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2015 IL App (5th) 140325-U

NO. 5-14-0325

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

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).

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Williamson County.
)	
v.)	No. 12-CF-455
)	
DANIEL R. WOODHALL,)	Honorable
)	John Speroni,
Defendant-Appellant.)	Judge, presiding.

JUSTICE WELCH delivered the judgment of the court.
Justices Goldenhersh and Chapman concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not err in denying the defendant's motion to suppress evidence and quash arrest where the totality of the circumstances justified a "protective sweep" of the defendant's residence; the defendant was not improperly seized; and, the defendant's consent to the officers' search of his residence was voluntary.

¶ 2 The defendant, Daniel R. Woodhall, appeals the order of the circuit court of Williamson County denying his motion to suppress evidence and quash arrest. For the following reasons, we affirm.

¶ 3 The following evidence was adduced from the defendant's March 8, 2013, hearing. On October 17, 2012, at approximately 9:20 p.m., nine Southern Illinois Enforcement

Group (SIEG) agents (officers) went to the defendant's residence, a duplex-style apartment, in order to conduct a "knock and talk" regarding an ongoing drug investigation. All of the officers were in plainclothes, but carried their firearms and identification as police officers. The defendant's girlfriend, Ashley Giffin, answered the door in her pajamas.

¶ 4 Giffin testified that she opened the door approximately six inches and saw five men standing outside her door, and that they identified themselves as "SIEG," but at the time, she did not know what that meant. The officers asked Giffin whether the defendant was home, and she told them that she was the only person in the apartment and that the defendant was in Johnston City. She admitted that this was a lie, as she was aware that the defendant was in the back bedroom and that another male, Dakota Graves, was in the front bedroom. Giffin stated that the officers would not tell her why they needed to speak with the defendant, and she lied because she was scared and "[i]t looked like people were coming to beat him up."

¶ 5 Giffin testified that the five officers entered the residence without her consent. She sat down on a couch in the living room, and the officers requested that she call the defendant; when she purposely dialed the wrong number, they took away her phone and began to raise their voices at her. She stated that at this point, the officers began to look around the house, but had never given her any indication that they had a warrant. She testified that the defendant then came out of the bedroom with his hands raised, and one of the officers drew a gun on him. Giffin testified that as the defendant moved towards the living room, one of the officers opened the laundry room door. The defendant

grabbed the door to shut it and asked to see a warrant, and the officer then punched the defendant in the arm. The defendant was thereafter placed in handcuffs and placed on a living room couch.

¶ 6 Giffin testified that after the officers realized there were other people in the apartment, they began "going through drawers, going through our cabinets, going through the fridge." Giffin stated that Graves' bedroom door was closed, and some officers entered it and brought him out in handcuffs. Giffin testified that she was then also placed in handcuffs, and the three occupants were separated for questioning. Giffin stated that while they were separated, several more officers entered the home without permission, even though the front door was closed. Giffin testified that after the officers had conducted their search, they asked her to sign both a *Miranda* waiver and a consent to search form. She stated that she signed the forms "because there was no reason not to if they had already searched through everything." She agreed that she was not threatened or told that she had to sign anything, but also stated that while sitting handcuffed in the living room, she did not feel free to leave the premises.

¶ 7 The defendant testified that at the time of the incident, he was in the back master bedroom when he heard people enter the apartment and yell at Ashley. He testified that he was "kind of scared for her" so he walked out of the bedroom; at that point, an officer pulled a gun on him, so he stated that he did not have any weapons; he agreed that he likely "surprised" the officers with his appearance. The defendant noted that while proceeding down the hallway towards the living room, an officer attempted to open the laundry room door, located between the living room and back bedroom. In response, the

defendant grabbed the knob and pulled the door shut, requesting to see a warrant, and the officer responded by striking him in the arm and placing him in handcuffs.

¶ 8 The defendant testified that he was escorted to the living room and placed on the couch. He noted that Ashley was also in the living room, but Graves was not; Graves' bedroom door was shut, but he agreed that evidently there were officers in that bedroom, because he observed Graves come out in handcuffs a few minutes later. Once all three were placed on the couch, the defendant noted that the officers were going through the cabinets, coat pockets, and "throwing things around." He recalled five officers being present when he initially came to the living room, and stated that he did not give any of the officers permission to enter the apartment.

¶ 9 The defendant testified that he was taken back to his bedroom, and though a couple officers walked in and out, he was mainly questioned by the officer with gray hair. He testified that he remained in handcuffs, but was granted his request to move them to the front of his body due to the discomfort. The defendant testified that he was then given a consent to search form, which he signed of his own free will; however, he noted that he chose to sign it because "they already went through my whole house" and he was scared. He was also given a *Miranda* waiver, which he read and signed. He testified that the officers had searched and asked questions involving what they had already seen in the home prior to his signing of the documents, and he had not given them permission to do so before that time.

¶ 10 SIEG inspector Kenneth Sneed agreed that he did not have a warrant to either arrest or search the premises, but testified that the general purpose of a "knock and talk"

is to see if the individual will consensually cooperate with an investigation, and that this was the purpose of the officers' presence that evening. He stated that nine officers were present, but that he, along with Agent Justin Dwyer and Agent Aaron Hoffman, initially approached the front door of the residence. Sneed testified that Giffin answered the door, and he believed that he initiated the conversation by identifying he and his fellow officers as police officers, and thereafter requesting permission to come inside. He disagreed that he stepped into the living room while Giffin backed off; rather, he stated Giffin granted permission to come inside, and the three officers entered the living room. Sneed then informed Giffin that they were there to talk to the defendant, and Giffin responded that she was the only one home, and that the defendant was in Johnston City.

¶ 11 Sneed noted that from the living room, he could see through a glass-paneled door that separated the garage from the home; he observed what he believed to be the defendant's vehicle in the garage. As it had been misting outside that evening, Sneed found it significant that there were water droplets on the vehicle's front fender. When Sneed asked Giffin why the defendant's car was present, Giffin responded that she had traded vehicles with the defendant for the evening. Sneed then requested that Giffin try to call the defendant and see if he would come home. Sneed testified that around this time, Dwyer, who was standing near an open door in the living room, said "[W]ho's that in there?" and illuminated his flashlight into a bedroom. As this was unfolding, Sneed testified that Agent Gill entered and "provided security" for Dwyer as he gave instructions to an individual in the bed (Graves). Sneed noted that this was the first time that "command authority" or raised voices had been employed during the incident, and

that Dwyer, for officer safety purposes, had taken his weapon out because "there wasn't supposed to be anybody in the house and all of a sudden we got somebody in the bedroom" and "one of [Graves'] hands was underneath the blanket." Sneed believed that Gill also had a weapon drawn on Graves. After Graves was handcuffed and brought to the living room, the officers again asked Giffin if anyone else was present in the home, and she responded in the negative.

¶ 12 Sneed testified that as this was transpiring, another individual came out of a room down the hallway, and was instructed to walk towards the living room. Noting that he and Gill were thereafter in "officer safety mode," when they observed light shining from underneath a nearby hallway door, Gill attempted to open the door and ascertain if someone was in that room. Sneed testified that the defendant tried to push Gill's hand away, and Gill pushed him back and proceeded to open the door, which led to a utility closet with cannabis drying in plain view. Sneed agreed that he and Gill were performing a cursory search or "protective sweep" at that point, as they could not trust Giffin's statement regarding the presence of other persons. Sneed testified that after this encounter, the three occupants, all handcuffed, were made to sit on the living room couch so that the officers "could have control on [*sic*] them" for the officers' safety while the remainder of the protective sweep occurred, noting that the threat stemmed from "[t]he fact that we were lied to on more than one occasion." No one else was discovered in the residence, and Sneed testified that at that point, no drawers, cabinets, or clothing had been searched.

¶ 13 Sneed testified that he relocated the defendant to his bedroom and told him that the officers' drug investigation "clearly showed" that the defendant was directly involved in the activity. Sneed stated that, after reading the forms aloud and giving the defendant the opportunity to ask questions and read the documents, the defendant first signed the consent to search form and then the *Miranda* waiver; he agreed that he did not use threats or force, and the defendant appeared to understand the forms. The officers then conducted a detailed search of the defendant's residence. He testified while he was with the defendant in the bedroom, the remainder of the officers entered the home without express permission.

¶ 14 SIEG agent Justin Dwyer testified that Giffin initially cracked the door, but opened it further after he identified himself as a police officer. He requested that he and the other officers talk with her inside the residence, and Giffin said yes. Six other officers remained in their vehicles, and Dwyer noted that it is "absolutely" normal procedure to take every available officer to a knock and talk.

¶ 15 Once inside, Giffin sat on the couch while the three officers "kind of spread out" and he stood near an open door by the living room. Sneed and Giffin conversed, and as Giffin agreed to attempt to call the defendant, Dwyer heard the sound of covers rustling from inside the room behind him. Dwyer stated that he shined his flashlight into the room and saw that a man (Graves) had both hands under the covers; Dwyer then drew his weapon and commanded that Graves put his hands in plain sight. He stated that Gill probably came inside when he heard Dwyer issuing verbal commands, but that he was focused on Graves at that moment and did not see Gill enter. Graves walked into the

living room and was handcuffed at some point due to officer safety concerns. As Graves was "within [his] custody and control," Dwyer testified that his focus remained on him. Four officers were in the home at this point, and the defendant made his appearance soon after this incident. Dwyer noted that the events up until that point transpired very quickly, "within two minutes tops."

¶ 16 When the three occupants were separated for questioning, Dwyer testified that he and Hoffman and "occasionally other agents" spoke with Graves in the front bedroom in which he was staying. Hoffman issued the forms to Graves, who thereafter signed the consent to search form, which applied to that bedroom, and a *Miranda* waiver.

¶ 17 SIEG agent Aaron Hoffman testified that he, along with Sneed and Dwyer, went to the defendant's home in an attempt to locate him. He stated that Giffin answered the door, and Sneed identified them as police officers and asked if they could come in and speak with her. She allowed them in, and as they followed her inside, Sneed asked if the defendant was home. Giffin replied that he was not; she and Sneed then had the conversation about the presence of the defendant's car in the garage, which Hoffman observed had noticeable raindrops on it. Sneed requested that she attempt to call the defendant on his cell phone. At that point, Dwyer shined his flashlight into one of the rooms and ordered an individual (Graves) out of it. Hoffman testified that the conversation level was "quiet" until the point in time that Dwyer was ordering Graves out of the bedroom, when it became "moderate to loud." He stated that he did not recall a weapon being drawn, and that he did not recall when Graves was handcuffed. Giffin was

again asked if anybody else was in the house, and the officers were told that there was not.

¶ 18 Around this time, Agent Gill let himself in the residence, and the defendant appeared from the other bedroom. Hoffman stated that the defendant was ordered to the living room, and Gill met him in the hallway. Hoffman stated that he did not recall Gill drawing a weapon on the defendant, as his main focus was on the individuals in the living room. Hoffman noted that it was at this point that the officers felt their safety was at issue as people kept appearing in the supposedly empty house. Hoffman stated as Gill was walking the defendant to the living room, he reached to open the door that had light illuminating under it, and the defendant attempted to deny him access. Once open, Hoffman observed what appeared to be drying cannabis stems. Once all three individuals were in the living room, Gill and Dwyer swept the house for any additional people, which entailed looking in any and all places where a person might be able to hide.

¶ 19 Thereafter, Hoffman and Dwyer took Graves to his bedroom and began talking to him. Hoffman noted that at that point, no more than five minutes had passed since the officers first entered the residence. Hoffman learned from Graves that he had been staying at the house for a few days, and Graves agreed to sign a consent to search his bedroom. Hoffman testified that Dwyer then searched the room while he read Graves his *Miranda* rights due to the items that the officers had already seen in plain sight. After this, Hoffman returned to the living room, where he learned that all three individuals had granted consent to search, and at that point, the officers conducted a search of the residence for evidence.

¶ 20 The trial court's August 30, 2013, order made the following findings of fact: that Agents Sneed, Hoffman, and Dwyer, without an arrest warrant or a warrant to search the premises, went to the defendant's residence to conduct a "knock and talk" concerning an ongoing drug investigation; that six officers were waiting in a vehicle and not at the front door; that Giffin cracked open the door, and that after the three men at the door identified themselves as police officers, Giffin opened the door far enough that she could stand and speak with them. The court further found that Giffin granted the three officers' permission to enter the residence, and that the officers then spread out in the living room; one bedroom, with its door open, was near the living room, another door was further down the hallway and had a light shining from under it, and another bedroom was further down the hallway.

¶ 21 The court found that Giffin told Sneed that the defendant was in Johnston City; however, through a glass door leading to the garage, the officers then observed what they believed to be the defendant's vehicle, but Giffin explained that she had traded cars with the defendant and confirmed that there was no one else in the home. About this time, Dwyer heard a sound in the dark bedroom with the open door and proceeded to illuminate the room with his flashlight and discovered a white male, Dakota Graves, sitting up with his hands underneath the covers. The court found that without being able to see Graves' hands and because Giffin had stated no one else was in the home, Dwyer drew his weapon for officer safety purposes, and, in an authoritative tone, ordered Graves to show his hands and walk towards him. Graves complied and was placed in handcuffs for officer safety. Officer Gill, who did not have formal permission to enter, entered the

residence at this time. Giffin was agitated after Graves' discovery and Sneed and Giffin were conversing loudly.

¶ 22 Giffin was again asked if the defendant was present and some of the officers, including Gill but not Dwyer, began a protective sweep to determine if any other persons were present because Giffin had lied to them. Prior to the sweep, no cabinets or drawers were opened and no clothing was gone through. At this time, the defendant appeared in the hallway from the far bedroom; as he proceeded down the hallway, Gill reached for the door with the light illuminating from under it to check and see if someone was inside the room for officer safety purposes. The defendant tried to push Gill's hand away, demanding to see a warrant and saying "get out of my house." Gill pushed the defendant back and opened the door, thereafter observing cannabis drying in a utility room.

¶ 23 The court found that Graves, Giffin, and the defendant were all handcuffed for officer safety in the living room, and a protective sweep of the residence was completed to see if any other persons were present; at this time, no cabinets or drawers were opened and no clothing gone through.¹

¶ 24 The court found that all three residents signed a consent to search the residence and a *Miranda* waiver. Specifically, the court found that neither Giffin nor the defendant

¹We note that in regards to the three residents' detainment, the court found that each person was "detained and not free to leave, but was not under arrest." In response to the defendant's argument, the State has conceded that the defendant was, in fact, under arrest, but argues that the defendant was properly in custody.

gave the officers permission to search the residence prior to signing the consent form, but they were not told that they had to sign the documents and were not threatened with physical force, and that the defendant appeared to understand his actions and did not appear to be under the influence of drugs or alcohol. When Sneed and the defendant exited the bedroom, all nine officers were in the residence without express permission from the residents. After the defendant signed a consent to search his residence, a detailed search ensued wherein drawers and cabinets were opened and clothing was checked; additional drugs were discovered during this search.

¶ 25 In its analysis, the court found that Giffin was not a credible witness. The court concluded that Giffin consented to the entry of the officers and that the protective sweep was justified for officer safety purposes after it was determined that Giffin had lied and that others were present in the residence, noting that the sweep justifiably included opening the utility room door which led to discovery of cannabis in plain sight; accordingly, the drugs from the utility room should not be suppressed.

¶ 26 Having discovered the cannabis, the officers were justified in detaining Giffin and the defendant. The court found that the State proved, by a preponderance of the evidence and under the totality of the circumstances, that Giffin and the defendant voluntarily consented to the search; further, the defendant knowingly and voluntarily waived his *Miranda* rights and his subsequent statements were voluntary.

¶ 27 Finally, the court noted that "[u]nder the current state of the law there is no question that the 'knock and talk' conducted by the officers was lawful." However, it noted that "[i]t seems to the court that the law has allowed the expansion of the 'knock

and talk' doctrine to the point that it has virtually swallowed the Fourth Amendment's search warrant requirement." The court opined that perhaps a better rule would be that "absent exigent circumstances, a 'knock-and-talk' should be limited to daytime hours." The court denied the defendant's motion to suppress evidence and quash arrest. The case proceeded to a stipulated bench trial. The defendant appeals, contesting only the court's ruling on his motion to suppress.

¶ 28 Our review of a trial court's ruling on a defendant's motion to suppress evidence involves mixed questions of fact and law, and we will give great deference to the trial court's findings, reversing them only if they are against the manifest weight of the evidence. *People v. Redman*, 386 Ill. App. 3d 409, 417 (2008). This deferential standard of review is premised upon the reality that the trial court is in a superior position to determine and weigh the credibility of the witnesses, observe the witnesses' demeanor, and resolve conflicts in the witnesses' testimony. *People v. Gherna*, 203 Ill. 2d 165, 175 (2003). However, if we accept the trial court's findings of fact, we review *de novo* whether suppression is warranted under those facts. *Gherna*, 203 Ill. 2d at 175.

¶ 29 The defendant first asserts that the trial court erred in finding Giffin an incredible witness. However, as noted above, the trial court made detailed findings of fact that are readily supported by the record, and was entitled to credit the testimony, given by all three officers, that Giffin indeed consented to their entry. We give this and all of the remaining findings of fact their proper deference and will not disturb them on appeal.

¶ 30 The defendant does not directly challenge the right of the officers to conduct a "knock and talk," but rather the officers' right to conduct a "protective sweep" based on

the encounter. A "knock and talk" occurs when police officers lawfully approach a residence in the hopes of obtaining permission for a consensual, nonconfrontational encounter; the purpose of this approach is to make investigatory inquiry, or, if the officers reasonably suspect criminal activity, to gain the occupants' consent to search. See *United States v. Walters*, 529 F. Supp. 2d 628 (E.D. Tex. 2007); *United States v. Gomez-Moreno*, 479 F.3d 350, 355 (5th Cir. 2007).

¶ 31 We reiterate that the trial court's finding regarding Giffin's consent to the officers' entry was not against the manifest weight of the evidence; thus, we agree with the trial court that the "knock and talk" was properly conducted and did not implicate the fourth amendment. The question thereafter becomes whether the officers were lawfully in the place from which the cannabis was viewed, which would justify its seizure under the plain-view doctrine. See *Horton v. California*, 496 U.S. 128, 136-37 (1990); *United States v. Ford*, 56 F.3d 265, 270 (D.C. Cir. 1995).

¶ 32 The defendant asserts that Giffin was not required to be truthful during the "knock and talk," and because the officers offered no other articulable reason supporting the conclusion that they feared for their safety during the encounter, the unjustifiable "protective sweep" requires the suppression of the evidence discovered in the utility room.

¶ 33 In *Maryland v. Buie*, the Supreme Court applied the *Terry* stop rule to "protective sweeps," rationalizing that because the risk of danger in the context of an arrest in the home is as great as an on-the-street or roadside investigatory encounter, police officers may take steps to assure themselves that the residence is not harboring other persons who

are dangerous and who could unexpectedly launch an attack. *Maryland v. Buie*, 494 U.S. 325, 333 (1990). The Court defined a protective sweep as a "quick and limited search of premises, incident to an arrest and conducted to protect the safety of police officers or others," and limited it to a cursory visual inspection of places in which a person may hide. *Buie*, 494 U.S. at 327. Such a sweep may be conducted, however, only where the "searching officer possesses a reasonable belief based on specific and articulable facts that the area to be swept harbors an individual posing a danger to those on the arrest scene." *Buie*, 494 U.S. at 337.

¶ 34 The defendant contrasts his situation with multiple cases wherein the courts found facts implicating the level of reasonable suspicion to justify a protective sweep, asserting that the pattern of factors do not lend themselves to the same conclusion here. See *People v. Pierini*, 278 Ill. App. 3d 974, 980 (1996) (protective sweep was justified where officers smelled cannabis and knew at least one other person was in the dwelling); *United States v. Burrows*, 48 F.3d 1011, 1017 (7th Cir. 1995) (protective sweep justified where the defendant had committed a violent crime and officers were refused entry, but heard movement coming from within the apartment); *United States v. Barker*, 27 F.3d 1287, 1289 (7th Cir. 1994) (protective sweep justified where the defendant was arrested inside his home and the officers saw weapons nearby).

¶ 35 Conversely, the defendant argues, his case is more akin to *United States v. Barrera-Martinez*, 274 F. Supp. 2d 950, 964 (N.D. Ill. 2003) (protective sweep is unjustified on the lone notion that those in drug trade may often use weapons), and *People v. Hassan*, 253 Ill. App. 3d 558, 563 (1993) (protective sweep is unjustified where

officers could not articulate specific facts which would lead them to believe that there was another individual on the premises that posed a threat of harm; the officers did not observe anyone else enter or leave the home, nor was it generally known to the officers whether or not there were people in the house). The defendant argues that Giffin's untruthfulness alone is insufficient to meet the requirement that the officers must give specific facts that their presence in the defendant's home is under threat of attack, as the officers did not testify that they suspected weapons or potentially violent behavior, that they had actual knowledge of another person's presence, or that they smelled cannabis upon entering his home.

¶ 36 However, as the inquiry is, like all inquiries involving reasonable suspicion, an evaluation of the totality of the circumstances (*People v. Miller*, 2014 IL App (2d) 120873, ¶ 22), we need not address whether lying to the officers, by itself, gives rise to the level of suspicion required to conduct a protective sweep; rather, the question before us is how Giffin's dishonesty contributed to the circumstances that could justify the officers' actions.

¶ 37 Based on our review of the record, we disagree with the defendant's assertion that this was the only factor giving the officers reasonable suspicion that the residence harbored unseen individuals who posed a danger to the officers on the scene. The officers, already suspicious of Giffin's candor due to the presence of the defendant's apparently recently driven car in the garage and her pretend call to his cell phone, thereafter discovered an unknown adult male, barely visible in a dark room. Giffin quickly became agitated at the show of authority, and the environment was becoming

increasingly loud and presumably more hostile. Thereafter, yet another individual, this time the defendant, made an unexpected appearance, and the officers testified the rapidly changing environment put them in "officer safety mode." We conclude that, after being subjected to repeated assurances about being alone in the residence, the rapid revelation of Giffin's deceit by the successive appearances of unknown adult males could cause a reasonably prudent officer to be concerned about the presence of more people; it is also logical to find that the officers believed that in an increasingly hostile environment, a hidden individual could pose a physical threat due to a tactical advantage of knowledge of the officers' presence. We conclude that for safety purposes, Officer Gill was entitled to open a door that stood out from the others by nature of being lit. The trial court did not err in determining that the protective sweep of the premises was justified and resulted in a legal seizure of evidence from the utility room.

¶ 38 The defendant next argues that he was improperly seized. As the State concedes that the defendant was seized, the question before us is whether the officers' actions were proper under the circumstances. As we have already determined that the protective sweep was justified and the cannabis properly obtained as evidence, we find that the discovery of the cannabis in plain view is dispositive of this issue; the officers thereafter had probable cause to arrest the defendant for a drug offense. See *People v. Nitz*, 371 Ill. App. 3d 747, 754 (2007). Thus, we agree with the State that the defendant's seizure was not unlawful.

¶ 39 Finally, the defendant contends that he did not voluntarily consent to a search of his property. A party may consent to a search conducted without a warrant and thus

eliminate the need for probable cause and a search warrant. *Schneckloth v. Bustamonte*, 412 U.S. 218, 248-49 (1973). When a defendant denies the voluntariness of his consent to search, that voluntariness becomes a question of fact to be determined from the totality of the circumstances surrounding the consent, with the State bearing the burden of proving that the consent was truly voluntary. *People v. Shinohara*, 375 Ill. App. 3d 85, 96 (2007). We will not reverse a trial court's determination that the consent was voluntary unless that determination is clearly unreasonable. *Shinohara*, 375 Ill. App. 3d at 96.

¶ 40 In addition to custody, relevant factors for determining whether a consent was involuntary include whether (1) the arrest occurred late at night; (2) the officers made the arrest while displaying weapons; (3) the arrest was made by forcible entry or the use of force; (4) the defendant was handcuffed or kept in close restraint; (5) the officers gained a key or similar means of entry during a search incident to arrest for the place they were asking to search; (6) the officers used the custody to make repeated requests for consent; (7) the custody was used for leverage, such as the officer telling the defendant that he would be released if he consented; (8) the defendant knew or was told he had the right to refuse consent; and (9) consent was obtained after the officer refused to grant the defendant's request to consult with counsel. *People v. Alvarado*, 268 Ill. App. 3d 459, 467 (1994).

¶ 41 While it is debatable whether 9:20 p.m. is "late at night," we find that the totality of the circumstances does not support the defendant's argument. The defendant points to the fact that he was handcuffed, and that the handcuffs were moved from the back to the

front so that he could sign the form; however, the testimony reflects that the defendant's handcuffs were moved from the back to the front at his request. Though nine officers entered the home and a weapon was drawn, the weapon was drawn on Graves, not the defendant. Though the defendant states that he felt that he had "no meaningful choice in the situation," ignorance of the right to refuse to consent does not vitiate the voluntariness of the consent, but is merely a factor for the circuit court to consider. *Bustamonte*, 412 U.S. at 234; *People v. Smith*, 124 Ill. App. 3d 914, 921 (1984). The defendant was asked only once for his consent and was permitted to first read and sign the form, which included a clause acknowledging that he had a right to refuse consent. The defendant admitted that he was not forced to sign the consent and that he did so of his own free will. We find that the trial court's conclusion that the defendant voluntarily consented to a search of his residence provides no grounds for reversal.

¶ 42 For the foregoing reasons, we affirm the trial court's order denying the defendant's motion to suppress evidence and quash arrest.

¶ 43 Affirmed.