FIRST DIVISION
December 12, 2016

No. 1-14-1446
2016 IL App (1st) 141446-U

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	Appeal from the
	)	Circuit Court of Cook County.
Plaintiff-Appellee,	)	
	)	
v.	)	11 CR 00909
	)	
KEITH WATTS,	)	
	)	Honorable Evelyn B. Clay,
Defendant-Appellant.	)	Judge Presiding.
	)	

PRESIDING JUSTICE CONNORS delivered the judgment of the court.
Justices Harris and Mikva concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court properly denied defendant's motion to quash arrest and suppress evidence where, although the police entered defendant's apartment without a warrant, the State sufficiently showed that the officers possessed probable cause to do so by presenting testimony of the arresting officers who stated that through their investigation and the FBI's use of a surveillance device, they were able to pinpoint the location of defendant's cell phone to his apartment and at the time of their entry into his apartment, they were unaware that the kidnapping victim was already dead at a different location; affirmed; mittimus corrected.

¶ 2 Defendant, Keith Watts, and two codefendants, Darnell Stokes and Jeremy Borders,[1] were arrested for the kidnapping and murder of Francisco Favela. Prior to trial, defendant's counsel filed a motion to quash arrest and suppress evidence, arguing that the police entered defendant's apartment on the night of his arrest without a warrant or probable cause and improperly seized evidence that was to be used against defendant at trial. The trial court denied the motion. After a jury trial, defendant was found guilty of first degree murder and ultimately sentenced to 48 years in prison. On appeal, defendant contends that the trial court improperly denied his motion to quash arrest and suppress evidence because the police lacked probable cause when they made a warrantless entry and search of his apartment. In the alternative, he argues, and the State concedes, that the mittimus should be corrected to reflect the proper number of days of presentencing detention. For the following reasons, we affirm and order the mittimus corrected.

¶ 3 BACKGROUND

¶ 4 During the afternoon of December 11, 2010, Francisco Favela was kidnapped from an apartment he owned at 2237 South Keeler Avenue in Chicago and where he was performing rehab construction work with David Robles, his assistant. Favela received a few phone calls from someone claiming to be interested in renting out the apartment he was rehabbing. Shortly thereafter, three men and a woman came to the apartment and blindfolded and gagged Robles with a gun to his head. Robles then heard Favela being beaten and begging for his life. After Robles heard the apartment fall quiet, he was able to free himself and escaped. Robles immediately informed Favela's wife of the beating and kidnapping and they all went to the Tenth District police station. The police, working in concert with the FBI, conducted an investigation that included the use of a device to track the location of defendant's cellular telephone, which led

[1] Codefendants Stokes and Borders are not parties to this appeal.

them to defendant's apartment. Shortly after determining the location of defendant's cell phone, the police made a warrantless entry into defendant's apartment and conducted a search for Favela or evidence of his whereabouts, resulting in the discovery of bloody clothes and bloody water in defendant's washing machine. The police also found a duffel bag containing blood-stained items, such as duct tape. Defendant and his girlfriend, Kortanya Hawkins, who were present at the apartment at the time of the police entry and search, were both detained and taken to the police station for questioning. Thereafter, Favela's body was found in the back of his own vehicle, which was parked in a garage at 1136 North Springfield. He had been beaten and stabbed to death.

¶ 5 Motion to Quash Arrest and Suppress Evidence

¶ 6 Defendant filed a pretrial motion to quash arrest and suppress evidence, arguing that his arrest should be quashed because the police entered his apartment without a search or arrest warrant in violation of defendant's fourth amendment rights and did not have reasonable suspicion of illegal activity or probable cause that would allow their forced, warrantless entry. The motion sought suppression of all fruits of the warrantless entry, including, *inter alia*, all statements or utterances by defendant, testimony of witnesses who saw defendant during his arrest, and any physical evidence. The State did not file a written response to the motion.

¶ 7 On May 4, 2012, the court held an evidentiary hearing on defendant's motion. In support of his motion, defendant called two witnesses on his behalf: his girlfriend, Hawkins, and Detective Greg Swiderek. Hawkins testified that she had known defendant for about eight years. She stated that on December 11, 2010, she made plans with defendant to have dinner at his apartment at 3336 West 19th Street in Chicago, which was an eight-unit building. Defendant's apartment was on the fourth floor. Hawkins went to defendant's apartment at about 10 or 11

p.m. and then cooked dinner. Thereafter, she took a shower, watched TV, and went to sleep. Hawkins testified that sometime after 1 or 2 a.m., she was awoken by the door buzzer. The buzzer was stuck and continued to buzz for some time. Hawkins stated she then got out of bed, looked around, asked defendant what was going on, and then went back to bed. During this time, defendant was in the hallway, and then joined her back in bed. Next, Hawkins stated she heard thumping from the front door, then the door was kicked in and she heard yelling from people she later realized were police. The police yelled for her and defendant to come out of the bedroom, which they did. Hawkins testified that the officers were in plain clothes and she did not recall them identifying themselves. She and defendant were then asked to get down on the floor and put their hands behind their backs, whereupon they were handcuffed. Hawkins stated that she never saw the police produce a search warrant and when she saw the front door again, it looked like it had been kicked in. Hawkins further stated she never heard anyone give the police permission to search the apartment.

¶ 8 On cross-examination, Hawkins testified that she and defendant were still a couple. She also testified that defendant's cell phone number was (773) 225-1994 and that was the number she used when she contacted defendant on December 11, 2010. Hawkins stated that after she was arrested, she spoke with two detectives, both named Garcia, and told them about what had happened before the police got to defendant's apartment. Hawkins admitted that she told the detectives that right after she heard buzzing and knocking, she saw defendant placing items into the washing machine. She also acknowledged that she told the detectives that when the police were entering the apartment, defendant said, "I am going away for a long time and I love you."

¶ 9 The defense next called Detective Swiderek, who testified during direct examination only that he was one of the detectives assigned to Favela's kidnapping, but he never went to the defendant's apartment building.

¶ 10 The State, however, questioned Detective Swiderek at length on cross-examination. Detective Swiderek testified that on December 11, 2010, when he joined the investigation, it was in "full swing." Detective Swiderek stated that detectives Garcia and Hill learned about what happened during Favela's beating and abduction from Robles, who was Favela's employee and with him at the apartment at the time of the occurrence. He testified that he learned that Favela had received a phone call from a man who was interested in renting the building he was rehabbing in the 2200 block of South Keeler. Detective Swiderek testified that he also learned Robles was duct-taped and put into a bathtub and was able to hear Favela being beaten for about 25 to 40 minutes. Additionally, Detective Swiderek stated that Robles at one point heard the men who had entered the building demanding $500,000 from Favela. Robles then continued to hear beating. Detective Swiderek further testified that Robles told detectives that after a period of time he could no longer hear any beating and believed everyone had left. At that point, Robles freed himself and went to one of Favela's family members who lived nearby. He and Favela's family then went to the Tenth District police station.

¶ 11 Detective Swiderek testified that detectives Garcia and Hill informed him that Favela's wife received a call from Favela's cell phone ((708) 734-4083), but Favela's wife was unable to communicate with the men on the phone because she only spoke Spanish. She then gave the phone to her 16 year-old son, Frankie. One of the men told Frankie that he wanted $500,000 within two hours for the return of his father. Favela told his son he was fine and then the phone went dead. This was the last conversation anyone ever had with Favela. Detective Swiderek

further testified that he learned from the other detectives that they had found blood and duct tape in the building where Favela was abducted. After Detective Swiderek learned that Favela's vehicle was missing, he put out an "all call message" to the Chicago Police Department, which would inform all Chicago police officers that they were looking for Favela and his vehicle. Additionally, all Illinois law enforcement agencies were notified.

¶ 12 Detective Swiderek testified that "due to the exigent circumstances, the phone records were requested immediately from the victim's phone." He testified that they were looking for what other numbers Favela had been in contact with and the relevant cell towers, which would show where he was last and where he received or made calls from, because "the cell towers can give you a close proximity to the phone." He explained that a "ping" indicates the cell tower site that is closest to the phone. Detective Swiderek testified that the cell tower at 3529 West Potomac was the cell tower that last pinged Favela's phone. As a result, a grid search near that location was conducted for defendant's vehicle or other evidence of Favela's whereabouts. Additionally, Detective Swiderek stated that they also learned about a telephone number with a 219 area code (Indiana) that had made two phone calls to Favela around the same time Robles told police that Favela received phone calls from the supposed prospective renter. Thus, the 219 number became a lead in the case. Detective Swiderek stated that because there was a kidnapping involved and because of the use of phones, the FBI was requested to assist. Once the FBI got involved, they requested "mudds and tolls[2]," in addition to cell tower sites "to determine when phone calls were made from that number to that number, and where that phone was at."

¶ 13 In the early hours of December 12, 2010, law enforcement eventually located the phone with the 219 number in Hammond, Indiana in the possession of codefendant Stokes. Detective

[2] Although Detective Swiderek did not provide a definition for "mudds and tolls" at the suppression hearing, Detective Marco Garcia defined "mudds and tolls" during his testimony at trial as "incoming and outgoing list of phone calls for that telephone." *Infra* ¶ 26.

Swiderek testified that prior to that, he saw defendant's cell phone number, which was (773) 225-1994, reflected on the records of the 219 phone. Additionally, he stated, "[t]he 773 telephone number had called [Favela] twice on the date of December 11, 2010, and also in a short time period had also called the 219, the Indiana phone number that belonged to Darnell Stokes." Thus, the 773 number became a new lead in the case and with the help of the FBI, the police obtained the records for that phone. The FBI also requested the assistance of the assistant U.S. Attorney in order to obtain more detailed phone records. Detective Swiderek stated that shortly after 10:30 p.m., the 773 number pinged cell towers located near the 1800-1900 block of South Christiana, which narrowed the search to a two-block radius. Other detectives went to that area to look for the location of that phone. At this point, Favela had not yet been found.

¶ 14 On redirect examination, Detective Swiderek stated that neither codefendant ever named defendant as being involved in the kidnapping and that defendant's apartment (3336 West 19th Place) was not given as a location the kidnappers might have gone. Rather, Detective Swiderek stated "[t]hat was just a location where the phone finally pinged to."

¶ 15 In response, the State called Sergeant Daniel Gallagher of the Chicago Police Department, who testified that on December 12, 2010, he was working as a detective on Favela's kidnapping case. Sergeant Gallagher stated that at around 2 a.m., the police and FBI were using more intelligence gathering devices to try to pinpoint the 773 number even further. At the same time, other law enforcement officials were pursuing the lead on the 219 number. Sergeant Gallagher testified that he was present when "an actual physical device that assists in locating the phone" was used by the FBI to narrow down the location of the phone connected to the 773 number to the 1800-1900 block of South Christiana. He also was present when the location was narrowed further to 3342 West 19th Street, and subsequently moved to the adjacent building at

3336 West 19th Street. Sergeant Gallagher was present when the location was narrowed further still within the building itself, specifically to the four apartments on the west side of the building. Sergeant Gallagher testified that he was present when the FBI was finally able to determine the single apartment that the 773 number was emanating signals from, which was apartment 4W. Sergeant Gallagher confirmed that, at this point, neither Favela nor his vehicle had yet been found. He stated that once the apartment was identified, some of the officers gathered around the front and back doors and began knocking and loudly announcing they were the police and others were ringing the buzzer that was on the ground floor. The buzzing noise was constant as the buzzer had gotten stuck. Sergeant Gallagher stated that although no one from apartment 4W came to the door, tenants from apartment 3W heard the officers' knocking and answered their door and told officers they heard movement above them in apartment 4W. Sergeant Gallagher also testified that he learned that officers who were closer to the door of apartment 4W also heard movement inside. The officers eventually made a forced entry into apartment 4W, wherein defendant and Hawkins were detained.

¶ 16 Sergeant Gallagher stated that the police immediately began looking for Favela. They did not find him inside defendant's apartment, but did find a pair of blood-stained work boots inside a washing machine that was running at the time of the police entry. There was also clothing inside the washing machine and the water therein was "discolored red." Sergeant Gallagher testified that they also found the cell phone corresponding to the 773 number, two handguns, and a laundry bag containing bloody clothes and duct tape, which also appeared to have blood on it. Defendant was placed under arrest and taken to Area Four. Hawkins was also taken to Area Four and eventually released.

¶ 17 On cross-examination, the following exchange occurred:

"MR. GOTTREICH [defense attorney]: And you were able to or the FBI was able to pinpoint Apartment 4W as having the strongest signal, correct?

SERGEANT GALLAGHER: That's correct.

MR. GOTTREICH: They could not say conclusively that the phone was in that unit though, correct, if you know?

SERGEANT GALLAGHER: I don't know conclusively exactly what their percentages are.

MR. GOTTREICH: But you were told that stronger signals came from that 4W apartment?

SERGEANT GALLAGHER: We were informed that the phone was inside 4W." Sergeant Gallagher also testified that at the point when he and fellow officers pounded on the door of defendant's apartment, they did not have a search warrant. Additionally, no witnesses or victims had identified defendant or apartment 4W as being involved in the kidnapping before the police knocked on the door.

¶ 18 After both parties rested, they presented argument. Defense counsel argued that at the time the police forcibly entered defendant's apartment, there was no evidence tying him to Favela's kidnapping and "[a]ll they had was a number that pinged to that apartment, called the victim twice that day, that is it." Thus, defense counsel asserted there was not probable cause for a search warrant and there were no exigent circumstances to justify the warrantless entry, because "[t]o break into someone's house you need more than a phone call ping to that location that called the victim some ten hours previously." The defense also argued that even if there were exigent circumstances, the State did not meet their burden after the defense showed there was a warrantless entry into defendant's apartment. Also, even if exigent circumstances were

present, defense counsel argued that "the police could have looked through the apartment and seen that the victim wasn't there and left. They can't then go and search for further evidence." The defense asked that the court suppress the evidence that resulted from the police's search, which exceeded the scope of a cursory visual inspection.

¶ 19 In response, the State argued that the defense was essentially asking the police not to look for the victim or any evidence of his whereabouts even though they knew the cell phone that had been used to call the victim near the time of the kidnapping was in apartment 4W. The State argued that the search the police were conducting was the most important search the police could do because it had the potential to save someone's life. Additionally, the State contended that this case was the exact type of case that defines "exigency," because at the time of entry into apartment 4W, the police did not know whether Favela was still alive, which was also the reason the police were justified in looking in the washing machine or anywhere defendant's body parts may have been. The State asserted that the police were justified in looking for any evidence of Favela's whereabouts throughout defendant's apartment.

¶ 20 On June 28, 2012, the court denied defendant's motion to quash arrest and suppress evidence. The court explained:

> "The court finds that [the] arrest in defendant's home was proper, constitutionally sound in that where there's a victim, a kidnapping victim, whose whereabouts are unknown and the time of a ransom demand has passed hours prior. The court finds that entry was the highest exigency that there could be and there was absolutely probable cause to go into that residence established by the investigatory information that developed when -- the two phone numbers that were -- in addition to the victims' phone numbers were investigated and those owners and the locations were looked up and

> investigated and the defendant's apartment pinged off of the FBI's equipment and they even knocked at the door, a step they did not have to take because these were exigent circumstances to go into that very apartment to -- without a warrant and the defendant's arrest in that fashion was proper and constitutional. It was without a warrant but it was based on exigent circumstances and the court denies the [m]otion to [q]uash [a]rrest [a]nd [s]uppress [e]vidence."

The court clarified that defendant's motion to suppress evidence was also denied.

¶ 21 Trial

¶ 22 Defendant's jury trial commenced on January 9, 2014. Over 20 witnesses testified during the trial, however, because defendant does not challenge the sufficiency of the evidence presented at trial, we set forth only the testimony needed to provide context and address the issues raised on appeal.

¶ 23 Robles, Favela's assistant, testified that on December 11, 2010, he was working with Favela at 2237 South Keeler, which was a building Favela owned, doing maintenance and repair work. Robles stated that at approximately 1:30 p.m., Favela went to Menards and subsequently called Robles to let him know that "some black man" was coming to look at the apartment to rent it and to ask that Robles to show the man the apartment if he came while Favela was gone. However, nobody came while Favela was gone. Once Favela returned, Robles testified he was working on the pantry and could hear Favela on the phone five or six feet away. He stated he heard Favela telling the person on the phone to come to the rear door and that he would open the door for him. Robles testified that he then heard three male voices and one female voice that he did not recognize. One of the men pointed a gun at Robles, tied his mouth, hands, and feet with duct tape, and placed Robles face down in the bathtub. Robles further testified that he was hit in

the head with a gun and kicked in the ribs. Robles stated he could hear Favela being beaten and he heard one of the voices demand $500,000 from Favela. Robles also heard one of the voices say "[d]o you think I am stupid?" after Favela offered $1,000. Robles testified that once the apartment fell silent, he could tell everyone had left. He freed himself, went to Favela's brother-in-law's house nearby, and called the police. Robles testified that he did not see Favela again.

¶ 24 Estella Favela, the victim's widow, testified through a Spanish interpreter that she and Favela had two children and had been married for 17 years prior to his death. She stated that on December 11, 2010, Favela left for work in the morning and she talked to him numerous times on the phone throughout the day. However, when she tried calling shortly after 2 p.m., Favela stopped answering his phone. Later, around 4 or 5 p.m., when she was en route to the police station after Robles told her about Favela's kidnapping, she received a phone call from Favela's cell phone, but did not recognize the English-speaking voice on the other end. Estella gave the phone to her son, Frankie. She testified that she heard Favela say, "I am fine." She also stated that she took the phone away from her son, said, "I love you," and did not hear anything else. Estella testified that she never heard from her husband again and the next time she saw him was at the morgue.

¶ 25 Frankie testified that when his mother handed him the phone, the voice on the other end demanded $500,000 within two hours to get Favela back alive. Frankie stated that the only thing his father said was "estoy bien," which means "I am fine" in Spanish. After the phone call, his mother explained to him that his father had been kidnapped.

¶ 26 Detective Marco Garcia testified that when he went to work the afternoon shift on December 11, 2010, he was immediately assigned to Favela's kidnapping. He testified that he initially interviewed Robles and Favela's family and found out that the ransom call came from

Favela's own phone. He also learned from Robles that Favela received phone calls during the time they were working together. Detective Garcia testified that he then started to get the "mudds and tolls" for Favela's phone, which "are incoming and outgoing list of phone calls for that telephone" in order "to ascertain who the respective renter was to the apartment who had called [Favela] on two occasions." He stated that he was able to get the mudds and tolls on an emergency basis and began working with the FBI. Detective Garcia stated that in reviewing the mudds and tolls for Favela's phone, he noticed that a 219 number, specifically, (219) 433-2728, had placed calls to Favela's phone near the time of the events in question. Accordingly, the police also ordered the mudds and tolls for that phone number to see if there was any sort of pattern associated with that phone and Favela's phone. Detective Garcia stated that there was indeed a pattern—"prior to and after the person with the 219 number called Mr. Favela, he also was in contact with another number that started with 773." Detective Garcia testified that the full 773 number was (773) 225-1994, and the police requested the mudds and tolls for it.

¶ 27 Detective Garcia further testified that in addition to getting the mudds and tolls for the three phones, the police were also trying to physically find the phones by using "pinging," which he explained was when "telephone companies are able to transmit a signal to the telephone that can geographically translate where it's located." They attempted to ping Favela's phone, the 219 number, and the 773 number. Using a triangulation method, the police were able to pinpoint the location of the phone associated with the 219 number to an address in Hammond, Indiana, and officers went to that location, where they found the phone with the 219 number in the pocket of codefendant Stokes. Detective Garcia testified that at 11:30 p.m. on the night of the kidnapping, the 773 number pinged in the area of the 1800 and 1900 block of South Christiana. Earlier that

day, the last signal from Favela's phone came from 3529 West Potomac, which prompted the officers to lead an unsuccessful grid search to look for Favela or his vehicle.

¶ 28 Detective Garcia testified that at approximately 2 or 2:40 a.m. on the morning of December 12, 2010, he or other law enforcement members pinpointed the location of the 773 number to 3336 West 19th Street and eventually narrowed the phone's location to apartment 4W. When the officers approached the building, they pressed the buzzer and it got stuck. The officers knocked on the building's door and announced their office. Someone from apartment 3W came out, so the officers knew they were being loud enough, but they eventually had to force their way into apartment 4W, where they found defendant and Hawkins. This was at approximately 3:15 or 3:20 a.m. Detective Garcia testified that when they entered apartment 4W, the washing machine was on, and inside he found a pair of work boots and observed that the water was stained red. The officers also found two handguns in the front bathroom, a canvas bag containing bloody clothing and a roll of blood-stained duct tape in the spare bedroom, and a canvas bag containing a handgun magazine and the phone that corresponded with the 773 number in the back bedroom.

¶ 29 Detective Swiderek also testified at trial. His testimony was consistent with his testimony at the hearing on the motion to suppress and overlapped substantially with Detective Garcia's testimony. However, Detective Swiderek also testified that a "trigger fish" was used to locate the cell phone that corresponded to the 219 number. Specifically, he stated that the officers went to an intersection in Hammond and used a trigger fish to get the exact location from which the phone with the 219 number was pinging. Once the phone was located in the pocket of codefendant Stokes, he and his nephew, Derrick Stidwell, were taken back to Area Four in Chicago for questioning.

¶ 30 In addition to the aforementioned three phone numbers, Detective Garcia testified that he also became aware of a fourth number, (312) 287-5361, which the officers pinged and eventually tracked to codefendant Borders on December 13, 2010. Detective Swiderek stated that Borders was arrested at 503 North LeClaire, where the officers found the phone with the 312 number in Borders's pocket, a roll of duct tape, and "a handwritten letter that I believe was notarized and signed by Mr. Jeremy Borders stating that his impounded vehicle, he wanted the care of the vehicle left to a Mr. Keith Watts."

¶ 31 Officer Joseph Lopez, who was one of the officers that transported Borders from 503 North LeClaire to Area Four, testified that during the transport, Borders told him and his partner that he would show them where Favela was. Officer Lopez testified that Borders directed them to the intersection of Augusta and Springfield, where they looked for a red garage door per Borders' instruction. Inside the garage at 1136 North Springfield, Officer Lopez stated he saw "an SUV in there with a male body in the back of the vehicle, and there was a garbage can located in the corner of the garage by the entry door." He testified that the vehicle matched the description of Favela's vehicle, and thus he had reason to believe that it was Favela's body in the back.

¶ 32 The State also called assistant medical examiner Dr. Steven White, who testified that he examined Favela's body and observed 26 separate injuries. Dr. White stated that Favela's cause of death was homicide from blunt head trauma due to an assault. After the State rested its case-in-chief, the defense made a motion for directed verdict, which was denied.

¶ 33 For his case, defendant testified on his own behalf. He stated that on December 11, 2010, at approximately 3 or 4 p.m., he was headed to the apartment that he rented with his brother, sister, and codefendant Stokes at 3336 West 19th Street. Once there, defendant showered,

changed clothes, and watched TV. Then, codefendant Borders and Borders's girlfriend came over. Defendant noticed that Borders's clothes were "messed up," and he had blood on his boots and pants, and Borders's girlfriend was carrying a black bag. Defendant also stated that Borders was acting mad and angry. He testified that Borders asked if he could take a shower, which defendant allowed. Defendant stated that when Borders took a shower, he left to go give his daughter some money, buy shoes, and attend a basketball tournament. He testified that when he returned home between 9 and 10 p.m., he noticed two white garbage bags by the front bathroom that contained wet, bloody clothing, which defendant put in one of the bedrooms. Eventually, Hawkins came over and they went to bed around 1 a.m. Defendant testified that the door buzzer woke him up and he noticed the police were coming into the apartment. He stated that when he saw them, he ran to the two white garbage bags, put the contents of one of the bags into the washing machine, and then ran back to the bedroom where Hawkins was. Defendant stated he was scared. Defendant testified that at that point, he told Hawkins that he loved her, but did not say he was "going away for a long time." He also stated that Borders had left the cell phone with the 773 number in his apartment and that his phone number was (312) 479-3084. Defendant testified that he did not kidnap or kill anyone on December 11.

¶ 34 The jury found defendant guilty of first degree murder on January 15, 2014, and his motion for a new trial was subsequently denied. He was sentenced to 48 years' imprisonment on April 22, 2014, and on that same day, defendant filed his notice of appeal.

¶ 35 ANALYSIS

¶ 36 On appeal, defendant contends the trial court erred in denying his motion to quash arrest and suppress evidence because the State failed to present any evidence to support the factual basis of the conclusion that the phone tied to the 773 number was in defendant's apartment. In

the alternative, defendant asserts and the State concedes, that the mittimus must be corrected to reflect 1227 days of presentence detention, rather than 1226 days. We affirm the trial court's decision denying the motion to quash arrest and suppress evidence, but we order correction of the mittimus.

¶ 37 Motion to Quash Arrest and Suppress Evidence

¶ 38 The fourth amendment to the United States Constitution ensures "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const., amend. IV. We apply a two-part standard of review when reviewing a ruling on a motion to quash arrest and suppress evidence. *People v. Grant*, 2013 IL 112734, ¶ 12. "While we accord 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, we review *de novo* the court's ultimate ruling on a motion suppress involving probable cause." *Id.* In this case, the trial court denied defendant's motion and made the legal determination that the warrantless arrest in defendant's home was proper due to the existence of probable cause and exigent circumstances. The trial court's legal determination, coupled with the lack of factual or credibility disputes in this matter, render our review *de novo*. See *People v. Chapman*, 194 Ill. 2d 186, 217 (2000).

¶ 39 Before addressing the merits of defendant's appeal, we first address the State's contention that defendant waived the argument that forms the basis of his appeal because he never made a specific foundational objection during the evidentiary hearing or at trial, and thus did not give the State an opportunity to correct its alleged shortcoming. Contrarily, defendant argues that this issue was preserved. Although sometimes used interchangeably by courts, "[w]aiver is different from forfeiture. Whereas forfeiture is the failure to make the timely assertion of the right, waiver is the 'intentional relinquishment or abandonment of a known right.' " *United States v. Olano*,

507 U.S. 725, 733 (1993). See also *People v. Phipps*, 238 Ill. 2d 54, 62 (2010). Here, there is no evidence that defendant intentionally relinquished or abandoned a known right, thus the term "waiver" does not apply. Further, although both the State and defendant use the term "waiver" when addressing defendant's alleged failure to preserve the issue here, we find that, instead, their arguments actually align with the concept of forfeiture since the basis of the State's argument is that defendant failed to timely object to the officers' testimony. The issue at bar is thus whether defendant *forfeited* his argument on appeal.

¶ 40 In order to avoid forfeiture of an issue on appeal, a defendant must both object to an alleged error at trial and raise the alleged error in a posttrial motion. *People v. Enoch*, 122 Ill. 2d 176, 186 (1988). "This rule is particularly appropriate when a defendant argues that the State failed to lay the proper technical foundation for the admission of evidence, and a defendant's lack of a timely and specific objection deprives the State of the opportunity to correct any deficiency in the foundational proof at the time of trial." *People v. Woods*, 214 Ill. 2d 455, 470 (2005). Conversely, if a defendant's challenge is based on the sufficiency of the evidence, then his claim is not subject to this rule and may be raised for the first time on direct appeal. *Id.*

¶ 41 We find that defendant took adequate steps to preserve the issue. Specifically, defendant filed a motion to quash arrest and suppress evidence, the trial court held an evidentiary hearing, both sides presented witnesses and argument, and the trial court ultimately denied the motion after finding the officers had probable cause to make the arrest and conduct the search. Additionally, after being found guilty of first degree murder by a jury, defendant filed a posttrial motion, arguing, *inter alia*, that a new trial should be granted because "[t]he defendant was denied a fair trial when this [c]ourt denied the [d]efendant's [m]otion to [q]uash [a]rrest and [s]uppress [e]vidence filed on September 26, 2011." This sentence was the only reference to the

suppression ruling in defendant's posttrial motion. Although we agree with the State that defendant's posttrial motion certainly lacked any detail regarding the allegedly erroneous suppression ruling, we still find that because the issue was listed in the posttrial motion, defendant properly preserved it for our review. See *People v. Hyland*, 2012 IL App (1st) 110966, ¶ 28 (finding that because the defendant filed a motion to quash arrest and suppress evidence that argued that the officers lacked probable cause for his arrest, and argued the same in his posttrial motion, the issue regarding his warrantless arrest was sufficiently preserved for appeal).

¶ 42 Turning to the merits of defendant's appeal, it is well established that the defendant bears the burden of proof on a motion to suppress evidence. *People v. Cregan*, 2014 IL 113600, ¶ 23. "If the defendant makes a *prima facie* showing that the evidence was obtained in an illegal search or seizure, the burden shifts to the State to provide evidence to counter the defendant's *prima facie* case." *Id.* However, the ultimate burden of proof lies with the defendant. *Id.* "[B]ecause warrantless searches are *per se* unreasonable, if the defendant challenges the warrantless search and demonstrates that he was doing nothing unusual at the time of the search, the State has the burden to demonstrate that the search was legally justified. [Citation.] Moreover, while an arrest may be based on information of which the arresting officer does not have personal knowledge, when the State attempts to justify a warrantless arrest on that basis, it must establish that the information relied on was based upon facts sufficient to establish probable cause to make an arrest. [Citation.]" *Hyland*, 2012 IL App (1st) 110966, ¶ 22.

¶ 43 Here, defendant challenges the warrantless search of his apartment. We agree with defendant that he made a *prima facie* showing that the search was unreasonable because it is undisputed that the police did not possess a warrant at the time of their entry into defendant's

apartment. Further, because it is not argued by either party, we assume *arguendo* that defendant would be able to demonstrate he was doing nothing unusual at the time of the search, and thus the burden of proof shifts to the State. As explained in detail below, we find that the State met its burden and established probable cause existed to justify defendant's arrest and the admission of evidence produced as a result of the officers' search of defendant's apartment. Defendant argues that the State presented no evidence that the police had probable cause to believe that the evidence of a crime was in defendant's apartment because it failed to present any evidence showing that the phone associated with the 773 number was in defendant's apartment. In response, the State asserts that testimony from Detective Swiderek and Sergeant Gallagher established the factual basis for probable cause.

¶ 44 It is important to note that in determining whether the trial court properly found that probable cause existed, a reviewing court is not limited to the evidence presented at the circuit court's pretrial suppression hearing, but may also consider evidence that was offered at the defendant's trial. *People v. Sims*, 167 Ill. 2d 483, 500 (1995). However, in this case, the bulk of the following evidence, which we relied on when reaching our conclusion, was presented at the suppression hearing. Detective Swiderek stated that when he came into work on the day of Favela's kidnapping, the investigation was already in full swing and he learned that members of his department had gone to the scene of the kidnapping and found evidence, *i.e.* blood and duct tape, consistent with Robles's story. He immediately requested the phone records from Favela's phone, which led the police to the 219 number. The FBI was enlisted to help with the case because it involved a kidnapping. Detective Swiderek further testified that the police requested the cell tower sites and the "mudds and tolls," or incoming and outgoing calls, from the phone with the 219 number. In the early hours of December 12, 2010, the law enforcement officials

working on Favela's case were able to locate the phone with the 219 number in Hammond, Indiana in Stokes's pocket. Detective Swiderek stated that prior to finding the phone on Stokes at around 7:30 p.m. on December 11, 2010, he noticed that the 773 number that was reflected on the records of the 219 number had called Favela's phone twice earlier that day near the time of the kidnapping. In fact, that 773 number had also called the 219 number within minutes of calling Favela's phone. Thus, the 773 number became another lead in the case.

¶ 45 Detective Swiderek testified that by 10 p.m. on the night of the kidnapping, Favela had not yet been found and the only leads in the case were the 219 number and the 773 number. The detective stated that around that same time, the 773 number "pinged" or "hit" the cell tower located in the 1800 to 1900 block of South Christiana. After midnight in the early hours of December 12, 2010, Detective Swiderek learned that the phone with the 219 number was first narrowed to an intersection in Hammond and then eventually to a specific address in Hammond. The detective went to that address and found Stokes with the phone tied to the 219 number in his pocket. At the time Detective Swiderek was interviewing Stokes around 2 a.m., other law enforcement officers were in the area of the cell phone ping in the 1800-1900 block of South Christiana. Additionally, Detective Swiderek stated that although no one provided the address of 3336 West 19th Place as a location where the kidnappers may have gone, that was "a location where the phone finally pinged to."

¶ 46 Sergeant Gallagher also testified regarding the investigation. He stated that around 2 a.m. on December 12, 2010, the police and FBI were using devices to gather intelligence and further pinpoint the location of the phone tied to the 773 number. Specifically, he testified that "an actual physical device that assists in locating the phone" was used to narrow down the phone's location first to the 1800-1900 block of South Christiana, then to the building at 3336 West 19th

Street, then to the four apartments on the west side of the building, and eventually to defendant's specific unit, 4W. Sergeant Gallagher testified that he was present when the FBI was able to determine that the phone's strongest signals were coming from that singular apartment. When asked on re-direct examination if the FBI could say conclusively that the phone was in unit 4W, he responded that he didn't know "conclusively exactly what their percentages are." However, he stated that he was informed that the phone was inside 4W. Sergeant Gallagher also testified that at the time law enforcement entered defendant's apartment, he learned that although no one from unit 4W answered the door after the police rang the buzzer, residents of the unit below 4W and other officers heard movement in unit 4W.

¶ 47 Although briefly set forth above, we believe it is pertinent to emphasize in more detail that, " '[a] search conducted without a search warrant is *per se* unreasonable unless it is a search conducted pursuant to consent, a search incident to arrest, or a search predicated upon probable cause where there are exigent circumstances which make it impractical to obtain a warrant.' " *People v. Ferral*, 397 Ill. App. 3d 697, 706 (2009) (quoting *People v. Alexander*, 272 Ill. App. 3d 698, 704 (1995)). Probable cause exists when the totality of the facts and circumstances known to the officers at the time of the entry is such that a reasonably prudent person would believe that the suspect is committing or has committed a crime. *Id.* In determining whether probable cause existed, the standard is one of probability of criminal activity, not proof beyond a reasonable doubt. *Id.*

¶ 48 Looking at the totality of the facts and circumstances presented through testimonial evidence at both the suppression hearing and trial (*Sims*, 167 Ill. 2d at 500), and keeping in mind the principle that "hearsay evidence is admissible during a motion to suppress, even though it is not admissible at trial" (*People v. Patterson*, 192 Ill. 2d 93, 111-12 (2000)), it is clear to this

court that the officers who entered defendant's apartment had probable cause to enter and conduct a search for any evidence of Favela's whereabouts. The testimony by Detective Swiderek and Sergeant Gallagher sufficiently paints a detailed picture of the steps of law enforcement's investigation in this case. They both describe how they worked with the FBI and used the FBI's equipment to track the location of the phones connected to the 219 and 773 numbers. They both testified that the 773 number "pinged" off of a cell tower that first narrowed their search for that phone to a specific block. Also, definitions of technical terms, such as "pinging" and "mudds and tolls" were provided to the court. Defendant acknowledges that there is no requirement that the searching officers themselves understand how a surveillance device works or even know why a search is being made at all, so long as some witness provides that information at an evidentiary hearing. In its ruling, the trial court stated "that entry was the highest exigency that there could be and there was absolutely probable cause to go into that residence established by the investigatory information that developed when -- the two phone numbers that were -- in addition to the victim['s] phone number[] were investigated and those owners and the locations were looked up and investigated and the defendant's apartment pinged off of the FBI's equipment ***." Although our review is *de novo*, we agree with the trial court's finding of probable cause. Additionally, a court may affirm a trial court's suppression ruling for any reason appearing in the record, regardless of whether such reason was expressly noted by the trial court in reaching its conclusion. *Sims*, 167 Ill. 2d at 501.

¶ 49 Defendant cites to *Hyland* for the proposition that "while an arrest may be based on information of which the arresting officer does not have personal knowledge, when the State attempts to justify a warrantless arrest on that basis, it must establish that the information relied on was based upon facts sufficient to establish probable cause to make an arrest." *Hyland*, 2012

IL App (1st) 110966, ¶ 22. In *Hyland*, the police took the defendant into custody and performed a search due to an investigative alert that stated the defendant had violated an order of protection. *Id.* ¶ 25. However, the State failed to present any evidence from anyone with personal knowledge of the factual basis for the alert. *Id.* As a result, the appellate court agreed with the trial court's finding of no probable cause, because the investigative alert was the only basis for the belief that the defendant had committed a crime. *Id.* ¶ 29-31.

¶ 50 We find the facts of this case differ from *Hyland.* In this case, Sergeant Gallagher was physically present when the FBI used a device to further narrow the location of the 773 number from an initial two-block radius, to a specific building, to a specific side of the building, and then to a specific unit in the building. Thus, at the time he made the warrantless entry into defendant's apartment, he had firsthand knowledge of the investigation that led law enforcement there. In his reply brief, defendant points to two pages of hearing transcript as support for his assertion that Sergeant Gallagher "testified that he did not understand what the FBI employees did with the device, other than it apparently let them inform him that the phone was in [a]partment 4W." Our review of the specific pages to which defendant cited and the record as a whole does not reflect any such testimony by Sergeant Gallagher. At no time did Sergeant Gallagher testify that he did not "understand" what the FBI was doing. We find that Sergeant Gallagher's testimony evidences his personal knowledge that the officers first narrowed the location of the phone to a two-block radius using the method of "pinging" to a cell tower, and then the FBI used a device that tested signal strength to further narrow that location to defendant's apartment.

¶ 51 Sergeant Gallagher also testified the FBI was able to pinpoint apartment 4W as having the strongest signal. Defendant makes much of the fact that when asked whether the FBI could conclusively say the phone tied to the 773 number was in that unit, Sergeant Gallagher

responded, "I don't know conclusively exactly what their percentages are." However, we do not find such testimony to be fatal in light of all of the other explanatory testimony that was provided. Also, defendant highlights that when asked if he was told the strongest signal was coming from unit 4W, Sergeant Gallagher replied that "[w]e were informed the phone was inside 4W." This sentence does not convince this court that Sergeant Gallagher and his team did not have probable cause to enter defendant's apartment. In fact, the meaning of this piece of testimony is not even clear to this court. Defendant seems to intend to use it as proof that Sergeant Gallagher was not told that the strongest signal was coming from unit 4W. However, just two questions prior to this, Sergeant Gallagher agreed that the statement "you were able to or the FBI was able to pinpoint [a]partment 4W as having the strongest signal" was "correct." Counsel for defendant never clarified these two arguably conflicting statements during the hearing, and now on appeal, insists that they must be construed as evidence of Sergeant Gallagher's lack of knowledge. We find defendant's contention unconvincing.

¶ 52 Additionally, it is well-settled that when officers are working together, the knowledge of each is the knowledge of all and the arresting officer has the right to rely on the knowledge of the officer giving the command, together with his own personal knowledge. *People v. Donnenfeld*, 62 Ill. App. 3d 991, 995 (1978). Here, there was ample testimony that the Chicago police department was working closely with the FBI and was using the FBI's tracking equipment to further its investigation. Thus, in entering apartment 4W, Sergeant Gallagher and the officers were able to rely on the information that was given to them through the FBI. Specifically, they were able to rely on the information that first brought them to the two-block radius of defendant's apartment and ultimately to apartment 4W. Additionally, Detective Swiderek, although not present at the time of entry into defendant's apartment, testified that he personally examined

Favela's phone records and found the pattern first with the 219 number and then with the 773 number. It was telephonic-based patterns that created the lead that prompted the FBI, Sergeant Gallagher, and other officers to pursue the location of the phone tied to the 773 number. Contrary to defendant's characterization of the investigative steps of this case, we do not believe the testimony shows that law enforcement merely guessed where the phone with the 773 number was located. Rather, it is clear the police and FBI used "pinging" to first cast a broad net and then used a surveillance device to further narrow the exact location of the phone. We find this level of detail to be sufficient to satisfy the State's burden of proving the arresting officers possessed probable cause. As a result, we find that the testimony presented at the suppression hearing sufficiently established a factual basis for probable cause and thus allowed for the officers' warrantless entry into defendant's apartment.

¶ 53 "That probable cause existed, however, is not alone sufficient to justify a warrantless entry into a suspect's home to effect an arrest." *People v. Foskey*, 136 Ill. 2d 66, 77 (1990) (citing *Payton v. New York*, 445 U.S. 573, (1980)). Exigent circumstances must also have been present. *Id.* Defendant does not challenge the trial court's finding that exigent circumstances existed at the time of his warrantless arrest. Further, exigent circumstances were present here. It is undisputed that at the time of their entry, law enforcement officials were unaware that Favela was already dead and still hoped that they may find him alive.

¶ 54 Mittimus Correction

¶ 55 Defendant argues and the State concedes that the mittimus should be corrected to reflect credit for 1227 days of presentencing detention, rather than 1226 days. Because we have the authority to correct the mittimus at any time without remanding the matter to the trial court

(*People v. Pryor*, 372 Ill. App. 3d 422, 438 (2007)), we order the mittimus corrected to reflect 1227 days of presentencing detention credit.

¶ 56 CONCLUSION

¶ 57 Based on the foregoing, we find that the trial court properly denied defendant's motion to quash arrest and suppress evidence. Therefore, we affirm the judgment of the circuit court and direct the clerk to correct the mittimus to reflect that defendant served 1227 days of presentencing detention rather than 1226 days.

¶ 58 Affirmed; mittimus corrected.