2017 IL App (1st) 143125-U

FIFTH DIVISION
October 20, 2017

No. 1-14-3125

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IN THE APPELLATE COURT
OF ILLINOIS
FIRST JUDICIAL DISTRICT

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| | ) | Appeal from the |
| THE PEOPLE OF THE STATE OF ILLINOIS, | ) | Circuit Court of |
| | ) | Cook County |
| Plaintiff-Appellee, | ) | |
| | ) | |
| v. | ) | No. 07 CR 9729 |
| | ) | |
| TYLON HUDSON, | ) | |
| | ) | Honorable |
| Defendant-Appellant. | ) | Brian K. Flaherty, |
| | ) | Judge Presiding. |

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PRESIDING JUSTICE REYES delivered the judgment of the court.
Justices Lampkin and Rochford concurred in the judgment.

**ORDER**

¶ 1 *Held*: The judgment of the circuit court of Cook County is affirmed where (1) the trial court correctly denied defendant's motion to suppress physical evidence, (2) the State's fingerprint expert testimony did not consist of hearsay conclusions from the prior fingerprint examiners, and (3) the trial court did not consider an improper factor in aggravation during sentencing.

¶ 2 Following a jury trial, defendant Tylon Hudson was found guilty of the first degree murder of Michael Hall when he personally discharged a firearm and was sentenced to a

cumulative 75 years' imprisonment in the Illinois Department of Corrections. On appeal, defendant contends the trial court erred in: (1) denying his motion to suppress evidence where the police did not have a reasonable belief that defendant was inside his apartment when they entered; (2) allowing the State's fingerprint expert to testify to conclusions made by other fingerprint examiners; and (3) considering the victim's death as an aggravating factor during sentencing. For the reasons that follow, we affirm the judgment of the circuit court.

¶ 3 BACKGROUND

¶ 4 Michael Hall was fatally shot on March 27, 2007, while inside his home. The evidence established that a shotgun blast entered through a small window of the front door and struck the victim in the left side of the face, killing him. A single spent shotgun shell casing was discovered on the front steps of the victim's residence. A murder task force was formed and numerous law enforcement officials from various police departments began investigating. In the course of their investigation, detectives learned that the victim's step-daughter, Erin Brewer, ten (10) days prior to the shooting had been attacked outside her workplace by defendant. As a result of the attack she received 75 stitches to her face. Thereafter, Erin obtained an order of protection against defendant covering her, the victim, her daughter and mother, Patricia Brewer-Hall. An arrest warrant was also issued for defendant in regards to the attack.

¶ 5 On April 3, 2007, law enforcement officials went to defendant's residence to execute the arrest warrant. While searching the apartment for defendant, Detective Steve Curry discovered a shotgun sticking out of a duffle bag which was lying on the floor inside a closet unobstructed. Defendant, however, was not inside the apartment during the time when the search was conducted. Later on the afternoon of April 3, 2007, defendant's sister, Renauta Hudson, signed a consent to search form for the residence she shared with her brother. Thereafter Investigator

Michael Narish inventoried, in pertinent part, the shotgun along with plastic bags of shotgun ammunition discovered inside the duffle bag. Defendant was ultimately arrested and indicted on eight counts of first degree murder and two counts of unlawful use of a weapon by a felon.

¶ 6 Prior to trial, defendant moved to suppress all of the physical evidence, including the shotgun and the ammunition because the officers did not have a reasonable belief that he was inside the apartment at the time they executed the arrest warrant.

¶ 7 At the suppression hearing Detective Curry of the Dalton Police Department testified that on April 3, 2007, he was assigned to execute an arrest warrant for defendant with regards to an aggravated domestic battery. As part of his investigation Detective Curry learned that defendant resided on West Wrightwood Avenue and that defendant was currently on mandatory supervised release (MSR).

¶ 8 Detective Curry arrived at defendant's residence at noon and did not observe defendant enter or exit the building. However, Detective Curry testified that he believed that it was possible defendant was inside the residence. At approximately 1 p.m., Detective Curry, Officer Brian Ortiz, and other unnamed officers approached the back door of defendant's apartment, knocked on the door, and announced their office. Receiving no answer, one of the other officers attempted to open the back door. Finding the back door to be unlocked, the officers entered the apartment. Detective Curry could not recall which officer attempted to open the door.

¶ 9 According to Detective Curry, upon entering the apartment he did not observe anyone inside. He and the other officers then proceeded to search the apartment for defendant. It was then that Detective Curry discovered a shotgun protruding from an unzipped duffle bag which was lying on the floor inside a closet. The duffle bag was situated in the front of the closet and was unobstructed.

¶ 10 Detective Curry then traveled to the police station where, at 2:20 p.m., he witnessed defendant's sister Renauta execute a consent to search form for the apartment she shared with defendant, the same apartment Detective Curry had been in earlier that day. Thereafter, the police searched the residence.

¶ 11 On cross-examination, Detective Curry testified he and his fellow officers entered defendant's residence with their weapons drawn because he believed defendant was armed and dangerous. Detective Curry also testified that he looked inside the closet because he believed defendant could have been hiding inside the closet.

¶ 12 Michael Narish, a crime scene investigator with the Illinois State Police, testified that on April 3, 2007, he was assigned to process an apartment located on the 3200 block of West Wrightwood Avenue in Chicago. Narish arrived at the scene at 2:45 p.m. and began processing the scene for evidence. Narish discovered a wallet and defendant's identification card. Narish further testified that he observed a shotgun protruding out of a bag lying on the floor of a closet. No items obstructed the visibility of the shotgun or the bag itself.

¶ 13 Wayne Waller, the owner of the building where defendant resided, testified that at 11:30 a.m. on April 3, 2007, he received a telephone call from Officer Ortiz during which Officer Ortiz requested the keys to the apartment. Waller was unaware if he was in possession of keys to the apartment, but agreed to meet Officer Ortiz at the building. Upon his arrival at the building 45 minutes later, Waller let Officer Ortiz into the building, but not into the specific unit of the apartment building. Instead, Waller remained downstairs. Fifteen minutes later, Officer Ortiz returned and informed Waller that the rear door to defendant's apartment had been tampered with, was ajar, and that he "went in." Waller further testified that he asked his employee, a maintenance man, whether or not he used a key to access the apartment and the maintenance

man informed him that "it never got to that point."

¶ 14 Renauta Hudson, defendant's sister, testified that on April 3, 2007, she was escorted to the police station by two officers. When she arrived she was informed that the officers believed her brother was involved in a murder. Renauta testified that she signed, but did not read, a consent to search form after she was threatened with being charged as an accessory to the crime if she did not sign it. Renauta further testified that on April 3, 2007, the back door was in working order and had no noticeable damage, however, when she arrived home the following day the door appeared to have been pried open. According to Renauta, she did not own a shotgun or ammunition.

¶ 15 The defense rested and the State recalled Detective Curry who testified that he did not threaten Renauta when she signed the consent to search form and that Renauta was cooperative.

¶ 16 The State next called Detective John Daley with the Village of Burnham police department who testified that he was assigned to the task force investigating the murder of Michael Hall. In the course of his investigation, Detective Daley interviewed Erin who indicated defendant had made recent threats against her and her family. Detective Daley further testified that defendant's arrest warrant for aggravated domestic battery was issued on March 29, 2007. According to Detective Daley, the only address for defendant was on West Wrightwood Avenue in Chicago. In addition, Detective Daley testified that defendant had signed an MSR agreement.[1]

¶ 17 After hearing arguments, the trial court denied defendant's motion to suppress. In its ruling the trial court made the following findings of fact: (1) Detective Curry went to the address defendant had provided to the parole authorities looking for defendant; (2) defendant was on

[1] This document was admitted into evidence at the suppression hearing, but the document does not appear in the record on appeal.

MSR and had signed a consent to search form related to his parole; (3) defendant provided the address on the 3200 block of West Wrightwood Avenue to the parole authorities; (4) law enforcement officials had an arrest warrant but not a search warrant; (5) Detective Curry was "there for a while beforehand to see if the defendant left or entered the building"; (6) Detective Curry never observed defendant leave or enter the building; (7) Detective Curry knew defendant was armed and dangerous; (8) Detective Curry knocked on the back door and there was no answer; (9) the back door was closed; (10) Detective Curry entered the apartment looking for defendant; (11) Detective Curry looked into the closet because he believed the defendant could be there; and (12) Detective Curry observed in plain view the shotgun inside a bag. The trial court did not make any specific findings regarding whether or not Officer Ortiz entered the building prior to Detective Curry. Nor did the trial court make any credibility finding regarding Waller.

¶ 18 The trial court concluded that the fact defendant was a parolee along with the totality of the circumstances justified the denial of the motion to suppress. According to the court:

> "the fact that they had an arrest warrant for the defendant, the defendant's greatly diminished rights and protections under the fact that he was a parolee, again viewing all of those, the fact they went to his house, announced their office, knocked on the back door, waited for someone to answer, nobody answered and they entered through [an] unlocked door simply to search to find out that the defendant was there, and not to search for any of the property, look for any property other than what they found in plain view. I think the police acted properly."

¶ 19 The matter then proceeded to trial where the State presented the following evidence. On March 29, 2007, Michael Hall's body was discovered after his wife, Patricia Brewer-Hall called

the police requesting a well-being check because she was out of town and had not been able to contact the victim for days. Lieutenant Preston Allbritton of the Dolton Police Department performed the well-being check. Upon arriving at the address provided by Patricia, Lieutenant Allbritton discovered the victim dressed in his pajamas lying on his back in a pool of coagulated blood on the other side of the front door. A small window in the front door had been shot through and an empty shotgun shell casing was at the bottom of the exterior front stairs. The assistant Cook County medical examiner Dr. Lauren Moser Woertz, an expert in the field of forensic pathology, testified that plastic wadding and buck shot was recovered from inside the victim's head. She opined that the victim's cause of death was due to a shotgun wound to his face and the manner of death was a homicide.

¶ 20 Robert Deel, a crime scene investigator with the Illinois State Police, recovered and inventoried evidence from the crime scene. This included, in relevant part, the shotgun shell casing and spent buck shot. These items were forwarded to the Illinois State Police Crime Lab for testing.

¶ 21 Detective Daley testified that in the course of his investigation he interviewed Erin, the victim's step-daughter. Erin testified that she began dating defendant in 2004 and they subsequently had a child together. In March 2007, Erin was living with her mother and daughter in Dolton, Illinois. That same month Erin's relationship with defendant became strained, as Erin no longer wanted to be in the relationship. On March 18, 2007, she was walking into work when defendant approached her and cut her face multiple times with a knife while threatening to kill her. Erin received treatment for her injuries, which included six hours of plastic surgery and 75 stitches. Shortly thereafter, Erin obtained an order of protection against defendant which covered her, the victim, her daughter and mother. Defendant, however, continued to threaten

her, so Erin decided to move out of the Dolton house. Six days after the attack, she received a telephone call from defendant wherein he threatened to kill her and her family.

¶ 22 The investigation further revealed that defendant was currently on parole and that defendant had informed his parole officer Wayne Stewart that he resided in an apartment located on West Wrightwood Avenue in Chicago. Stewart testified that he had visited defendant at that location. Renauta confirmed defendant resided with her on West Wrightwood Avenue in March and April 2007 during her testimony. Renauta further testified she did not own or possess a shotgun or ammunition.

¶ 23 The State's evidence further revealed that during the course of the investigation law enforcement officials became aware that there was an outstanding arrest warrant for defendant with regards to the March 18, 2007, incident. Detective Curry testified consistently with his suppression hearing testimony that upon entering defendant's residence while executing the arrest warrant he discovered a shotgun inside a duffle bag in plain view inside the closet.

¶ 24 Investigator Narish testified he collected 13 pieces of physical evidence from defendant's apartment, including an open duffle bag containing a Winchester Light 12 gauge shotgun and Remington 12 gauge shotgun shells. According to Narish, a live shotgun shell was discovered in the chamber of the shotgun and some shotgun shells were inside a plastic bag which was found inside the duffle bag.

¶ 25 Jeffrey Parise, a forensic scientist and an expert in the field of firearms and firearm identification, testified that the weapon recovered from defendant's apartment was a semiautomatic shotgun that had been modified with the barrel shortened and the stock removed. The weapon was in operating condition. Parise further testified that the shotgun shells recovered from the weapon and from inside the duffle bag were Remington Peters 12 gauge shot shells

with number six size shot. Parise compared the recovered shotgun shot to the shot pellets that had been removed from the victim's body and concluded that they were consistent with number six size shot. Parise also compared the shot wad column from one of the recovered shotgun shells to the shot wad recovered from the victim's body and opined they were the same. After performing ballistics tests with the recovered shotgun and ammunition, Parise further opined to a reasonable degree of scientific certainty that the fired shotgun shell casing recovered at the crime scene was fired by the shotgun recovered from defendant's residence.

¶ 26 Prior to the State introducing evidence regarding the fingerprints analysis, defense counsel requested a sidebar. Outside the presence of the jury, defense counsel argued that he should be allowed to question Holly Heitzman, the State's fingerprint expert, about the fact she was the third person to review the fingerprints without opening the door to hearsay. The State responded that should Heitzman so testify, it would leave an impression with the jury that the other two State fingerprint examiners did not find a match and therefore asked to question her on redirect regarding the results of those other examiners. The trial court ruled that if defense counsel asked Heitzman about being the third person to review the fingerprints, then it would allow the State to question her regarding the conclusions of the other examiners on redirect. Defense counsel also requested that Heitzman be permitted to testify regarding the reasons why the other fingerprint examiners were not testifying. The trial court determined the inquiry was not relevant and denied defendant's request.

¶ 27 Holly Heitzman, a forensic scientist and expert in latent fingerprint analysis with the Illinois State Police Crime Lab, first testified generally about the fingerprint comparison process. According to Heitzman, the Illinois State Police apply the ACE-V method (analysis, comparison, evaluation, and verification), which is "a structured logical procedure designed to minimize bias

an[d] if used correctly, will result in very few errors." Regarding the ACE-V method, Heitzman testified that:

> "after the initial examiner finishes, he would then – he or she would then give the case to another examiner and the verification step would take place.
>
> This is part of the scientific process of peer reviewed and it involves as a [*sic*] mentioned earlier a qualified examiner repeating a process independently from the first examiner.
>
> The second examiner will either then support or refute the original conclusions of the first examiner."

Heitzman further testified she was the "verifier" in this case and completed the verification step. Heitzman testified, however, that "[a]s the verifier, I completed by [*sic*] own – like my own individual ACE process which was independent of the original examiner in this case." Thus, she "start[s] over and *** do[es] the analysis, comparison and evaluation."

¶ 28 Heitzman testified she applied the ACE-V method to the latent fingerprint recovered from the plastic bag containing the shotgun shells. In completing the "analysis" phase, Heitzman determined that the latent print was suitable for comparison. Heitzman testified that the plastic bag had been wrinkled, and opined that that was why there were voids in the fingerprint recovered from the plastic bag. Ultimately, Heitzman concluded within a reasonable degree of scientific certainty that defendant's fingerprint matched the latent fingerprint recovered from the plastic bag of ammunition. Specifically, Heitzman testified that the, "[l]evel one detail was consistent throughout. Level two detail was consistent in type, relative position, group relationship and direction. And level three detail was present and consistent."

¶ 29 On cross-examination, defense counsel asked Heitzman questions about the "distortion

ratio" in the print. Heitzman expressed that she had "never heard of that before" but agreed with counsel that the distortion ratio could be 74.4%. Heitzman further testified generally that void areas affect comparison.

¶ 30 On redirect, Heitzman clarified that she was not agreeing that there's 74 percent of the distortion in the latent fingerprint, only that she was agreeing that counsel "was telling me that." According to Heitzman, the Illinois State Police does not calculate distortion and she had never heard of that method before. Heitzman reiterated that while portions of the latent fingerprint were distorted, there were sufficient portions of the fingerprint that allowed her to form the opinion that the latent lift on the plastic bag was a match to defendant's fingerprint.

¶ 31 The State rested and defendant made a motion for a directed verdict, which was denied. The defense then called three witnesses who testified as follows.

¶ 32 Kenneth Moses, a fingerprint examiner and an expert in the field of fingerprint analysis, testified that in April 2014 he was asked by the defense to consult on this case. He received several compact disks containing the fingerprint evidence and reports from the Illinois State Police Crime Lab. Moses compared the latent fingerprint from the plastic bag to the known thumbprint of defendant. Moses initially observed that there was distortion in the latent fingerprint, but testified that distortion is "very commonly found on prints from plastic bags." According to Moses there are two types of discrepancies, one occurs from actual distortion, i.e. the movement of the print will smear the ridges in the print, and the other occurs due to the fact it is a print from a different source. Moses testified that while he did not count the number of discrepancies between the latent fingerprint and the known print, he "thought" there were "more than ten." In addition, Moses testified that 74% of the fingerprint could not be seen at all. Moses opined that his comparison results were inconclusive as he did not have enough

information in the latent fingerprint to attribute it to defendant's known fingerprint. Moses defined inconclusive to mean "there is not enough information, or there is conflicting information that does not allow you to make either an identification or an exclusion."

¶ 33 On cross-examination, the State inquired about whether Moses had his results verified by another examiner. Moses testified that there was no one from his lab that could verify his work and that he "was the only latent examiner hired by the defense, so there was nobody to pass it on to." The State further questioned Moses if he was familiar with defendant's file and the process the Illinois State Police Crime Lab employed in this case. While he indicated that he had read the Illinois State Police Crime Lab report, he also testified that he was not familiar with its procedures. Moses testified that through his reading of the report he knew the conclusions of the Illinois State Police—that there were multiple analysts who determined there was an identification of the latent fingerprint. In later testimony, however, he stated that he was familiar with the Illinois State Police Crime Lab's procedures and criticized the lab for not employing "blind verifications," i.e. verifications where the examiner did not know what the person before him concluded.

¶ 34 Renauta testified again as follows. On April 3, 2007, she was working when she was called into the manager's office to speak with two detectives. The detectives informed her that if she cooperated with them she would be able to return to work, but if she did not then she would lose her job. Renauta was then escorted out of the building and placed in the back seat of a police vehicle. When they arrived at the police station, she was brought into an interrogation room where she was questioned. She was at the police station for 12 hours. At no point did she feel like she was free to leave. During her conversation with the detectives she was informed that she would have to fix her apartment door. Renauta testified that when she left her apartment

that morning the back door was in "okay condition," but when she came home the door was damaged and "appeared as if someone either had tried to pick the lock or kicked it in." Two photographs were admitted into evidence demonstrating the damage to the door she noticed when she arrived home on April 4, 2007.

¶ 35 On cross-examination, the State presented Renauta with photographs depicting no damage to her apartment door. Renauta denied that the State's photographs were an accurate depiction of the damage to the door in her apartment, noting that the State's photographs were taken from a different angle.

¶ 36 The last witness called by the defense was Waller, the landlord of the property on West Wrightwood Avenue. Waller testified consistently with his suppression hearing testimony with some discrepancies. First, Waller testified that five minutes elapsed between the time Officer Ortiz went upstairs to defendant's apartment and when he returned. Second, Waller testified that his maintenance man "never used the key to the front door because Ofc. Ortiz got in the rear and opened the front door, I presume." On cross-examination, Waller testified he did not hear anyone make a forced entry into any of the units. He further testified that Officer Ortiz informed him that "he got in."

¶ 37 The defense rested. After hearing closing arguments, the jury deliberated and ultimately found defendant guilty of first degree murder and specially found defendant had personally discharged a firearm that proximately caused the victim's death.

¶ 38 The matter then proceeded to sentencing. After hearing arguments in aggravation and mitigation, the trial court sentenced defendant to 50 years' imprisonment for first degree murder and an additional 25 years' imprisonment for the firearm enhancement. This appeal follows.

¶ 39 ANALYSIS

¶ 40 On appeal, defendant contends the trial court erred in: (1) denying his motion to suppress evidence where the police did not have a reasonable belief that defendant was inside his apartment when they entered; (2) allowing the State's fingerprint expert to testify to conclusions made by other fingerprint examiners; and (3) considering the victim's death as an aggravating factor during sentencing. We address each contention in turn.

¶ 41 Motion to Suppress

¶ 42 In reviewing a trial court's ruling on a motion to suppress, we apply the two-part standard of review adopted by the Supreme Court in *Ornelas v. United States*, 517 U.S. 690, 699 (1996). *People v. Wear*, 229 Ill. 2d 545, 561 (2008). As to the trial court's findings of historical fact, "we will reverse those findings only if they are against the manifest weight of the evidence." *People v. Luedemann*, 222 Ill. 2d 530, 542 (2006). We review *de novo* the trial court's ultimate legal ruling granting or denying the motion. *People v. Cosby*, 231 Ill. 2d 262, 271 (2008). Further, in reviewing the trial court's ruling, a reviewing court may consider the entire record, including trial testimony. *People v. Gilliam*, 172 Ill. 2d 484, 501 (1996).

¶ 43 We further observe that on a motion to suppress, the burden of proving that a search or seizure was unlawful is on the defendant. 725 ILCS 5/114-12(b) (West 2006); *People v. Cregan*, 2014 IL 113600, ¶ 23. If a defendant makes a *prima facie* showing that the search was unreasonable, the burden then shifts to the State to provide evidence countering defendant's *prima facie* showing. *Id.* The ultimate burden, however, remains with the defendant. *Id.*

¶ 44 In this case, defendant maintains that his fourth amendment rights were violated when the police entered his apartment without a reasonable belief that he was inside, performed a search of the premises, and recovered physical evidence, namely the shotgun.

¶ 45 The fourth amendment to the United States Constitution protects the "right of the people

to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const., amend. V; see also *Elkins v. United States*, 364 U.S. 206, 213 (1960) (observing that fourth amendment applies to state officials through the fourteenth amendment). The "essential purpose" of the fourth amendment is to impose a standard of reasonableness upon the exercise of discretion by government officials, including law enforcement officers, to safeguard the privacy and security of individuals against arbitrary invasions. *Delaware v. Prouse,* 440 U.S. 648, 653-54 (1979) (and cases cited therein); *Illinois v. McArthur*, 531 U.S. 326, 330 (2001). To enforce the fourth amendment requirement of reasonableness, the United States Supreme Court "has interpreted the Amendment as establishing rules and presumptions designed to control conduct of law enforcement officers that may significantly intrude upon privacy interests." *McArthur*, 531 U.S. at 330. Generally, reasonableness under the fourth amendment requires a warrant supported by probable cause. *Katz v. United States*, 389 U.S. 347, 357 (1967).

¶ 46 There are, however, a few exceptions to this requirement. *People v. Moss*, 217 Ill. 2d 511, 518 (2005). "When faced with special law enforcement needs, diminished expectations of privacy, minimal intrusions, or the like, the Court has found that certain general, or individual, circumstances may render a warrantless search or seizure reasonable." *McArthur*, 531 U.S. at 330. Particularly relevant to this case, we observe that defendant was on MSR and, as a result, had a diminished expectation of privacy. See *People v. Wilson*, 228 Ill. 2d 35, 52 (2008) (a search of a parolee's residence without reasonable suspicion is constitutional); *People v. Collins*, 2015 IL App (1st) 131145, ¶ 30. An individual on MSR shall "consent to a search of his or her person, property, or residence under his or her control." 730 ILCS 5/3-3-7(10) (West 2006). Law enforcement officials, however, must know defendant is on MSR for a suspicionless search

to be reasonable (*People v. Coleman*, 2013 IL App (1st) 130030, ¶ 21) and the fact a defendant on MSR has signed an MSR agreement consenting to a search does not constitute prospective consent (*Wilson*, 228 Ill. 2d at 39).

¶ 47 With defendant's parolee status in mind, we further observe that, unlike the facts of the cases cited above, the law enforcement officials in this case had an arrest warrant for defendant. The United States Supreme Court has held that "for Fourth Amendment purposes, an arrest warrant founded on probable cause implicitly carries with it the limited authority to enter a dwelling in which the suspect lives *when there is reason to believe the suspect is within*." (Emphasis added.) *Payton v. New York*, 445 U.S. 573, 603 (1980); see *People v. Kite*, 97 Ill. App. 3d 817, 827 (1981) (finding law enforcement officials entered the defendant's residence lawfully with a search warrant, "which affords the same justification for their entry into his residence as would an arrest warrant." (cited favorably by *People v. Edwards*, 144 Ill. 2d 108, 129 (1991)). Accordingly, we first turn to consider whether the law enforcement officials had a reasonable belief that defendant was inside his dwelling at the time they executed the arrest warrant.

¶ 48 This question necessarily involves a review of the factual findings made by the trial court. In assessing the evidence regarding a motion to suppress, we defer to the trial court's factual findings and will reverse those findings only if they are against the manifest weight of the evidence. *People v. Almond*, 2015 IL 113817, ¶ 55. Such deference recognizes that the trial court is in a superior position to determine and weigh the witnesses' credibility, observe their demeanor, and resolve any conflicts in their testimony. *People v. Swanson*, 2016 IL App (2d) 150340, ¶ 27. The absence of factual findings does not necessarily preclude a reviewing court from affirming a trial court's ruling on a suppression motion. *People v. Townsend*, 6 Ill. App. 3d

873, 878 (1972). A trial court's factual findings, though not set forth explicitly, may frequently be inferred from the ruling. *People v. Byrd*, 408 Ill. App. 3d 71, 76 (2011) (holding that the trial court's "legal conclusion sufficiently informs us of the supporting inferences the trial judge may have drawn to reach his decision."). "A court of review 'remains free to engage in its own assessment of the facts in relation to the issues presented and may draw its own conclusions when deciding what relief should be granted.' " *People v. Gherna*, 203 Ill. 2d 165, 175-76 (2003) (quoting *People v. Crane*, 195 Ill. 2d 42, 51 (2001)).

¶ 49 Here, the trial court found that prior to arriving at defendant's residence Detective Curry knew (1) defendant's parolee status, (2) defendant's residential address, and (3) that defendant was armed and dangerous. The trial court also found that: Detective Curry waited outside the building before entering; Detective Curry never observed defendant leave or enter the building; the officers knocked on the closed back door and announced their office; the officers waited at the back door and receiving no answer, entered the apartment looking for defendant. None of these facts are against the manifest weight of the evidence.

¶ 50 Defendant maintains that the trial court erred in its assessment of the facts and asserts that Waller's testimony establishes that the law enforcement officials had no reasonable belief that defendant was inside the dwelling because Officer Ortiz entered the apartment prior to Detective Curry. We disagree. While Waller testified that Officer Ortiz informed him that he "went in" or "got in" the apartment, the evidence does not reveal that Waller personally observed Officer Ortiz enter the apartment and defendant offered no corroborating evidence that this was the case. In addition, Waller's testimony regarding the amount of time Officer Ortiz was investigating the apartment differed from his testimony during the suppression hearing and during the jury trial. Initially, Waller indicated Officer Ortiz was gone for 15 minutes, but at trial it was only five

minutes. Moreover, Waller admitted at both the suppression hearing and during the trial that he merely "presumed" Officer Ortiz walked through the apartment because Waller's employee did not need to open the front door. Overall, we find Waller's testimony to be replete with uncorroborated hearsay and decline to consider it as evidence of whether the officers who executed the arrest warrant had a reasonable belief that defendant was inside the residence. This conclusion is further supported by the fact that the trial court, in rendering its findings, did not find Officer Ortiz had been in the apartment prior to Detective Curry. See *Byrd*, 408 Ill. App. 3d at 76 (a trial court's factual findings, though not set forth explicitly, may frequently be inferred from the ruling).

¶ 51 Here, it is uncontroverted that there was an arrest warrant for defendant when the police entered the apartment and that, as a parolee, defendant had a diminished expectation of privacy. See *Wilson*, 228 Ill. 2d at 52. In addition, our review of the record reveals that the law enforcement officials had a reasonable belief defendant was at that particular location because defendant had indicated it was his residence to his parole officer and his parole officer confirmed it was defendant's residence. Consequently, it is reasonable to look to defendant's residence as a place he might be found. See *People v. Sain*, 122 Ill. App. 3d 646, 651 (1984). Furthermore, Detective Curry expressly testified he believed it was possible defendant was inside the dwelling. Moreover, once the officers approached the back door, they found it to be unlocked. This circumstance supports an officer's reasonable belief that a suspect is within. See *id.*

¶ 52 We further observe that the trial court found that the officers discovered the shotgun while executing an arrest warrant and the shotgun was in plain view. Our review of the record indicates that upon entering the residence with their weapons drawn, the officers swept the apartment in an attempt to locate defendant. This sweep included looking inside a closet, a place

where a person could be found. See *People v. Downey*, 198 Ill. App. 3d 704, 715 (1990) (officers testified the defendant was found hiding in a closet). On the floor of the closet in plain view was a shotgun protruding out of a duffle bag.

¶ 53 Based upon these facts and defendant's MSR status, we conclude that law enforcement officials had a reasonable belief defendant was inside his dwelling when they executed the search warrant. Consequently, because the law enforcement officials were lawfully inside defendant's apartment executing an arrest warrant when they discovered the shotgun in plain view, the trial court did not err in denying defendant's motion to suppress.

¶ 54 Fingerprint Evidence

¶ 55 Defendant next asserts that the trial court violated the hearsay rule and the confrontation clause when it allowed the State's fingerprint expert to testify that another examiner had identified defendant as the source of the latent fingerprint. Defendant maintains that the trial court compounded this error when it prohibited defense counsel from questioning the expert about the prior fingerprint examiners. In addition, defendant contends that the State also added to the error in its cross-examination of the defense fingerprint expert and also in closing argument when it stated that other, non-testifying fingerprint examiners had identified the fingerprint as defendant's.

¶ 56 The State maintains that Heitzman's conclusion that defendant's fingerprint matched the fingerprint recovered from the plastic bag was properly admitted into evidence as she did not testify to another examiner's statement. The State also observes that defendant has forfeited review of this issue because he failed to make a timely objection at trial.

¶ 57 We first turn to consider whether defendant's claims are properly before this court. To preserve an issue for review, defendant must object both at trial and in a written posttrial motion.

*People v. Enoch*, 122 Ill. 2d 176, 186 (1988). Failure to do so operates as a forfeiture as to that issue on appeal. *People v.McLaurin*, 235 Ill. 2d 478, 485 (2009). "When a defendant procures, invites, or acquiesces in the admission of evidence, even though the evidence is improper, she cannot contest the admission on appeal. [Citations.] This is because, by acquiescing in rather than objecting to the admission of allegedly improper evidence, a defendant deprives the State of the opportunity to cure the alleged defect. [Citations.]" *People v. Bush*, 214 Ill. 2d 318, 332 (2005). Our review of the record reveals that defendant did not object during Heitzman's testimony nor did he raise this specific issue in his posttrial motion. Accordingly, the issue is forfeited.

¶ 58 This court, however, may review an issue for plain error where the issue was not properly preserved. Illinois Supreme Court Rule 615(a) states that "[a]ny error, defect, irregularity, or variance which does not affect substantial rights shall be disregarded. Plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the trial court." Ill. S. Ct. R. 615(a) (eff. Jan. 1, 1967). The plain-error rule "allows a reviewing court to consider unpreserved error when (1) a clear or obvious error occurred and the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant, regardless of the seriousness of the error, or (2) a clear or obvious error occurred and that error is so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process, regardless of the closeness of the evidence." *People v. Piatkowski*, 225 Ill. 2d 551, 565 (2007) (citing *People v. Herron*, 215 Ill. 2d 167, 186-87 (2005)). Defendant carries the burden of persuasion under both prongs of the plain-error rule. *People v. Lewis*, 234 Ill. 2d 32, 43 (2009). While defendant insists this issue was preserved for our review, he argues that if it was not then he was deprived of a substantial right where his trial counsel was

ineffective for failing to preserve his claim of error. However, "[t]he first step of plain-error review is to determine whether any error occurred." *Id.* Therefore, we will review the issue to determine if there was any error before considering it under the plain-error doctrine.

¶ 59 Defendant contends that the trial court improperly admitted hearsay evidence, namely, that a non-testifying fingerprint examiner concluded the latent fingerprint on the plastic bag of ammunition matched defendant's fingerprint. Hearsay evidence is an out-of-court statement offered to prove the truth of the matter asserted. *People v. Lawler*, 142 Ill. 2d 548, 557 (1991). Such evidence is generally inadmissible because the opposing party has no opportunity to cross-examine the declarant. *People v. Jura*, 352 Ill. App. 3d 1080, 1085 (2004). Testimony that a non-testifying party identified the accused as the perpetrator of a crime constitutes inadmissible hearsay. *People v. Lopez*, 152 Ill. App. 3d 667, 672 (1987). We review a trial court's decision regarding the admission of hearsay for abuse of discretion. *People v. Brown*, 2017 IL App (1st) 142877, ¶ 46.

¶ 60 Defendant relies on the cases of *People v. Smith*, 256 Ill. App. 3d 610, 615 (1994), *People v. Yancy*, 368 Ill. App. 3d 381, 385 (2005), and *People v. Prince*, 362 Ill. App. 3d 762, 776 (2005), however, these cases are clearly distinguishable. In each of these cases this court held that testimony by a fingerprint examiner that her identification had been verified by a second, non-testifying examiner is inadmissible hearsay. *Smith*, 256 Ill. App. 3d at 615; *Yancy*,

¶ 61 368 Ill. App. 3d at 385; *Prince*, 362 Ill. App. 3d at 776. This conclusion relied in part on the well-settled proposition that a witness who testifies to statements made to him or her by a non-testifying third party that identify defendant as the perpetrator of a crime constitutes hearsay. *Smith*, 256 Ill. App. 3d at 615 (citing *Lopez*, 152 Ill. App. 3d at 672, (1987)).

¶ 62 Here, on the contrary, Heitzman was the "verifier" and thus did not testify that her

identification was verified by a second, non-testifying examiner. In addition, although defendant claims that "Heitzman told the jurors that another, nontestifying examiner had identified the latent print as Hudson's," our review of the record reveals otherwise. Prior to rendering her expert opinion, Heitzman testified as to what the ACE-V method entailed, which provided the scientific basis involved in rendering her opinion. She did not testify to any conclusion of a prior examiner and expressly explained to the jury that she completed her own, individual ACE process, which was independent of the original examiner in this case. While Heitzman did indicate that the ACE-V method involved peer review, at no point did she testify to any statement or conclusion made by a prior examiner. In fact, she testified that the ACE-V process involved "support[ing] or refut[ing] the original conclusions of the first examiner," which fails to support defendant's conclusion that Heitzman unequivocally testified that the original examiner identified the latent fingerprint to be defendant's. Accordingly, we conclude no hearsay violation occurred.

¶ 63 Defendant further argues that because the trial court allowed Heitzman to testify that another examiner identified the latent print as defendant's that the trial court "should have let defense counsel cross-examine her about any problems with the prior examiners or their work." Defendant cites *People v. Trotter*, 254 Ill. App. 3d 514, 528 (1993), in support of his proposition. In that case, however, the reviewing court determined reversible error occurred where the trial court had erroneously admitted hearsay testimony and prohibited the defendant from calling a witness to challenge that testimony. *Id.* Here, on the contrary, we have determined that Heitzman did not testify to any hearsay and thus the trial court properly excluded defense counsel from cross-examining Heitzman about the prior examiners.

¶ 64 Moreover, as we have concluded that no hearsay violation occurred, we need not

consider defendant's confrontation clause argument. See *Crawford v. Washington*, 541 U.S. 36, 59 (2004) (holding the confrontation clause prohibits the introduction of hearsay statements against the accused if they are deemed testimonial in nature, unless the declarant is unavailable for trial and the defendant has had a prior opportunity to cross-examine the declarant); *People v. Negron*, 2012 IL App (1st) 101194, ¶ 44.

¶ 65 Finally, defendant argues that the prosecutor compounded the effect of the "wrongly admitted hearsay testimony" when she improperly questioned the defense fingerprint expert Moses and elicited testimony from him that multiple people in the Illinois State Police Crime Lab had identified the latent print as defendant's. Defendant maintains this questioning was improper where both Heitzman and Moses had indicated that they reached their respective conclusions without relying on another examiner's work. Thus, defendant concludes that "the only reason for the prosecutor to repeatedly state that nontestifying examiners had identified the print as Hudson's was to bolster Heitzman's testimony and thereby add weight to the State's case." Defendant further observes that the prosecutor compounded the error when she referenced the multiple identifications other than Heitzman's in her closing argument.

¶ 66 As a general rule, cross-examination is limited to the scope of the direct examination. *People v. Williams*, 66 Ill. 2d 478, 486-87 (1977). "It is proper on cross-examination to develop all circumstances within the knowledge of the witness which explain, qualify, discredit or destroy his direct testimony although they may incidentally constitute new matter which aids the cross-examiner's case." (Internal quotation marks omitted.) *Id.* at 486 (quoting Gard, Illinois Evidence Manual R. 471 (1963)); see *People v. Stewart*, 104 Ill. 2d 463, 490 (1984). The extent of cross-examination rests within the sound discretion of the circuit court. *People v. Figueroa*, 308 Ill. App. 3d 93, 99 (1999) (citing *People v. Burris*, 49 Ill. 2d 98, 104 (1971)). A reviewing

court will not reverse the decision of the circuit court, to permit a certain line of questioning, unless there has been a clear abuse of discretion resulting in manifest prejudice to the defendant. *People v. Kliner*, 185 Ill. 2d 81, 130 (1998).

¶ 67 Setting aside the fact there was no "wrongly admitted hearsay testimony," our review of the record reveals that there were valid reasons for the complained-of questioning. When read in full, it is apparent in the record that the State's line of questioning during Moses' cross-examination was not to establish that multiple fingerprint examiners came to the same conclusion as Heitzman, but for the purpose of attacking Moses' credibility and to discredit his testimony. We therefore cannot say the trial court abused its discretion when it allowed the State to question Moses in this manner. See *id.*

¶ 68 In regards to defendant's assertion that the State made an improper comment during closing argument, we observe that defense counsel failed to object during the trial and failed to raise this issue in a posttrial motion. Accordingly, we find this argument to be forfeited, but will review the argument for plain error.

¶ 69 When reviewing claims of prosecutorial misconduct in closing argument, the court is to consider the entire closing arguments of both the prosecutor and the defense attorney in order to place the complained—of remarks in context. *People v. Phillips*, 392 Ill. App. 3d 243, 275 (2009). While it is not clear if a prosecutor's comments during closing arguments are reviewed *de novo* or for an abuse of discretion (see *People v. Daniel,* 2014 IL App (1st) 121171, ¶ 32; *People v. Maldonado,* 402 Ill. App. 3d 411, 421 (2010); *People v. Johnson,* 385 Ill. App. 3d 585, 603 (2008)), we do not need to resolve the issue of the appropriate standard of review at this time, because our holding in this matter would be the same under either standard. Moreover, comments in closing argument constitute reversible error only when they engender substantial

prejudice against a defendant such that it is impossible to say whether or not a verdict of guilt resulted from those comments. *People v. Nieves*, 193 Ill. 2d 513, 533 (2000).

¶ 70 While the record does indicate that the prosecutor briefly referenced that Heitzman's identification was "believed time and again by analysts at the Illinois State Police," defendant was not substantially prejudiced by this remark as this was not the testimony at trial. The jurors were instructed by the trial judge to disregard the portions of the closing arguments that were not presented as evidence and that the arguments should not be considered by them to be evidence. Thus, the alleged error was mitigated by the trial court. See *People v. Hampton*, 387 Ill. App. 3d 206, 222-23 (2008). Moreover, although the prosecutor stated the identification was "believed time and again by analysts," she also informed the jury that they did not have to believe the fingerprint was defendant's in order to convict him; it was just "a piece of evidence that we have given to you along with all the other evidence." Consequently, we do not believe that the jury would have reached a different verdict had this comment not been made.

¶ 71 In conclusion, having found no error occurred, there can be no plain error. See *Piatkowski*, 225 Ill. 2d at 565. Thus, it follows that defendant's argument that his counsel was ineffective for failing to object to the alleged hearsay testimony fails. *People v. Patterson*, 217 Ill. 2d 407, 438 (2005).

¶ 72 Sentencing

¶ 73 Lastly, defendant argues that the trial court improperly considered a factor inherent in the offense of first degree murder while sentencing him, namely the victim's death. Defendant acknowledges that he did not properly preserve this issue for our review, but contends that it is reversible error under the second prong of the plain-error doctrine. In the alternative, defendant requests we find he was deprived of his right to a fair trial where his counsel was ineffective for

failing to include this issue in a postsentencing motion.

¶ 74 We first turn to address defendant's request that we review this issue for plain error. As previously discussed, to overcome a claim of forfeiture, we must determine whether the alleged error can be reviewed under the plain-error doctrine. The first step in a plain-error analysis is to determine whether a "plain error" occurred. *People v. Piatkowski*, 225 Ill. 2d 551, 564-65 (2007). "The word 'plain' here is synonymous with 'clear' and is the equivalent of 'obvious.' " *Id.* at 565 n. 2.

¶ 75 The Illinois Constitution mandates that "penalties shall be determined both according to the seriousness of the offense and with the objective of restoring the offender to useful citizenship." Ill. Const. 1970, art. I, § 11. The trial court has broad discretion in imposing an appropriate sentence, and where, as here, that sentence falls within the range provided by statute, it will not be altered absent an abuse of discretion. *People v. Gutierrez*, 402 Ill. App. 3d 866, 900 (2010). An abuse of discretion occurs where the sentence is "greatly at variance with the spirit and purpose of the law, or manifestly disproportionate to the nature of the offense." *People v. Stacey*, 193 Ill. 2d 203, 210 (2000) (citing *People v. Fern*, 189 Ill. 2d 48, 54 (1999)). The trial court is in the superior position to determine an appropriate sentence because of its personal observation of defendant and the proceedings. *People v. Alexander*, 239 Ill. 2d 205, 212-13 (2010). It must weigh the relevant sentencing factors, which include the defendant's demeanor, credibility, age, social environment, moral character, and mentality. *Id.* at 213.

¶ 76 Although the trial court has broad discretion when imposing a sentence, it may not consider a factor implicit in the offense as an aggravating factor in sentencing. *People v. Phelps*, 211 Ill. 2d 1, 11 (2004). In other words, a single factor cannot be used both as an element of an offense and as a basis for imposing a "harsher sentence than might otherwise have been

imposed." *People v. Gonzalez*, 151 Ill. 2d 79, 84 (1992). Such dual use of a single factor is often referred to as "double enhancement." *Id.* at 84. The prohibition against double enhancements is based on the rationale that "the legislature obviously has already considered such a fact when setting the range of penalties and it would be improper to consider it once again as a justification for imposing a greater penalty." (Internal quotation marks omitted.) *People v. James*, 255 Ill. App. 3d 516, 532 (1993). The defendant bears the burden of establishing that a sentence was based on improper considerations. *People v. Dowding*, 388 Ill. App. 3d 936, 943 (2009).

¶ 77 The mere mention, however, of an improper factor in passing does not mean that the court relied on that factor in determining the appropriate sentence. *People v. Beals*, 162 Ill. 2d 497, 509-10 (1994). A court may refer to the nature and circumstances of an offense at sentencing. *People v. Sanders*, 2016 IL App (3d) 130511, ¶ 13. The trial court is presumed to have recognized and disregarded incompetent evidence unless the record reveals the contrary. *People v. Bowen*, 2015 IL App (1st) 132046, ¶ 55. Accordingly, "the record must affirmatively disclose that the arrest or charge was considered by the trial court in imposing sentence." *People v. Garza*, 125 Ill. App. 3d 182, 186 (1984). The question of whether a court relied on an improper factor in imposing a sentence ultimately presents a question of law to be reviewed *de novo*. *People v. Abdelhadi*, 2012 IL App (2d) 111053, ¶ 8.

¶ 78 While defendant argues that the trial court "explicitly considered the victim's death as an aggravating factor," the record indicates otherwise. When issuing its sentence the trial court stated:

> "[T]his is probably one of the most vicious crimes I've seen in my 34 years as an attorney spending 10 years at 26th and California and 7 years on a felony bench here in Markham,

> to say this is one of the most vicious crimes I've seen would be an understatement.
>
> * * *
>
> There I take the factors in aggravation that defendant's conduct *caused serious harm*. There is no more serious harm than this. He has a history. I look at all the felony convictions he has and a sentence is necessary to deter others from committing this crime, and I look through the factors in mitigation and I see none that would supply [*sic*] to you. Again, I also consider the factors in the pre-sentence investigation." (Emphasis added).

The record does not indicate the trial court emphasized a factor inherent in the offense during sentencing. Instead, the record demonstrates the trial court properly stressed the nature and circumstances of the offense. *Sanders*, 2016 IL App (3d) 130511, ¶ 13. Further, in determining the exact length of a particular sentence within the sentencing range for a given crime, a trial court may consider as an aggravating factor the *degree* of harm caused to a victim, even where serious bodily harm is arguably implicit in the offense of which the defendant is convicted. *People v. Saldivar*, 113 Ill. 2d 256, 269 (1986). When read in its totality, the record discloses that the trial court was merely considering the degree of harm when it stated defendant "caused serious harm" and "There is no more serious harm than this." See *Dowding*, 388 Ill. App. 3d at 943; *Saldivar*, 113 Ill. 2d at 269; *People v. Peshak*, 333 Ill. App. 3d 1052, 1069 (2002), overruled on other grounds by *People v. Pomykala*, 203 Ill. 2d 198 (2003) (stating a court of review should consider the record as a whole, rather than focusing on a few words or statements by the trial court). We also do not have before us facts that indicate the State argued in aggravation that defendant caused the victim's death such that the trial court's ruling mirrored the State's arguments. See *Dowding*, 388 Ill. App. 3d at 943; *Saldivar*, 113 Ill. 2d at 272.

¶ 79 The context of this case bears similarity to the circumstances in *People v. Brewer*, 2013 IL App (1st) 072821, ¶ 1, where the defendant there was also found guilty of first degree murder and personally discharging a firearm in the shooting death of the victim. In that case, the trial court made the following statements during sentencing:

> "Factors in aggravation, the defendant's conduct did cause or threaten serious harm, the ultimate serious harm, murder. The defendant received compensation for committing the offense, no, but this was a robbery that turned into a murder, felony murder. The defendant has a history of prior delinquency or criminal activity. Although minimal, yes, he does have a history of prior delinquency, not a stranger to the criminal justice system. *** The sentence is necessary to deter others from committing the same crime." *Id.* ¶ 56.

The *Brewer* court ultimately held that the trial court did not consider an improper factor in aggravation, reasoning, "the fact his conduct threatened or caused serious harm is not a factor inherent in the crime itself but is a proper aggravating factor to be considered during sentencing even in cases where serious bodily harm is implicit in the offense." *Id.* ¶ 57 (citing *Saldivar*, 113 Ill. 2d at 269; *People v. Solano*, 221 Ill. App. 3d 272, 274 (1991); and *People v. Spencer*, 229 Ill. App. 3d 1098, 1102 (1992)).

¶ 80 We find defendant's reliance on *Sanders* to be misplaced. In that case, the trial court stated the following when sentencing defendant: "[A]mong other things, the defendant's conduct did cause or threaten serious harm. It may be inherent in the actual fact that he committed a murder, but it did occur, and that the defendant has a history of prior delinquency of criminal activity." *Sanders*, 2016 IL App (3d) 130511, ¶ 6. The reviewing court concluded that the trial court committed reversible error where it "expressly stated, in aggravation, that the

defendant's conduct did cause harm and acknowledged that this fact was inherent in the offense of murder, but reasserted that the conduct 'did occur.' " *Id.* ¶ 14. The reviewing court reasoned, "Because the court noted this improper factor, acknowledged that it was inherent in the offense, and then indicated that it was still considering the factor in aggravation, we find that the court erroneously gave improper weight to the double enhancing factor." *Id.* While the *Sanders* court had before it a clear statement in the record that the trial court considered an element of the offense in aggravation when sentencing defendant, that is not the case here. The record before us indicates that the trial court did not acknowledge that serious harm was inherent in the offense and thus *Sander*s is distinguishable.

¶ 81 In sum, defendant has failed to affirmatively demonstrate that the trial court considered improper aggravating factors during sentencing. Because there was no error, there can be no plain error to excuse defendant's forfeiture of this issue. See *Piatkowski*, 225 Ill. 2d at 565.

¶ 82 Furthermore, because there was no error, defendant also cannot demonstrate that his counsel was ineffective for failing to object at trial or raise this claim in a postsentencing motion. As the trial court did not err, there is no reasonable probability that defendant's sentence would have been different had counsel raised the issue below. Defendant suffered no prejudice from his counsel's alleged deficient performance and his claim of ineffective assistance of counsel must fail. *Patterson*, 217 Ill. 2d at 438.

¶ 83 CONCLUSION

¶ 84 In sum, our review of the record reveals no errors sufficient to require reversal. Consequently, we affirm the judgment of the circuit court.

¶ 85 Affirmed.