SIXTH DIVISION
November 9, 2018

No. 1-16-0485

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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. 09 C6 60672
	)	
ADAM MONTJOY,	)	Honorable
	)	Luciano Panici,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE CONNORS delivered the judgment of the court.
Presiding Justice Delort and Justice Harris concurred in the judgment.

ORDER

¶ 1 *Held*: Trial court's denial of defendant's motion to quash arrest and suppress evidence was proper where the warrantless entry by police was justified by exigent circumstances; fines and fees order amended to indicate number of days served in custody.

¶ 2 Following a bench trial, defendant Adam Montjoy was convicted of possession of a controlled substance with intent to deliver between 15 and 100 grams of cocaine, and sentenced to 12 years' imprisonment. On appeal, defendant contends that the trial court erred when it denied his motion to quash arrest and suppress evidence of the narcotics found inside his

apartment because the warrantless entry by police was not justified by exigent circumstances. Defendant also contends that his fines and fees order should be amended to reflect that he served 1798 days in presentence custody in order for him to receive the monetary credit against his fines to which he is entitled.[1] We amend the fines and fees order, and affirm defendant's conviction in all other respects.

¶ 3 Defendant was charged with one count of possession of a controlled substance with intent to deliver between 15 and 100 grams of cocaine, and one count of simple possession of that substance. Defendant filed a motion to quash arrest and suppress evidence arguing that the police forcibly entered his home, searched the premises, recovered narcotics, and arrested him without an arrest or search warrant. Defendant argued that the police did not have probable cause to arrest him without a warrant, rendering his arrest unlawful. Therefore, the narcotics recovered from his home should be barred from evidence under the exclusionary rule.

¶ 4 At the hearing on defendant's motion, defense counsel asserted in his opening statement that the police responded to a call about a man with a gun, and upon arrival, learned of a misdemeanor domestic battery. Counsel argued that defendant was alone inside his apartment and refused to open the door, but that exigent circumstances did not exist, and thus, the police did not have authority to forcibly enter the apartment without a warrant. The State responded that the police entered the apartment under exigent circumstances and found the narcotics in plain view during a permissible protective sweep of the apartment.

[1] Defendant does not challenge the days of sentencing credit on his mittimus, which is correctly reflected.

¶ 5 Defendant presented testimony from two Calumet City police officers. Officer Mike Serrano testified that about 2:30 p.m. on March 8, 2009, he heard over his radio Officer Chavez[2] being dispatched to a domestic situation regarding a man barricaded inside an apartment with a small child and a handgun. Serrano drove to the location. He entered the apartment building and saw Chavez in the first-floor hallway with four or five people. Chavez told Serrano that the man was upstairs inside the subject apartment. Serrano recalled seeing a woman with Chavez, but could not recall if she had a child with her.

¶ 6 Serrano went upstairs to the subject apartment, knocked on the door, announced his office, and asked defendant to come out and speak with him. Defendant refused. Serrano did not intend to arrest defendant at that point because he did not have all of the information about the situation. Serrano wanted to hear defendant's side of the story. Serrano simultaneously spoke with defendant through the door and Chavez in the hall, trying to establish what had happened. Serrano learned that a domestic battery had occurred. He also learned that the female victim and child were not inside the apartment, but were in the hallway. The police had been told that defendant might have a gun. Serrano testified that based on his 15 years of experience, when someone claims they might have observed a gun, he must proceed as though a gun is present for his own safety. Serrano did not know if anyone else was inside the apartment with defendant.

¶ 7 Serrano further testified that Sergeant David Iwaszko arrived at the scene and joined him outside the apartment door. The two officers spoke with defendant through the door and tried to persuade him to exit the apartment. They also told defendant that he was under arrest for domestic battery. Defendant refused to exit the apartment. Iwaszko attempted to kick the door

[2] Officer Chavez's first name does not appear in the record.

open, but was unsuccessful. Officer David Miro arrived at the apartment. The officers repeatedly told defendant to exit the apartment and he repeatedly refused. When it became apparent that defendant would not exit the apartment, the officers again told him that he was under arrest and that they were not leaving. Miro then kicked the door open.

¶ 8 The three officers entered the apartment and observed defendant standing in the kitchen. Iwaszko brought defendant down to the floor and handcuffed him. Defendant did not possess a gun. Iwaszko removed defendant from the apartment. Serrano and Miro quickly searched the apartment to insure that no one else was inside, and to search for a gun. Miro called Serrano into the bedroom. Serrano observed a small caliber bullet on the floor. On a television stand, he also observed a plastic bag containing an off-white rock-like substance of suspect cocaine.

¶ 9 Sergeant Iwaszko testified that about 2:30 p.m. on March 8, he responded to a 911 call regarding a domestic battery in progress involving a child and a possible weapon. Iwaszko arrived at the three-story apartment building about 2:35 p.m. There were stairs on both the east and west side of the building. Serrano was on the third floor outside of the subject apartment. Chavez was standing with the victim, Alyssa Dixon, on a landing between the second and third floors. Other people, including Joni Rudd, were standing in the hallway. Chavez had a conversation with Rudd about the gun. Dixon told Chavez that she and defendant had an argument, and that defendant choked her. Chavez told Iwaszko that a domestic battery had occurred, that the child was with Chavez, and that defendant possibly had a gun inside the apartment. The apartment door was closed and locked. Iwaszko did not know if anyone else was inside the apartment with defendant.

¶ 10 Iwaszko spoke to defendant through the closed door and asked him to exit the apartment to discuss the situation. Iwaszko was going to arrest defendant for domestic battery. Defendant refused to come out and refused to open the door. After speaking with defendant for 10 minutes, Iwaszko attempted to kick in the door, but was unsuccessful. Iwaszko again tried to convince defendant to exit the apartment, but defendant refused. Miro then arrived at the apartment and kicked the door open. Iwaszko, Miro and Serrano entered the apartment with their weapons drawn and observed defendant standing in the kitchen, about 10 feet from the door. The officers ordered defendant to get on the floor. Defendant complied. Iwaszko handcuffed defendant, conducted a pat down, and walked defendant outside to his police vehicle. Defendant was not in physical possession of any illegal items.

¶ 11 In closing, defense counsel argued that the police did not have probable cause to arrest defendant based on what Dixon had told them. Counsel pointed out that Dixon and the child were safely outside of the apartment, and argued that the police did not have authority to enter the apartment based on an alleged misdemeanor. Counsel further argued that there were no exigent circumstances that gave police authority to enter the apartment without a warrant. The State responded that the police had probable cause to arrest defendant, and that they had authority to conduct a protective sweep of the apartment, during which they observed the cocaine in plain view.

¶ 12 The trial court found that the evidence was not contradicted and that the police "absolutely" had probable cause to arrest defendant. It further found that the officers spoke to defendant for a reasonable amount of time before kicking in the door. The court also found that the officers had authority to conduct a protective sweep of the apartment. The court stated:

> "I think that the exigent circumstances would have provided that the police officers would have been remiss in their duties had they left the apartment without doing a sweep, and if a gun had been found, and then later on somebody would have been hurt, then they would have been after the police department.
>
> I think that they had every right to do that. Thereafter during the sweep they found the drugs in plain view, which nobody disagrees or contests."

Accordingly, the trial court denied defendant's motion to quash arrest and suppress evidence.

¶ 13 At trial, Iwaszko testified substantially the same as he did at the suppression hearing, adding that he spoke with defendant through the door for about 15 to 20 minutes before Miro kicked it open. Miro testified substantially similar to Iwaszko and Serrano regarding their interaction with defendant and forced entry. Miro added that he, Iwaszko and Serrano ran inside the apartment with their weapons drawn. During a security sweep of the apartment, Miro recovered one round of ammunition from the bedroom floor, and a plastic bag containing two large chunks of suspect crack cocaine from a television stand in the bedroom. In another bedroom, Miro recovered rent receipts containing defendant's name.

¶ 14 The State presented a stipulation that forensic chemist Brian Trost tested one of the two chunks of the white, rock-like substance recovered by Miro and found it positive for 39.7 grams of cocaine. The total weight of the two chunks was 70.7 grams.

¶ 15 Rudd testified for the defense that about 2 p.m. on March 8, her daughter, Dixon, called and said she was leaving defendant and asked Rudd to pick her up. Rudd arrived at the apartment with other family members and helped Dixon move her personal belongings out of the apartment. When defendant refused to give them the baby, Rudd called the police. Rudd denied

seeing any weapons, bullets or narcotics inside the bedrooms. When the police arrived, the baby was already outside of the apartment, and defendant had closed the apartment door.

¶ 16 On cross-examination, Rudd testified that Dixon was six months pregnant at the time of the incident. Rudd denied that Dixon told her what she and defendant argued about. Rudd further denied seeing any marks on Dixon's face, neck or hands.

¶ 17 In rebuttal, Chavez testified that she spoke with Dixon and Rudd together at the apartment, and Dixon told her that she was arguing with defendant because he gave her an STD. Chavez further testified that she observed scratches and bruises on Dixon's neck. Rudd told Chavez that defendant had a weapon inside the apartment.

¶ 18 The trial court found defendant guilty of both counts and merged the possession count into the charge of possession of a controlled substance with intent to deliver. The court delayed sentencing in this case for four years, pending defendant's trial for attempted first degree murder in an unrelated case. Defendant was acquitted of that charge. The court sentenced defendant to 12 years' imprisonment in this case, and awarded him 1798 days of sentencing credit for time served in custody. The court also assessed defendant $4144 in fines, fees and court costs.

¶ 19 On appeal, defendant first contends that the trial court erred when it denied his motion to quash arrest and suppress evidence of the narcotics found inside his apartment because the warrantless entry by police was not justified by exigent circumstances. Defendant concedes that the police had probable cause to arrest him for domestic battery. He argues, however, that there were no pressing concerns that required the police to take immediate action. Defendant asserts that he was locked inside his apartment alone, he was not a threat to anyone, Dixon was not injured, the offense was not grave but a misdemeanor, he was not a flight risk, and there was no

reason for police to believe he was destroying evidence. Consequently, he claims that the police should have secured a warrant for his arrest.

¶ 20 The State responds that the court properly denied defendant's motion because the totality of the circumstances show that the officers acted reasonably and exigent circumstances existed that justified their warrantless entry. The State argues that a domestic battery was recently committed, that it was a grave and violent offense, there was no unjustified delay during which the police could have obtained a warrant, there was reasonable belief that defendant was armed, the police had probable cause to arrest him, they knew defendant was inside the premises, he would likely escape if not apprehended, and their entry was a last resort.

¶ 21 Our review of the trial court's ruling on defendant's 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 therefrom. *People v. Ballard*, 206 Ill. 2d 151, 162 (2002).

¶ 22 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. Police are prohibited from entering and searching a person's home without a warrant supported by probable cause, unless there are exigent circumstances. *People v. Lampitok*, 207 Ill. 2d 231, 243 (2003). Absent exigent

circumstances, a search or seizure inside a home without a warrant is presumptively unreasonable. *People v. McNeal*, 175 Ill. 2d 335, 344 (1997).

¶ 23 When reviewing an assertion of exigent circumstances, the court must determine if police acted reasonably by considering the totality of the circumstances that confronted them at the time of entry. *Id.* at 345-46. Each case must be decided based on the facts presented. *Id.* at 345. Our supreme court has identified the following factors as relevant considerations when determining whether exigent circumstances justified a warrantless entry into a private residence: (1) was the crime under investigation recently committed; (2) was there a deliberate or unjustified delay by police during which time they could have obtained a warrant; (3) was a grave offense, particularly one of violence, involved; (4) was there a reasonable belief the suspect was armed; (5) did the police act on a clear showing of probable cause; (6) was there a likelihood the suspect would escape if not quickly apprehended; (7) did police have a strong reason to believe the suspect was in the premises; and (8) although nonconsensual, was the police entry made peaceably. *Id.* The supreme court stated that no list of factors bearing on exigency is exhaustive, and these factors are merely guidelines, not cardinal maxims that must be applied rigidly in each case. *Id.*

¶ 24 Here, the record shows that Serrano and Iwaszko both testified that they were responding to a 911 domestic disturbance call involving a child and a possible handgun. At the scene, they learned that shortly before their arrival, defendant had committed a domestic battery against his girlfriend, Dixon. Though Dixon and the child were outside of the apartment, police were told that defendant might be in possession of a gun inside. Defendant had locked himself inside the apartment and refused police orders to come out, even after being told that he was under arrest

for domestic battery. Serrano and Iwaszko both testified that they did not know if anyone else was inside the apartment with defendant. Police attempted to persuade defendant to exit the apartment for 15 to 20 minutes. When those attempts were unsuccessful, and it became apparent defendant would not exit the apartment, the officers then forcibly entered the apartment by kicking open the door.

¶ 25 The record therefore reveals that, based on consideration of the relevant factors, the police faced exigent circumstances that justified their warrantless entry into defendant's apartment. The crime under investigation, the domestic battery, had been recently committed shortly before police arrived on the scene. The police made entry 15 to 20 minutes after arriving, and thus, there is no indication or evidence of any delay during which they could have obtained a warrant. The crime, the choking of Dixon, involved violence. The police had been informed that defendant was possibly armed with a handgun, and they did not know if anyone else was inside the apartment with him. The police could therefore reasonably believe that defendant was actually armed, and that there was potential for additional imminent violence.

¶ 26 In addition, defendant concedes that the police had reasonable belief that he was armed, had probable cause to arrest him for the domestic battery, and that they knew he was inside the premises. Though the forced entry by police may not have been what would typically be characterized as "peaceable," there is no indication that the force used was excessive. The record shows that Iwaszko quickly detained and handcuffed defendant upon entering, then walked him out of the apartment and to a police vehicle without incident. Regarding defendant's likelihood of escape, the known facts do not weigh either for or against finding exigent circumstances. It is unknown whether there was another manner of exit available to defendant, whether it was

another door, window, balcony or fire escape. There is no indication whether any such information was known to police. Nonetheless, even if defendant had no likelihood of escape, all of the other factors weigh in favor of finding exigent circumstances.

¶ 27 In so finding, we reject defendant's reliance on *People v. Brown*, 277 Ill. App. 3d 989 (1996). In *Brown*, the police heard gunshots, then observed the defendant on a second-floor porch holding a gun. *Id.* at 991. The defendant fled into an apartment, but the officers could not follow him because the door was fortified with heavy steel and burglar bars. *Id.* at 991-92. Several additional officers arrived at the scene. *Id.* at 992. While numerous officers secured the front and rear entrances to the building for nearly three hours, two officers attempted to locate a judge to execute a search warrant. *Id.* When unsuccessful, the officers returned to the building and forcibly entered the apartment using a battering ram. *Id.* On appeal, this court found that there were no exigent circumstances that justified the warrantless entry. *Id.* at 997. This court noted that a successful initial entry may have been justified under hot pursuit. *Id.* at 996. However, when the police determined that they had time to seek a warrant, and delayed entry for nearly three hours, the exigency of the situation was diminished. *Id.* Under these circumstances, this court found that there was no reason why the officers could not have maintained the stakeout for some additional time to procure a warrant. *Id.* at 997.

¶ 28 Unlike *Brown*, in this case, there was no deliberate delay by the officers during which time they could have obtained a warrant. The officers attempted to persuade defendant to exit the apartment for 15 to 20 minutes. When it became apparent that defendant would not exit the apartment, the officers forcibly entered without any delay.

¶ 29 Based on the facts of this case, we conclude that under the totality of the circumstances that confronted police at the time they entered the apartment, the officers acted reasonably. Exigent circumstances justified their decision to enter the apartment, seize defendant, and conduct a protective sweep without a warrant, at which time they found the cocaine in plain view. Accordingly, the trial court did not err when it denied defendant's motion to quash arrest and suppress the narcotics.

¶ 30 Defendant next contends, and the State agrees, that his fines and fees order should be amended to reflect that he served 1798 days in presentence custody in order for him to receive the monetary credit against his fines to which he is entitled. The line on that order where the number of days served is to be indicated, allowing for calculation of his monetary credit, was erroneously left blank. The parties agree that once the number of days served is entered, his monetary credit can be applied against his eligible fines, which will reduce his assessment from $4144 to $939.

¶ 31 Pursuant to section 110-14 of the Code of Criminal Procedure (Code) (725 ILCS 5/110-14 (West 2010)), a defendant is entitled to have a credit applied against his fines of $5 for each day he spent in presentence custody. Defendant may apply for the monetary credit he is due under section 110-14 at any time, and at any stage of court proceedings. *People v. Caballero*, 228 Ill. 2d 79, 88 (2008).

¶ 32 Here, the record indicates that defendant spent 1798 days in presentence custody, and is therefore entitled to a credit of $8990 against his eligible fines. The parties agree, and the fines and fees order indicates, that defendant was assessed $3205 in fines that are subject to offset by the presentence credit under section 110-14 of the Code. Pursuant to Illinois Supreme Court Rule

615(b) (eff. Jan. 1, 1967), we modify defendant's fines and fees order to reflect that he served 1798 days in custody. After applying the credit of $3205, defendant's total amount due should be $939.

¶ 33 For these reasons, we amend defendant's fines and fees order to reflect the number of days served in custody, and affirm his conviction and sentence in all other respects.

¶ 34 Affirmed; fines and fees order amended.