress the evidence as a result of the actions of the Decatur police officers either before or during the trial, we find defendant forfeited the argument the evidence should have been suppressed. To preserve an issue for appeal, a defendant must make a specific objection at trial and in a posttrial motion. *People v. Enoch*, 122 Ill. 2d 176, 186-87, 522 N.E.2d 1124, 1129-30 (1988).

¶ 34 Finally, even if the actions of the Springfield police officers or the Decatur police officers violated defendant's fourth amendment rights, the evidence found inside the residence would have been admissible pursuant to the inevitable-discovery doctrine, which allows admission of evidence found during an unlawful entry if the State can establish by a preponderance of the evidence that the evidence ultimately or inevitably would have been

discovered by lawful means. *People v. Alvarado*, 268 Ill. App. 3d 459, 470, 644 N.E.2d 783, 790-91 (1994).

"Generally, courts will find evidence inevitably would have been discovered if (1) the condition of the evidence when actually found by lawful means would have been the same as that when improperly obtained; (2) the evidence would have been discovered through an independent line of investigation untainted by the illegal conduct; and (3) the independent investigation was already in progress at the time the evidence was unconstitutionally obtained." *Id.* at 470, 644 N.E.2d at 791.

In this case, the Decatur police were working on an independent burglary investigation prior to the entry by Springfield police into defendant's home. Further, a search warrant for the home could have been obtained based on information the police had prior to entering the home. Finally, because no one was inside the home when the police entered and the police had the home secured so no one could enter, the evidence found inside the home would have been in the same condition had the police waited to get a search warrant before entering.

¶ 35

III. CONCLUSION

¶ 36 For the reasons stated, we affirm the trial court's denial of defendant's motion to suppress. As part of our judgment, we award the State its \$75 statutory assessment as costs of this appeal. 55 ILCS 5/4-2002 (West 2012).

¶ 37 Affirmed.