2019 IL App (5th) 160272-U

NO. 5-16-0272

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Madison County.
	)	
v.	)	No. 14-CM-1011
	)	
CURTIS ADAM BERG,	)	Honorable
	)	Luther W. Simmons,
Defendant-Appellant.	)	Judge, presiding.

PRESIDING JUSTICE OVERSTREET delivered the judgment of the court.
Justices Moore and Boie concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant's conviction reversed where circuit court erred by denying defendant's motion to suppress when subject evidence was obtained after officers unlawfully entered defendant's home without a warrant and no exceptions to the warrant requirement applied.

¶ 2 On February 17, 2016, following a jury trial, the defendant, Curtis Adam Berg, was convicted of resisting or obstructing a peace officer (720 ILCS 5/31-1 (West 2012)) and subsequently sentenced to an 18-month probation term. On appeal, he contends, *inter alia*, that his conviction should be reversed because the circuit court of Madison County erred by denying his pretrial motion to suppress evidence that was used at trial to support his conviction. For the following reasons, we reverse the defendant's conviction.

¶ 3 BACKGROUND

¶ 4 On April 14, 2014, a misdemeanor complaint was filed against the defendant, alleging that he obstructed a peace officer, in violation of section 31-1 of the Criminal Code of 2012 (720 ILCS 5/31-1 (West 2012)), in that the defendant knowingly obstructed the performance of deputy Ryan J. Ray. The defendant pled not guilty and entered demands for a jury and for a speedy trial.

¶ 5 On March 24, 2015, the defendant filed a motion to suppress. The motion alleged that on the date in question, the defendant was home with his wife, Britni Berg, and was not engaged in any illegal or suspicious behavior. The motion further alleged that Danielle Frisse informed officers that "the [defendant and Britni] were just arguing and had been for some time so she thought that it needed to stop." The motion alleged that, although Frisse's statement did not give officers of the Madison County sheriff's office any reason to enter the defendant's home without a warrant, the officers did so. The motion alleged that the defendant was charged with obstructing a peace officer because he allegedly failed to comply with the officer's orders after entry was made into the home and, because the officers entered the home unlawfully, any evidence obtained thereafter must be suppressed.

¶ 6 On June 11, 2015, a hearing was conducted on the motion to suppress. There, Ryan Ray testified that he is a patrol deputy with the Madison County sheriff's office and has been so employed since 2007. Ray testified that he was trained at the police academy to respond to, *inter alia*, domestic calls and incidents involving searches and seizures. Ray testified that he was on duty on April 13, 2014, when he was dispatched to the defendant's residence at approximately 4:15 a.m., due to an eyewitness account of a domestic

disturbance there. Ray testified that dispatch advised that a verbal confrontation between the defendant and his wife had been ongoing for some time and it was reported that, earlier in the day, a firearm was used inside the residence. Ray added that "[i]t wasn't really defined as to how at that point."

¶ 7 A recording of the dispatch was played for the circuit court, which Ray confirmed was the dispatch he received on the date in question. Ray testified that he, Deputy Gooch, and Sergeant Marconi all received the dispatch. He indicated that Gooch reported on the dispatch that he is on a SWAT unit that investigated a past incident in the area of the defendant's residence and the suspect of that incident had been possibly abusing medication and possessed multiple firearms. Ray conceded that the officers eventually learned that the SWAT unit incident did not involve the defendant but the officers considered the information because the defendant's residence had not been ruled out at the time of the dispatch.

¶ 8 Ray agreed that, when a caller mentions a gun or a weapon in the home, officers take certain precautions to protect themselves and those involved. Ray testified that, after receiving the dispatch, it took him approximately 15 to 20 minutes to reach the defendant's home and Marconi arrived approximately one minute later. He noted that, because domestic situations are "extremely volatile and evolving," he usually prepares for the worst. Ray testified that, when he arrived at the residence, he spoke to the 911 caller (Danielle Frisse) who identified herself as a friend of the defendant's wife, Britni. Ray testified that Frisse was standing next to her vehicle in the driveway approximately 50 yards from the garage and that as he was speaking to her, he did not hear anything going

on inside the house, nor was he aware of the locations of the defendant or Britni. Frisse informed Ray that she and Britni had returned to the residence, when the defendant and Britni began arguing and continued to argue for a long period of time. Frisse reported that the defendant had discharged a firearm inside the house earlier in the day and she felt that someone needed to intervene before the situation worsened.

¶ 9 Ray testified that, after speaking with Frisse, he believed that somebody inside the residence was in danger. Ray testified that Marconi arrived, spoke briefly to Frisse to determine the number of people inside the residence, then proceeded toward the open garage door. Ray testified that, after speaking with Frisse, he proceeded to Marconi's location in the area of the garage. Ray described the garage as having two doors leading into the house—a screen door that was closed and a solid door that was open. Ray indicated that he did not hear anything as he approached these doors. However, he testified that he and Marconi entered the home with their guns drawn because "it's a domestic situation[ ] [with] [a] mention of a firearm being involved or inside the residence. *** [T]here was an earlier reported incident involving the firearm. Again, we were going to meet the force with equal action and for our safety and anyone involved."

¶ 10 Ray testified on cross-examination that he learned from Frisse that the incident with the firearm occurred earlier in the day while the defendant was home alone, the dispute at hand was strictly verbal, and Frisse gave no indication that the defendant was currently brandishing a weapon. Ray admitted that it is not illegal for spouses to argue, even if it annoys one of their friends. He qualified, however, that Frisse was fearful for Britni's

safety due to the evolving situation and he is required to investigate domestic disturbances as they are being reported.

¶ 11 Ray testified that he ended his conversation with Frisse because Marconi heard an active argument inside the residence. Accordingly, Ray joined Marconi, and the two officers entered the home. Ray reiterated that he did not hear anything as he approached the entry doors, but he still felt the need to enter. He testified that he and Marconi did not knock, but opened the door and walked into the residence with their guns drawn.

¶ 12 Ray testified that he and Marconi entered the home from the garage into the kitchen. He testified that nobody was in the kitchen at first, but Britni walked around the corner and "seemed to be surprised that we were there." Ray testified that Marconi took Britni by the arm to lead her to safety, but she pulled away, went back around the corner, and walked down the hallway. Ray reiterated that their purpose in contacting Britni was to ensure her safety. Ray testified at the trial that Britni did not appear to be injured, she was "upset that we were there," she told the officers "that everything was fine," and she "yelled at us several times to get out of her residence."

¶ 13 William Marconi testified that he is a sergeant with the Madison County sheriff's office, where he has been employed for over 16 years. Marconi confirmed that he was specifically trained in search and seizure laws and to respond to, *inter alia*, domestic disputes. Marconi testified that he was on duty on the date in question, and was dispatched to the defendant's address to provide backup assistance to Ray. Marconi confirmed that dispatch received a call from Frisse, who reported a domestic disturbance between the defendant and Britni.

¶ 14 While en route to the residence, Marconi overheard Sergeant Gooch ask dispatch if it was the same residence where his SWAT team previously responded to a standoff. Marconi testified that when he asked dispatch if there were currently shots being fired, dispatch advised that the defendant fired a weapon inside the residence earlier in the evening. Marconi testified that he was unable to confirm the current location of the firearm and added that officers use extreme caution when a threat of somebody firing a gun exists. Marconi explained that when a 911 caller mentions a gun, officers try at all costs to avoid putting themselves or anyone else in danger.

¶ 15 Marconi testified that he arrived at the scene approximately one minute after Ray. He had instructed Ray to stand by until he arrived so there would be two officers present. Marconi testified that he learned from dispatch that there were previous domestic disturbances at the residence and "[t]he fact that [the defendant] had fired a gun inside his own residence would show the mindset of somebody that's not acting quite right, and that's kind of extreme, and in my experience with domestic disturbances, things can quickly get out of hand." He added that "[e]motionally things can escalate very quickly."

¶ 16 Marconi testified that when he arrived, he spoke briefly to Frisse in order to confirm who was inside the residence and, as he began walking toward the house, he "could already hear the disturbance." Marconi acknowledged that Frisse knew more about the situation than he did, but he did not take additional time to speak to her because he "could hear screaming going on" that needed his attention. Marconi testified that he usually attempts to obtain as much information as possible, but there is not always time to do so if there is "an immediate possible threat to somebody."

¶ 17 When asked if there was, in fact, an immediate threat to anybody, Marconi responded: "There was yelling and screaming. There was an active disturbance that was reported *** by a person who said there was a woman inside yelling and screaming, things being thrown, and earlier in the evening a person had used a firearm inside the residence. To me that's an immediate concern." Marconi indicated that his biggest concern was not knowing the location of the firearm or whether the defendant was currently armed. He testified: "I don't want it to turn into a situation where we knock and now all of a sudden the lights go out. I have a possible armed subject as well as a possible victim inside the house."

¶ 18 Marconi added that there was also a question if this was in fact the house where the previous standoff had occurred with the SWAT team. Marconi testified that when he responds to an incident involving a gun, "obviously safety will be the number one concern." Marconi explained:

> "The fact that this person's mindset, which I don't know, the fact that they fired a firearm inside the residence, it's been reported. Now the person is back out there causing another disturbance. At this point it's very delicate because I have to take precautions that anything I do doesn't turn this into a possible hostage situation. If this person is in the mindset where they might become violent towards the police and once we push our hand now the person in the case, my belief was the female in the disturbance, I have to be very careful not to do anything that would jeopardize her life such as turn it into a hostage situation where now I have an armed subject with somebody inside the house."

¶ 19 Marconi testified that as he proceeded toward the house, he noticed the garage was open with a light on inside and, from his vantage point at the front of the garage, he could see into the kitchen through an open entry door and a closed screen door. Marconi testified that he saw nobody inside, but he could hear a male and female yelling at each other. Marconi agreed that he decided to draw his gun and proceed into the house without knocking on the door because the circumstance of the defendant using the firearm earlier in the evening distinguished the situation from other domestic calls with no reports of firearms. Marconi conceded that he did not hear a firearm being discharged and that he knew that the shots were fired "earlier in the evening." He indicated that he enters homes without a warrant and without announcing himself "[o]nly under the extreme circumstance where I believe somebody might be in danger or possibly harmed or there's an immediate safety concern for somebody involved."

¶ 20 Marconi averred that it is not typical for a person to fire a gun inside his own home and reiterated that he would enter a home without a warrant, unannounced, and with his gun drawn only when there was "an immediate threat or a chance of an immediate threat." Marconi testified that he knew that the defendant was home alone when he fired the gun earlier in the evening, but Marconi did not know if the gun was fired accidentally or on purpose or if the defendant had used the gun to threaten anyone. Marconi classified the disturbance at the defendant's home as an emergency.

¶ 21 Marconi testified that he and Ray entered the home through the doorway into the kitchen and were inside approximately five seconds before Britni entered the kitchen. Marconi ordered Britni to come outside with him because he wanted to get her out of the

house. Marconi testified that Britni refused to leave the house and "asked what the 'F' I was doing." He stated that he took Britni by the hand in an attempt to guide her outside but "she yanked away from me and took off running back into the room [with the defendant]." At trial, Marconi testified that he observed no obvious injuries to Britni.

¶ 22 Britni Berg testified that between 4:30 a.m. and 5 a.m. on the date in question, her husband—the defendant—arrived at home, intoxicated, and passed out in the bedroom. Britni testified that she attempted for 10 or 15 minutes to awaken the defendant because she wanted him to leave with his friend so Frisse would stay at the house and not drive. Britni explained that Frisse was intoxicated when she arrived at their home and Britni did not want her to drive herself home. However, because of a disagreement between Frisse and the defendant, Frisse refused to go into the house while he was there. Accordingly, Britni was attempting to persuade the defendant to leave with his friend so Frisse would stay. Britni testified that there was no yelling, nothing being thrown, nor any kind of commotion whatsoever.

¶ 23 At the conclusion of the hearing, the circuit court entered an order denying the motion to suppress. On February 17, 2016, following a jury trial, the defendant was convicted of resisting or obstructing a peace officer (720 ILCS 5/31-1 (West 2012)) and subsequently received an 18-month probation sentence. The defendant filed a timely notice of appeal.

¶ 24 ANALYSIS

¶ 25 The sole issue for our consideration on appeal is whether the circuit court erred by denying the defendant's motion to suppress.[1] We give great deference to a circuit court's factual findings when reviewing its ruling on a motion to suppress. *People v. Luedemann*, 222 Ill. 2d 530, 542 (2006). "We will reverse those findings only if they are against the manifest weight of the evidence." *Id*. "A reviewing court, however, remains free to undertake its own assessment of the facts in relation to the issues and may draw its own conclusions when deciding what relief should be granted." *Id*. Accordingly, the circuit court's ultimate legal ruling regarding whether suppression is warranted is reviewed *de novo*. *Id*.

¶ 26 "The physical entry of the home is the chief evil against which the wording of the fourth amendment is directed." *People v. Wear*, 229 Ill. 2d 545, 562 (2008). "The fourth amendment guarantees: 'The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated and no Warrants shall issue, but upon probable cause.' " *Id*. (quoting U.S. Const., amend. IV). "It is a basic principle of the fourth amendment that searches and seizures inside a home without a warrant are presumptively unreasonable." *Id*.

> "This is because, '[t]o be arrested in the home involves not only the invasion attendant to all arrests but also an invasion of the sanctity of the home. This is simply too substantial an invasion to allow without a warrant, at least in the absence

[1]We need not consider issues raised regarding the trial, as our conclusion regarding the motion to suppress is the basis on which we reverse the defendant's conviction and is thereby dispositive of the appeal.

of exigent circumstances, even when it is accomplished under statutory authority and when probable cause is clearly present.' " (Internal quotation marks omitted.) *Id.* (quoting *Payton v. New York*, 445 U.S. 573, 588-89 (1980), quoting *United States v. Reed*, 572 F.2d 412, 423 (2d Cir. 1978)).

¶ 27 "It has been long held that any evidence obtained as a result of an unlawful entry *** cannot be admitted into evidence in court." *People v. Hand*, 408 Ill. App. 3d 695, 699 (2011). To justify a warrantless entry, there must be both probable cause *and* exigent circumstances. *People v. Harris*, 104 Ill. App. 3d 833, 842 (1982).

¶ 28 I. Probable Cause

¶ 29 "Probable cause means more than bare suspicion." *People v. Jones*, 215 Ill. 2d 261, 273 (2005). "Probable cause exists where the arresting officer has knowledge of facts and circumstances that are sufficient to justify a reasonable person to believe that the defendant has committed or is committing a crime." *Id.* at 273-74. "The substance of all of the definitions of probable cause is a reasonable ground for belief of guilt, and that the belief of guilt must be particularized with respect to the person to be searched or seized." *Id*. at 274. "A court must examine the events leading up to the search or seizure, and then decide whether these historical facts, viewed from the standpoint of an objectively reasonable law enforcement officer, amount to probable cause." *Id*. Moreover, a police officer's knowledge and training are relevant in determining whether probable cause exists. See *id*. at 280; see also *People v. Ward*, 205 Ill. App. 3d 439, 444 (1990).

¶ 30 In this case, we recognize that the events leading up to the warrantless entry were not insignificant. Both officers were trained to respond to domestic disturbances, which

have the potential to become volatile or to rapidly escalate into violence. Sergeant Marconi distinguished the events on the date in question from typical domestic calls because of the firearm that was discharged earlier in the evening. The officers also knew of previous domestic disturbances at the defendant's residence, although no charges resulted. Also noteworthy is that the officers were aware of a prior incident involving a standoff with a SWAT team in the vicinity of the defendant's residence and—at the time of the warrantless entry—the defendant's home had not yet been ruled out as the site of that standoff.

¶ 31 We appreciate that the circumstances known to the officers at the time in question were matters of concern and most certainly merited extra care and caution. However, while probable cause does not require proof beyond a reasonable doubt, it cannot be established by mere suspicion (see *Jones*, 215 Ill. 2d at 273), which is all that the evidence supported in this case. The witnesses testified of many unknowns, possibilities, speculations, and concerns, none of which are the foundation of probable cause.

¶ 32 Deputy Ray testified that Frisse was fearful for Britni's safety due to the evolving situation and he is required to investigate domestic disturbances as they are being reported. However, being *concerned* for a person's safety is insufficient to establish probable cause because a concern or a worry is not equivalent to a reasonable belief that a crime is in progress or had occurred. See *id.* at 273-74. Sergeant Marconi spoke of a "possible armed subject," a "possible victim," a "possible hostage situation," and a "possible threat." He testified that he enters homes without warrants only when he believes that "somebody *might* be in danger or *possibly* harmed or there's an immediate safety *concern* for somebody involved." (Emphases added.) Although the circumstances faced by the

officers were significant, they created no more than speculation and suspicion, which is not enough to establish probable cause. See *id.* at 273. Accordingly, probable cause was not established due to a lack of evidence to justify a reasonable belief that a crime had occurred or was occurring at the time the officers entered the home without a warrant. See *id.* at 273-74.

¶ 33 II. Exigent Circumstances

¶ 34 Even assuming, *arguendo*, that probable cause did exist, in addition to probable cause, exigent circumstances must have been present to justify the warrantless entry. See *Harris*, 104 Ill. App. 3d at 842. "The fourth amendment does not prohibit officers from entering a home without a warrant if exigent or compelling circumstances justify the entry." *People v. Foskey*, 136 Ill. 2d 66, 74 (1990). "The burden of demonstrating exigent need for a warrantless search *** is on the State." *Id.* at 75. While there is no exhaustive list of factors which constitute exigent circumstances, the Illinois Supreme Court set forth the following factors, which may be considered to determine whether exigent circumstances justify a particular warrantless entry:

> "(1) whether the offense under investigation was recently committed; (2) whether there was any deliberate or unjustifiable delay by the officers during which time a warrant could have been obtained; (3) whether a grave offense is involved, particularly one of violence; (4) whether the suspect was reasonably believed to be

armed; (5) whether the police officers were acting upon a clear showing of probable cause[2]; (6) whether there was a likelihood that the suspect would have escaped if not swiftly apprehended; (7) whether there was strong reason to believe that the suspect was on the premises; and (8) whether the police entry, though nonconsensual, was made peaceably." *Id*.

¶ 35 Again, this is not an exhaustive list "nor are the factors included in it cardinal maxims that are to be applied rigidly in each case." *People v. Davis*, 398 Ill. App. 3d 940, 948 (2010). "Rather, the totality of the circumstances facing the officers at the time of the entry must be considered and, based on those circumstances, it must be determined whether the officers acted reasonably." *Id*. "In determining whether law-enforcement officials acted reasonably in a given case, courts should be careful to judge the circumstances as known to the officials at the time they acted." *People v. Abney*, 81 Ill. 2d 159, 173 (1980).

¶ 36 In considering whether exigent circumstances were present, the first factor is whether the offense under investigation was recently committed. *Foskey*, 136 Ill. 2d at 75. The only applicable "offense" in this case is the defendant's charge and conviction of resisting or obstructing a peace officer (720 ILCS 5/31-1 (West 2012)). Because this offense did not occur until *after* the warrantless entry, we cannot say it was a factor that created an exigent circumstance to *justify* the entry. The officers were dispatched to the defendant's residence in response to a call concerning a domestic disturbance, and to investigate whether an offense related thereto was in fact occurring. Frisse reported only

[2]Given our foregoing conclusion regarding probable cause, we forgo discussion of this factor in this section.

a verbal confrontation and specified that the conflict had not been physical. Sergeant Marconi heard arguing coming from the house, but there was no evidence of any physical violence or injury to anyone.

¶ 37 The officers were notified that the defendant discharged a firearm inside the residence earlier in the evening, but testimony indicated that the defendant was home alone when that happened. Although Sergeant Marconi testified that he was unaware if the defendant had used the weapon to threaten another person, we presume that he did not, given that no other people were present when the firearm was discharged. Marconi was also unsure if the firearm was discharged accidentally or on purpose. Notably, the officers were not investigating the discharge of the firearm, but the domestic disturbance. Moreover, Frisse did not indicate that the defendant was currently armed.

¶ 38 We appreciate that the earlier incident involving the discharged firearm added to the mix of circumstances the officers were required to consider, but that incident was separate from the domestic disturbance at hand and, even if the officers had known that the firearm was present in the residence, this fact would not have created an exigent circumstance to justify the warrantless entry. See *People v. Brown*, 277 Ill. App. 3d 989, 990, 996-97 (1996) (officers hearing gunshots and observing armed suspect run into residence did not create exigent circumstance to justify warrantless entry because discharging the firearm merely violated a city ordinance and nobody was shown to be in danger). In this case, nobody other than the defendant was present when the firearm was discharged, the whereabouts of the firearm was unknown by the time the officers were dispatched, the caller had not witnessed the defendant brandishing a weapon, and nobody was ever shown

to be in danger. Based on these facts, we cannot say that there was an offense committed, recently or otherwise, that created an exigent circumstance to justify a warrantless entry into the home. See *id*.

¶ 39 Regarding the second factor, there was no deliberate or unjustifiable delay by the officers during which a warrant could have been obtained. See *Foskey*, 136 Ill. 2d at 75. Deputy Ray arrived at the residence 15 to 20 minutes after receiving the dispatch and Sergeant Marconi arrived one minute later. The officers entered the home very shortly thereafter. Accordingly, no delay applies here.

¶ 40 The third factor is whether a grave offense is involved, particularly one of violence. *Id*. As mentioned, the only offense that evolved was the defendant's charge and conviction of resisting or obstructing a peace officer (720 ILCS 5/31-1 (West 2012)). This is not a grave offense involving violence, and it did not occur until after the warrantless entry. Although the officers were dispatched to investigate whether an offense was in fact occurring, Frisse denied seeing the defendant with a weapon and reported that the confrontation was strictly verbal, not physical. There was no evidence to lead the officers to believe that any offense was in progress, let alone a grave offense involving violence that would create an exigent circumstance to justify a warrantless entry into the home.

¶ 41 The fourth factor is whether the suspect was reasonably believed to be armed. *Foskey*, 136 Ill. 2d at 75. The information that the defendant discharged a firearm earlier in the day while he was home alone was insufficient to support a reasonable belief that he was currently armed, especially with no evidence to support the same. When Sergeant Marconi asked dispatch if there were currently shots being fired, the response he received

was that the shots were fired earlier in the evening. Moreover, Frisse made no mention of the defendant currently having a gun. The earlier incident was separate from the domestic disturbance that was under investigation at the time the police made the warrantless entry. As previously noted, even if the officers would have known that the firearm was present in the residence, this fact would not have created an exigent circumstance to justify the warrantless entry. See *Brown*, 277 Ill. App. 3d at 996-97. Furthermore, the presence or absence of a handgun at the residence does not support an inclination that the defendant would have been armed during the argument with his wife or that he would have used the handgun on the officers. For these reasons, we cannot say there was a reasonable belief that the defendant was currently armed, thereby creating an exigent circumstance to justify the warrantless entry.

¶ 42 The next factor is whether there was a likelihood that the defendant would have escaped if not swiftly apprehended. *Foskey*, 136 Ill. 2d at 75. There was no need for the officers to swiftly apprehend the defendant because there is no evidence that he had committed any offense. Accordingly, he was not likely to escape, as there is nothing in the record suggesting that the defendant had a *need* to escape. The defendant and Britni were engaged in a verbal argument. Although Frisse reported that the argument had continued for quite some time and expressed concern that the argument could escalate, there was no evidence of any condition that would have prompted the defendant to attempt an escape.

¶ 43 We next observe that the defendant was obviously on the premises and, besides entering with their guns drawn, there is no evidence that the officers did not enter peacefully. See *id*. However, these facts are of no consequence because they do not make

the warrantless entry valid. For the foregoing reasons, the exigent circumstances exception to the warrant requirement does not apply.

¶ 44 III. Emergency Aid Exception

¶ 45 In the alternative, the State argues that the warrant requirement was excused in this case because the emergency aid exception applies. The State concedes that this argument is waived because it was not presented below. See *Webber v. Wight & Co.*, 368 Ill. App. 3d 1007, 1023 (2006) (issues not raised with specificity at the trial level are waived and may not be raised for the first time on appeal). However, "[t]he rule of waiver is a limitation on parties and not on courts." *In re Marriage of Sutton*, 136 Ill. 2d 441, 446 (1990). Accordingly, waiver notwithstanding, we opt to address this issue.

¶ 46 The emergency aid exception allows officers to enter a home without a warrant in emergency situations. *People v. Lomax*, 2012 IL App (1st) 103016, ¶ 29. Requirements for the emergency aid exception are: (1) the search must not be motivated primarily by an intent to seize evidence and to make an arrest; (2) the officers must have reasonable grounds to believe that there is an emergency and an immediate need for their assistance to protect life or property; and (3) there must be a reasonable basis, approximating probable cause, that associates the emergency with the place to be searched. *People v. Feddor*, 355 Ill. App. 3d 325, 329-30 (2005). Like the exigent circumstances exception, whether an officer's belief that an emergency is occurring is reasonable is determined by a totality of the circumstances faced by the officer at the time of the entry. *Lomax*, 2012 IL App (1st) 103016, ¶ 29. A warrantless entry is permitted if officers believe it is necessary to enter

the home to give emergency assistance to an occupant who is injured or to protect the occupant from imminent injury. *People v. Ramsey*, 2017 IL App (1st) 160977, ¶ 24.

¶ 47 A. *Motivation for the Search*

¶ 48 The first requirement for the emergency aid exception to the warrant requirement to apply is that the search must not be motivated primarily by an intent to seize evidence and to make an arrest. *Feddor*, 355 Ill. App. 3d at 330. This requirement is met in this case, as there is no evidence that the officers' primary intent in entering the home was to arrest the defendant. The officers expressed concern for Britni's well-being, given all of the information they gathered from the dispatch and from Frisse. Sergeant Marconi testified that he was concerned by the fact that the defendant discharged a firearm in the residence earlier in the evening and he entered the home as he did because he had a possible armed subject and a possible victim in the house. Deputy Ray testified that he believed that somebody inside the residence was in danger. The evidence indicates that the officers' motive for entering was to ensure Britni's safety and not to arrest the defendant or to seize evidence. For these reasons, we find this requirement was satisfied.

¶ 49 B. *Reasonable Grounds to Believe an Emergency Exists*

¶ 50 The next requirement for the emergency aid exception to the warrant requirement to apply is the officers must have reasonable grounds to believe that there is an emergency and an immediate need for their assistance to protect life or property. *Id.* at 329-30. Here, there is no evidence that any emergency was occurring, or that there was an immediate need to protect life or property. Notwithstanding the circumstances that undoubtedly

merited concern, the officers knew that the altercation was strictly verbal, that no physical violence had occurred, and there was no indication that the defendant was currently armed.

¶ 51 Upon arrival, Marconi overheard the defendant and Britni yelling at each other but there was nothing to indicate that Britni was being injured in any way or that she was in danger of imminent injury. See *Ramsey*, 2017 IL App (1st) 160977, ¶ 24. While the officers obviously did not want the situation to escalate into an emergency, entering a home to *prevent* an emergency is not the same as entering a home in the *midst* of an emergency to assist an injured person or to protect them from imminent injury, which is what the requirement entails. See *id.* This simply was not the case here. Because we find no evidence to support a reasonable belief that there was an emergency and an immediate need for the officers' assistance to protect life or property (*Feddor*, 355 Ill. App. 3d at 329-30), this requirement for the emergency aid exception was not met.

¶ 52 C. *Probable Cause*

¶ 53 The final requirement for the emergency aid exception to apply is that there must be a reasonable basis, approximating probable cause, that associates the emergency with the place to be searched. *Feddor*, 355 Ill. App. 3d at 330. This requirement was not met, as indicated by our previous analysis regarding reasonable grounds. For the foregoing reasons, we find the emergency aid exception to the warrant requirement does not apply in this case because the requirements herein analyzed were not satisfied.

¶ 54 IV. Case Comparison

¶ 55 This case is much like *People v. Jones*, where, the defendant conceded that the officer's warrantless entry was initially authorized because the officer had received a report

of a loud argument at the residence, accompanied by the sound of things breaking. 2015 IL App (2d) 130387, ¶ 14. Because the officer observed the defendant and a woman arguing on the porch as he approached the house and the defendant appeared intoxicated, the defendant conceded that the officer was authorized to step onto the porch to determine whether the woman was injured or needed assistance. *Id*. However, the court in *Jones* emphasized that the caller reported only a verbal confrontation and, although the officer was authorized to conduct an initial investigation, his authority to remain in the defendant's home terminated once he found no evidence of domestic violence or any other offense, and once he determined that the woman had no visible injuries and did not request his assistance. *Id*. ¶ 16. The *Jones* court held that the officer's remaining in the home was a violation of the fourth amendment and, accordingly, reversed the defendant's conviction of obstructing a peace officer. *Id*. ¶¶ 16, 18.

¶ 56 Two key distinctions between *Jones* and the instant case are that in *Jones*, the officer knocked on the door and identified himself as an officer prior to stepping onto the porch (*id*. ¶ 4) and the defendant conceded that the officer's initial entry onto the porch was authorized (*id*. ¶ 14). In contrast, the officers in this case did not knock on the door before the warrantless entry and the defendant did not concede that the entry was initially authorized.

¶ 57 Like *Jones*, the officers in this case were dispatched to the scene of a domestic disturbance involving a strictly verbal dispute. Even assuming, *arguendo*, that the officers were initially authorized to enter the home to determine if Britni was injured or needed assistance, the authority to remain in the home terminated when the officers found no

evidence of domestic violence or any other offense, and when they determined that Britni had no visible injuries and did not request their assistance. See *id*. ¶ 16.

¶ 58 As previously observed, there was no evidence of any offense, the officers testified that they saw no injuries on Britni when she walked into the kitchen, and she did not request their assistance. In fact, Marconi testified that Britni told them that everything was fine, she swore at them, refused to leave the house with them, and retreated back into the bedroom with the defendant. At that point, the officers were required to leave the residence, and they violated the fourth amendment for failure to do so. See *id*.

¶ 59 Because no exceptions to the warrant requirement apply, the officers violated the fourth amendment by entering the defendant's home without a warrant. Accordingly, the circuit court erred by denying the motion to suppress and the defendant's conviction of resisting or obstructing a peace officer (720 ILCS 5/31-1 (West 2012)) must be reversed.

¶ 60 CONCLUSION

¶ 61 For the foregoing reasons, we reverse the defendant's conviction of resisting or obstructing a peace officer (720 ILCS 5/31-1 (West 2012)).

¶ 62 Reversed.