2019 IL App (1st) 161701-U, 171647-U
No. 1-16-1701, 1-17-1647

SECOND DIVISION
March 29, 2019

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court
	)	of Cook County.
Plaintiff-Appellee,	)	
	)	
v.	)	No. 13CR23394
	)	
VIRGIL GIPSON,	)	
	)	The Honorable
Defendant-Appellant.	)	Nicholas Ford,
	)	Judge Presiding.

JUSTICE PUCINSKI delivered the judgment of the court.
Justices Mason and Lavin concurred in the judgment.

ORDER

¶ 1 *Held:* Defendant's armed habitual criminal conviction affirmed where the circuit court properly denied his pretrial motion to suppress.

¶ 2 Following a bench trial, defendant Virgil Gipson was convicted of the offense of armed habitual criminal and sentenced to eight years' imprisonment. Defendant appeals his conviction and the sentence imposed thereon, arguing that the search in which police officers recovered the firearm that he was found to unlawfully possess, was conducted in violation of his constitutional

rights and that the court erred in denying his pretrial motion to suppress. For the reasons explained herein, we affirm the judgment of the circuit court.

¶ 3 BACKGROUND

¶ 4 On September 20, 2013, defendant was arrested for misdemeanor theft of a cellular phone. During the course of a subsequent search, officers recovered cannabis from his pocket as well as a handgun and ammunition inside of a box that was in defendant's possession at the time of his arrest. Based upon the results of the search, defendant was charged with a number of weapons offenses including armed habitual criminal, unlawful use of a weapon by a felon, aggravated unlawful use of a weapon by a felon, and defacing a firearm.[1]

¶ 5 Defendant filed a motion to quash his arrest and to suppress evidence. In his motion, defendant argued that his initial arrest was unsupported by probable cause and that the subsequent search was likewise unlawful. Accordingly, defendant contended that suppression of the fruits of the unlawful search was required. The circuit court subsequently presided over a hearing on defendant's motion.

¶ 6 At the hearing, Chicago Police Officer Jason Wilson testified that at approximately 6:45 p.m. on September 20, 2013, he was dispatched to a McDonald's restaurant located at 36 West 95th Street. Upon his arrival at the restaurant, he spoke to a gentleman named Quinton Jones who reported that defendant had stolen his cellular phone. Jones explained that he had let defendant borrow his cell phone and that when he approached defendant to get his phone back, defendant claimed that he no longer had it. Jones reported the theft to a McDonald's security guard and the guard called his cell phone number in an effort to locate the phone. They heard the

[1] Defendant was also initially charged with misdemeanor theft and possession of cannabis; however, those charges were later dismissed when the State elected to proceed solely with the gun charges.

phone ringing as defendant and his sister were exiting the restaurant. Jones observed the pair head eastbound away from the restaurant.

¶ 7 After interviewing Jones and the McDonald's security guard, Officer Wilson relocated to a nearby CTA bus stop located at 14 West 95th Street, where he encountered defendant and his sister. Jones, who accompanied him, identified defendant as the individual who had borrowed and failed to return his phone. He also identified defendant's sister as the woman who had been with defendant at the time. Officer Wilson recovered Jones's cell phone from the woman's "bosom area" and defendant and his sister were both placed in handcuffs and arrested for misdemeanor theft. During the course of a custodial search of defendant's person, Officer Wilson recovered cannabis.

¶ 8 Officer Wilson testified that at the time of his arrest, defendant was holding a box in his hands that he claimed held a gift for his daughter. After defendant and his sister were transported to the 6th District Police Station for processing, Officer Wilson inventoried the box that had been in his possession. Inside of the box were "children items" as well as a Smith and Wesson .40 caliber handgun. Officer Wilson explained that it was necessary to open and inventory the contents of the box for safety purposes and to ensure that no dangerous items were contained therein. When defendant was asked if he was aware that a gun had been inside of the box, he "immediately" denied any such knowledge. Officer Wilson acknowledged that the offenses with which defendant was initially charged—misdemeanor theft and misdemeanor possession of cannabis—were both bondable offenses.

¶ 9 Defendant testified that on September 20, 2013, at approximately 6:45 p.m., he was standing at the CTA bus terminal. His sister was standing approximately seven or eight yards away from him. At that time, he was approached by two officers who inquired if he had recently

been at the nearby McDonald's restaurant. When defendant confirmed he had been there, the officers indicated that they were inquiring about "an incident with a telephone." Defendant acknowledged that he "kn[e]w about that." He confirmed that he had borrowed Jones's phone, and explained that after he finished using the phone, he put it on the table, and walked up to the front of the restaurant to order some more food. When he returned to the table where he and his sister had been sitting, he no longer saw the phone. Jones then approached him and inquired about his phone. Defendant looked around the table, emptied his pockets, and searched his bag, but was unable to find Jones's phone. In an effort to locate the phone, a security guard called Jones's number and Jones "heard the phone on [defendant's] sister." Defendant asked his sister if she had Jones's phone, but she denied it and left the restaurant. When she returned shortly thereafter, defendant again asked his sister if she had Jones's phone, and she again denied it. Jones, however, insisted he "heard the ring tone on [defendant's] sister," and an argument ensued. Defendant and his sister were then kicked out of the restaurant.

¶ 10 After being kicked out of McDonald's, defendant testified that he and his sister walked over to the 95th Street bus station. At that time, he was carrying a bag and his sister was carrying a box. Shortly thereafter, he and his sister were approached by police officers, and Officer Wilson ultimately recovered Jones's phone from his sister. His sister, however, told the officers that defendant had "nothing to do with the theft." Nonetheless, Officer Wilson "frisked" defendant, but ultimately told him that he was "free to go." Before defendant began walking away, Officer Wilson asked his sister if she wanted to release her property to her brother, and she responded "yeah." As a result, defendant took possession of his sister's keys, identification, money, and the box that she had been holding.

¶ 11 Shortly after defendant took possession of his sister's property, however, Officer Wilson approached him and stated, "we have a problem." Officer Wilson explained that Jones also wanted to file charges against defendant for the cell phone theft. Defendant responded, "I ain't stole [sic] nothing. [My sister] just told ya'll I didn't have nothin to do with it." Officer Wilson agreed, but explained that Jones had the right to file a complaint against him for theft if he wanted to. He urged defendant not to worry, however, explaining that 'it's only a misdemeanor" told him that he would be "out in a few hours." Defendant, in turn, responded, "I want to bond out for it," and Officer Wilson said that they would discuss the matter at the police station.

¶ 12 After being transported to the police station, defendant reiterated his request to "bond out." Approximately two hours later, officers came to him with his bag and the box from which a handgun and shells were recovered and questioned him about the gun.

¶ 13 On cross-examination, defendant denied making any statements to police officers about the box and denied "hav[ing] the box." He further denied that officers had recovered cannabis from his person or that he owned a gun.

¶ 14 Upon hearing the aforementioned testimony, the circuit court denied defendant's motion to suppress. In doing so, the court found that police had probable cause to arrest defendant following Jones's identification of him as the individual who borrowed and then failed to return his phone. The court further found that the "[s]ubsequent location of marijuana on his person would have been an additional basis for probable cause." Finally, the court noted that "defendant disassociated himself completely with the [box] that was seized." Although the court did "not believe*** very much of what the defendant said," the court found that defendant's disassociation provided "another basis" to dismiss his motion to suppress due to "lack of standing because he's not indicating that he ever had the box or that the box was his."

¶ 15 Following the court's denial of his motion to suppress, defendant, who was represented by a court-appointed attorney, indicated his desire to proceed *pro se*. Despite the court's repeated admonishments about the potential pitfalls of representing himself given his 8th grade education and his documented mental health issues, defendant insisted on proceeding *pro se*, citing his distrust of his attorney and his dissatisfaction with his attorney's representation up to that point. The court ultimately granted defendant's request and he proceeded to represent himself at trial.

¶ 16 At trial, Charles Brackett testified that he was working as a security guard on the evening September 20, 2013, at the McDonald's restaurant located at 36 West 95th Street. At approximately 5:35 p.m. his attention was drawn toward the lobby of the restaurant where a man was engaged in an argument with defendant and a woman about a cell phone. During the argument, defendant was holding a square box under his arm that appeared to be taped shut. When he approached the trio, Brackett was provided with the number of the cell phone at issue. He called the number and he heard it ring three times before it hung up. Ultimately, because the three individuals were cussing loudly at each other at the restaurant, he asked them to leave the premises and called 911 to report the "situation." Sometime thereafter, he was approached by police officers who had been assigned to investigate the theft and was informed that the phone had been recovered from the female involved in the earlier argument.

¶ 17 On cross-examination, Brackett acknowledged that he did not see defendant with Jones's cell phone; rather, he was simply told that defendant had borrowed and failed to return the phone. Brackett denied hearing defendant ask his sister for the phone. He admitted that the three individuals left the restaurant when he asked them to and confirmed that defendant was

carrying the box under his arm when he left the premises. Brackett never heard defendant make any statements about the contents of the box.

¶ 18 Chicago Police Officer Mulligan testified that at approximately 5:35 p.m. on September 20, 2013, he and his partners were dispatched to the McDonald's restaurant located at 36 West 95th Street to investigate a theft. Upon their arrival at that location, Officer Mulligan spoke to Jones and the restaurant's security guard. Jones relayed what had occurred and "pointed out" the offenders who were both standing at a bus stop located less than one block away. Officer Mulligan and his partners then walked over to the bus stop and conducted a field interview with defendant and his sister. During the interview, defendant was holding a duffle bag and a white cardboard box that was sealed on top. Jones's cell phone was recovered from defendant's sister and the officers arrested both defendant and his sister for misdemeanor theft.

¶ 19 Following his arrest, defendant was transported to the 6th District Police Station for processing. Officer Mulligan testified that he maintained possession of the duffle bag and the white box that defendant had been carrying at the time of his arrest and transported the items to the station. Upon arriving at the station, he inventoried the bag and the box. He explained that prisoners have "rights to their own property" and that police personnel are not allowed to "throw" away an arrestee's property. In the processing room, Officer Mulligan searched the box and the bag as part of the inventory process. He explained that closed items are opened to ensure that hazardous materials, such as bombs, or poisons are not contained therein. Defendant's bag did not contain any contraband. His box, however, which had been sealed with tape, contained office or school supplies, including a Hello Kitty folder, as well as a silver frame Smith and Wesson .50 caliber handgun with a black handle and a magazine with 14 live rounds of .40 caliber ammunition. The gun and ammunition were concealed in another folder located inside of

the box. Officer Mulligan testified that there were scratch marks in the area where the gun's serial number was located, which he categorized as a "poor attempt to deface the weapon." The bag, box, and the gun were all assigned unique inventory numbers.

¶ 20 On cross-examination, Officer Mulligan confirmed the police policy dictates that "when a person is taken into custody, his property will be taken with him and inventoried accordingly." Officer Mulligan further confirmed that he did not ask defendant if he wanted to turn his property over to someone else for safekeeping at the time of his arrest. In addition, he did not ask defendant if he packed the box or request that the gun be tested for fingerprints or DNA.

¶ 21 Following Officer Mulligan's testimony, the State introduced an Illinois State Police certification indicating that defendant had never been issued a valid Firearm Owner's Identification (FOID) card. The State also introduced certified copies of defendant's prior convictions. The State then rested its case-in-chief.

¶ 22 Defendant called his sister, Patricia Williams, to testify on his behalf. Williams testified that she took Jones's phone after defendant had finished using it. Defendant did not pass the phone to her; rather, she took the phone off of the table. Defendant did ask her to return it; however, she did not do so. She only returned the phone when she was questioned by police officers. She never implicated her brother in the theft when she spoke to the officers. Williams recalled that defendant was holding a duffle bag in his hand when they were both approached by police at the bus stop. When asked to explain where the box was at that time, Williams elected to "plead the Fifth." When specifically asked if the box belonged to defendant she again stated, "I plead the Fifth." Williams denied knowing that there was a weapon in the box and denied seeing her brother handle a firearm that day.

¶ 23 Defendant called his mother, Angela Williams, as his next witness. She testified that she never saw him handle a weapon on the day of his arrest. She could not recall if she saw her daughter in possession of a white box.

¶ 24 Defendant elected to testify on his own behalf. His account of the events that transpired was consistent with the account he provided at the earlier hearing on his motion to quash his arrest and suppress evidence. Specifically, defendant testified that he met his sister at the bus station and that they went to McDonald's because he was hungry. At the restaurant, he asked Jones, another patron of the restaurant, if he could borrow his cell phone. Jones gave defendant his phone and then stepped outside of the restaurant. After using Jones's phone, defendant put it on the table and then went to the front of the restaurant to order more food. As he was waiting for the food, Jones approached him and asked for the phone. Defendant looked through his pockets and went back to the table to look for the phone, but was unable to find it. A security guard then "got involved" and called Jones's phone. Jones heard the sound of his phone ringing from defendant's sister; however, she denied having Jones's phone and an argument ensued. The security guard asked all three of them to leave the restaurant. The three of them walked back towards the bus stop and defendant offered to pay for Jones's phone. Jones, however, left the bus stop to find his girlfriend, who had been with him at the restaurant.

¶ 25 Sometime thereafter, defendant was approached by Officer Mulligan. In response to the officer's questions, defendant admitted that he had been at the McDonald's and had borrowed Jones's phone, but denied that he had stolen the phone. He then pointed to his sister, who was standing several feet away, and stated she also denied having Jones's phone. When another officer questioned his sister, however, she produced the phone. She apologized to defendant and informed the officers that he had "nothing to do" with the theft. After his sister was arrested, one

of the officers asked her if she wanted to release her property to defendant and she responded, "yes." Defendant then took possession of her keys, money, and identification. He also "grabbed the box that was on the ground by her foot" and began walking away because he had been told he was "free to go."

¶ 26 As he was walking back into the bus terminal however, one of the officers stopped him and told him that there was a "problem" because Jones wanted to file a complaint against him. The officer acknowledged that defendant's sister had stated that he had "nothing to do" with the theft, but told him that Jones had the right to file a complaint against defendant if he wanted to. The officer, however, assured defendant that he would be "out in a few hours" because he would only be charged with a misdemeanor. Defendant inquired if he would be able to "bond out" so that he could attend his daughter's birthday party, and the officer assured him that he would be able to do so and that they would "talk about that" at the police station. Defendant estimated that he was at the police station for over an hour when he was first asked about the gun that had been in the box. In response to the officers' inquiries, defendant stated that he did not know the person to whom the gun belonged, but guessed that it probably belonged to his sister or her boyfriend. Defendant testified that he was charged with weapons offenses despite not knowing anything about the gun.

¶ 27 On cross-examination, defendant denied that he ever held the box while he was at McDonald's, but acknowledged that it "was on the table where [he] was eating." Defendant also denied that he had the box under his arm when he left the restaurant. The only item that he was holding at that time was his duffle bag. Defendant stated that he "didn't get the box until [his] sister released it to [him] because she was getting arrested."

¶ 28 Following his testimony, defendant rested his case. The parties both delivered closing arguments. After hearing the aforementioned evidence as well as the arguments of the parties, the court entered a "finding of guilty [on] all counts." In doing so, the court noted that the only question before the court was whether or not defendant "knowingly possessed the article in question," and concluded that "[o]ne can gauge from the way that he held tightly to the box as he went through these series of transactions and interactions with other people, some of the words that were said by him and the way that he interacted" that defendant knowingly possessed the firearm at issue, which was concealed in the sealed box. At the sentencing hearing that followed, defendant was sentenced to eight years' imprisonment for the armed habitual criminal conviction. Defendant's posttrial motion was denied and this appeal followed.

¶ 29 ANALYSIS

¶ 30 On appeal, defendant challenges the circuit court's denial of his pretrial motion to quash his arrest and suppress evidence. He argues that the court "erred in failing to suppress [the] gun and ammunition found inside of a box that was in [his] possession [because] the police conducted an unlawful inventory search [when] there was no reasonable belief that [he] would be subjected to further incarceration following his arrest for misdemeanor theft."

¶ 31 The State responds that the circuit court properly denied defendant's motion where he "consistently maintained that the box belonged to his sister and [that] it was in her possession, not his, and therefore he did not establish that he had a legitimate expectation of privacy in its contents." The State further argues that the inventory search that revealed the firearm was a proper "routine administrative procedure" because there was no evidence that police knew that defendant would be able to post bond at the time that the officers conducted the search.

¶ 32 A circuit court's ruling on a motion to suppress is subject to a bifurcated two-prong standard of review. See *Ornelas v. United States*, 517 U.S. 690, 699 (1996); *People v. Johnson*, 237 Ill. 2d 81, 88 (2010). Pursuant to this standard, a reviewing court will afford great deference to the circuit court's factual findings and will disregard those findings only where they are against the manifest weight of the evidence. *People v. Bonilla*, 2018 IL 122484, ¶ 8; *Johnson*, 237 Ill. 2d at 88. "This deferential standard of review is grounded in the reality that the circuit court is in a superior position to determine and weigh the credibility of the witnesses, observe the witnesses' demeanor, and resolve conflicts in their testimony." *People v. Pitman*, 211 Ill. 2d 502, 512 (2004). The circuit court's ultimate legal finding as to whether suppression is warranted, however, is subject to *de novo* review. *People v. Colyar*, 2013 IL 111835, ¶ 24; *People v. Bartelt*, 241 Ill. 2d 217, 234 (2011). Accordingly, "[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)). When conducting this analysis, a reviewing court may consider the evidence presented at trial in addition to the evidence presented during the prior suppression hearing. *People v. Almond*, 2015 IL 113817, ¶ 55.

¶ 33 The right to be free from unlawful searches and seizures is protected by both the federal and state constitutions. U.S. Const., amend. IV; Ill. Const. 1970, art. I, § 6; *Bartelt*, 241 Ill. 2d at 225-26. "The 'essential purpose' of the fourth amendment is to impose a standard of reasonableness upon the exercise of discretion by law enforcement officers to safeguard the privacy and security of individuals against arbitrary invasions." *People v. McDonough*, 239 Ill. 2d 260, 266-67 (2010) (quoting *Delaware v. Prouse*, 440 U.S. 648, 653-54 (1979)). "A 'search'

occurs when 'an expectation of privacy that society is prepared to consider reasonable is infringed.' " *People v. Absher*, 242 Ill. 2d 77, 83 (2011) (quoting *United States v. Jacobsen*, 466 U.S. 109, 113 (1984)). "If an inspection by police does not intrude upon a legitimate expectation of privacy, there is no 'search' subject to the warrant clause of the fourth amendment." *People v. Mannozzi*, 260 Ill. App. 3d 199 (1994) (citing *Illinois v. Andreas*, 463 U.S. 765, 771 (1983)). Accordingly, a defendant challenging the propriety of a search bears the burden of proving that he had a "legitimate expectation of privacy" in the property searched. *People v. Rosenberg*, 213 Ill. 2d 69, 78 (2004); *People v. Carodine*, 374 Ill. App. 3d 16, 22 (2007). Courts have identified several factors to be considered to determine whether a defendant has a legitimate expectation of privacy in the place searched or the property seized, including: (1) ownership of the property searched; (2) whether the defendant was legitimately present in the area searched; (3) the defendant's possessory interest in the area searched or the property seized; (4) a defendant's prior use of the area or property searched or seized; (5) a defendant's ability to control or exclude others from the use of the property; and (6) whether the defendant had a subjective expectation of privacy in the property. *People v. Pitman*, 211 Ill. 2d 502, 520-21 (2004). Whether a person has a legitimate expectation of privacy in an area searched is measured by an objective standard derived from common practical experience and is dependent on the totality of the circumstances. *Rosenberg*, 213 Ill. 2d at 78; *People v. Frias*, 393 Ill. App. 3d 331, 355 (2009). The existence of a legitimate expectation of privacy involves a question of law subject to *de novo* review. *Rosenberg*, 213 Ill. 2d at 76.

¶ 34 As a threshold matter, we note that in denying defendant's motion to dismiss, the circuit court discussed the issue of "standing" and found that one basis to justify its ruling was that defendant lacked standing to contest the propriety of the search of the box given his efforts to

"disassociate[] himself completely" from the box. Although fourth amendment constitutional safeguards are personal protections that may not be vicariously asserted (*People v. Rosenberg*, 213 Ill. 2d 69, 77 (2004); *People v. Ervin*, 269 Ill. App. 3d 141, 146 (1994)), courts "no longer use[] the rubric of 'standing' when analyzing fourth amendment claims" (*People v. Johnson*, 237 Ill. 2d 81, 89 (2010); see also *Rakas v. Illinois*, 439 U.S. 128, 138-40 (1978) ("dispensing with the rubric of 'standing' as the framework for analyzing fourth amendment claims)). Accordingly, whether defendant had "standing" to contest the propriety of the search was not the relevant question for the circuit court to ask. Instead, the proper inquiry was whether defendant met his burden of establishing that he had a legitimate expectation of privacy in the box. *Rosenberg*, 213 Ill. 2d at 77; *People v. McCauley*, 2018 IL App (1st) 160812, ¶¶ 29-30. Keeping this inquiry in mind, we turn now to evaluate defendant's claim.

¶ 35 It is well-established that citizens have recognized expectations of privacy in their own belongings as well as the containers that conceal their belongings from plain view. *United States v. Ross*, 456 U.S. 798, 822-23 (1982); *People v. Carpenter*, 228 Ill. 2d 250, 270 (2008). At the suppression hearing and at trial, however, defendant, who bore the burden of proving that he had a legitimate expectation of privacy in the box, repeatedly denied ownership of it and solely admitted to a momentary possession of it. Defendant testified that he only came to possess the box when his sister released it to him upon her arrest. Up to that point, defendant denied that he ever had the box in his possession. Defendant, however, suggests that he still would have had a reasonable legitimate expectation of privacy under those circumstances because he was provided with a possessory interest in the box and had the ability to control or exclude others from the box when his sister released it to him.

¶ 36 In support, defendant cites *People v. Sparks*, 315 Ill. App. 3d 786 (2000), a case in which this court found that defendant, a passenger in his girlfriend's car, had a sufficient expectation of privacy in the interior of the car and in his personal belongings contained therein to challenge the constitutionality of a police search of the vehicle, which uncovered drugs. *Id*. at 792. In doing so, we noted that defendant had been a passenger in the car for an extended trip from Texas to Illinois, had clothes for the trip stored in the car in which he had traveled for days, and that he also possessed a set of keys to the car, thus providing him with the ability to control or exclude others from the car. *Id.* Here, in contrast, based on defendant's testimony, he had only a brief tangential association with the property that police searched. That is, he testified that he was momentarily provided with the box when his sister agreed to release her property to him following her arrest, but that Officer Wilson stopped him as he was walking away, and informed him that there was "problem" because Jones wanted him arrested as well. In addition, defendant never claimed that the box contained any of his personal property; rather, he professed not to know the contents of the box. We thus disagree that defendant's testimony established that he had a reasonable, legitimate expectation of privacy with respect to the box.

¶ 37 In reviewing a motion to suppress, however, the question of whether a person has a legitimate expectation of privacy in an item searched is dependent on the totality of the circumstances (*Rosenberg*, 213 Ill. 2d at 78; *Frias*, 393 Ill. App. 3d at 355), and a reviewing court may consider both the evidence presented at the hearing on a motion to suppress as well as the evidence presented at trial to make this determination (*Almond*, 2015 IL 113817, ¶ 55). In this case, throughout the lower court proceedings, defendant's testimony admitting to merely momentary possession of the box following his sister's arrest, was contradicted by three witnesses who testified that they observed holding and exerting control over the box in question

prior to any arrest. Charles Brackett observed defendant holding the sealed box under his arm at the McDonald's restaurant where the cell phone theft occurred and Officers Wilson and Mulligan both observed defendant holding the box while he was standing at the nearby bus terminal. Moreover, according to Officer Wilson, when asked about the contents of the box, defendant disclosed that the box contained gifts for his daughter. The subsequent search revealed that in addition to the gun, the box contained "children['s] items," including a Hello Kitty folder. We find that the testimony of these witnesses was sufficient to establish defendant's possession, ownership, and ability to control and exclude others from the box.

¶ 38 Thus, although defendant's testimony, standing alone, which the court found to be incredible, was insufficient to establish he had a legitimate expectation of privacy with respect to the box, the totality of the circumstances supports the conclusion that defendant was in fact the owner of the box and that he thus had a legitimate expectation of privacy in its contents. We nonetheless find that the warrantless search of the box in which defendant had a legitimate expectation of privacy did not infringe on his fourth amendment constitutional rights as it was a proper inventory search incident to his arrest.

¶ 39 An inventory search is " 'an incidental administrative step following arrest and preceding incarceration' " (*People v. Evans*, 314 Ill. App. 3d 985, 989 (2000) (quoting *Illinois v. Lafayette*, 462 U.S. 640, 644 (1983)) and is a recognized exception to the general rule that searches must be conducted pursuant to a warrant. Pursuant to that exception, a police officer may " 'remove and list or inventory found on the person or in the possession of an arrested person who is to be jailed.' " *People v. Nogel*, 137 Ill. App. 3d 392, 397 (1985) (quoting *Lafayette*, 462 U.S. at 646). Predetention inventory searches serve four legitimate governmental interests, including: (1) protecting the owner's property while it is in police custody; (2) protecting the police against

false claims of theft from the arrestee; (3) protecting the police, the arrestee, and other detainees from being injured by dangerous items or substances; and (4) allowing police to ascertain or verify the identity of the arrestee. *Evans*, 314 Ill. App. 3d at 989 (citing *Lafayette*, 462 U.S. at 646). To be reasonable, " '[i]nventory searches must be made 'in accordance with established inventory procedures.' " *Id*. at 989 (quoting *Lafayette*, 462 U.S. at 648). In order for an inventory search to be justified at its outset, however, the officer performing the search must reasonably believe that the person in custody will be subject to further incarceration. *Nogel*, 137 Ill. App. 3d at 399. For purposes of this analysis, "incarceration must mean something more intrusive than simple detention for the purely administrative purpose of booking an individual who is otherwise subject to immediate release on a non-substantial quasi criminal charge." *Id.* The reasonableness of the officer's belief that the defendant will be subjected to further incarceration depends upon the "facts and information available to the officer at the stationhouse following arrest." *Id*.

¶ 40 Here, the parties agree that the offenses with which defendant was originally charged—misdemeanor theft and possession of cannabis—were both bondable offenses. The mere fact that a defendant is arrested on a bondable offense, however, does not preclude an officer from conducting a reasonable inventory search where there is no evidence that the officer was aware that the defendant could post bond. See, *e.g.*, *People v. Mannozzi*, 260 Ill. App. 3d 199, 209 (1994) (finding that the trial court properly denied the defendant's motion to suppress evidence seized from her purse at the time of her arrest for DUI, a bondable offense, in part, because the record was "not clear" as to whether the officer knew that the defendant could post bond); see also *People v. Dillon*, 102 Ill. 2d 522, 526 (1984) (emphasizing that a defendant seeking suppression of a search bears the burden of establishing its unlawfulness and concluding that the

defendant could not establish that inventory search of his wallet was unreasonable where there was "no proof [in the record] of defendant's ability to meet the requirements of a substantial bond"). In this case, although defendant testified that he informed the officers that he wanted to "bond out," there is no evidence in the record that he had the means to post bond and that the officers were aware of his ability to do so. *Cf* . Nogel, 137 Ill. App. 3d at 398 (finding an inventory search of the defendant's locked briefcase was unlawful where the defendant was arrested for a minor ordinance violation, which would have required him to post "at worst" a $50 bond, a sum the officers knew he "was easily able to surrender given the amount of currency contained on his person at the time of arrest"). Moreover, we note that Officers Wilson and Mulligan both testified that the search was conducted in accordance with department policy, which mandates that the personal property of those in custody be searched to ensure that no dangerous materials are concealed. See *Evans*, 314 Ill. App. 3d at 989 (quoting *Lafayette*, 462 U.S. at 646 (recognizing that for an inventory search to be reasonable, it "must be made 'in accordance with established inventory procedures' "). Although Officer Mulligan admitted he did not know if the policy had been memorialized in writing, "there is no requirement that such policies be in writing." *Id*. We reiterate that it was the defendant's burden to establish the unlawfulness of the search. *Id*. Ultimately, given the lack of evidence of defendant's ability to post bond and the fact that the search of the box was conducted in accordance with department policy, we find that the search was a reasonable inventory search and that the circuit court properly denied defendant's motion to suppress.

¶ 41 CONCLUSION

¶ 42 The judgment of the circuit court is affirmed.

¶ 43 Affirmed.