

2011 IL App (2d) 100564-U
No. 2-10-0564
Order filed December 7, 2011

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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of Lake County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 09-CF-1388
)	
EDUARDO C. JUAREZ,)	Honorable
)	Daniel B. Shanes,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE BOWMAN delivered the judgment of the court.
Presiding Justice Jorgensen and Justice Hutchinson concurred in the judgment.

ORDER

Held: The trial court did not err in denying defendant's motion to suppress evidence. Even if it did err, the error was harmless beyond a reasonable doubt.

¶ 1 Following a jury trial, defendant, Eduardo C. Juarez, was found guilty of unlawful restraint (720 ILCS 5/10-3(a) (West 2008)) and misdemeanor battery (720 ILCS 5/12-3 (West 2008)). Defendant was sentenced to three years' imprisonment on the unlawful restraint conviction and 364 days' imprisonment on the battery conviction, to be served concurrently. On appeal, defendant

argues that the trial court erred in denying his motion to suppress evidence obtained without a search warrant. We affirm.

¶ 2

I. BACKGROUND

¶ 3 On April 29, 2009, defendant was charged by indictment with attempted first-degree murder (720 ILCS 5/8-4(a), 9-1(a)(1) (West 2008)); two counts of aggravated kidnaping (720 ILCS 5/10-1(a)(1), 10-1(a)(2), 10-2(a)(3) (West 2008)); two counts of kidnaping (720 ILCS 5/10-1(a)(1), 10-1(a)(2) (West 2008)); aggravated unlawful restraint (720 ILCS 5/10-3.1(a) (West 2008)); and unlawful restraint (720 ILCS 5/10-3(a) (West 2008)). The offenses related to an incident with Lucia Martinez on April 4, 2009. The State subsequently nol-prossed the kidnaping charges.

¶ 4 In August 2009, defendant filed a motion to suppress his statements to police, alleging that he did not knowingly and intelligently waive his *Miranda* rights. The trial court denied the motion in November 2009.

¶ 5 On January 20, 2010, after jury selection had begun, defendant filed a motion to suppress evidence obtained without a search warrant. Defendant argued that although police officers obtained his landlord's permission to enter her house, she could not consent to a search of his room. He further argued that the police officers entered the residence without exigent circumstances that would allow a warrantless entry. Defendant sought the suppression of "[a]ll physical evidence, including but not limited to photographs of the inside of the residence, which was discovered directly or indirectly as a result of the illegal entry." The trial court stated that the motion was untimely but granted defendant leave to file it.

¶ 6 The parties agreed to proceed on the motion based on a stipulation to the following evidence. On April 5, 2009, Lucia Martinez ran up to a Round Lake (Heights) police car and told the officer

that defendant had tried to choke and kill her. Round Lake Beach police officer Coppes was summoned and spoke to Martinez. Martinez said that the incident took place a short time prior at defendant's residence on Brentwood. Martinez led several officers to the residence to look for defendant. "There was a concern that the victim expressed that he would go to her house looking for her or harm her or her family since she claimed to have escaped from him at the residence." Officers knocked on the door and spoke to the home's owner, Evangelina Gonzalez. Defendant was renting a room in the lower level of the house from Gonzalez; the room was down the stairs and immediately to the right. The stairway and hallway leading to defendant's room were common areas that Gonzales had access to on a regular basis. Gonzalez indicated that defendant kept his door closed, and she did not go into his room. The officers obtain Gonzalez's permission to search for defendant in the house. In the common area downstairs, they observed a picture that appeared to have fallen off the wall, with a large area of shattered glass. The officers "looked in every conceivable place where a body or person might be hiding," including inside defendant's room. "While they were in the room they observed screwdrivers on the dresser that was on the wall nearest the door." The officers then secured the residence, and an officer came back about three hours later and took pictures, including of the dresser where the screwdrivers were sitting.

¶ 7 In response to questions posed by the trial court, the parties stated that defendant's door did not have a lock. When asked if the door was open or closed when the police were there, the prosecutor responded, "Police would say it's open." Defense counsel stated, "He told me that this morning, yes." In argument, defense counsel stated that there were no exigent circumstances justifying entry into defendant's room because Martinez did not indicate that anyone else was in the room. He argued that the officers were "staring at an open door" and could "visually see the room."

Counsel argued that the police were able to search the common areas and determine that no one else was physically harmed, and an officer could have stood at the door while the police obtained a warrant. Counsel argued there was also no indication that defendant was having any traumatic medical problem, and just because they were looking for defendant, it did not rise to the level of exigent circumstances.

¶ 8 The State argued that there were exigent circumstances because the police arrived at the residence within 15 to 20 minutes of receiving a complaint that defendant had choked Martinez and tried to kill her there. The State argued that the seriousness of the offense created exigency, and the officers were looking for a person rather than evidence of a crime.

¶ 9 The trial court found that defendant's door was open and the police knew that the room was exclusively defendant's. The trial court also stated that defendant had a subjective expectation of privacy. It denied defendant's motion to suppress on the basis that Gonzalez had the apparent authority to allow the search of defendant's room, as the downstairs included common areas, defendant's door did not have a lock on it, and defendant's door was open.

¶ 10 We now summarize the relevant evidence from defendant's trial. Martinez testified as follows. She was 50 years old and became romantically involved with defendant in December 2008. In late March 2009, Martinez ended the relationship. On April 3, 2009, Condell Hospital called Martinez, relating that defendant was refusing tests and treatment if she was not there. Martinez thought that she and defendant could be friends, as they had been before their relationship. She stayed overnight at the hospital and then went home the next morning. She returned later that morning upon being notified that defendant was ready to be released but needed a ride home. Defendant asked Martinez to stop at a liquor store and buy him some beer, and she complied.

Defendant was renting a room in the lower level of a house, but when they got to the home, defendant did not want to get out of the car. He grabbed Martinez's cell phone and called his mom in Mexico. He also drank three or four beers. Martinez called her daughter, and defendant accused her of talking to her boyfriend. Defendant said that he was going back to Mexico, she should not worry, and he was going to pay her the money he owed her. Defendant then asked if she wanted the title to the car they were in. Martinez had provided the money to pay for the car, but defendant negotiated the sale, and Martinez never received the title. They went inside the house to get the title.

¶ 11 Defendant started kicking things in his room and then put a paper he said was the title in his back pocket. Martinez went upstairs and started opening the front door. Defendant grabbed her hand and started dragging her down the stairs, saying that she would not get out of there unless she was dead. They fell down the stairs, and defendant then picked up Martinez and pushed her against the wall. A picture hanging on the wall fell and broke. Defendant put his hands on Martinez's neck and squeezed and twisted her neck. Martinez fell down, with defendant on top of her. Martinez could not breathe and fainted.

¶ 12 Martinez woke up and found herself in defendant's room, on his bed. Martinez heard defendant talking on the phone, saying that he had killed her and needed a "ticket to get out of" there. Defendant then came by the bed and told Martinez to wake up. He poked Martinez in the abdomen several times with a screwdriver. Defendant said that he was going to kill her and that she was not going to get out unless she went with him. In order to calm defendant down, Martinez said that she loved him and would go to Mexico with him. Martinez realized that she had urinated on herself, and she had defendant get clothes out of her car for her to change into. Upon returning, defendant left the keys on the bed, and Martinez grabbed them. When defendant later began looking

for them, she suggested that he left them in the car. Meanwhile, Gonzalez, the owner of the house, returned. Defendant went outside again, and Martinez ran upstairs and told Gonzalez that defendant was trying to kill her. Martinez saw that defendant was returning, and she ran out the back door to the car. As she drove away, she saw defendant chasing her and screaming her name. Martinez stopped briefly at a convenience store and had the cashier call her kids and tell them not to let defendant into the house. She then started driving toward the police station. She saw a police car and told the officer that somebody had tried to kill her.

¶ 13 Round Lake Heights police officer James Blasco testified that on April 4, 2009, at about 4:30 or 4:45 p.m., he was parked in his police car, using his radar gun. Martinez pulled her vehicle in front of him and jumped out. Her coat was torn, and she was emotional, agitated, and crying. She had red lateral marks on her throat that were consistent with choke marks. Martinez said that her boyfriend had tried to kill her, choked her, and threatened to kill her with a screwdriver. Blasco ascertained that the incident occurred in Round Lake Beach, so he called officers from that jurisdiction. A Round Lake Beach officer arrived within minutes and took over the case.

¶ 14 Round Lake Beach officer Kenneth Coppes testified that he responded to the call. Martinez was hysterical and crying. Her jacket was torn, and she had red marks on her neck. He determined that the incident occurred approximately ten minutes earlier; Coppes spoke to Martinez for a total of five to seven minutes. Martinez was not able to provide defendant's address, but she rode with him and showed him where it was. Coppes had four or five other officers meet him there. Gonzalez came to the door, and when they said that they were looking for defendant, she said that he was out walking. She gave the officers permission to enter the residence. The police wanted to determine if defendant was in the residence, and they checked every space that a person could fit into. Coppes

saw a picture leaning against the wall on the lower level, with broken glass on the floor. Coppes identified a photograph showing the picture and broken glass, and defense counsel stated he had no objection to its admission into evidence. Coppes went into defendant's bedroom to see if he was there, and Coppes remained in the room for only 15 to 20 seconds. On top of a dresser in the room there were two screwdrivers. Coppes identified a picture of the dresser, and the trial court admitted it into evidence over defendant's objection. It took the officers three to four minutes to clear the house and determine that defendant was not there.

¶ 15 Coppes interviewed defendant at the police station later that night and took a written statement from him. Coppes wrote out the statement based on defendant's narration, and defendant initialed and signed it. In the statement, defendant said that Martinez was driving him home from the hospital, and they stopped to buy beer. After arriving at his house, he drank one beer in the car, and she had two. Martinez asked for the car's title. Defendant told her no because the car was his. They went into the house, and Martinez again asked for the title. Defendant said that he did not have it, and Martinez slapped his cheek. Defendant pushed her away, and a hallway picture fell off the wall. Martinez started going up the stairs, and defendant pulled her back, onto the floor. Defendant was angry because Martinez had been talking to her ex-husband or boyfriend, because Martinez hit him, and because he was on medication and drinking. Defendant put his hands on Martinez's neck and pulled her towards him. He let go when she stopped moving, and he put her on his bed. He called his nephew and told him that he thought he had killed Martinez and needed help with the body. Defendant then saw that Martinez was breathing. He asked her to go to Mexico with him, and she agreed. Defendant picked up a screwdriver and held it towards Martinez. He said that she would not come out of the house unless it was with him. He then either put the screwdriver down or threw

it away from himself. Martinez asked him to get clothes out of the car because she had urinated. He did so, and she changed her pants. Martinez said that she would go with him. He went outside and turned the car on to get ready. He came back in, but Martinez had gone out the back door, and she got in the car and drove away.

¶ 16 Evangelina Gonzalez testified that on the afternoon in question, she returned home and started washing dishes. She heard someone running up the stairs, and she saw that it was a lady who had stayed overnight with defendant before. Her jacket was torn. The lady said something to Gonzalez. Gonzalez heard defendant coming in the house and running downstairs, calling her name. The lady ran out the back door and left in her truck. Defendant ran out the front door. From the time Gonzalez got home until the time the woman came upstairs, Gonzalez did not hear any noise coming from downstairs.

¶ 17 A doctor testified regarding Martinez's injuries, opining that she suffered from non-accidental neck trauma due to manual strangulation.

¶ 18 At trial, defendant provided the following testimony, in relevant part, through a translator. When he left the hospital with Martinez, he asked her to stop and buy Gatorade, but she instead bought beer. He was thirsty when they arrived at the house, so he drank one can. Martinez drank two or three cans. He used Martinez's phone to call his mother in Mexico. Defendant told Martinez that he wanted to go back to Mexico because he was always sick and there was no one to take care of him here. Martinez looked bothered by the idea and said that she wanted the car's title. They argued, with Martinez stating that she "desired [his] death" and he responding that she was crazy. They went inside, still arguing about the title. Defendant denied ever pushing Martinez, grabbing her neck, threatening or poking her with a screwdriver, or choking her. After arguing inside,

defendant went outside to get air and a cigarette from the car. When he returned, he saw that Martinez had run upstairs and exited through the back door. Martinez had also thrown things around his room. Defendant went for a walk and was later arrested. Defendant saw the marks on Martinez's neck prior to April 4, 2009, and thought they were hickeys. Defendant testified that he spoke limited English, and he denied making the statements that the police attributed to him.

¶ 19 Defendant submitted jury instructions on lesser-included offenses of aggravated battery and battery. The jury found defendant guilty of unlawful restraint and battery and not guilty of the remaining charges. The trial court denied defendant's posttrial motion. Following the denial of his motion to reconsider his sentence, defendant timely appealed.

¶ 20

II. ANALYSIS

¶ 21 On appeal, defendant argues that the trial court erred in denying his motion to suppress evidence obtained from his bedroom, because the police search was done without a warrant, valid consent, or exigent circumstances. In his reply brief, defendant specifies that he is challenging the trial court's decision to allow into evidence a photograph taken of the interior of his room; the photograph shows two screwdrivers sitting on top of his dresser.

¶ 22 When reviewing rulings on motions to suppress, we accord great deference to the trial court's factual findings and reverse those findings only if they are against the manifest weight of the evidence. *People v. Pitman*, 211 Ill. 2d 502, 512 (2004). Such deference is based on the recognition that the trial court is in a superior position to determine and weigh the witnesses' credibility, observe their demeanor, and resolve conflicts in their testimony. *Id.* However, we review *de novo* the ultimate ruling on the motion to suppress. *Id.* Further, in reviewing the ruling on the motion to suppress, we may consider evidence presented at trial in addition to evidence from the suppression

hearing. *People v. Kveton*, 362 Ill. App. 3d 822, 829 (2005). Also, we review the trial court's judgment rather than its reasoning, and we may affirm the judgment on any basis supported by the record. *People v. Anderson*, 401 Ill. App. 3d 134, 138 (2010).

¶ 23 We begin with the issue of exigent circumstances, as we conclude that it is determinative here. A warrantless entry will be upheld if both probable cause and exigent circumstances are present. *People v. Ferral*, 397 Ill. App. 3d 697, 704 (2009). Probable cause exists where, considering the totality of circumstances known to the officer at the time, a reasonably prudent person would believe that the suspect is committing or has committed a crime. *Id.* at 706. Defendant does not directly contest probable cause. In any event, we conclude that probable cause existed in this case to arrest defendant at the time the police searched his room. Martinez told the police that defendant had tried to choke and kill her minutes before. Coppes testified Martinez was hysterical and crying, her jacket was torn, and she had red marks on her neck. Accordingly, a reasonably prudent person would believe that defendant had committed some type of crime against Martinez.

¶ 24 Even with probable cause, the police may not make a warrantless entry into a private residence without consent or exigent circumstances. *Id.* at 708. The State has the burden of demonstrating that exigent circumstances exist. *People v. Urbina*, 393 Ill. App. 3d 1074, 1082 (2009). Some factors courts can consider in determining whether exigent circumstances justified the warrantless entry are:

“(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; (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.” *People v. Foskey*, 136 Ill. 2d 66, 75 (1990).

The list of factors is neither exhaustive nor to be rigidly applied. *People v. Davis*, 398 Ill. App. 3d 940, 948 (2010). The primary consideration is reasonableness. *Foskey*, 136 Ill. 2d at 75-76. In determining whether the police acted reasonably, we must look at the totality of the circumstances known to the officers at the time of the warrantless entry. *Id.* at 75. “The circumstances must militate against delay and justify the officers’ decision to proceed without a warrant.” *Id.*

¶ 25 Defendant argues that the facts failed to show exigent circumstances for officers to enter the rented bedroom and search for him. Defendant argues that there was no showing that he would have been present at the residence, as Martinez told the police that she was afraid that defendant would go to her house looking for her, and Gonzalez told the police when they arrived that defendant was out walking. Defendant argues that based on Martinez’s fear, the police would have been better off going to her residence to look for him while other officers could have secured a warrant to search his room for evidence of the alleged incident. Defendant argues that this is also not a case of “hot pursuit” in which the police could have chased him into a private home if he were seeking to avoid arrest.

¶ 26 We conclude that, contrary to defendant’s argument, exigent circumstances existed here. Applying the *Foskey* factors, Martinez told the police that she had just escaped from defendant, who had tried to choke and kill her. Second, the police did not delay, but rather proceeded directly to

defendant's residence. Third, the alleged offense of attempted murder was grave and violent. See *In re D.W.*, 341 Ill. App. 3d 517, 529 (2003) (grave offenses include first-degree murder, armed robbery, assault, and the sale and distribution of drugs). Fourth, while there was no allegation of a gun involved, Martinez did tell police that defendant threatened to kill her with a screwdriver, which could be considered a weapon. See *People v. Flores*, 371 Ill. App. 3d 212, 220 (2007) (screwdriver can be used as a weapon). Fifth, as discussed, there was a clear showing of probable cause. For the sixth factor, there was some likelihood that the defendant would have escaped if not swiftly apprehended; defendant was allegedly involved in an attempted murder and Martinez told the police that she was afraid that he would go to her house, looking for her, and harm her or her family. Seventh, there was a strong reason to believe that defendant would still be on the premises, as that is where he lived, and the incident had just occurred. Although Gonzalez told police when they arrived that defendant was out walking, the police would not have known if she was trying to protect him, and defendant could also have returned without her knowledge. Eighth, the police entry was made peaceably. The police obtained Gonzalez's consent to enter her house, and no one was present when they entered defendant's room. Additionally, we consider that when the police entered the house, they were only looking in places where a person could be hiding, and Coppes was in defendant's room for only 15 to 20 seconds.¹ Considering all of the circumstances known to the

¹Defendant does not argue that even if the police were justified in initially entering his room, the warrantless entry was no longer justified when an evidence technician arrived later and took a picture of the dresser. Accordingly, such an argument is forfeited, and we do not address it on appeal. See Ill. S. Ct. R. 341(h)(7) (eff. Sept. 1, 2006) (points not argued in the appellant's brief are forfeited); *People v. Jacobs*, 405 Ill. App. 3d 210, 218 (2010) (the appellant must clearly define

police at the time, exigent circumstances justified their warrantless entry into defendant's room.

¶ 27 Even if, *arguendo*, the trial court should have suppressed the photograph showing the screwdrivers, any error in failing to do so was undoubtedly harmless. An evidentiary error is harmless beyond a reasonable doubt if there is no reasonable probability that the jury would have acquitted the defendant without the error. *In re E.H.*, 224 Ill. 2d 172, 180 (2006). Our supreme court has identified three approaches for making this assessment: (1) focusing on the error to determine whether it might have contributed to the conviction; (2) determining whether properly-admitted evidence overwhelmingly supports the conviction; and (3) determining whether the improperly-admitted evidence is merely cumulative or duplicative of properly-admitted evidence. *People v. Becker*, 239 Ill. 2d 215, 240 (2010). All three approaches apply here.

¶ 28 First, regarding the alleged error itself, the offenses the jury convicted defendant of were unlawful restraint and battery, neither of which include the element of use of a weapon. In fact, the jury acquitted defendant of aggravated unlawful restraint, which does involve use of a weapon. Second, all of the other evidence overwhelmingly supports the ultimate convictions. Unlawful restraint occurs when a person knowingly and without legal authority detains another. 720 ILCS 5/10-3(a) (West 2008). Battery occurs if a person intentionally or knowingly, and without legal justification, either causes bodily harm to someone or makes physical contact of an insulting or provoking nature. 720 ILCS 5/12-3 (West 2008). Martinez testified about a series of events in which defendant kept her from leaving the house and grabbed her, pushed her, choked her, and

issues, cite pertinent authority, and present cohesive arguments; the appellant may not impose the burden of argument and research on the appellate court, nor is it the court's role to act as advocate or search the record for error).

poked her with a screwdriver. Martinez's account was largely corroborated by her appearance and demeanor when she sought police help, by defendant's statement to police, and by the doctor's opinion that her neck injuries were caused by manual strangulation. Gonzalez's testimony was also consistent with Martinez's account of her interaction with her. In contrast, at trial defendant testified that he had no physical contact with Martinez, which was not credible in light of the aforementioned evidence. Third, the photograph of the screwdrivers was cumulative evidence, as Martinez testified to defendant's use of a screwdriver, and defendant's statement to police also mentioned his handling of a screwdriver. Thus, there is not a reasonable probability that the jury's verdict would have been different if the photograph of the screwdrivers had not been admitted into evidence, and, therefore, any error in admitting the photograph was harmless.

¶ 29 Based on our conclusion that exigent circumstances allowed the warrantless police entry and, even otherwise, any error was harmless, we do not address the remaining issues defendant discusses in his brief, such as whether the search was justified as a "protective sweep" or through consent, and whether the evidence was in plain view.

¶ 30

III. CONCLUSION

¶ 31 For the reasons stated, we affirm the judgment of the Winnebago County circuit court.

¶ 32 Affirmed.