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IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 13 CR 8568
)	
LARRY BROOKINS,)	Honorable
)	Sharon M. Sullivan,
Defendant-Appellant.)	Judge, presiding.

JUSTICE HYMAN delivered the judgment of the court.
Presiding Justice Neville and Justice Pucinski concurred in the judgment.

ORDER

¶ 1 *Held:* Defendant's burglary conviction affirmed over his challenges that the trial court abandoned impartiality and erred in denying his motion to quash arrest and suppress evidence.

¶ 2 After a bench trial, the court convicted defendant Larry Brookins of burglary and sentenced him to 18 years' imprisonment as a Class X offender. Brookins contends that, during the hearing on his motion to quash arrest and suppress evidence, the trial court abandoned impartiality by urging the State to change its strategy. Brookins also argues that the court erred in

denying his motion to quash and suppress because the State failed to show that the police had probable cause for his arrest. **We affirm.**

¶ 3 Background

¶ 4 Brookins represented himself *pro se* throughout all of the proceedings. Brookins was charged with one count of burglary of a J.J. Peppers convenience store on March 7, 2013. Brookins filed a motion to quash arrest and suppress evidence arguing that he was arrested without an arrest or search warrant, and that the police lacked probable cause to arrest him based on an investigative alert.

¶ 5 At the hearing on his motion, Brookins called Lugary Coleman who testified that on the night of March 3, Brookins was in a physical altercation with Keesha Bergman and her brother. The next day, Coleman retrieved Brookins' auto from 11th and Hirsch Streets.

¶ 6 Brookins next called former Chicago police officer Russell Blomstrand who testified that he identified Brookins in a surveillance video recording of a burglary at Peppers.

¶ 7 Brookins called Chicago police detective Patricia Pedroza who testified that she viewed a surveillance video of a burglary that occurred at Peppers on March 7, 2013. On April 8, Pedroza and another detective interviewed Brookins at the police station about the burglary.

¶ 8 Brookins also called Chicago police officer Adrian Perez who testified that on April 7 he initiated Brookins' arrest based on an investigative alert. Perez acknowledged that he did not have an arrest or search warrant for Brookins. At the time of the arrest, police searched and impounded Brookins' auto. On cross-examination, Perez testified that he knew that there was an active investigative alert naming Brookins as the offender in the burglary of the Peppers store. About 10 p.m. on April 7, Perez and his partner, Officer Motyka, went to an area on North

Leavitt Street that Brookins was known to frequent. They saw Brookins arrive in a Dodge van. After Brookins parked, he was taken into custody.

¶ 9 The State called Chicago police officer Edwin Pagan who testified that on March 7, he went to Peppers after the burglary and viewed the store's surveillance video several times. He asked the store's owner to pause the video where there was a clear image of the offender. Using his phone, Pagan took a photograph of the offender. Pagan shared the photo with other detectives involved in the case, including Pedroza.

¶ 10 Pagan learned that police had a man in custody at a hospital for another burglary. He went to the hospital, compared the photo on his phone with the man in custody, and determined it was not the same man. Officer Blomstrand, who was guarding the man at the hospital, looked at the photo and recognized the man as Brookins. Blomstrand had completed a contact card for Brookins. Thereafter, an investigative alert was issued for Brookins indicating that Blomstrand had recognized him as the man in the photo.

¶ 11 On cross-examination, Pagan acknowledged that he did not take the information he had to a magistrate for a probable cause determination. He testified that if an investigative alert indicates that the detectives have probable cause to arrest an offender, they can do so. Pagan acknowledged that an investigative alert is not a warrant. On redirect examination, the State presented a copy of the photograph that Pagan took of the man on the surveillance video.

¶ 12 The State next called Chicago police officer Jason Motyka who testified that about 10:30 p.m. on April 7, he and Officer Perez went looking for Brookins who was subject to an investigative alert issued by Pedroza, relating to the March 7 burglary of the Peppers store. The investigative alert contained Brookins' name and stated that the items taken from the convenience store, including lottery tickets. Motyka, saw Brookins sitting in the driver's seat of a

maroon minivan, and approached. Motyka and his partner were dressed in plain clothes, and, according to Motyka, he was wearing indicia of the CPD, including his CPD star, bulletproof vest, duty belt, radio, and firearm. He asked Brookins to identify himself. Brookins did, and Motyka arrested Brookins. Lottery tickets were on the front passenger seat of the van. On cross-examination, Motyka testified that the investigative alert indicated that there was probable cause to arrest Brookins. Motyka acknowledged that he and Perez did not have a warrant for Brookins' arrest, or a warrant to search Brookins' van. The officers went to that particular location to look for Brookins because there had been recent contact with him in that area. They conducted their surveillance for three days before finding Brookins.

¶ 13 The trial court stated that the police had “plenty of time” to request an arrest warrant, but did not. The court noted that there was no testimony regarding when Blomstrand identified Brookins in the photo. Nor did Blomstrand testify about his prior contact with Brookins, or how he was able to identify Brookins. It was not readily apparent or clear to the court that the copy of the photo from Pagan's phone was Brookins, and the State did not introduce the surveillance video from the store or testimony from Pagan or Pedroza about what the video showed. The court noted that the photo was a close-up of a person wearing a hat, and it did not show the store, the surroundings, or the person taking anything from the store.

¶ 14 The trial court concluded that the State failed to establish probable cause to arrest Brookins. It further found that even if there were grounds for the investigatory stop, insufficient grounds existed to search the van. And, Motyka's testimony about the lottery tickets being in plain sight was suspect. So the trial court granted Brookins' motion to quash arrest and suppress evidence. The State requested a date to file a motion to reconsider and an attenuation hearing.

¶ 15 At the hearing on its motion to reconsider, the State reviewed the testimony from the police officers and detectives. It argued that probable cause was established based on all of the information possessed by the officers working together. Alternatively, the State argued that if the trial court denied its motion to reconsider, it should conduct an attenuation hearing to allow the evidence that was recovered from Brookins' van to be admitted at trial. The State asserted that the police impounded Brookins' van, and conducted an inventory search, during which the evidence was recovered.

¶ 16 In response, Brookins maintained that the police did not have an arrest warrant issued by a judge, nor did they have probable cause to arrest him. He argued that his arrest based on the investigative alert was unconstitutional.

¶ 17 The trial court stated that there was no testimony regarding what was depicted in the surveillance video. The State disagreed and argued that Pagan's testimony that he viewed the surveillance video and took a photo of a screen shot of the offender from that video established that Pagan was referring to the surveillance video from the March 7 burglary. To this, the trial court stated that although the photo was taken from the video, but, again, there was no evidence of what the surveillance video showed. The trial court questioned whether the photo showed a person standing as a lookout outside the store, or someone standing in an aisle, or someone actually taking something from the store—the photo merely showed a close-up of someone's face, and did not show that person doing anything. The trial court said it needed some showing of what happened during the burglary, or what the person in the photo had done.

¶ 18 The State again disagreed, arguing that the court could consider the totality of the information possessed by the officers working together to determine whether they had reasonable belief that a crime had been committed, and that Brookins committed that crime. The State

maintained that a burglary had occurred, and that Brookins was identified as the offender in the surveillance video. The prosecutor then stated “if the Court would like to see the video, we can make that video available to your Honor.”

¶ 19 The trial court explained that it was troubled that it did not have any evidence of what the video showed, or any evidence as to how Blomstrand was able to identify Brookins. It questioned the circumstances involved in Blomstrand’s earlier contact with Brookins. And then stated “I’ve seen the defendant here in court every day, and when I look at the still photo, it didn’t jump out at me that that was this defendant.” The trial court questioned whether a judge would have issued a warrant if presented with the same information, and the State answered in the affirmative. The following colloquy then occurred:

“THE COURT: So are you asking to reopen, to introduce something, this surveillance video? We’re at this stage of a motion to reconsider.

[THE PROSECUTOR]: Judge, I guess at this stage we would request to reopen the case and present additional evidence, if your Honor would allow.

* * *

THE COURT: And you believe that the – and you ask to reopen to show the surveillance video which would show further evidence of this defendant; is that what you’re saying, that the officer would have had?

[THE PROSECUTOR]: Well, this isn’t the trial, but it would further support the issue of probable cause, which I believe we have presented enough evidence sufficient for a finding of probable cause. So at this point we would be asking to admit further evidence for the issue of the motion to quash arrest. It would go to the probable cause to arrest the defendant.

THE COURT: All right. If you want a date to bring in the surveillance video with the officer, I'll allow you to do that. Or the officer who viewed the surveillance tape with the video."

¶ 20 At the hearing, Officer Pagan testified that he and his partner went to Peppers to investigate a burglary. The store's owner informed them that he had a video of the burglary and the offender. Pagan discovered that the offender entered the store by breaking the glass on the front door and crawling through. Pagan also learned that items taken during the burglary included cigarettes, liquor, and lottery tickets. After watching the video several times, Pagan asked the owner to scan through it slowly to find a clear view of the offender's face. When that occurred, the owner paused the video, and Pagan used his cell phone to take a photograph of the offender from the video.

¶ 21 Pagan later showed the photograph to other officers and detectives. When Officer Blomstrand viewed it, he recognized the man and told Pagan his name was Larry Brookins. Blomstrand said he recently had contact with Brookins when he responded to a domestic disturbance call three days before the burglary. Blomstrand had completed a contact card with Brookins' information, and had given him a ride. Pagan retrieved Brookins' contact card and checked his criminal history in the database, which contained several photographs of Brookins. Blomstrand confirmed that Brookins was the same man he had stopped. Pagan then forwarded all of the information he had to the detectives.

¶ 22 The State published two surveillance videos taken inside Peppers. On the first video, Pagan pointed out a man placing cigarettes into a green duffel bag. Pagan also identified the segment of the video that depicted a clear image of the offender, which Pagan photographed. On the second video, Pagan pointed out the offender crawling into the store through the shattered

glass on the front door. The video showed another angle of the man placing items into the green duffel bag, and then leaving the store. The State moved into evidence the copy of the photograph from Pagan's phone and the two surveillance videos, and rested.

¶ 23 The trial court found that the surveillance videos showed one person entering the store, going behind the counter, removing items from the shelves, and filling a green duffel bag with numerous packs of cigarettes. The court noted that the video showed several angles of the offender from the side and back, depicting his height and build, and his face. The court commented "[t]his evidence at this point is very different than it was when I looked at the copy of the photo and had no description of what took place." The court concluded that, considering all of the evidence together, the police had probable cause to believe that Brookins was the person in the video, and to arrest him for the burglary of the store. The court noted that based on the evidence, the police could have arrested Brookins without an investigative alert. Accordingly, the court granted the State's motion to reconsider, reversed its initial ruling granting Brookins' motion to quash arrest and suppress evidence, and denied that motion.

¶ 24 Brookins filed a motion to reopen the motion to quash arrest and suppress evidence, arguing that the State did not present anything new in its motion to reconsider, and only presented the surveillance videos after the trial court noted that the videos had not been shown. Brookins maintained that his constitutional rights were violated because the police never obtained an arrest warrant, but instead, arrested him based on an investigative alert.

¶ 25 In denying Brookins' motion, the trial court noted that Officer Pagan testified to the contents of the video, it had viewed the video, and "it couldn't be clearer that you're the person in that video in that store that night." Further, the court stated that once the State recalled Pagan and showed the video, it was clear that the police had probable cause to arrest Brookins.

¶ 26 Brookins then filed a motion for substitution of judge for cause claiming that Judge Sullivan, who had presided over all of the proceedings, was prejudiced against him. The motion was heard by the Presiding Judge. Brookins argued that Judge Sullivan initially granted his motion to quash arrest and suppress evidence, but reversed her ruling after she willfully led the State into presenting the surveillance video as evidence. The State presented an affidavit from Judge Sullivan averring that she had no bias or prejudice against Brookins, and could be fair and impartial in hearing his case.

¶ 27 After reviewing the transcript from the hearing on the State's motion to reconsider, the Presiding Judge found that Judge Sullivan: (i) had not led the State to introduce the video, but reframed the State's request, clarifying that the State sought to reopen the hearing to introduce the video; (ii) had a right to reconsider her ruling on the motion and to allow the State to reopen; and (iii) could be fair and impartial in Brookins' case. The motion for substitution was denied.

¶ 28 At trial, the Peppers owner testified that early in the morning of March 7, 2013, he received a call from police that someone had broken into his store. When he arrived at the store and saw that the glass window on the front door was broken and the store was a "mess." He viewed the surveillance videos taken inside the store and saw a man enter and take cigarettes, cigars and liquor. He gave copies of the videos to police. The store owner did not recognize the man in the video, did not know Brookins, and did not give Brookins or anyone else permission to break into his store or take any items.

¶ 29 While the prosecutor played the first video in court, the store owner pointed out a man placing cigarettes inside a bag. He testified that the second video showed a man breaking the glass on the front door, entering the store, and standing near the liquor and lottery tickets. The

store owner could not recall if any lottery tickets were taken. The video also showed the man leaving the store.

¶ 30 Officer Pagan testified that he arrived at the store to investigate the burglary and saw that the front window had shattered. Pagan viewed surveillance videos taken inside the store which showed the offender shattering the front window, entering the store, walking behind the counter, and ransacking the cigarette display. Similar to his prior testimony, Pagan testified that he took a photograph of the offender's face from the video and showed the photo to Blomstrand, who indicated that he knew the offender from recent contact. Based on that information, Pagan identified Brookins as the offender. Pagan also identified Brookins in court.

¶ 31 Officer Blomstrand testified that on March 4, 2013, he responded to a call regarding a domestic incident. A woman pointed out Brookins sitting inside a maroon Dodge Caravan. When Brookins got out of the van, Blomstrand saw a sledgehammer between the front seats. Blomstrand completed a contact card with Brookins' information, and gave him a ride to a hotel.

¶ 32 A few days later, Blomstrand was guarding a burglary suspect at a hospital when Pagan arrived and showed him a photograph of the burglary suspect in this case. Blomstrand told Pagan that the man in the hospital was not the man in the photograph, but he recognized Brookins, and gave Pagan Brookins' contact information. Blomstrand also identified Brookins in court.

¶ 33 Officer Motyka testified that on April 7, he saw an active investigative alert for Brookins indicating that there was probable cause to arrest him for a March 7 burglary of a Peppers store. Motyka and Officer Perez set up surveillance on North Leavitt Street. Brookins arrived in the area driving a maroon Dodge Caravan. The officers approached and asked Brookins his name. Brookins identified himself and was placed under arrest. Motyka drove Brookins' van to the

police station. Inside, Motyka saw a large green duffel bag, a sledgehammer, blue jeans, a black cap, and lottery tickets. Motyka identified Brookins in court.

¶ 34 Brookins called Officer Perez as a witness, who testified that he was one of the officers who initiated Brookins' arrest. Perez acknowledged that he did not have an arrest warrant for Brookins.

¶ 35 Detective Pedroza testified that she and her partner, Detective Amato, arrived at the Peppers store after the burglary. The owner told her that the items taken included cigarettes, liquor, and lottery tickets. Pedroza viewed the surveillance videos. She later issued the investigative alert for Brookins.

¶ 36 Evidence technician Cronin testified that on April 8 she photographed Brookins' van and several items inside. She did not know if any of the items had been moved before she photographed them. On cross-examination, Cronin identified photographs she took of items found in the rear of the van, including a jacket, cap, blue jeans, a green duffel bag, and a sledgehammer. She also photographed lottery tickets on the front seat.

¶ 37 Brookins testified that on the night of April 7, police officers approached him with guns drawn, and yelled at him to get out of his van and put his hands up. When he did, officers pushed him against his van, searched him, and asked him where the gun was. Police handcuffed Brookins and transported him to the police department where he was handcuffed to a wall. An hour later, Brookins was forced to surrender his personal property, fingerprinted, photographed, and then placed in a jail cell without being told why he had been arrested. The police showed Brookins a photograph on a cell phone of a black man.

¶ 38 On cross-examination, Brookins acknowledged that he saw the surveillance videos shown in court. He denied that he was the offender in the videos and denied taking any items

from the store. Brookins acknowledged that he owned the red Dodge Caravan. He also acknowledged that he had clothes and tools inside the van, but could not tell from the photographs if the clothing and green duffel bag were his. Brookins denied that the jacket and lottery tickets found inside the van were his. He did not recall the sledgehammer.

¶ 39 The trial court found that the surveillance videos showed Brookins breaking into the store and committing the burglary. Accordingly, the trial court found Brookins guilty of burglary, and sentenced him to 18 years' imprisonment as a Class X offender.

¶ 40 Analysis

¶ 41 Issue of Trial Court's Impartiality

¶ 42 Brookins first contends that the trial court abandoned impartiality by urging the State to change its strategy during the hearing on his motion to quash arrest and suppress evidence. Brookins argues that when the State presented its motion to reconsider, it did not offer any new evidence, specifically, the surveillance videos. He asserts that the trial court repeatedly stated that it needed more evidence, and the State repeatedly replied that the evidence was sufficient to show that the police had probable cause. Brookins points to the court's question to the prosecutor, asking "are you asking to reopen, to introduce something, this surveillance video?" Brookins argues that the court went too far and assisted the State with presenting the video evidence to establish probable cause. He also argues that the Presiding Judge erred when she denied his motion for substitution of judge for cause based on Judge Sullivan's lack of impartiality.

¶ 43 The State responds that (i) the trial court did not abandon impartiality or become an advocate for the prosecution; (ii) the prosecutor offered to provide the surveillance video before

the court inquired if the State wanted to reopen the hearing; and (iii) the trial court merely clarified the prosecutor's request to reopen proofs to make the video available.

¶ 44 A trial court abuses its discretion by abandoning its judicial role and adopting the role of a prosecutor. *People v. Mimes*, 2014 IL App (1st) 082747-B, ¶ 19. Nevertheless, our supreme court has long held that “it is never improper for a judge to aid in bringing out the truth in a fair and impartial manner.” *People v. Franceschini*, 20 Ill. 2d 126, 132 (1960). A trial judge may act to ensure that evidence which is essential to the proper disposition of a case is not inadvertently omitted. *People v. Robinson*, 236 Ill. App. 3d 313, 317 (1992). Hence, a court has the authority to allow the State to reopen its case, including during a suppression hearing, even without a motion from the State. *In re Tyreke H.*, 2017 IL App (1st) 170406, ¶ 111; *Franceschini*, 20 Ill. 2d at 132 (quoting *People v. Lurie*, 276 Ill. 630, 641 (1917)).

¶ 45 The record reveals that the trial court did not abandon impartiality and act as an advocate for the State. Contrary to Brookins' assertion, the trial court did not urge the State to change its strategy, nor did it assist the State with presenting the surveillance video as evidence to establish probable cause. The record shows that at the hearing on its motion to reconsider, the State repeatedly argued that the totality of the information possessed by the police officers working together was enough to establish probable cause to arrest Brookins for the burglary. The court disagreed and explained that although Officer Pagan had testified that he viewed the surveillance video, there was no testimony regarding what activity was depicted in that video. The court acknowledged that the photograph of the man's face was taken from the video, but further explained that no evidence indicated what that person had actually done.

¶ 46 The prosecutor responded by arguing that a burglary had occurred, and that Brookins was the offender in the video. The record shows that it was the prosecutor who then offered “if the

court would like to see the video, we can make that video available to your Honor.” Moments later, the court asked “[s]o are you asking to reopen, to introduce something, this surveillance video?” The prosecutor replied “I guess at this stage we would request to reopen the case and present additional evidence, if your Honor would allow.”

¶ 47 Thus the record shows that the prosecutor initiated the introduction of the surveillance video, and the trial court clarified that the State was asking to reopen proofs to introduce the video. The trial court had the authority to allow the State to do so to ensure that the evidence, which was essential to the proper disposition of Brookins’ motion to quash and suppress, was not omitted. *In re Tyreke H.*, 2017 IL App (1st) 170406, ¶ 111; *Robinson*, 236 Ill. App. 3d at 317. So the record shows that the trial court aided in bringing out the truth in a fair and impartial manner. *Franceschini*, 20 Ill. 2d at 132. Accordingly, we find no appearance of partiality or abuse of discretion by the trial court.

¶ 48 Motion for Substitution of Judge

¶ 49 Based on this finding, it follows that we find no merit in Brookins’ argument that the court erred when it denied his motion for substitution of judge for cause. See 725 ILCS 5/114-5(d) (West 2014). To prevail, Brookins must demonstrate that he suffered actual prejudice from the trial judge. *People v. Haywood*, 2016 IL App (1st) 133201, ¶ 29. Prejudice involves hostility, animosity, distrust, or ill will towards the defendant. *Id.* A trial court’s ruling on a motion for substitution will not be disturbed on review unless the determination was against the manifest weight of the evidence. *Id.*

¶ 50 Brookins’ motion for substitution followed from his assertion that Judge Sullivan abandoned impartiality and led the State to admit the surveillance video as new evidence to support a probable cause finding against him. In ruling on the motion, the Presiding Judge found

that Judge Sullivan had not led the State to introduce the video, but instead, she had merely clarified that the State was asking to reopen the hearing to introduce the video. The Presiding Judge explained that Judge Sullivan had a right to allow the State to reopen, and to reconsider her ruling on Brookins' motion to quash and suppress. We agree with this analysis.

¶ 51 Probable Cause

¶ 52 Finally, Brookins contends that the trial court erred when it denied his motion to quash arrest and suppress evidence because the State failed to show that the police had probable cause to arrest him. Brookins argues that Blomstrand's identification of him from the photograph on Pagan's phone was improbable. Alternatively, Brookins argues that collateral estoppel barred the trial court from reopening the proofs and admitting the surveillance video because the video was not newly discovered evidence.

¶ 53 The State responds that the trial court, on reconsideration, properly denied Brookins' motion to quash and suppress as the evidence showed that the police had probable cause to arrest Brookins for the burglary based on the information known to the officers collectively. The State further argues that collateral estoppel does not apply because the doctrine only applies in situations where a defendant attempts to re-litigate a motion to suppress on grounds that are different than the grounds argued at the initial hearing.

¶ 54 Our review of the trial court's ruling on Brookins' motion to quash arrest and suppress evidence presents questions of both fact and law. *People v. McCarty*, 223 Ill. 2d 109, 148 (2006). The trial court's factual findings are given great deference and will not be disturbed on review unless they are against the manifest weight of the evidence; however, the court's ruling on the motion is a question of law which we review *de novo*. *People v. Close*, 238 Ill. 2d 497, 504 (2010). At a hearing on a motion to quash and suppress, the trial court is responsible for

determining the credibility of the witnesses, weighing the evidence, and drawing reasonable inferences. *People v. Ballard*, 206 Ill. 2d 151, 162 (2002).

¶ 55 The fourth amendment of the United States Constitution, which applies to the states through the fourteenth amendment, protects all citizens from unreasonable searches and seizures in their homes, effects and persons. U.S. Const., amend. IV. An arrest secured without a warrant is valid only where it is supported by probable cause. *People v. Grant*, 2013 IL 112734, ¶ 11. Police have probable cause to arrest an individual when the facts known to the officer at the time of the arrest are sufficient to lead a reasonably cautious person to believe that the individual has committed a crime. *Id.* Whether probable cause exists depends on the totality of the circumstances at the time of the arrest. *Id.* An officer's factual knowledge, based on his or her police experience, is relevant to determining probable cause. *Id.* Common sense considerations the existence of probable cause; the calculation concerns the probability of criminal activity, rather than proof beyond a reasonable doubt. *Id.*

¶ 56 Although an arrest may be based on information of which the arresting officer does not have personal knowledge, the State must show that the information the officer relied on was based on facts sufficient to show probable cause to support an arrest. *People v. Hyland*, 2012 IL App (1st) 110966, ¶ 22. An arresting officer may rely on information received in an official police communication, provided that the officer who issued the communication had probable cause to arrest. *People v. Lawson*, 298 Ill. App. 3d 997, 1001 (1998).

¶ 57 We have carefully reviewed the record and it shows that the State sufficiently established that the police had probable cause to arrest Brookins for the burglary. At the hearing on Brookins' motion to quash and suppress, both Detective Pedroza and Officer Pagan testified that they viewed the surveillance video of the burglary at the Peppers store. Officer Pagan paused the

video where it depicted a clear image of the offender, and took a photograph with his phone. He later showed that photo to Officer Blomstrand, who recognized and identified Brookins based on recent contact.

¶ 58 At the hearing on the State's motion to reconsider, Pagan further testified that the surveillance video showed the offender breaking the glass on the front door and crawling into the store. As the video played in court, Pagan pointed out the offender breaking into the store, placing cigarettes into a green duffel bag, and leaving the store. He also pointed out the segment of the video from which he took the photograph of the offender.

¶ 59 Pagan testified that when Blomstrand identified Brookins, he specifically told Pagan Brookins' name. Blomstrand had contact with Brookins when he responded to a domestic disturbance call on March 4, three days before the burglary. Blomstrand completed a contact card with Brookins' information, and had given him a ride. Pagan retrieved Brookins' contact card and checked his criminal history in the database, which contained several additional photographs of Brookins. Blomstrand then confirmed that the photograph in Pagan's phone was of Brookins. The record thus shows that Blomstrand had sufficient contact with Brookins within days of the burglary, which rendered his identification reliable.

¶ 60 Pagan testified that he forwarded all of the information he had to the detectives and Detective Pedroza, who had also viewed the surveillance video, then issued the investigative alert for Brookins.

¶ 61 Officers Perez and Motyka both testified at the hearing on Brookins' motion to quash and suppress that they arrested Brookins based on the information they received in the investigative alert. They testified that the alert named Brookins as the offender in the burglary of the Peppers

store. Motyka further testified that the alert stated that Brookins had taken cigarettes and lottery tickets during the burglary.

¶ 62 The totality of the circumstances revealed in the record, including the surveillance video and Blomstrand's identification of Brookins, establish that the police had sufficient facts to reasonably believe that Brookins had committed the burglary of the Peppers store. *Grant*, 2013 IL 112734, ¶ 11 (considerations in determining existence of probable cause). Consequently, the investigative alert issued by Pedroza was based on probable cause. Furthermore, Perez and Motyka were permitted to rely on the information contained in the investigative alert, which gave them probable cause to arrest Brookins. *Lawson*, 298 Ill. App. 3d at 1001.

¶ 63 Accordingly, the trial court's finding that the police had probable cause to arrest Brookins was not against the manifest weight of the evidence, and its denial of his motion to quash arrest and suppress evidence was proper.

¶ 64 Doctrine of Collateral Estoppel

¶ 65 We reject Brookins' alternative argument that the trial court was barred from reopening proofs and admitting the surveillance video based on the doctrine of collateral estoppel. Generally, collateral estoppel bars rehearing on a motion to suppress in the same proceeding, except "where the defendant shows 'exceptional circumstances or any evidence in addition to that submitted upon the first hearing which had become available for submission in connection with the motion to suppress.'" *People v. Gilliam*, 172 Ill. 2d 484, 505-06 (1996) (quoting *People v. Holland*, 56 Ill. 2d 318, 321 (1974)). In *Gilliam*, the court explained that to avoid the collateral estoppel bar on the basis of "additional evidence" that had become available, the evidence must be "newly discovered evidence." *Id.* at 506. Relying on this holding from *Gilliam*, Brookins

argues that, because the video was not “newly discovered evidence,” the trial court was prohibited from allowing the State to reopen proofs to admit it.

¶ 66 This court, however, has rejected the argument that collateral estoppel bars a trial court from reconsidering its ruling on a motion to suppress. See *People v. Saunders*, 307 Ill. App. 3d 406, 412 (1999). “A ruling on a motion to suppress ‘may be changed or reversed any time before final judgment.’ ” *Id.* (quoting *People v. Zinnamon*, 266 Ill. App. 3d 671, 675 (1993)). As discussed, this court has repeatedly found that a trial court has the authority to allow a litigant to reopen its case under appropriate circumstances, including during a suppression hearing, even without a motion from the State. *In re Tyreke H.*, 2017 IL App (1st) 170406, ¶ 111 (citing *People v. Gonzalez-Carrera*, 2014 IL App (2d) 130968, ¶ 21. A court has the discretion to allow the State to present more evidence, even after it has rested its case, and that decision will not be disturbed on review absent a clear abuse of discretion. *Gonzalez-Carrera*, 2014 IL App (2d) 130968, ¶ 21. Factors that may be considered include: (i) whether the failure to present the evidence was inadvertent; (ii) whether the other party will be subjected to surprise or unfair prejudice; (iii) the importance of the new evidence; and (iv) any cogent reasons that justified denying the motion to reopen. *Id.*

¶ 67 Evidence that is the subject of a motion to reopen proofs should be relevant to the theory previously argued by the State at the hearing, rather than an attempt to establish an entirely different justification for a seizure. See *id.* ¶ 22 (and cases). In *Gonzalez-Carrera*, the court explained:

“It is one thing to allow a party, under limited circumstances, to introduce evidence to support its original theory or claim because it inadvertently failed to do so. It is an

entirely different matter to give a losing litigant a second bite at the apple by allowing it to argue an alternative basis for relief after it lost on its original basis.” *Id.*

¶ 68 The record shows that the trial court’s decision to allow the State to reopen proofs to present the surveillance video was based on the court’s belief of the importance of that evidence. Initially, the State had presented testimony from Pagan and Pedroza that they had viewed the surveillance video of the burglary, but they did not testify about what was depicted in the video. The court further noted that the photograph taken by Pagan from the video showed a close-up of someone’s face, and did not show that person doing anything. As a result, the trial court found that the State had failed to establish probable cause.

¶ 69 In its motion to reconsider, the State, maintaining its theory, repeatedly argued that the testimony from the multiple officers sufficiently established that a burglary had occurred, and that Brookins was the offender depicted in the surveillance video, thereby proving probable cause. The prosecutor then offered to provide the video to the court. After confirming that the prosecutor believed that the video would show further evidence that the police had probable cause to arrest Brookins, the trial court allowed the State to reopen proofs to present the video.

¶ 70 Under these circumstances, the trial court stayed within the scope of its authority to allow the additional evidence, which it deemed important to a proper disposition of the motion to quash and suppress. *In re Tyreke H.*, 2017 IL App (1st) 170406, ¶ 111; *Robinson*, 236 Ill. App. 3d at 317. Not only do we find no abuse of discretion in allowing the State to reopen proofs and present the video, but that the trial judge acted impartially and judiciously throughout the proceedings.

¶ 71 Affirmed.