



¶ 5 Kevin Cripps testified that he is employed as a sergeant with the Marion County sheriff's office. On March 12, 2011, when Cripps reported to work at 11 p.m., he learned from other officers of possible methamphetamine activity at a specified location in rural Salem. Cripps also learned from his fellow officers that a female suspect could potentially leave the location with methamphetamine. Accordingly, he drove to the area and parked where he could keep the property under surveillance. Cripps testified that he remained for a little over an hour, but left in response to another call. Deputy Hannah Burr, who was also on duty that night, drove into the area as Cripps was leaving and took over surveillance of the property. After Cripps was gone for approximately five minutes, Burr observed a male subject being picked up by a vehicle at the end of the driveway. When Cripps returned, Burr was initiating a traffic stop on the vehicle. Cripps exited his car and overheard Burr explain why the traffic stop had taken place and request identification from both occupants. The driver was an employee of a taxi service that owned the vehicle, and the passenger was identified as the defendant. After running the names of the occupants, Burr discovered an outstanding warrant against the defendant in Effingham County. Cripps testified that he detected a "very strong chemical smell that I have smelled at methamphetamine labs on multiple occasions" emanating from the defendant as he searched him. Cripps added that the smell is very distinct to people who cook methamphetamine.

¶ 6 Deputy Burr testified that she was on duty on the night in question. She testified that she drove to the area under surveillance when Cripps left, passed the driveway of the subject property, and continued driving about a quarter of a mile. She subsequently turned her patrol car around and spotted the defendant standing at the end of the driveway as she drove past again. Burr noted that the defendant was adjusting a black bag he was carrying on his shoulder. Burr met a car and observed in her rearview mirror the car slowing down and the defendant getting into it. She testified that she never lost sight of the defendant from the time

she first spotted him until he entered the car. She subsequently turned her patrol car around and followed the car until she pulled it over for driving 64 miles per hour (mph) in a 55-mph zone.

¶ 7 Although the car was unmarked, Burr testified that she discovered it belonged to the Blue Angels taxi service when she checked the license plate. She approached the taxi, informed the driver that she pulled him over for speeding, and obtained his identification as well as that of the defendant. The driver acknowledged that he had been speeding and explained that he was attempting to get his passenger to the train station before the train left. After the identification check yielded an outstanding warrant on the defendant, Sergeant Cripps searched him, and Burr placed him under arrest. Burr subsequently gave the taxi driver a verbal warning for speeding and transported the defendant to the Marion County jail.

¶ 8 Burr testified that she did not search the vehicle after the defendant's arrest, nor did she observe a bag during the traffic stop or make any inquiry about the bag that she had earlier observed on the defendant's shoulder because she was busy verifying information with a dispatcher who was new to the job. Burr conceded that she completely forgot about the bag until some time later when the dispatcher notified her that a representative of Blue Angels had called and stated that the taxi driver recalled that the defendant had a bag in the trunk, stated that the bag had not been opened or disturbed in any way, and requested that the officers retrieve the bag. Burr and Cripps drove to Blue Angels in Centralia, where the taxi driver took them to the car and opened the trunk. Burr testified that once the trunk was opened, the same chemical smell that was on the defendant earlier was emanating from the trunk and the bag. Accordingly, they opened the bag and discovered "everything pretty much used in making meth." Burr conceded that the bag was opened without a warrant. The bag was subsequently turned over to a methamphetamine response team of the Illinois State Police. The State's position at the suppression hearing was that the search was conducted as

an inventory search subsequent to arrest. Accordingly, additional testimony was elicited regarding the Marion County sheriff's office inventory search policies. Because that testimony is not relevant to our disposition, we will not discuss it. For reasons that are not clear from the record on appeal, the issue of abandonment was not presented by the State.

¶ 9 The circuit court took the matter under advisement and on September 2, 2011, entered an order granting the defendant's motion to suppress evidence. The circuit court concluded that the search was not conducted for inventory purposes as alleged by the State, but for investigatory purposes. The State filed a timely notice of appeal. Additional facts will be provided as necessary throughout the remainder of this order.

¶ 10

#### ANALYSIS

¶ 11 In addition to the argument presented to the circuit court that the search of the bag was conducted as an inventory search, the State contends on appeal, *inter alia*, that the fourth amendment (U.S. Const., amend. IV) does not apply to the search of the bag because the defendant abandoned the bag at the time of his arrest. The defendant responds that the State has waived this issue on appeal because the same was not raised in the circuit court. "The principle of waiver applies to the State as well as to defendants." *People v. Knop*, 199 Ill. App. 3d 944, 949 (1990). However, "[t]he rule of waiver is \*\*\* a limitation on the parties, not a limitation on this court's jurisdiction." *People v. Gargani*, 371 Ill. App. 3d 729, 732 (2007). "Where circumstances warrant, \*\*\* it is within the discretion of the appellate court to review contentions not raised at trial by the State under the doctrine of plain error." *Knop*, 199 Ill. App. 3d at 949.

¶ 12 "The plain[ ]error doctrine allows a reviewing court to address defects affecting substantial rights if \*\*\* fundamental fairness so requires rather than finding the claims waived." *Gargani*, 371 Ill. App. 3d at 732. As this court previously recognized, the State has a substantial right to completely try a defendant, which requires that the circuit court

consider persuasive and reliable forms of evidence. See *People v. Lucy*, 204 Ill. App. 3d 1019, 1033 (1990). In the case at bar, the evidence in the bag is persuasive and reliable because the defendant never contended that the bag did not belong to him. Moreover, the evidence is key to the State's case, and the suppression of the evidence deprived the State of its substantial right to completely try the defendant. See *id.* Accordingly, despite the State's waiver, fundamental fairness requires us to review the issue (see *Gargani*, 371 Ill. App. 3d at 732) of whether the defendant abandoned the bag at the time of his arrest, thereby rendering the fourth amendment (U.S. Const., amend. IV) inapplicable.

¶ 13 "In order to challenge a search, a defendant must establish that he had a reasonable (or legitimate) expectation of privacy in the property searched or seized." *People v. London*, 358 Ill. App. 3d 567, 572 (2005). "A warrantless search is presumptively invalid and *per se* unreasonable unless the search falls within a recognized exception." *Id.* "An 'abandonment of property' is one recognized exception to the warrant requirement." *Id.* "This exception prevents individuals from effectively contesting the search or seizure of property after they have relinquished possession or ownership of the property." *Id.* "Abandonment has been viewed by the courts as a relinquishment of an interest in property to the extent that a defendant either (1) no longer has a reasonable expectation of privacy in the property or (2) no longer has standing to contest the subsequent search or seizure of the property." *Id.* "Property that has been abandoned is no longer protected by the fourth amendment and may be searched or seized without a warrant." *Id.* "Abandonment is primarily a question of intent, inferred from words, objective facts, and other conduct." *Id.*

¶ 14 In this case, we may infer by the defendant's conduct during and subsequent to his arrest that he intended to abandon the bag. During the arrest, for obvious reasons, he never spoke up or asked the officers to retrieve his bag from the trunk of the taxi, nor did he ask for the bag at any time subsequent to the arrest. Indeed, a connection to the bag would have

only resulted in negative consequences additional to those already faced by the defendant in being brought in on the outstanding Effingham County warrant. Moreover, Deputy Burr testified that the defendant paid the taxi driver before he was arrested. Because the defendant's hire of the taxi was complete at the time of his arrest, he lost his legitimate expectation of privacy in the trunk of the taxi at that point. See *People v. Carlton*, 133 Ill. App. 3d 1061, 1064 (1985) (passenger has legitimate expectation of privacy in trunk of cab only while he is renting it). When the defendant abandoned the bag, he no longer had a reasonable expectation of privacy in it, nor did he have standing to contest its subsequent search. See *London*, 358 Ill. App. 3d at 572. Accordingly, the fourth amendment (U.S. Const., amend. IV) does not apply to the bag and its search was not unlawful.

¶ 15

#### CONCLUSION

¶ 16 For the foregoing reasons, we reverse the September 2, 2011, order of the circuit court of Marion County that granted the defendant's motion to suppress evidence, and we remand for further proceedings that are not inconsistent with this order.

¶ 17 Reversed and remanded.