

No. 1-09-3466

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 JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 06 CR 26604
)	
ANGELA SNELL,)	Honorable
)	Joseph M. Claps,
Defendant-Appellant.)	Judge Presiding.

PRESIDING JUSTICE STEELE delivered the judgment of the court.
Justices Neville and Salone concurred in the judgment.

ORDER

¶ 1 *Held:* Where defendant consented to the search of her apartment, the trial court did not err in denying her motion to suppress the gun found therein.

¶ 2 Following a jury trial, defendant Angela Snell was convicted of unlawful use of a weapon by a felon and sentenced to six years in prison. On appeal, defendant contends that the trial court erred in denying her motion to suppress the gun found in her apartment. For the reasons that follow, we affirm.

¶ 3 Defendant's conviction arose from the events of October 27, 2006. In brief, police

responded to a 911 call of a shooting at an apartment building. Defendant and the victim, who was defendant's live-in boyfriend, were outside near an ambulance when, according to the police, defendant told the police she was the shooter. The police searched defendant's apartment and found a gun. Subsequently, the State charged defendant with several crimes, including, as relevant to this appeal, unlawful use of a weapon by a felon. Defendant filed a motion to quash arrest and suppress evidence, in which she argued that the warrantless search and arrest were not supported by probable cause and that she did not consent to the search.

¶ 4 At the hearing on the motion, defendant testified that on the date in question, she lived at 9050 South Escanaba, in apartment 1-D, with her boyfriend, Jerol Hearn. Some time in the early morning hours, Hearn was shot outside the apartment building. Defendant called 911 and was outside with Hearn when an ambulance arrived at the scene. Several police officers arrived after Hearn was in the ambulance. Defendant talked with the officers and related that she had called for the ambulance. Defendant denied having told the officers that she shot Hearn. She also denied the police asked her where the gun was, and that in response, she said it was in her apartment and that she would show them where she put it.

¶ 5 The police asked defendant to go inside with them. Defendant testified that she was wearing a set of keys to her apartment complex around her neck on a chain, but denied handing the keys to the police. Defendant saw her neighbor, Sheba Cheers, and beckoned to her to open the apartment complex's common door. When Cheers opened the door, defendant and about four officers entered the complex. The officers took defendant into Cheers' apartment and began searching it. While in Cheers's apartment, a female officer patted her down and took defendant's keys from around her neck. Defendant was handcuffed and taken to her own apartment, which the police opened with defendant's keys. There, they found a gun, cocaine, and heroin.

¶ 6 Defendant denied giving the police permission to open the door or go into her apartment, and denied inviting the officers into her apartment to look around. Defendant stated that she did not go into her apartment with the officers willingly, did not show them where to search, and did not point out the gun to them.

¶ 7 Sheba Cheers testified that on the date in question, she lived at 9050 South Escanaba, in apartment 1-C, which was on the same level as defendant's apartment. About 1:30 a.m., Cheers heard something that made her go to her window. From the window, she saw two uniformed police officers and defendant. Defendant gestured to her to open the door to the apartment complex, so Cheers left her apartment and went up the stairs to the common door. When she opened it, several police officers came in with defendant and headed into Cheers's apartment. The police searched all around Cheers's apartment, including in her closet and drawers. According to Cheers, when the police finished searching her apartment, they took defendant out the back door.

¶ 8 The State called Chicago police sergeant Sean Martin. Sergeant Martin testified that about 1:50 a.m. on the date in question, he responded to a call of a person shot at the back of the building at 9050 South Escanaba. When he arrived at the rear of the apartment complex, he saw defendant, who was outside, look in his direction and then go inside the complex. Sergeant Martin followed defendant through a hallway and into an open apartment. He did not search the apartment as he went through it, but did "clear" it to make sure no one was hiding behind a door or in any of the rooms. While he was in the apartment, he noticed what appeared to be narcotics on a bed. Sergeant Martin continued to follow defendant out of the apartment to the front of the building.

¶ 9 In front of the apartment building, Sergeant Martin stopped defendant near the ambulance. Defendant said to him, "I shot him." Sergeant Martin advised defendant of her

Miranda rights, and after she indicated she understood, he asked her where the gun was. Defendant told him and agreed to show him. Sergeant Martin and defendant then walked through a neighboring apartment, out that apartment's back door, and into defendant's apartment, 1-D. Defendant pointed out the gun under her bed. The gun was recovered, along with suspected narcotics and narcotics paraphernalia. Sergeant Martin explained that he walked defendant through the neighboring apartment because there were a lot of people around, he was concentrating on the conversation with defendant, there were a lot of doors, people had their doors open, and he did not realize he was going into a different apartment. He did not search the neighboring apartment. Because he was concentrating on defendant, did not see any other officer searching the neighbor's apartment.

¶ 10 Following arguments by counsel, the trial court granted the motion to suppress as to the narcotics and narcotics paraphernalia, but denied the motion as to the gun. The case proceeded to a jury trial on a charge of unlawful use of a weapon by a felon.

¶ 11 At trial, Sergeant Martin testified that about 1:30 a.m. on the date in question, he responded to a call of a man shot at the back of an apartment building at 9050 South Escanaba. He and a number of other officers went to the rear of the building. There, Sergeant Martin saw defendant, who was outside, look in his direction. As he proceeded toward her, she quickly went inside the complex's back door. Sergeant Martin followed her through the door to the complex, which was open, through a short hallway, and then through a second open door, into the kitchen of an apartment. From the kitchen, he could see defendant walking out the apartment's front door. As Sergeant Martin moved through the apartment, he "cleared" it, which meant he looked for offenders or bodies. About four other officers followed him, but he did not see any of those officers searching the apartment. Within a minute of entering the apartment, Sergeant Martin followed defendant out the front door.

¶ 12 When Sergeant Martin got outside, he saw defendant standing near an ambulance. A lot of people were milling around and the paramedics were treating a man. Sergeant Martin testified that he and some other officers walked up to defendant, who turned to him and said, "I shot him." In response, Sergeant Martin walked her away from the immediate area and advised her of her *Miranda* rights. After defendant indicated that she understood, Sergeant Martin asked her where the weapon was and defendant said it was in her apartment. Sergeant Martin asked her to direct him to it, and she agreed. Sergeant Martin and defendant walked back into the apartment complex and into an apartment. A "lot" of people were in the apartment, including several police officers.

¶ 13 Sergeant Martin immediately realized the apartment they were in, 1-C, was not the one they had passed through earlier, so he walked defendant out that apartment's back door. He and defendant then entered her apartment, 1-D, through her back door. When Sergeant Martin asked defendant to show him where the weapon was, she pointed it out under her bed. Another officer, who had been inside defendant's apartment since the initial pursuit, recovered the gun. Sergeant Martin thereafter placed defendant in custody.

¶ 14 Chicago police officer Silas Gates testified that around 1:30 a.m. or 1:50 a.m. on the date in question, he responded to a call of a man shot at 9050 South Escanaba. When he arrived at the back of the building, he saw Sergeant Martin pull up in a squad car. Defendant, who was outside, looked toward Sergeant Martin, turned, and briskly walked into the building. Sergeant Martin followed defendant. Officer Gates and his partner followed him into the complex, down some stairs, and into the back door of apartment 1-D. Officer Gates testified that he stayed in the apartment while defendant and Sergeant Martin went out the front door. A couple of minutes later, Sergeant Martin returned with defendant. Three other officers were present in the apartment as well. Defendant told the officers that a gun was under the bed. Officer Gates

1-09-3466

recovered the gun, opened the cylinder, and removed five live rounds and one shell casing from it. He also recovered documents indicating that defendant resided in the apartment. Later, at the police station, he inventoried the gun, bullets, and casing.

¶ 15 Chicago police officer Richard Hanrahan testified that he and his partner arrived at the back of the building at 9050 South Escanaba at about 1:30 a.m. Several other officers, including Sergeant Martin, were on the scene. Officer Hanrahan saw defendant, who was in the back parking lot, look in the direction of the police officers and then quickly walk through a doorway into the building. Sergeant Martin pursued her into an apartment, followed by some of the other officers and finally, Officer Hanrahan. Officer Hanrahan testified that he continued through the apartment and eventually caught up with Sergeant Martin and defendant outside the front of the building, near an ambulance. There, he heard defendant say "that she had shot him." Defendant was moved from the immediate area and given *Miranda* warnings by Sergeant Martin.

¶ 16 Officer Hanrahan testified that he, Sergeant Martin, and one or two other officers went back into the building and entered apartment 1-C. When they realized they were in the wrong apartment, they went out the back door. According to Officer Hanrahan, they were in apartment 1-C for less than 30 seconds. He did not search or see any other officer search apartment 1-C. The officers then entered apartment 1-D through its back door. At some point, Officer Gates gave Officer Hanrahan some documents he had recovered from apartment 1-D. Officer Hanrahan testified that he later inventoried the documents, which indicated that defendant lived in apartment 1-D.

¶ 17 The parties stipulated that in 1984, defendant was convicted of possession of a controlled substance.

¶ 18 Sheba Cheers testified on defendant's behalf. She stated that on the date in question, she lived in apartment 1-C at 9050 South Escanaba. Between 1 a.m. and 2 a.m., Cheers looked out

her front window and saw defendant and two police officers standing near an ambulance. Some time later, there was a knock at her door. Cheers testified that she opened the door to defendant and two officers. The officers brought defendant, who was not in handcuffs, inside. Four or five more officers followed and proceeded to search Cheers's apartment, going through her bedroom, dressers, and cabinets, for 30 to 40 minutes. When she asked why they were searching her apartment, the police said they were looking for a weapon. Eventually, the police took defendant from Cheers's apartment.

¶ 19 Jerol Hearn testified that on the date in question, he lived in apartment 1-D with defendant, who was his girlfriend. He had never seen defendant with a gun or seen a gun in the apartment. Between 1 a.m. and 2 a.m., while defendant was sleeping, he went outside to take out the trash. He was near the trash bin in the back parking lot when he felt pain in his leg and realized he had been shot. Hearn testified that he went back inside and woke defendant, who called 911. He and defendant then went outside to meet the ambulance. Hearn stated that when he spoke to the police later at the hospital, he told them he did not know who shot him and did not believe defendant made the statement about being the shooter.

¶ 20 The jury found defendant guilty of unlawful use of a weapon by a felon. The trial court entered judgment on the verdict and subsequently sentenced defendant to six years in prison.

¶ 21 On appeal, defendant contends that the trial court erred in failing to suppress the gun that was recovered from her apartment. She asserts that she did not consent to the warrantless search. She further argues that exigent circumstances did not justify the search, as she was handcuffed and surrounded by police officers while the search took place. Thus, according to defendant, the police controlled both her person and the scene, and there was no chance any potential evidence could be tampered with while they obtained a warrant.

¶ 22 When reviewing a ruling on a motion to suppress, we defer to the trial court's findings of fact, reversing them only if they are against the manifest weight of the evidence. *People v. Burton*, 409 Ill. App. 3d 321, 327 (2011). However, the ultimate question of whether suppression is warranted is a determination we review *de novo*. *Burton*, 409 Ill. App. 3d at 327. On appeal, we may consider both the record from the suppression hearing and the trial evidence, and we are free to draw our own conclusions from the evidence. *Id.*

¶ 23 Under the federal and state constitutions, searches and seizures are required to be reasonable. U.S. Const., amend. IV; Ill. Const. 1970, art. I, §6; *People v. LaPoint*, 353 Ill. App. 3d 328, 332 (2004). A search conducted without a warrant is considered *per se* unreasonable unless it falls within one of the recognized exceptions to the warrant requirement, such as consent. *LaPoint*, 353 Ill. App. 3d at 332. Consent is determined by examining whether a reasonable person would have understood, given the individual's words, acts, or conduct, that the individual had granted consent. *Burton*, 409 Ill. App. 3d at 328 (citing *Florida v. Jimeno*, 500 U.S. 248 (1991)).

¶ 24 In the instant case, Sergeant Martin testified at the motion to suppress that when he and defendant were standing near the ambulance, she said, "I shot him," at which point he took her aside and advised her of her rights. After indicating that she understood, she told Sergeant Martin where the gun was, agreed to show him, and eventually led him to her bedroom and pointed out the gun under the bed. At trial, Sergeant Martin related essentially the same narrative. He testified when he and some other officers approached defendant near the ambulance, she turned to him and said, "I shot him." Sergeant Martin walked her away from the immediate area and advised her of her *Miranda* rights, which she indicated she understood. Defendant then told him the weapon was in her apartment and agreed to direct the police to it. When they arrived in her apartment, defendant showed the police that the gun was under her bed.

¶ 25 Sergeant Martin's version of events was corroborated at trial. Officer Hanrahan testified that when he caught up with Sergeant Martin and defendant outside the front of the building near the ambulance, he heard defendant say "that she had shot him." Officer Hanrahan testified that Sergeant Martin gave defendant *Miranda* warnings, after which defendant and several police officers went into defendant's apartment. Officer Gates further corroborated Sergeant Martin at trial by testifying that when Sergeant Martin and defendant returned to defendant's apartment, defendant told the officers that a gun was under the bed.

¶ 26 We are mindful that defendant denied giving consent to search her apartment. However, the trial court is responsible for weighing the credibility of witnesses at suppression hearings. *People v. Oliver*, 236 Ill. 2d 448, 458 (2010). In this case, the trial court resolved the conflicting testimony regarding whether defendant consented to the search for the gun in favor of Sergeant Martin. We do not find the trial court's factual finding that consent was given to be against the manifest weight of the evidence. See *Oliver*, 236 Ill. 2d at 458. In our view, a reasonable person would have understood defendant's words and actions as granting consent to search for a gun in her apartment. Accordingly, the trial court did not err in denying the motion to suppress the gun.

¶ 27 Given our determination that defendant consented to the search for the gun, we need not address defendant's arguments regarding exigent circumstances.

¶ 28 For the reasons explained above, we affirm the judgment of the circuit court of Cook County.

¶ 29 Affirmed.