

sentenced defendant to 12 years' imprisonment with credit for 168 days served. This appeal followed.

¶ 3 Defendant argues (1) the trial court erred by denying his motion to suppress evidence, and (2) his conviction should be reversed because without the evidence sought to be suppressed, the remaining evidence would be insufficient to prove him guilty beyond a reasonable doubt. We disagree and affirm.

¶ 4 I. BACKGROUND

¶ 5 In August 2011, the State charged defendant with being an armed habitual criminal (720 ILCS 5/24-1.7(a)(3) (West 2010)). The charge alleged defendant knowingly possessed a "silver handgun" after having been convicted a total of two or more times of violations of the Illinois Controlled Substances Act (720 ILCS 570 (West 2010)) or the Cannabis Control Act (720 ILCS 550 (West 2010)) that were punishable as Class 3 felonies or higher.

¶ 6 Later in August 2011, defendant filed a motion to suppress evidence pursuant to section 114-12 of the Code of Criminal Procedure of 1963 (Procedure Code) (725 ILCS 5/114-12 (West 2010)). In the motion, defendant alleged police obtained evidence against him in violation of his fourth amendment rights.

¶ 7 A. Facts Pertinent to Defendant's Fourth Amendment Claim

¶ 8 The following facts were gleaned from testimony presented at the September 2011 hearing on defendant's motion to suppress and defendant's November 2011 jury trial. See *People v. Slater*, 228 Ill. 2d 137, 149, 886 N.E.2d 986, 994 (2008) (In reviewing the trial court's ruling on a motion to suppress evidence, "it is proper for us to consider the testimony adduced at trial, as well as at the suppression hearing."). We review only those facts necessary for our decision.

¶ 9 Between 9:30 and 9:48 p.m. on the evening of August 3, 2011, 16-year-old Onessia Lawson was playing with her young nephew at a playground in a field directly adjacent to her family home in Rantoul. Several juvenile females and a 20-year-old woman named Precious arrived at the playground in a van and attempted to start an altercation with Onessia. Onessia attended high school with the juvenile girls and had been involved in an ongoing dispute with them. Onessia used her cellular phone to call her mother, Keowanna Lawson, and tell her the girls were trying to "jump" her. Keowanna and her husband, Onycai Lawson, walked through the field behind their house to the playground, had an argument with Precious, and walked back to their house with Onessia and Onessia's nephew.

¶ 10 Approximately 15 minutes later, Precious returned to the area behind the Lawsons' house with defendant, who claimed to be Precious's uncle. Keowanna was familiar with defendant and knew he lived two or three blocks away on Marco Drive. Defendant asked to speak with "the lady of the house." Keowanna stood up, but Onycai approached defendant and told him he could speak to the man of the house. Onycai and defendant "exchanged words and stuff," according to Keowanna's trial testimony, and then defendant and Precious left.

¶ 11 Shortly thereafter, defendant returned to the Lawsons' house with two other men. Keowanna, Onycai, and their son were present along with several nonfamily members. Defendant wanted Onycai to walk somewhere to speak with him. Onycai testified he refused and "then [defendant] proceeded to his crotch in the front and pulled out a pistol." Keowanna testified about what happened, as follows:

"So [defendant] was like, he told my husband, he like, ["]I told you, man, I was tired of the talking,["] and he said

[']something's going to happen today[']. And so he—my husband said—told him, [']well, man, I don't know what it is, so we can do whatever[']. And then [defendant] just sort of scooted back, took a gun out and cocked it."

¶ 12 Keowanna testified "[i]t was a silver gun. It was long." Onycai described the gun, as follows:

"It was chrome. I know it's an automatic 'cause all he did was clicked it once, and I want to say it's a nine [(9 millimeter)] but, you know, I wasn't for sure 'cause I didn't just actually look at it and, you know, meditate on it."

¶ 13 The two men who accompanied defendant tried to calm defendant down and told him to put the gun away. Keowanna went into her house and called the police. The two men who came with defendant stood in front of defendant. Defendant and the two men left the scene on foot shortly before the police arrived.

¶ 14 At 9:48 p.m., Sergeant Lance Kerney and Officer Stephanie Barrett of the Rantoul police department were dispatched to the Lawsons' house on Abram Drive in response to a report of a man with a gun. The officers arrived in separate vehicles. Kerney testified he arrived "a couple minutes" after the incident involving defendant and Onycai had occurred.

¶ 15 At the Lawsons' house, Sergeant Kerney and Officer Barrett encountered "a large group, mostly juveniles and some parents[.]" Barrett spoke with members of the Lawson family. Kerney did not ask questions of anyone, but stood by listening to the conversation and making sure the man with the gun did not return while the witnesses were being interviewed. Onycai and

Keowanna related their observations to Barrett and provided the house number on Marco drive where defendant lived. Kerney testified he and Barrett "promptly drove" to that address, which was approximately two blocks away. The two officers arrived at the address on Marco Drive "four or five minutes" after receiving the initial call.

¶ 16 Sergeant Kerney parked his squad car several houses down the street from the address on Marco Drive. He and Officer Barrett approached the house on foot. Kerney testified the house was a duplex and part of the housing facilities of the old Chanute Air Force Base. No fences or gates surrounded the property.

¶ 17 Sergeant Kerney noticed a light on in the kitchen window, which was on the side of the house facing the street, approximately 12 to 13 feet away from the sidewalk. Kerney walked onto the lawn and placed himself close to the window so his face was approximately six to eight inches from the glass. Kerney testified he was six feet, three inches tall and could stand flat-footed on the grass and look through the window. The State offered into evidence two photographs, taken at a later date, showing Kerney standing next to the window in the same position he was standing on the night of August 3, 2011. In the photographs, the bottom of the window is approximately even with Kerney's neck.

¶ 18 On the night at issue, the miniblinds inside the window were drawn almost all the way down, but the slats were adjusted to the open position so that Kerney "had a clear view" into the kitchen. Because the light was on in the kitchen and it was dark outside, Kerney could not readily be seen from inside the house.

¶ 19 Sergeant Kerney saw two men inside the house. One man was sitting in a chair in the kitchen and the other man, whom Kerney identified as defendant, was standing or walking

near the area where the kitchen met the living room. Defendant walked to the kitchen sink, which was directly below the window Kerney was looking into. Kerney was approximately four feet away from defendant.

¶ 20 Sergeant Kerney saw defendant using his white T-shirt to wipe off a "large-frame chrome handgun" he held in his hand. After he wiped off the gun, defendant ejected the magazine, put the gun on the kitchen table, and wiped off the magazine. Defendant then put the magazine back in the handgun. Kerney described the magazine as a "semiautomatic magazine, silver in color, had actually bullets in the magazine." Kerney could see the bullets, which had copper-colored tips and were probably .9 millimeter, 40 caliber, or 45 caliber, according to his estimation. While Kerney was making these observations, he notified dispatch he saw a man with a handgun and would need additional units to respond to the scene.

¶ 21 After defendant put the magazine back in the gun, a phone inside the house rang. Officer Barrett heard someone inside the house make a comment about the police, then the lights in the house went out. Because Sergeant Kerney feared the lights may have gone out because a neighbor called to notify defendant the police were outside the house, and because Kerney might be easier to see with the lights out inside the house, Kerney and Barrett hid behind a van in the next-door neighbor's driveway. More police officers arrived at the scene and, following a standoff lasting between 45 minutes and an hour, defendant eventually surrendered peacefully.

¶ 22 Thereafter, officers conducted a search of the house but did not locate a gun. However, Sherry Pearce, an assistant property manager at the housing complex, testified Shalone Matchem, defendant's girlfriend and the lessee of the house, told her on the morning of August 4, 2011, the police destroyed a portion of drywall in the house during their search the previous

night. Pearce told Matchem it would be her responsibility to fix the damage. Sometime later that month, Matchem was evicted for failure to pay rent. The State admitted into evidence a photograph depicting a large drywall patch on a wall underneath an air vent in a hallway of the house. Pearce testified someone had apparently patched the drywall before Matchem moved out of the house. At some time in September 2011, Sergeant Kerney went to the housing complex and spoke with Pearce about an unrelated matter. Pearce asked Kerney why the police damaged the drywall during their August 3, 2011, search of the house. Kerney told Pearce the police did not damage the house at all. Pearce showed Kerney the drywall patch. Kerney testified at trial the area of the wall now containing a patch was completely undamaged at the time the police called off their search on the night of August 3, 2011.

¶ 23 B. Defendant's Motion To Suppress Evidence

¶ 24 In his August 2011 motion to suppress, defendant argued Sergeant Kerney violated his fourth amendment rights by looking into the window of the house on Marco Drive. Defendant sought to suppress "all observations made by the investigating officers and all statements made by [defendant] and the investigating officers."

¶ 25 In September 2011, following a hearing, the trial court denied defendant's motion to suppress, finding as follows:

"In considering the Defendant's motion, the Court is taking into consideration all of the facts as they existed on the night in question. First of all, the Rantoul [p]olice [d]epartment officers responded to a citizen complaint that a person had displayed a handgun at a place other than [the address on] Marco Drive. The

complainant also said, however, that the person with the gun had gone to [the address on] Marco Drive. And so the officers then went there to continue with their investigation.

The Court believes that the fact that the complaint was of a handgun does, in fact, raise certain exigent circumstances so that it wouldn't necessarily be the case as would often apply that some officer would simply go up and knock on the door for fear perhaps that he would be met with a fuselage of bullets from the other side. So the officers, I believe, at that point had a reasonable opportunity to investigate to see whether they were in danger, just exactly what was going on there at Marco Drive.

The—in the course of the investigation, Sergeant Kerney went up to the side of the residence, did not enter into the residence, looked through a window. And one of the characteristics of most windows is that they're transparent. You can look through them. There was, in fact, apparently a venetian blind, but the blind was not closed, and the officer looked into the residence and saw the Defendant and another individual there.

* * *

[A]gain, the officers were there in the course of an investigation investigating a man-with-gun complaint which gave rise to certain

officer safety considerations that I believe were, in fact, exigent.

The Court believes that the intrusion, very limited as it was, was justified and that there was no—and there is no—basis for suppressing what the officer saw through an open window and an open set of blinds."

¶ 26 C. Subsequent Proceedings in the Trial Court

¶ 27 At defendant's November 2011 jury trial, the State presented, among other evidence, Sergeant Kerney's testimony as to what he observed through the window at the house on Marco Drive. The jury found defendant guilty of the offense of being an armed habitual criminal (720 ILCS 5/24-1.7(a)(3) (West 2010)), an element of which requires the State to prove defendant received, sold, possessed, or transferred a firearm. The trial court denied defendant's posttrial motions and sentenced him to 12 years' imprisonment with credit for 168 days served.

¶ 28 This appeal followed.

¶ 29 II. ANALYSIS

¶ 30 On appeal, defendant argues Sergeant Kerney violated his fourth amendment rights by looking through the window of the house on Marco Drive. Defendant contends Kerney's actions constituted a warrantless search and no exception to the warrant requirement applied. Defendant further asserts his conviction should be reversed because without Kerney's testimony, the State would be left with insufficient evidence to prove him guilty beyond a reasonable doubt.

¶ 31 A. Standard of Review

¶ 32 In reviewing a trial court's ruling on a motion to suppress evidence, we apply a two-part standard of review. *People v. Luedemann*, 222 Ill. 2d 530, 542, 857 N.E.2d 187, 195 (2006) (citing *Ornelas v. United States*, 517 U.S. 690, 699 (1996)). Under this standard, a trial court's findings of historical fact are reviewed only for clear error, and we give due weight to any inferences drawn from those facts by the fact finder. *Id.* We remain free, however, to undertake our own assessment of the facts in relation to the issues and draw our own conclusions when deciding what relief should be granted. *Id.* Accordingly, we review *de novo* the trial court's ultimate legal ruling as to whether suppression is warranted. *Id.*

¶ 33 B. Sergeant Kerney's Actions Constituted a Search

¶ 34 The fourth amendment to the United States Constitution protects the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const., amend. IV; accord Ill. Const. 1970, art. I, § 6. "[T]o claim the protection of the fourth amendment, a defendant must demonstrate that he or she personally has an expectation of privacy in the place searched and that his or her expectation is reasonable, that is, an expectation of privacy that has ' "a source outside of the Fourth Amendment, either by reference to concepts of real or personal property law or to understandings that are recognized and permitted by society." ' " *People v. Rosenberg*, 213 Ill. 2d 69, 77-78, 820 N.E.2d 440, 446 (2004) (quoting *Minnesota v. Carter*, 525 U.S. 83, 88, 119 S. Ct. 469, 472, (1998), quoting *Rakas v. Illinois*, 439 U.S. 128, 143 n. 12, 99 S. Ct. 421, 430 n. 12 (1978)).

¶ 35 In this case, although the window through which Sergeant Kerney looked was transparent and unobstructed, it was elevated above the ground at such a height that would make it difficult for a person on the public sidewalk to be able to see what was happening inside the

kitchen. In fact, Kerney had to step well onto the private property and place himself inches away from the window to observe defendant's actions. In one of the photographs offered into evidence by the State, Kerney's body is touching the side of the house as he looks into the window. With his body up against the house, only Kerney's head and neck are above the windowsill. The window was not adjacent to any private walkway or other area where members of the public might enjoy an implicit invitation to walk past. No building facing the window could provide a vantage point from which others might readily look into the kitchen. On these facts, we conclude occupants inside the kitchen of the home, including defendant, could reasonably expect their conduct to remain private and unseen by others. Accordingly, Kerney's actions constituted a fourth amendment search.

¶ 36 C. Exigent Circumstances Justified Sergeant Kerney's Actions

¶ 37 The fourth amendment does not prohibit law enforcement from making a warrantless intrusion into the privacy of a suspect's home when exigent circumstances render the intrusion objectively reasonable. *People v. Foskey*, 136 Ill. 2d 66, 74, 554 N.E.2d 192, 196 (1990). The cornerstone of an exigency analysis is whether the police officers acted reasonably. *People v. Williams*, 161 Ill. 2d 1, 26, 641 N.E.2d 296, 306 (1994). In determining whether exigent circumstances rendered the intrusion objectively reasonable, the appellate court must evaluate "the totality of the circumstances confronting the officers at the time the entry was made." *Foskey*, 136 Ill. 2d at 75, 554 N.E.2d at 197. The burden of proving the existence of exigent circumstances is on the State. *Id.* Although not exhaustive, the Illinois Supreme Court has held the following factors relevant to the determination of whether exigent circumstances exist:

"(1) whether the offense under investigation was recently committed; (2) whether there was deliberate or unjustifiable delay by the police during which they could have obtained a warrant; (3) the gravity of the offense, particularly whether it involves violence; (4) whether the suspect is reasonably believed to be armed; (5) whether the police were acting on a clear showing of probable cause; (6) whether it was likely the suspect would escape if not apprehended quickly; (7) whether there was a strong reason to believe the suspect was on the premises; and (8) whether the nonconsensual entry by the police was, nevertheless, peaceable."

People v. Eden, 246 Ill. App. 3d 277, 282, 615 N.E.2d 1224, 1227 (1993) (citing *Foskey*, 136 Ill. 2d at 75, 554 N.E.2d at 197).

¶ 38 Applying the factors enunciated by the supreme court in *Foskey* to the facts before us, the offense under investigation in this case had been committed only minutes before the officers arrived. The officers responded to a report of a man with a gun and they did not delay at all in their investigation. Although the weapon had not been discharged, defendant was reasonably believed to be armed with a loaded .9 millimeter handgun and the potential for violence was great, given the ongoing nature of the dispute involving the Lawson family and defendant's family and the short distance (two blocks) between the Lawsons' and the house defendant retreated to. The seriousness of defendant's offense was elevated because it involved children. The consistent statements of multiple witnesses provided the officers with a clear showing of probable cause defendant had drawn a handgun and cocked it during an altercation

with Onycal. Defendant's decision to cock the handgun, loading a round into firing position, indicated his willingness to use the weapon against others. The fact multiple witnesses saw defendant do this and Keowanna called the police meant it was likely defendant would flee the area to avoid being apprehended. It was therefore important for the officers to act quickly.

¶ 39 Keowanna identified defendant by name and gave the officers the address of the house where he was staying, which was only two blocks away. Because defendant and the two men left on foot, there was strong reason to believe defendant could be found at that address. The officers drove directly to the address, arriving only four or five minutes after receiving the initial call. Because Sergeant Kerney was not certain defendant was at the address on Marco Drive, it would have been inappropriate for him to then begin the potentially lengthy process of obtaining a search warrant for the house. This would also have compromised the more immediate need to ensure safety and security in the area. Although Kerney's elected course of action intruded into the privacy of the home, that intrusion was entirely peaceful and minimally invasive considering the window was unobstructed and the room Kerney looked into was a kitchen (as opposed to a potentially more private area, such as a bedroom or bathroom). Under these circumstances, we conclude Sergeant Kerney's actions were reasonable given the exigencies of the situation.

¶ 40 The trial court did not err by denying defendant's motion to suppress evidence. Because we affirm the court's denial of defendant's motion to suppress, we need not address his remaining argument.

¶ 41 III. CONCLUSION

¶ 42 We affirm (1) the trial court's denial of defendant's motion to suppress evidence

and (2) defendant's conviction. We grant the State its \$50 statutory assessment against defendant as costs of this appeal.

¶ 43 Affirmed.

¶ 44 JUSTICE APPLETON, dissenting.

¶ 45 I respectfully dissent. I do not believe that the circumstances of the police call made by the residents of the Lawson home justified the subsequent warrantless search by peeking through a window, thereby invading the curtilage of defendant's abode.

¶ 46 The police received a report that defendant argued with a neighbor concerning a previous altercation between members of his family and the family of the neighbor. Words were exchanged and, apparently, the neighbors advised the police that defendant had displayed a weapon during the argument. When officers arrived at defendant's house to investigate the neighbors' complaint, there then existed no exigent circumstance to justify a search.

¶ 47 While parsing through the factors in *Eden*, one must not lose sight of the basic requirement: that, at the very moment of the warrantless search, there was a genuine emergency; there truly were exigent circumstances—not that there were exigent circumstances before things calmed down, but that the exigent circumstances still existed. The evidence must show "an immediacy or real threat of current danger or likelihood of flight." *People v. Davis*, 398 Ill. App. 3d 940, 949 (2010). In the present case, the danger was no longer current or immediate. The altercation at the playground was over and done with. The crisis was over. If defendant had attempted to leave, the police could have stopped him, and a pistol could not be flushed down the toilet. See *People v. Gott*, 346 Ill. App. 3d 236, 247-48 (2004).

¶ 48 For this reason, I would reverse defendant's conviction based on the fruits of the illegal search undertaken by the investigating officers. I would further note that the alleged weapon was never found in defendant's residence, following an exhaustive search of the premises.