2019 IL App (2d) 170471-U
No. 2-17-0471
Order filed August 1, 2019

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of Lake County.
Plaintiff-Appellee,	)	
v.	)	No. 14-CF-1894
JUAN TAMAYO,	)	Honorable Mark L. Levitt
Defendant-Appellant.	)	Judge, Presiding

JUSTICE ZENOFF delivered the judgment of the court.
Justices Hutchinson and Hudson concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court's order denying defendant's motion to suppress evidence was affirmed. There were no exigent circumstances justifying a warrantless entry into defendant's apartment. Nevertheless, by failing to present a cogent argument supported by pertinent authority, defendant forfeited his challenge to the trial court's alternative finding of consent. The judgment was therefore affirmed on that basis. The matter was remanded to the circuit court in accordance with Supreme Court Rule 472(e) (eff. May 17, 2019) to allow defendant to file a motion challenging the calculation of presentence custody credit.

¶ 2 Following a bench trial with stipulated evidence in the circuit court of Lake County, the court found defendant, Juan Tamayo, guilty of unlawful possession of a firearm by a street gang member (720 ILCS 5/24-1.8(a)(2) (West 2014)). The court sentenced defendant to 7 1/2 years'

imprisonment. On appeal, defendant argues that the court erred by denying his motion to suppress evidence. In the alternative, defendant asks us to amend the mittimus to give him additional presentence custody credit. For the reasons that follow, we affirm the judgment and remand the matter to the circuit court in accordance with Supreme Court Rule 472(e) (eff. May 17, 2019) to allow defendant to file a motion challenging the calculation of presentence custody credit.

¶ 3 I. BACKGROUND

¶ 4 Around 8:30 p.m. on July 13, 2014, an occupant of a car fired a single gunshot at the occupants of a van in the parking lot of a strip mall in Round Lake Beach, Illinois. At 3:10 or 3:15 a.m. on July 14, without a warrant, police officers from multiple jurisdictions arrested defendant inside his apartment in Grayslake, Illinois, due to his suspected involvement in the shooting. As defendant was apprehended, one of the officers noticed a gun on the bed where defendant had been sleeping. Defendant was charged by indictment with multiple offenses, including unlawful possession of a firearm by a street gang member.

¶ 5 A. Motion to Suppress Evidence

¶ 6 Defendant moved to suppress any evidence that was gathered as a result of both his arrest and the purportedly illegal entry into and search of his apartment. In summarizing the evidence that was presented at the February 2015 hearing on defendant's motion, we will first focus on how the police came to suspect that defendant was involved in the shooting. We will then relate the circumstances of defendant's arrest.

¶ 7 *1. Initial Investigation*

¶ 8 Detectives Paul Grace and Blake DeWelde, both of the Round Lake Beach police department, testified as to how their investigation of the shooting unfolded throughout the evening of July 13 and into the early morning of July 14.

¶ 9 Grace testified that he responded to a call around 9 p.m. with reports of gunfire. He was the lead investigator. Officers took multiple witnesses to the police station for questioning, and different officers questioned the witnesses separately. Grace personally interviewed Domingo Rios, a self-identified former member of the Sureno 13 street gang. Domingo relayed the following information to Grace. Domingo was at his sister-in-law's house when a green car, possibly a Mercury Grand Marquis, drove past the residence several times. One of the occupants of that car, who was sitting in the back seat and wearing a black and white sweatshirt, flashed gang signs associated with the Latin Kings. Domingo then got into a van with his brothers, Raymundo and Roberto Rios, and the three of them drove to a nearby liquor store. When they pulled into the parking lot of the strip mall where the liquor store was located, Domingo saw the green car again. The green car came alongside Domingo's van. The person who had thrown up the gang signs, now wearing a mask over his face, fired a bullet into Domingo's van. Nobody was hit, but the bullet went through a window and into the wall of a nearby business.

¶ 10 Grace testified that Investigator Ken Lupi interviewed Raymundo and Rebecca Rios. The record does not reflect what specific details Raymundo and Rebecca related to the police, apart from their responses, which are described below, to being shown photo lineups.

¶ 11 DeWelde testified that he went to the Round Lake Beach police department at around 9:30 p.m. to assist with the investigation. He interviewed Roberto Rios and Cassandra Martinez. Roberto related to DeWelde many of the details that Domingo had told Grace about the events leading up to the shooting. Roberto additionally mentioned seeing "some kind of rope" tied to

the rear part of the green car's door, and he said that there were approximately five Hispanic or Caucasian males in the green car. Cassandra likewise mentioned seeing a rope tied near the trunk area of the green car. She believed that the green car may have been a Nissan.

¶ 12 Based on the information received from the various witnesses, Grace advised the Round Lake Beach police department's two "gang experts" that he was looking for Latin Kings members with a green car. According to Grace, those gang experts told him that defendant was a known member of the Latin Lings who drove such a vehicle. They also told Grace that defendant associated with a person named Luis Pena and that defendant and Pena had purportedly been "doing shootings" in town recently.

¶ 13 One of the investigators working on the case procured surveillance footage from the rear of the liquor store. That footage, which is not included in the record on appeal, purportedly showed a green Mercury Sable driving in the area behind the store. The footage also purportedly showed that the green car had a sticker on its back driver's side pillar.

¶ 14 According to Grace, the police assembled lineups containing photographs of both defendant and Pena. Roberto identified defendant from the lineups as being an "occupant" of the green car. Domingo identified Pena as the driver of the green car, but Domingo was not able to identify defendant. Rebecca identified Pena as the individual she had seen flashing gang signs, and she was "75 percent sure" that defendant was the driver of the green car. Neither Raymundo nor Cassandra was able to identify any occupants of the green car from the photographs.

¶ 15 Grace explained that officers also showed Domingo a screen shot that was taken from the surveillance footage at the liquor store. Domingo identified the green car in the picture as being the car whose occupant had fired upon his van. DeWelde testified that he showed the actual surveillance footage to Roberto, who similarly identified the car on the video as being the one

that had driven by his home earlier in the evening. According to DeWelde, Cassandra likewise identified the green car from the surveillance footage.

¶ 16 Grace testified that defendant's registered address was an apartment in Grayslake. At Grace's request, Grayslake police officers went to a parking lot near defendant's apartment building and located a green Mercury Sable that was registered either to defendant or defendant's father. At 2:15 a.m., Grace, Lupi, DeWelde, and Roberto arrived in Grayslake to view defendant's parked car. According to Grace, defendant's car had a sticker on its back left pillar, which corresponded with what was visible in the surveillance footage. Grace and DeWelde stood outside defendant's car and looked into it. According to Grace, they noticed, in plain view: some rope; a black, white and gold sweatshirt; a mask; a tire iron; and a spent shell casing. The shell casing was in the backseat portion of the floor board, and it appeared to Grace that it was a .40 caliber casing. Roberto viewed the parked car and told the officers that it was indeed the car that had been involved in the shooting.

¶ 17 At that point, the officers requested additional police units to, in Grace's words "come assist us with trying to make contact with [defendant]." Meanwhile, a detective stayed behind with Roberto and facilitated having defendant's car taken to the police station for purposes of obtaining a warrant to search it.

¶ 18 *2. The Arrest*

¶ 19 In the process of arresting defendant, four officers entered the secured common vestibule of defendant's multi-unit apartment building through an exterior door. The evidence did not conclusively show how the officers gained entry. They then proceeded to the apartment that defendant shared with his family and knocked on the door. Defendant's father (or perhaps both of his parents) purportedly allowed the officers to enter the apartment and indicated which

bedroom was defendant's. When defendant did not respond to the officers' verbal commands to exit his locked bedroom, they used a ram to break into that bedroom.

¶ 20 i. Entry into the Common Vestibule of the Apartment Building

¶ 21 Most of the details pertaining to the officers' entry into the common vestibule of defendant's apartment building came from the officers' testimony. Grace remained in control of the investigation during the events leading to defendant's arrest, and the Grayslake police department merely provided assistance for purposes of officer safety. Officer Tim Warner and Sergeant Joseph Holtz, both of the Grayslake police department, entered the secured common vestibule of defendant's apartment building with Grace and DeWelde through an exterior door. None of the officers could recall, however, who let them in that door.[1]

¶ 22 Specifically, Grace testified that the multi-floor building where defendant lived was toward the back of the subdivision, whereas defendant's car was parked in the middle of the subdivision. Grace did not know the distance between the car and defendant's apartment building, but he testified that the car was not visible from the exterior entrance to the building. Grace did not recall whether the exterior door was locked, as he was not the first officer to enter; he believed that Holtz would have been the first officer through that door. Although Grace was "not exactly sure" how he and his fellow officers ended up on the first level of defendant's apartment building, he maintained that they did not break the door or the lock. He testified that, if the door was locked, it was possible that "Grayslake" may have had a key. He said that none of the officers rang defendant's buzzer, but that it was possible that they rang other doorbells.

¶ 23 Holtz testified that he responded to defendant's apartment complex at 2:50 a.m. on July 14, 2014, to assist the Round Lake Beach police department in looking for a suspect who was

[1] Warner did not testify at the hearing on defendant's motion to suppress evidence.

involved in a shooting. Each building in the complex had three stories with four residences on each floor. Holtz testified that the exterior door to defendant's building both closed and locked automatically. The door was locked on the morning of July 14, and neither he nor the other officers had keys. None of the officers called anyone to get a landlord to let them in. Holtz recalled entering the locked door that morning, but he did not recall how the officers got in, who opened the door, or in what order the officers entered. Holtz did say, however, that they did not break in or pick the lock. Asked about the possible ways that they could have gotten in, Holtz testified that he normally pushes one of the 12 buttons corresponding to an apartment, indicates that it is the police, and then somebody will give him access to the building. He did not know whether he or any of the other officers actually buzzed a residence that morning.

¶ 24 DeWelde testified that he arrived at the apartment complex sometime between 2 and 3 a.m. on July 14, 2014. He said that defendant's building had a security door on the outside leading into a vestibule and then another door. DeWelde did not recall whether the door to the building was locked that morning, and he did not remember whether he was the first officer to approach the door. He was "not 100 percent certain" whether anybody buzzed one of the apartments to get in, but he said that this "could have possibly happened." Nor did he know whether anybody had a key or whether the door was propped open. DeWelde testified that if the door was locked and he did not have a key, he would buzz multiple apartments to see who came down and opened the door first. He recalled that the officers stood outside of the building that morning for approximately one minute.

¶ 25 Defendant's sister, Maria Guadalupe Tamayo, testified that the 12 apartments in the building shared a common entrance. There was no guard at that entrance and no camera. Residents could buzz visitors in to allow them to enter. To her knowledge, all of the intercoms

were working on the morning of her brother's arrest. She never saw the lock on the exterior door damaged, and the lock was working on the day following defendant's arrest.

¶ 26 ii. Entry Into Defendant's Apartment and Bedroom

¶ 27 After entering the common vestibule of defendant's apartment building, the officers proceeded to apartment 103, which they knew to be defendant's address. Grace knocked on the door and defendant's parents answered. There was conflicting testimony as to whether the officers obtained informed oral consent from defendant's parents to enter the apartment. The trial court ultimately found that the officers had consent to enter the apartment, and defendant does not dispute that finding. Thus, for purposes of this appeal, we need not detail the conflicting testimony regarding the interactions between the officers and defendant's family.

¶ 28 It will suffice to say that all of the occupants of apartment 103, except defendant, woke up amidst the commotion and exited the areas where they had been sleeping. Defendant did not respond to the officers' demands to exit his bedroom, which the officers determined was locked. When the officers discussed using a ram to break into defendant's bedroom, defendant's sister advised the officers of a makeshift way to pick the lock. The officers rejected that suggestion out of fears for their own safety, in the event that defendant was armed and behind the door. According to Grace, at some point police "units on the exterior of [defendant's] apartment bedroom" looked through a window and observed defendant lying on a bed. Holtz, who had SWAT training, exited the building, looked into the window of defendant's bedroom, confirmed that defendant was sleeping in his bed, and returned to defendant's apartment. During the 30 seconds that Holtz left the building, he kept the exterior door propped open with a floor mat. Once Holtz returned to defendant's apartment, Grace used the ram to break into defendant's

bedroom. Defendant was then taken into custody at approximately 3:10 or 3:15 a.m. without incident. Holtz noticed a gun on defendant's bed, which he seized.

¶ 29 *3. Court's Rulings*

¶ 30 The trial court denied defendant's motion to suppress evidence. The court found the facts to be "largely undisputed" as to how the investigation proceeded and how the officers came to suspect that defendant was involved in the shooting. The court rejected defendant's argument that the officers' initial entry into the common vestibule was "offensive" to the constitution in the absence of a warrant. On that point the court said:

> "I find that, based on the officer's [*sic*] testimony, the uncontradicted reports of how it was that they were able to go through, which I find to be perfectly reasonable in light of all of the evidence that was adduced during this case, that there was nothing that was constitutionally impermissible about the way they gained entry."

The court remained "cognizant of the fact that, at the time that the officers did gain entry through this first door at this residence[,] that was the home of not just this defendant but also of his parents, his sister, [and] a minor child." The court also mentioned that the police "were investigating a murder [*sic*] that had occurred at approximately 10:30 [*sic*] the evening before, that being some five, five and a half hours after the shooting they were investigating."[2] According to the court, the police "found themselves to be in that location with evidence which led them at that point to believe that they may be in at least the very immediate vicinity of an individual that was involved in an active shooting only a few hours earlier." In the court's view,

[2] The police were not investigating a murder, and the shooting that they were investigating actually occurred around 8:30 p.m.

it would "turn the constitution[al] requirements on their head" if the officers were required to obtain a warrant at that point.

¶ 31 The court believed that the parties' arguments regarding consent "may very well be a red herring." Even so, the court addressed the issue, as the parties had raised it. It was clear to the court that "the officers' actions were reasonable based on what they were confronted with." Specifically, the officers "were certainly within their right to try to secure the premise and the person of [defendant] based on what they knew at that time." The court noted that the officers nevertheless "took the extra steps of asking and trying to obtain permission to enter the dwelling, even given what they knew and could reasonably infer based on what they had before them." The court rejected defendant's father's testimony that he did not understand the officers' requests. The court found that defendant's father indeed consented to allowing the officers to enter the apartment.

¶ 32 The court further explained that "the very thinly veiled efforts by [defendant's] parents to try to ascertain some type of private residence by [defendant] within his parents' residence fell flat."[3] On that point, the court indicated that it was "not clear from this record that [defendant] pays any rent, let alone a significant, consistent amount of rent that that could be a persuasive argument."

¶ 33 In concluding, the court said:

> "Notwithstanding all of those efforts, I find the officers' conduct to be completely appropriate, given what was known to them at the time. I find that there was consent

[3] Defendant's family testified that defendant contributed toward the rent. The evidence showed that, although defendant's family members were not prohibited from entering defendant's room, they generally did not enter the room when he was not home.

such as it needed to be in order to gain entry, given all the facts of the case, the officers' responsibility to secure that residence when they had in their possession information that an active shooter or an individual involved in an active shooting was present in that residence at that time."

¶ 34 B. Subsequent Proceedings

¶ 35 Nearly a year after the court denied defendant's motion to suppress evidence, defendant filed a motion to reopen proofs. The parties stipulated that additional testimony would establish the following facts:

"(1) That on July 13, 2014 the officers had 24 hour telephone access to the on-duty judge available for the purpose of issuing search warrants and were aware of this capability.

(2) That, in addition, the officers had 24 hour telephone access to the on-duty state's attorney who was available for the purpose of assisting the officers in preparing and applying for search warrants.

(3) That none of the officers involved in this search attempted to contact either the on-duty states [*sic*] attorney or the on-duty judge or made any attempt to obtain a warrant for the defendant's residence."

The court ultimately determined that there was no reason to set aside the pretrial rulings.

¶ 36 The State *nolle prossed* all charges against defendant other than unlawful possession of a firearm by a street gang member. The matter proceeded to a bench trial with stipulated evidence. The court found defendant guilty. By agreement of the parties, the court then sentenced defendant to 7 1/2 years' imprisonment. The court denied defendant's posttrial motion, and defendant filed a timely notice of appeal.

¶ 37 II. ANALYSIS

¶ 38 Defendant argues that the court erred in denying his motion to suppress evidence. Alternatively, he maintains that we must amend the mittimus to give him additional credit for presentence custody.

¶ 39 A. Motion to Suppress Evidence

¶ 40 In reviewing the denial of a motion to suppress evidence, we will not disturb the trial court's determinations of historical fact unless they are against the manifest weight of the evidence. *People v. Davis*, 398 Ill. App. 3d 940, 947 (2010). A decision is against the manifest weight of the evidence where "the opposite conclusion is apparent or the findings are unreasonable, arbitrary, or not based on the evidence." *People v. Thomas*, 2019 IL App (1st) 170474, ¶ 14. "We remain free, however, to independently assess the facts in relation to the issues presented and to draw our own conclusions as to what relief should be granted; thus, we review *de novo* the ultimate question of whether the evidence should be suppressed." *Davis*, 398 Ill. App. 3d at 947.

¶ 41 "The fourth amendment to the United States Constitution protects people from unreasonable searches and seizures." *Thomas*, 2019 IL App (1st) 170474, ¶ 15; U.S. Const., amend. IV. Searches and seizures that are conducted inside of a home without a warrant are presumptively unreasonable. *People v. Wear*, 229 Ill. 2d 545, 562 (2008). The sanctity of the home is not limitless, however, and there are exceptions to the general requirement to procure a warrant. *Wear*, 229 Ill. 2d at 563. Two of those exceptions are at issue here: the exigent-circumstances exception and the consent exception. According to defendant, the State failed to demonstrate that either exception applied.

¶ 42 *1. Exigent Circumstances*

¶ 43 "One exception to the warrant requirement lies where 'there are exigent circumstances which make it impractical to obtain a warrant.' " *People v. Nichols*, 2012 IL App (2d) 100028, ¶ 59 (quoting *People v. Ferral*, 397 Ill. App. 3d 697, 706 (2009)). To identify exigent circumstances, courts consider the following non-exhaustive list of factors: (1) whether the crime under investigation was recently committed, (2) whether there was any deliberate or unjustified delay by the police during which time a warrant could have been obtained, (3) whether a grave offense was involved, particularly a crime of violence, (4) whether there was reasonable belief that the suspect was armed, (5) whether the police officers were acting on a clear showing of probable cause, (6) whether there was a likelihood that the suspect would escape if he was not swiftly apprehended, (7) whether there was strong reason to believe the suspect was in the premises, and (8) whether the police entry was made peaceably, albeit non-consensually. *Nichols*, 2012 IL App (2d) 100028, ¶ 59. Courts decide each case on its own facts, keeping in mind that the guiding principle is reasonableness. *People v. Foskey*, 136 Ill. 2d 66, 75-76 (1990). Courts must also evaluate exigency based on the circumstances that were known to the police officers when they acted. *People v. Abney*, 81 Ill. 2d 159, 173 (1980). It is the State's burden to demonstrate that the officers encountered an exigent need to conduct a warrantless search or arrest. *People v. McNeal*, 175 Ill. 2d 335, 345 (1997).

¶ 44 Defendant concedes that five of the factors weigh in support of a finding of exigent circumstances. We accept that concession. The police were investigating a shooting, which is certainly a crime of violence. They also had reason to believe that defendant was armed, given the nature of the crime, that they saw a spent shell casing in plain view in defendant's car, and that their gang experts suspected that defendant had been involved in other recent shootings. Moreover, the officers acted on a clear showing of probable cause, having received information

from multiple witnesses linking defendant and the vehicle he was in to the crime. The officers likewise had a strong reason to believe that defendant was in his apartment because his car was parked in the complex's parking lot early in the morning. Additionally, the officers peaceably entered defendant's building before requesting consent to enter defendant's apartment from his parents.

¶ 45 The parties dispute factors one, two, and six. Addressing the first factor, defendant contends that the crime was not recently committed, because more than six hours elapsed between the shooting and his arrest. The State disagrees, arguing that "the officers were in the midst of actively investigating a recent shooting, had not taken a break, and were continuously interviewing witnesses when they were suddenly confronted with evidence showing they were in the immediate vicinity of an armed and dangerous suspect."

¶ 46 We conclude that this factor weighs somewhat in favor of finding exigent circumstances. There is no bright-line rule as to exactly when a crime can no longer be considered recently committed. *Nichols*, 2012 IL App (2d) 100028, ¶ 62. In *Dorman v. United States*, 435 F. 2d 385, 393 (D.C. Cir. 1970), the court deemed four hours to be "relatively recent" for purposes of this factor. Six hours and 45 minutes might likewise arguably be considered relatively recent. Although the amount of time at issue here does not strongly support a finding of exigent circumstances, it likewise does not strongly militate against a finding of exigent circumstances. Cf. *People v. White*, 117 Ill. 2d 194, 218 (1987) ("[T]he lapse of nearly two weeks between the commission of the crime and the discovery of the suspect's whereabouts rendered it extremely unlikely that an additional several hours of delay to obtain a warrant would have enabled the defendant to escape or permitted him to commit another serious crime.").

¶ 47 With respect to the second factor, defendant argues that the Round Lake Beach police—Grace, in particular—deliberately delayed arresting him despite having probable cause. Defendant emphasizes that the Round Lake Beach police knew from their witness interviews that he was a possible suspect. They were aware that the car that was used in the shooting was registered to defendant, and they knew where he lived. Defendant maintains that, notwithstanding that probable cause, the Round Lake Beach police did not go to his apartment complex until after the Grayslake police had located his car. Even then, defendant claims, the Round Lake Beach police asked a witness to verify that defendant's car was used in the shooting and then "engaged in deliberate delay by waiting for additional officers to arrive with equipment." Defendant stresses that, during all of this, there was a judge who was on duty and available via telephone to issue a warrant.

¶ 48 The State responds that "there was no delay between the shooting, investigation, and defendant's arrest," as these events proceeded in "one fluid motion." The State proposes that the "officers were justified in acting swiftly" once they observed a spent shell casing and other incriminating items in defendant's car. Specifically, in the State's view, "probable cause became clear at the moment officers observed the spent shell casing in plain view in defendant's vehicle, along with the other items identified as connected to the crime." The State acknowledges that the officers sought a search warrant for defendant's car but not an arrest warrant. According to the State, however, unlike defendant himself, the car "was not likely to skip up and bolt away, call for backup, or behave unpredictably and violently." The State thus submits that there was "an urgent need to apprehend defendant."

¶ 49 We conclude that the delay factor weighs strongly against a finding of exigent circumstances. "Unnecessary delay is to be measured not from the time when the police learn of

the suspect's location but from the time they have probable cause to arrest." *Foskey*, 136 Ill. 2d at 82. "Probable cause to arrest exists when the facts known to the officer at the time of the arrest are sufficient to lead a reasonably cautious person to believe that the arrestee has committed a crime." *Wear*, 229 Ill. 2d at 563. For the following reasons, although it is arguable that there was probable cause to arrest defendant even before Grace and DeWelde viewed the inside of defendant's parked car, assuming that the State is correct that probable cause "became clear" only at that point, the evidence still showed that the officers had opportunities to attempt to get a warrant.

¶ 50 Although Grace and DeWelde explained generally how their investigation unfolded throughout the evening of July 13 and into the morning of July 14, 2014, they did not provide a detailed timeline of events. We remain mindful that the State bore the burden of proving that exigent circumstances justified the warrantless entry. *McNeal*, 175 Ill. 2d at 345. From the testimony, we know that the shooting occurred around 8:30 p.m. and that Grace began his investigation around 9:00 p.m. DeWelde arrived at the Round Lake Beach police station around 9:30 p.m. At approximately 2:15 a.m., Grace and DeWelde arrived at defendant's apartment complex with another Round Lake Beach officer and Roberto. Defendant was taken into custody around 3:10 or 3:15 a.m.

¶ 51 From the incomplete timeline that the officers provided, we know that, sometime prior to 2:15 a.m., the Round Lake Beach police procured surveillance footage from the liquor store, assembled photo lineups, and interviewed witnesses. During this investigation, the officers obtained certain evidence linking defendant to the shooting. For example, from the witnesses' claims of observing gang signs before the shooting, it was apparent to the officers that the perpetrators were affiliated with the Latin Kings. Defendant was known to the Round Lake

Beach police to be a member of the Latin Kings. He was also known to associate with a man named Pena, to drive a car that matched the description provided by the witnesses, and to possibly have been involved in other recent shootings. Multiple witnesses identified both defendant and Pena from photo lineups as being in the car that opened fire on them, although the witnesses disagreed as to whether defendant was the driver of the car or merely an occupant. It is thus arguable that, sometime before 2:15 a.m., Round Lake Beach officers possessed information that would have led a reasonably cautious person to believe that defendant had committed a crime. See *Wear*, 229 Ill. 2d at 563.

¶ 52 Once the Round Lake Beach officers arrived at defendant's parking lot around 2:15 a.m., Grace and DeWelde looked into defendant's parked car and saw items associated with the crime. Apparently around that same time, Roberto confirmed that this was indeed the car that had been involved in the shooting. There is no doubt that the probable cause for defendant's arrest grew stronger in light of the officers' observations and Roberto's identification. That does not mean, however, that there were now exigent circumstances justifying a warrantless entry into defendant's residence.

¶ 53 To the contrary, the officers' subsequent actions show that they did not consider the circumstances to be exigent and that there were indeed opportunities to seek an arrest warrant. For one thing, the officers began the process of getting a warrant to search defendant's car. If they had time to seek a warrant to search the car, there does not seem to be any reason why they could not have also sought an arrest warrant. As the parties stipulated, there was a judge on duty around the clock and available by telephone to issue warrants, and the State's Attorney's office was available by telephone to provide the officers with assistance in applying for warrants. Furthermore, the officers requested and waited for "additional units"—*i.e.*, more Grayslake

police officers—to help them "make contact" with defendant. The time awaiting reinforcement presented another opportunity to attempt to get a warrant. Once again, we emphasize that Round Lake Beach officers arrived at defendant's apartment complex around 2:15 a.m. but defendant was not taken into custody until 3:10 or 3:15 a.m. Although some portion of that hour obviously was spent entering the building, entering defendant's apartment, and entering defendant's bedroom, the State failed to elicit testimony from the officers chronicling how they spent their time. Tellingly, none of the officers claimed that exigent circumstances prevented them from procuring a warrant. For all of these reasons, even assuming that probable cause "became clear" only when Grace and DeWelde observed the incriminating items in defendant's car, we believe that the delay factor weighs strongly against a finding of exigent circumstances.

¶ 54 The parties finally dispute the sixth factor: whether there was a likelihood that defendant would escape if he was not swiftly apprehended. Defendant argues that he was not a likely candidate for escape, where "his car was parked a considerable distance from his home, several armed officers had secured his vehicle and the general area, and he was ultimately found at home, asleep." The State, on the other hand, asserts that "it was reasonable to assume defendant knew that officers were looking for him," that "[i]t was essentially a fight-or-flight situation putting the officers on high-alert," and that "anyone could have tipped off defendant to the presence of police by calling or texting him at any moment." According to the State, the police were reasonable in taking "every precaution to guard against further endangerment to the community."

¶ 55 We conclude that the escape factor also weighs strongly against a finding of exigent circumstances. The officers never testified that they feared that defendant would escape or that they suspected that he knew they were looking for him. Although the officers apparently

gathered around defendant's car at one point in the early morning hours, that car was parked away from defendant's apartment building. There was no testimony that defendant or anybody else noticed the early-morning police presence. Nor did the officers testify that they had reason to believe that defendant's acquaintances knew of the investigation so as to be in a position to tip him off.

¶ 56 In support of its "fight-or-flight" argument, the State points to Grace's testimony that "there was a strong possibility that [defendant] may have been pretending like he was asleep or laying on the bed" and that "this could be an ambush situation." The State pulls Grace's testimony out of context. Grace never said that a fear of being ambushed was the impetus for entering defendant's apartment without a warrant. Grace instead explained that, *once the officers were already inside of defendant's apartment without a warrant*, defendant's family members mentioned a makeshift way of picking the lock on defendant's bedroom door. According to Grace, the officers rejected that suggestion, as it would leave the officers exposed in the event of an ambush. Contrary to what the State suggests, there was no evidence of a "fight-or-flight" scenario justifying the warrantless entry into defendant's apartment.

¶ 57 Nor is there merit to the State's contention that a warrantless entry was necessary to avoid endangerment to the community. Contrary to what the State seems to suggest, the police had absolutely no reason to suspect that defendant posed a risk to his own family or neighbors.

¶ 58 We also find it significant that there was a substantial police presence at the apartment complex on the morning of defendant's arrest. According to Grace, in addition to the four officers who entered defendant's apartment, there were "units on the exterior of [defendant's] apartment bedroom" who observed defendant lying on a bed. The record is conspicuously silent as to why one of the officers could not have procured a warrant for defendant's arrest while the

rest of them maintained a stakeout. See *People v. Brown*, 277 Ill. App. 3d 989, 997 (1996) ("[W]e see no reason why the officers could not have maintained the stakeout for the additional period required to procure a warrant.").

¶ 59 After evaluating the applicable factors in view of the totality of the circumstances, we hold that there were no exigent circumstances justifying a warrantless entry into defendant's apartment for the purpose of arresting him. The facts presented simply did not " 'militate against delay and justify the officers' decision to proceed without a warrant.' " *Davis*, 398 Ill. App. 3d at 948 (quoting *Foskey*, 136 Ill. 2d at 75). The trial court erred in ruling otherwise.

¶ 60 *2. Consent*

¶ 61 Defendant next argues that the State failed to prove that the police obtained voluntary consent to enter his apartment building. Notably, he limits his challenge to the officers' initial entry into "the apartment building's outer doorway or vestibule." He does not dispute that, after the officers entered the common vestibule of his building, his parents provided valid third-party consent to enter his particular apartment. Nor does defendant dispute that his parents' consent justified the officers in using a ram to enter his locked bedroom. We thus confine our analysis to the very narrow issue that defendant raises.

¶ 62 Citing *United States v. Matlock*, 415 U.S. 164 (1974), and *People v. Blake*, 93 Ill. App. 3d 538 (1981), defendant asserts that, "[a]dmittedly[,] any apartment resident could have given the police valid consent to enter the common area." Defendant contends that the State nevertheless failed to introduce affirmative evidence showing that either (1) the vestibule door was open when the officers arrived or (2) the officers obtained consent to enter without invoking their authority or resorting to coercion, intimidation, or deception. Specifically, defendant proposes that the officers' testimony about what they would "generally do" to gain entry to a

locked multi-unit apartment building was insufficient to support the trial court's ruling on the motion to suppress evidence.

¶ 63 Relying on *United States v. Eisler*, 567 F.2d 814 (8th Cir. 1977), and *United States v. St. Clair*, 240 F. Supp. 338 (S.D.N.Y. 1965), the State responds that "there was no Fourth Amendment violation because defendant had no reasonable expectation of privacy at the outer door of his multi-unit apartment complex, nor in the common areas of the building." According to the State, because the police did not need a warrant to enter the common areas of the apartment building, the State did not have to prove that the officers' entry at the building's exterior door was "valid." "[E]ven if the protections of the Fourth Amendment extended to the outer door," however, the State submits that the evidence gave rise to a reasonable inference that the officers obtained consent to enter the building.

¶ 64 In his reply brief, defendant clarifies that he does not claim to have "an individual expectation of privacy in the apartment complex's common area." Citing *Blake* again as well as *People v. Burns*, 2016 IL 118973, defendant nevertheless posits that "[t]enants have collective expectation [*sic*] of privacy in an apartment's secured common area, and only a tenant or landlord can give police valid consent to enter." Citing *Illinois v. Rodriguez*, 497 U.S. 177 (1990), *People v. Kratovil*, 351 Ill. App. 3d 1023 (2004), and *People v. Davis*, 398 Ill. App. 3d 940 (2010), defendant asserts that, "[t]herefore, the State was required to present evidence that police obtained voluntary consent from *someone* with appropriate authority." (Emphasis in original.) Defendant argues that "the State failed to show that the police obtained valid consent from *anyone* with a privacy interest in the common area." (Emphasis in original.)

¶ 65 Our analysis begins and ends with the State's threshold argument that the building's common vestibule was not a constitutionally protected area. Defendant assumes that his Fourth

Amendment rights were implicated by the officers' entry into the vestibule. As explained below, however, the law is not settled as to exactly how the Fourth Amendment applies to common areas of multi-unit apartment buildings. Rather than offering a well-reasoned basis for choosing one side over the other of conflicting authority on this issue, defendant fails to even acknowledge the conflict or meaningfully discuss it. He instead relies on cases that either do not pertain to the specific issue that he raises or which pertain to the issue only superficially. We thus deem defendant's argument forfeited.

¶ 66 Providing a bit of background is necessary to explain the current state of Illinois jurisprudence on the issue. It will also illustrate why defendant has not presented a cogent argument supported by pertinent authority.

¶ 67 "Applying the Fourth Amendment to various common spaces in apartment buildings has been a source of considerable controversy." *United States v. Sweeney*, 821 F.3d 893, 898 (7th Cir. 2016). Caselaw from foreign jurisdictions has not been consistent. See Wayne R. LaFave, Search and Seizure § 2.3(b) at 743-45 (5th ed. 2012) (collecting cases). Nor has Illinois caselaw been consistent. Compare *People v. Trull*, 64 Ill. App. 3d 385, 389 (1978) ("It seems rather elementary to us that a locked door is a very strong manifestation of a person's expectation of privacy. Thus, we conclude that the common entries and hallways of a locked apartment building are protected by the fourth amendment.") and *People v. Wormack*, 91 Ill. App. 3d 169, 171 (1980) (following *Trull*) with *People v. Lyles*, 332 Ill. App. 3d 1, 7 (2002) (rejecting *Trull* and holding that "a tenant has no reasonable expectation of privacy in common areas of an apartment building that are accessible to other tenants and their invitees."). It does not appear that this court has weighed in on the issue.

¶ 68 In *People v. Smith*, 152 Ill. 2d 229, 243 (1992), officers investigating a murder were walking through a gangway outside of an apartment building when they heard a man and a woman arguing from inside. The officers opened an unlocked back door to the building and entered a common hallway. *Smith*, 152 Ill. App. 2d at 243. While standing in that hallway, the officers heard a man talking to a woman in an apartment and telling her that he killed someone. *Smith*, 152 Ill. App. 2d at 243. The officers knocked on that apartment's door, the defendant answered, and the officers arrested him. *Smith*, 152 Ill. App. 2d at 244. Faced with these facts, our supreme court rejected the defendant's argument that the officers violated his Fourth Amendment rights when they listened to his conversation from outside his apartment door, reasoning as follows:

> "We believe that under the facts surrounding the conversation overheard by the officers, no fourth amendment 'search' can be said to have occurred because defendant did not have a reasonable expectation of privacy in his conversation. Several facts support this conclusion. First, the area where the officers overheard defendant's conversation was a common area shared by other tenants, the landlord, their social guests and other invitees. (See, *e.g.*, *Commonwealth v. Hall* (1975), 366 Mass. 790, 794, 323 N.E.2d 319, 322 (expectation of privacy diminished in common areas of apartment building); *Lorenzana v. Superior Court* (1973), 9 Cal.3d 626, 629, 511 P.2d 33, 35, 108 Cal.Rptr. 585, 587 ('sidewalk, pathway, common entrance or similar passageway offers an implied permission to the public to enter which necessarily negates any reasonable expectancy of privacy').) Second, the area where the officers were standing when they overheard the conversation was unlocked. (See *Hall*, 366 Mass. at 794, 323 N.E.2d at 322 (police conduct in deliberately circumventing building security indicated violation of

reasonable expectation of privacy).) Third, defendant's voice was raised. (*United States v. Burns* (10th Cir.1980), 624 F.2d 95 (no privacy interest in conversation loud enough to be overheard outside room); accord *United States v. Llanes* (2d Cir.1968), 398 F.2d 880, 883–84.) Fourth, the officers used no artificial means to enhance their ability to hear defendant's conversation, nor did they enter an area where they had no legal right to be. (*People v. Wright* (1968), 41 Ill. 2d 170, 242 N.E.2d 180.) While none of these factors is necessarily sufficient alone to justify our conclusion, when taken together, it becomes clear that no fourth amendment search is implicated here." *Smith*, 152 Ill. 2d at 245-46.

¶ 69 In *Florida v. Jardines*, 569 U.S. 1, 11-12 (2013), the Supreme Court of the United States determined that using a drug-sniffing dog at a homeowner's porch constituted a "search" within the meaning of the Fourth Amendment, where the porch was part of the home's "curtilage." The majority of the Court decided the case using the "property rights" approach to Fourth Amendment jurisprudence: *i.e.*, the court found that the officers' actions amounted to a physical intrusion on the defendant's property to gather evidence. *Jardines*, 569 U.S. at 11. The majority found it unnecessary to determine whether the defendant also had a reasonable expectation of privacy in the area that was searched, as the reasonable-expectations test " 'has been *added to*, not *substituted for*,' the traditional property-based understanding of the Fourth Amendment." (Emphasis in original.) *Jardines*, 569 U.S. at 11 (quoting *United States v. Jones*, 565 U.S. 400, 409 (2012)).

¶ 70 In *Burns*, a case arising out of Champaign County, which is part of the Fourth District of the Illinois Appellate Court, our supreme court considered the applicability of *Jardines* where the defendant resided not in a single-family home but on the third floor of a multi-unit apartment building with locked exterior doors. There was no issue raised or considered in *Burns* about the

officers' entry into the secured common areas of the building (the evidence showed that a tenant allowed at least one of the officers into the building (*Burns*, 2016 IL 118973, ¶ 6)). However, once inside the building, the officers, acting without a warrant, brought a drug-sniffing dog to the landing immediately in front of the defendant's apartment. *Burns*, 2016 IL 118973, ¶ 1. The dog alerted the officers to the presence of drugs in the defendant's apartment, and the officers used that information to apply for a search warrant. *Burns*, 2016 IL 118973, ¶ 9. A judge issued the warrant as requested, and officers then searched the defendant's apartment and found drugs inside. *Burns*, 2016 IL 118973, ¶ 9. Under these circumstances, the majority of our supreme court determined that the warrantless dog sniff was improper, as the defendant's landing, although part of the common area, constituted curtilage and was therefore subject to Fourth Amendment protections. *Burns*, 2016 IL 118973, ¶ 41. Having extended *Jardines* to the situation at hand, the majority deemed it "unnecessary to address the merits of whether use of the drug-detection dog violated defendant's reasonable expectation of privacy." *Burns*, 2016 IL 118973, ¶ 45.

¶ 71 Nevertheless, in the context of considering whether the good-faith exception to the exclusionary rule applied, the majority in *Burns* rejected the State's argument that *Smith* and *Lyles* "established that tenants in an apartment building have no reasonable expectation of privacy in common areas." *Burns*, 2016 IL 118973, ¶ 57. According to the court:

> "Contrary to the State's assertion, *Smith* did not hold that tenants have no expectation of privacy in common areas of locked apartment buildings. Rather, *Smith* concerned an individual's reasonable expectation of privacy in things overheard by the police while standing in a common area of an unlocked apartment building." *Burns*, 2016 IL 118973, ¶ 58.

The court acknowledged that *Lyles*, a First District case, held that tenants have no reasonable expectation of privacy in common areas of apartment buildings, even if the exterior doors are locked. *Burns*, 2016 IL 118973, ¶ 64. *Trull*, on the other hand, was a Fourth District case which held that common entries and hallways of locked apartment buildings are protected by the Fourth Amendment. *Burns*, 2016 IL 118973, ¶ 60. The majority in *Burns* chose not to resolve this conflict between the districts of the appellate court. The majority merely held that *Trull* was binding authority in the Fourth District, so the officers could not have reasonably relied on *Lyles* when they conducted a dog sniff in front of Ms. Burns' apartment door. *Burns*, 2016 IL 118973, ¶ 66. For essentially the same reasons, the majority held that the officers were not entitled to rely on the " 'legal landscape' " of cases from foreign jurisdictions involving "pre-*Jardines* dog sniffs." *Burns*, 2016 IL 118973, ¶ 67. The two dissenting justices, however, believed that "the concept of curtilage has no application to the common areas of multiple-unit structures"; they also would have followed "[t]he great weight of federal authority hold[ing] that there is no reasonable expectation of privacy in the common areas of an apartment building, even if it is locked or secured." *Burns*, 2016 IL 118973, ¶ 103 (Thomas, J., dissenting, joined by Karmeier, J.).

¶ 72 *People v. Bonilla*, 2018 IL 122484, ¶ 25, involved facts that were "nearly identical to those in *Burns*," except that the exterior doors to the defendant's apartment building were unlocked. The majority of our supreme court extended *Burns*, holding that police officers violated the defendant's Fourth Amendment rights by bringing a drug-sniffing dog to the curtilage of his apartment without a warrant. *Bonilla*, 2018 IL 122484, ¶ 32. In the context of rejecting the State's renewed argument that the officers had relied in good faith on *Smith*, the majority explained that "*Smith* did not hold that tenants have no expectation of privacy in

common areas of either locked or unlocked apartment buildings." *Bonilla*, 2018 IL 122484, ¶ 42. The majority also rejected the State's argument that the officers were entitled to rely on federal cases that had held that tenants lack reasonable expectations of privacy in the common areas of apartment buildings. The majority reasoned that those cases all predated *Jardines* and that some of them were called into doubt after *Jardines*. *Bonilla*, 2018 IL 122484, ¶ 48. (One of the cases that the majority mentioned was *Eisler*, which the State cites in the present appeal.) The two dissenting justices, on the other hand, reiterated their positions from *Burns* that "the concept of curtilage has no application to the common areas of multiple-unit structures" and that tenants have "no reasonable expectation of privacy in the common areas of an apartment building." *Bonilla*, 2018 IL 122484, ¶ 66 (Thomas, J., dissenting, joined by Karmeier, J.). Neither the majority nor the dissenting justices in *Bonilla* cited *Lyles* or *Trull*.

¶ 73 Under the present state of the Illinois caselaw, it is difficult to make categorical pronouncements about tenants' Fourth Amendment rights with respect to the common areas of multi-unit apartment buildings. There is conflicting appellate authority on this issue, and that conflict has not been squarely resolved. As exemplified by *Burns* and *Bonilla*, irrespective of whether the exterior door to an apartment building is locked to the public, the majority of our supreme court has rejected the notion that tenants inherently have *no* protectable interests in common areas. On the other hand, *Burns* and *Bonilla* certainly cannot be read so broadly as to suggest that tenants inherently have protectable interests in the *entirety* of the common area, either under the property-rights approach or under the reasonable-expectation-of-privacy approach. To that end, *Burns* and *Bonilla* did not hold that the entirety of the common area of an apartment building constitutes curtilage. By the same token, the majority did not attempt to define the limits of what might constitute curtilage; the court just said that "[t]he boundary to the

landing of defendant's apartment is easily understood as curtilage." *Burns*, 2016 IL 118973, ¶ 39. Moreover, the comments that the majority made in *Burns* and *Bonilla* about expectations of privacy were in the context of rejecting the State's invocation of the good-faith exception to the exclusionary rule. The court did not hold that tenants categorically have reasonable expectations of privacy in common areas; the court merely explained that it was not established law that tenants categorically have no expectations of privacy in common areas.

¶ 74 " '[A] judicial opinion must be read as applicable only to the facts involved, and it is an authority *only for what is actually decided*.' " (Emphasis in original.) *People v. Orahim*, 2019 IL App (2d) 170257, ¶ 8, n.2 (quoting *People v. Trimarco*, 364 Ill. App. 3d 549, 556 (2006) (McLaren, J., dissenting)). Unlike the case at bar, *Burns* and *Bonilla* both involved searches immediately outside of the defendants' apartment doors using extra-sensory aids. Those cases did not address the specific question that defendant's argument in the present appeal raises: whether a tenant's Fourth Amendment rights are implicated by police officers' mere entry into a secured common vestibule of an apartment building.

¶ 75 Nevertheless, in the wake of *Burns* and *Bonilla*, "[t]he analysis of what constitutes a constitutionally protected area and unlicensed physical intrusion in a multiunit building must be more fact-driven and nuanced." *Thomas*, 2019 IL App (1st) 170474, ¶ 29. Unfortunately, the parties' respective arguments here are anything but "fact-driven and nuanced." For its part, the State relies heavily on forty-plus-year-old federal caselaw, including *Eisler*, which the majority of our supreme court cited unfavorably in *Bonilla*. Defendant, as he did in the trial court, essentially takes for granted that the common vestibule of his building was a constitutionally protected area, citing no authority directly supporting that position. Many of the cases that he

cites, including *Matlock*, *Rodriquez*, *Kratovil*, and *Davis*, do not even involve challenges to police officers' entries into common areas of apartment buildings.

¶ 76 Moreover, defendant does not argue in his briefs that the vestibule constituted curtilage under the property-based analyses of *Jardines*, *Burns*, and *Bonilla*. Nor does he cite or discuss the factors that would guide our analysis in that respect. See *Burns*, 2016 IL 118973, ¶ 34 ("The Supreme Court set forth a four-factor inquiry for analyzing curtilage questions: (1) 'the proximity of the area claimed to be curtilage to the home'; (2) 'whether the area is included within an enclosure surrounding the home'; (3) 'the nature of the uses to which the area is put'; and (4) 'the steps taken by the resident to protect the area from observation by people passing by.' " (quoting *United States v. Dunn*, 480 U.S. 294, 301 (1987))). In response to a question at oral argument, defense counsel made a passing remark that the common vestibule to defendant's building might be considered "collective curtilage," insofar as the residents had an exclusive property interest in that space. An appellant may not raise new points during oral argument. Ill. S. Ct. R. 341(h)(7) (eff. May 25, 2018). At any rate, upon searching for the term "collective curtilage" across all United States jurisdictions, we were unable to find any decision using that term in the Fourth-Amendment context. To the extent that defendant sought to extend the caselaw, it was incumbent on him to articulate cogent reasons for doing so supported by legal authority. "Mere contentions, without argument or citation to authority, do not merit consideration on appeal." *Hall v. Naper Gold Hospitality LLC*, 2012 IL App (2d) 111151, ¶ 12.

¶ 77 In his briefs, defendant appears to invoke the reasonable-expectation-of-privacy test, although he does not cite or discuss any of the relevant factors. See *Thomas*, 2019 IL App (1st) 170474, ¶ 48 ("Factors for determining a reasonable expectation of privacy include whether the defendant was legitimately present in the area searched, his possessory interest in the area or

property seized, his prior use of the area searched or property seized, his ability to control or exclude others' use of the property, and his subjective expectation of privacy."). Instead of engaging in any analysis of these nuanced issues, defendant merely cites *Burns* and *Blake* for the proposition that "[t]enants have collective expectation [*sic*] of privacy in an apartment's secured common area, and only a tenant or landlord can give police valid consent to enter." As the above discussion makes clear, *Burns* does not support that blanket proposition; the majority in *Burns* declined to resolve the appeal on reasonable-expectation-of-privacy grounds.

¶ 78 *Blake*, a 1981 decision, likewise does not support defendant's proposition. In *Blake*, the three defendants resided in a nine-flat apartment building that had a locked exterior entrance and a basement laundry room that was used by all of the building's tenants. *Blake*, 93 Ill. App. 3d at 539. With the consent of both the landlord and one of the tenants, a police officer surveilled the basement for almost two months through a hole that he drilled in the door of the consenting tenant's apartment. *Blake*, 93 Ill. App. 3d at 539. On multiple occasions, the officer saw two of the defendants enter the basement and look into bags that were stuffed under an unused refrigerator. *Blake*, 93 Ill. App. 3d at 539. The officer searched those bags and found "contraband," and the defendants were ultimately arrested and charged with drug offenses. *Blake*, 93 Ill. App. 3d at 539. The trial court granted the defendants' motions to suppress the evidence, and the State appealed. *Blake*, 93 Ill. App. 3d at 539. The appellate court reversed, rejecting the defendants' argument that they had a reasonable expectation of privacy in the contents of the bags that they left in the common basement. *Blake*, 93 Ill. App. 3d at 540-41. As part of its ruling, the court noted that the defendants appeared to dispute the validity of the landlord's consent to the surveillance. *Blake*, 93 Ill. App. 3d at 540. Relying on cases discussing third-party consent, the court determined that the defendants' landlord "possessed sufficient

authority to allow the surveillance." *Blake*, 93 Ill. App. 3d at 540. On that point, the court said that "it is not unreasonable to assume that the landlord of an apartment building has the right to permit inspection of the common areas." *Blake*, 93 Ill. App. 3d 540.

¶ 79 As with *Burns*, *Blake* does not support defendant's blanket statement that "[t]enants have collective expectation [*sic*] of privacy in an apartment's secured common area, and only a tenant or landlord can give police valid consent to enter." To the contrary, the court in *Blake* held that the defendants *lacked* a privacy interest in the contraband that they hid in the basement of their locked apartment building. Furthermore, the court in *Blake* never discussed the officer's "entry" into the secured common area. *Blake* instead centered on the officer's actions of drilling a hole in a door, surveilling a common area for weeks at a time, and opening bags that were hidden under a refrigerator. The fact that the landlord in *Blake* may have had the authority to consent to such an ongoing and intrusive search of a common area does not mean that "only a tenant or landlord can give police valid consent to enter" a common area. Nor does it mean that the State must in all cases show that the police obtained valid consent to enter a common area.

¶ 80 As he did in the trial court, defendant merely assumes that, even though the police officers subsequently procured valid third-party consent from his parents to enter his particular apartment for the purpose of arresting him, the State also had to show that the officers obtained valid consent to enter the common vestibule of the building. Defendant's analysis of this critical threshold issue is wholly conclusory and insufficient in light of the complex legal landscape. Defendant does not even mention the Fourth District's decision in *Trull* or the First District's decision in *Wormack*. Those cases might have provided support for a cogent legal argument, even though their reasoning was subsequently rejected in *Lyles* by a different division of the First District. Instead of focusing on which line of cases offers the soundest approach, defendant does

not even note the split of authority. The two cases that he cites (but does not discuss in detail) that involved searches of common areas of apartment buildings—*Burns* and *Blake*—do not support the proposition for which he cites them. Moreover, defendant does not ask us to extend the caselaw that he cites, much less present a compelling reason for doing so supported by a "fact-driven and nuanced" analysis. *Thomas*, 2019 IL App (1st) 170474, ¶ 29. Accordingly, we deem defendant's challenge to the officers' entry into the apartment building's common vestibule to be forfeited. We express no opinion on whether the vestibule constituted curtilage or whether defendant had an expectation of privacy, collective or otherwise, in that vestibule, such that it could be considered a constitutionally protected area.

¶ 81 Defendant has elected not to challenge on appeal the remaining aspects of the State's "consent theory," namely that the officers procured valid consent from defendant's parents to enter both the family's apartment and defendant's bedroom. Therefore, although we rejected the trial court's finding that exigent circumstances justified a warrantless entry into defendant's apartment, we must affirm the judgment denying defendant's motion to suppress evidence based on the trial court's alternative finding of consent.

¶ 82 B. Presentence Custody Credit

¶ 83 In the alternative, defendant asks us to amend the mittimus to give him seven additional days of presentence credit. Supreme Court Rule 472(a)(3) (eff. May 17, 2019) provides that, at any time after the judgment, the circuit court retains jurisdiction to correct "[e]rrors in the calculation of presentence custody credit." A defendant may raise a sentencing credit issue on appeal only if he first raised the issue in the circuit court. Ill. S. Ct. R. 472(c). According to Rule 472(e), "[i]n all criminal cases pending on appeal as of March 1, 2019, or appeals filed thereafter in which a party has attempted to raise sentencing errors covered by this rule for the

first time on appeal, the reviewing court shall remand to the circuit court to allow the party to file a motion pursuant to this rule." The present appeal was pending as of March 1, 2019. In accordance with Rule 472(e), we remand the matter to the circuit court to allow defendant to file an appropriate motion.

¶ 84 III. CONCLUSION

¶ 85 For the reasons stated, we affirm the judgment of the circuit court of Lake County and remand the matter to the circuit court in accordance with Illinois Supreme Court Rule 472(e) to allow defendant to file a motion challenging the calculation of presentence custody credit.

¶ 86 Affirmed and remanded.