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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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THE PEOPLE OF THE STATE	)	Appeal from the Circuit Court
OF ILLINOIS,	)	of Kane County.
	)	
Plaintiff-Appellee,	)	
	)	
v.	)	No. 08—CF—675
	)	
FRANK W. EVANS,	)	Honorable
	)	Thomas E. Mueller,
Defendant-Appellant.	)	Judge, Presiding.

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JUSTICE HUTCHINSON delivered the judgment of the court.  
Presiding Justice Jorgensen and Justice Bowman concurred in the judgment.

**ORDER**

*Held:* (1) The trial court properly denied defendant's motion to suppress evidence of his obstruction of justice in response to officers' unlawful entry into his home, as the distinct-crime exception to the exclusionary rule applied even though defendant did not do physical violence to the officers; (2) defendant was entitled to a \$25 credit against his fine for the five days he spent in presentencing custody. We affirmed as modified the judgment of the trial court.

Following a bench trial, defendant, Frank W. Evans, was convicted of one count of obstructing justice (720 ILCS 5/31—4(a) (West 2008)). Defendant appeals, arguing that (1) the trial court erred when it denied his motion to suppress evidence, and (2) he is entitled to a \$25 credit

against the fine imposed by the trial court. For the reasons that follow, we affirm defendant's conviction, but modify the judgment to reflect a \$25 credit against defendant's fine.

Defendant was charged with one count of obstructing justice for providing a police officer with a false name. Prior to trial, defendant moved to quash his arrest and suppress statements, arguing that the arrest and statements were the product of an illegal entry by the police into defendant's home.

The evidence presented at the hearing on defendant's motion reflected that, on the evening of March 6, 2008, the Kane County sheriff's department received a call regarding a man pointing a gun at two little girls. Upon talking to witnesses, the police proceeded to defendant's house. The police did not have a search or arrest warrant. The police surrounded the house and made their presence known to the occupants. At some point, the officers entered the house, proceeded to the basement, and placed defendant under arrest.

The trial court denied defendant's motion, finding that, because defendant's act of providing the officers a false name constituted a distinct crime in reaction to the officers' entry into the home, it was not subject to the exclusionary rule.

At the bench trial, an officer testified that after he was arrested, defendant provided the police with false names. No other witnesses testified. The trial court found defendant guilty and sentenced him to 24 months' probation and 60 days in the county jail. The trial court also imposed a \$1,000 fine. Defendant timely appealed.

On appeal, defendant contends that the trial court erred when it denied his motion to suppress, because the distinct-crime exception to the exclusionary rule does not apply where the distinct crime is not physical resistance against a police officer. We disagree with defendant.

In reviewing a trial court’s decision on a motion to suppress, we apply a two-part standard of review. First, the trial court’s factual findings are given great deference and will be disturbed only if they are against the manifest weight of the evidence. *People v. Luedemann*, 222 Ill. 2d 530, 542 (2006). Second, the ultimate legal conclusion as to whether suppression is warranted is reviewed *de novo*. *Id.* at 542.

The chief evil against which the fourth amendment to the United States Constitution is directed is the physical entry of the home. *Payton v. New York*, 445 U.S. 573, 585 (1980); *People v. Wear*, 229 Ill. 2d 545, 562 (2008). Thus, the fourth amendment “has drawn a firm line at the entrance to the house” (*Payton*, 445 U.S. at 590), and warrantless searches and seizures inside a home are presumptively unreasonable (*Payton*, 445 U.S. at 586; *Wear*, 229 Ill. 2d at 562). Typically, evidence, including oral statements, that is acquired during or as a direct result of an illegal search may not be used against the defendant. *People v. Abrams*, 48 Ill. 2d 446, 454 (1971). Under the distinct-crime exception to the exclusionary rule, however, evidence of a defendant’s unlawful conduct that was in response to police actions in violation of the fourth amendment will not be excluded. *Id.* at 455.

It was on this distinct-crime exception that the trial court relied in denying defendant’s motion to suppress. Relying on *Abrams* and *People v. Villareal*, 152 Ill. 2d 368 (1992), defendant argues that this was error because the exception applies only when the distinct crime the defendant commits in response to police actions is a physical one directed against the police. In *Abrams*, 48 Ill. 2d at 455, and *Villareal*, 152 Ill. 2d at 377, the defendants sought to suppress evidence that they engaged in physical contact with the officers who entered the premises. In both cases, the supreme court held that, because the defendants’ physical violence against the officers constituted distinct

crimes committed in response to the officers' actions, evidence of the defendants' actions was not subject to the exclusionary rule, regardless of the legality of the officers' actions. *Villareal*, 152 Ill. 2d at 377-79; *Abrams*, 48 Ill. 2d at 455. To allow such evidence to be suppressed would be to "encourage unlawful and retaliatory conduct." *Abrams*, 48 Ill. 2d at 456.

Defendant also relies on *People v. Brown*, 345 Ill. App. 3d 363, 367-68 (2003), for the proposition that the distinct-crime exception applies only where the defendant engages in physical resistance. In *Brown*, an officer stopped the defendant, who falsely told the officer that he did not have any identification and that his name was Tony B. Brown rather than Antonio B. Brown. *Brown*, 345 Ill. App. 3d at 365. A majority of the Fourth District held that evidence of the defendant's statements to the officer was properly suppressed, because the distinct-crimes exception to the exclusionary rule did not apply where the defendant did not physically resist the officer's actions. *Brown*, 345 Ill. App. 3d at 367-68. Justice Turner dissented, disagreeing that the distinct-crimes exception applies only where the defendant physically resists an officer's actions. *Brown*, 345 Ill. App. 3d at 369-70. In support, Justice Turner noted that the supreme court in *Abrams* did not limit the exception to physical resistance and even relied on cases that did not involve physical resistance. *Brown*, 345 Ill. App. 3d at 369.

For the reasons stated in the *Brown* dissent, we disagree with defendant's contention that the distinct-crime exception to the exclusionary rule applies only where a defendant physically resists the actions of police. In neither *Abrams* nor *Villareal* did the supreme court limit the exception to acts of physical resistance. While it is true that those cases involved physical resistance, the supreme court's reasoning did not rely on that fact, nor did the supreme court include physical resistance as an element in its formulation of the exception. Rather, in *Abrams*, the supreme court stated, "[W]e

hold that an accused cannot effectively invoke the fourth amendment to suppress evidence of his own unlawful conduct which was in response to police actions in violation of the amendment.” *Abrams*, 48 Ill. 2d at 455. It also stated, “We and other courts, through whose decisions the rule of exclusion has evolved, have not contemplated that one who commits an unlawful homicide, assault, or other offense in reaction to an illegal search would be entitled to suppress the evidence of his deed.” *Abrams*, 48 Ill. 2d at 456. In neither of these statements of the exception did the supreme court limit the exception to physical offenses, despite the opportunity to do so. Although in *Villareal* the supreme court made the statement that the defendants could not rely on the exclusionary rule to suppress evidence of their “physical actions,” it is apparent from the context of that statement that the court was discussing the specific defendants in that case—who did, in fact, engage in physical resistance—and was not attempting to limit the application of the distinct-crime exception.

In addition, defendant’s interpretation of the exception is undercut by the *Abrams* court’s reliance, and specific approval of, the application of the exception in cases involving briberies. See *Abrams*, 48 Ill. 2d at 456-57 (“We consider these refusals to extend the exclusionary rule [to cases involving attempted briberies of officers] to have been correct.”). Had the supreme court intended the exception to apply only in cases of physical resistance, it would not have relied on, much less explicitly approved of, the application of the exception in cases involving attempted briberies.

Accordingly, we affirm the trial court’s decision to deny defendant’s motion to suppress.

Defendant also argues that he is entitled to a monetary credit against the \$1,000 fine imposed by the trial court. The State agrees, as do we. Under section 110—14(a) of the Code of Criminal Procedure of 1963 (725 ILCS 5/110—14(a) (West 2008)), most defendants are entitled to credits of \$5 per day for time spent in presentencing custody against their “fines” (unless the law specifically

excludes application of the credit to a particular fine). Defendant served five days in presentencing custody. Accordingly, he is entitled to \$25 in credit against his \$1,000 fine.

For the reasons stated, we affirm defendant's conviction but modify the judgment to reflect a \$25 credit against defendant's fine.

Affirmed as modified.