2019 IL App (2d) 18-0048-U
No. 2-18-0048
Order filed July 25, 2019

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IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of McHenry County.
Plaintiff-Appellant,	)	
v.	)	No. 15-CF-1067
JANINE D. McCOLLUM,	)	Honorable Sharon L. Prather,
Defendant-Appellee.	)	Judge, Presiding.

JUSTICE SPENCE delivered the judgment of the court.
Presiding Justice Birkett and Justice Schostok concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court's findings on defendant's motion to suppress and quash the warrant were not against the manifest weight of the evidence. Therefore, we affirmed.

¶ 2 The State brings this interlocutory appeal from the trial court's order suppressing evidence and quashing the search warrant in favor of defendant, Janine D. McCollum. It argues that exigent circumstances justified its search and, in the alternative, exigent circumstances were unnecessary because the search warrant was unconnected to the police officers' entry into defendant's home. We affirm.

¶ 3 I. BACKGROUND

¶ 4 On January 7, 2016, a grand jury returned a nine-count indictment against defendant, including counts for unlawful possession of cannabis between 30 and 500 grams with intent to deliver (720 ILCS 550/5(d) (West 2014)) (Class 3 felony), unlawful possession of cannabis between 30 and 500 grams (720 ILCS 550/4(d) (West 2014)) (Class 4 felony), and several misdemeanor offenses. Defendant filed a motion to suppress evidence and quash search warrant, arguing that the police officers conducted a nonconsensual, warrantless search of her home in violation of the Fourth Amendment. She also argued that no exigent circumstances existed.

¶ 5 On October 12, 2017, the court heard defendant's motion. Defendant first called her daughter, Madison McCollum, and she testified as follows. She was 21 years old, and she had been living with defendant at her home on Chadwick Lane. Her two younger sisters also resided at defendant's home. The home was two stories and had five bedrooms, and it was on a suburban street with other homes around it.

¶ 6 Madison was at home on December 9, 2015, along with her mother and one of her sisters. At that time, she was four-and-a-half months pregnant. She heard a knock on the front door around 6:30 p.m., and she answered the door. The door opened inward, and she opened it enough to peek out with her head. Nobody had identified themselves yet, but she could see that it was the police. They asked if she was Madison McCollum, and she responded yes. She agreed to talk with the officers and stepped outside onto the porch. She closed the door behind her.

¶ 7 The police informed her that they had received a Crime Stoppers tip that she was dealing drugs and that there was marijuana inside the house. She denied both. To her knowledge, there was no smell of marijuana in the house. She knew the smell of marijuana because she had

smoked it in high school. There were six cats living in the house, and several of the cats had problems with continence: “they pee[d] all over.”

¶ 8 Madison went back into the house to get defendant. When she tried to shut the front door, the police stopped her because they said she was not allowed to close it. One officer put his foot into the foyer to block the door from closing, and he had his hand on the door. She responded that she had to close the door because if she did not, the cats would escape. The officers said no, and one of the cats escaped through the front door.

¶ 9 After the cat got out, Madison went after it, telling the officers she would be right back. One officer followed her to help her retrieve the cat, and the other officers entered the home. After about five minutes, she recovered the cat from under a car in the driveway. While she was outside, she heard defendant yelling “do not enter my home.”

¶ 10 Defendant testified next as follows. She had resided on Chadwick Lane in Lake in the Hills since June 2001. Around 6:30 p.m. on December 9, 2015, she was home with two of her daughters, and one of them told her that law enforcement officers were at the door. She was upstairs at the time, and she was not fully dressed. She yelled not to come into her house, and then she heard that the cat had escaped. At that point, she ran downstairs, and an officer was standing in the foyer. On the way down, she told the officer multiple times not to come into her home.

¶ 11 When defendant got downstairs, she saw that the front door was open. The officer did not leave her home, and at least two others entered. She asked what they were doing in her home and told them that they were not allowed to come inside. They refused to leave and said they needed to search her house. She denied carrying a backpack or giving the officers a backpack.

¶ 12 She asked the officers for a search warrant, and they said they did not need one. The officers then proceeded to look through her house for about half an hour, in what they said was a protective sweep. They searched "everywhere," including in closets, under beds, behind doors, in the medicine cabinet, and in a small drawer with a makeup mirror. She followed them during part of their sweep. During their half-hour sweep, the police found approximately 43 grams[1] of cannabis in the master bedroom closet. The cannabis was found in a jar underneath "a bunch of stuff, like clothes." After the officers found the cannabis, they laughed. They said they got what they needed and that one of them was going to get a warrant. Only after the officers found cannabis did they inform defendant that they would obtain a warrant.

¶ 13 After the officers' sweep and their discovery of cannabis, defendant's boyfriend, Ryan Malone, arrived at the residence. He told the officers they needed a warrant. The officers said one person was leaving to obtain the warrant, and they instructed everyone to remain outside of the house. Defendant and her daughters left the house and remained outside for at least several hours. The officers obtained a warrant sometime around 8:00 or 8:15 p.m. To her knowledge, the officers did not discover any evidence to be used against her that they had not already discovered before obtaining the search warrant.

¶ 14 After the State's motion for a directed finding was denied, the State called Officer Jason Draftz, who testified as follows. He was a detective assigned to the McHenry County sheriff's narcotics unit. His training included the detection of cannabis based on sight and odor.

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[1] The search warrant inventory supports this number. It states that the police recovered two items containing a green leafy substance from the master bedroom walk-in closet: 22.3 grams in a clear glass jar and 21.5 grams in a clear sandwich bag.

¶ 15 On October 24, 2015, the Lake in the Hills police department received an anonymous tip from Crime Stoppers that defendant's family was dealing drugs from their home. On December 9, 2015, he and officers Muraski, Fields, and Woods traveled to defendant's home to follow up on the tip. Madison answered the front door, and the door was "wide open," as far as it could be opened. He identified "a strong odor of fresh cannabis emanating from inside the residence," based on his training and experience. He told Madison that he smelled cannabis, and she responded that the smell was cat pee. Shortly thereafter, a cat exited through the door, and Madison chased after it toward the driveway. The door remained open while she chased the cat.

¶ 16 Once Madison had secured the cat, she took it back inside and tried to close the door. He then advised her that he had probable cause to apply for a search warrant and that the officers were going to secure the residence. At that time, he stepped away from the house to contact the State's Attorney's office to begin the process of applying for a search warrant. A State's Attorney gave them permission to enter the residence to secure it. He did not enter the home until the State's Attorney gave permission. To his knowledge, defendant never told anyone to leave her home. On cross-examination, Draftz denied talking to Madison after she left the house to retrieve the cat, and he stated that he went to call the State's Attorney's office once Madison went to retrieve the cat.

¶ 17 Officer Eric Woods assisted Draftz with the investigation of defendant's home, and he testified as follows. He was trained in the investigation and detection of drugs, including cannabis. He was trained to tell the difference between the odors of fresh and burnt cannabis. He stood by the garage while Draftz initially went to defendant's front door. He first noticed the odor of cannabis when Madison left the residence to chase a cat. After Draftz stepped away from the door, Woods approached it, and he smelled a stronger odor of fresh cannabis coming from

inside the home. He began speaking with Madison and asked who else was home. She replied that her sisters were inside, and he asked her to have whoever was inside come downstairs. Madison then went upstairs, and he could hear two females talking. She was out of his view for about 30 to 45 seconds. At that time, he entered the residence. Based on his training and experience, he was worried that evidence was being destroyed.

¶ 18 As soon as he entered, he saw defendant and Madison walking down the stairs. Defendant was carrying a backpack. She held the backpack out and said that this is probably what he was smelling, and she said the backpack belonged to her boyfriend. Nobody went through the backpack at the time, but he believed that eventually the police found cannabis residue or a smoking pipe in the backpack.

¶ 19 She set the backpack down, and he started a conversation with her. He asked if there were other people in the house, and she replied there were only the cats. Woods continued to hear noises inside the house, and he asked defendant to walk him around the house to verify nobody else was home. She was "fine with it," and she escorted him upstairs to her bedroom. When they got there, she was nervous. She pointed to a small amount of weed on a shelf that she said she had picked up in Colorado. Woods physically observed the cannabis in a container on the shelf. He told her he was not looking for drugs at that point in time; he just wanted to make sure there were no other persons in the residence.

¶ 20 Defendant continued to escort him, and he did not locate anyone else upstairs. The other officers found defendant's other daughter, Laney, when she came up from the basement. After the sweep, the officers had everyone go outside. Eventually Ryan Malone arrived at the house. He was speaking on a cell phone with his attorney.

¶ 21 The final witness, Officer Jeff Fields, testified as follows. He had experience and training in the detection of cannabis, and he assisted with the December 9, 2015, investigation of defendant's home. When Madison opened the front door, he could smell marijuana emanating from inside. He was able to differentiate the odor of fresh and burnt cannabis, and the odor was fresh. After the officers obtained a search warrant, he was the evidence officer. He took custody of a backpack from defendant's residence that had several glass smoking pipes and some containers with marijuana residue. He also seized cannabis from a bedroom shelf and additional cannabis from inside the master bedroom walk-in closet. Some of the cannabis found was in a closed jar, and some was in a closed Ziploc bag.

¶ 22 On November 27, 2017, the court ruled on the motion to suppress evidence and quash arrest warrant. The court disagreed with the State that exigent circumstances justified entrance to the home. First, it explained that the evidence presented—a small amount of cannabis seized during the search, and the fact that the cannabis was located in a closed container inside a closet in the second floor bedroom—made it "highly unlikely" that the officers could smell the cannabis from the front door. The court found the entrance into the residence illegal, and the issuance of a search warrant after the fact did not establish exigent circumstances to justify the entry.

¶ 23 In addition, the only exigent circumstances the State argued was the possible destruction of evidence, and the court ruled that destruction of evidence by itself did not justify the warrantless entry. The court continued that the State did not present any evidence that defendant had recently engaged in any drug transactions, nor did the anonymous tip have any details or corroboration. There was no evidence that anyone was armed or dangerous or trying to escape.

No violent crime was charged. Accordingly, the court granted defendant's motion to suppress evidence and quash the search warrant.

¶ 24 The State moved to reconsider, and the court heard the motion on January 10, 2018. The State argued, in part, that it was improper for the court not to believe the officers' testimony that they could smell cannabis from the front door. It argued the court had essentially conducted an improper *sua sponte Franks* review.[2] The court asked "[i]sn't that a judgment on credibility" and while the State admitted it was, it countered that another judge had already issued the search warrant based on the underlying predicate that the officers were able to smell cannabis. The court denied the motion.

¶ 25 The State filed a timely interlocutory appeal.

¶ 26 II. ANALYSIS

¶ 27 The State makes two arguments on appeal: (1) exigent circumstances justified the officers' entry into defendant's home, and (2) in the alternative, exigent circumstances were not required because the search warrant was unconnected to the officers' entry. We address the arguments in turn.

¶ 28 A. Exigent Circumstances

¶ 29 The State concedes that the officers entered defendant's home without a warrant and that it has the burden of demonstrating the exigency of its warrantless entry. Citing the factors articulated in *People v. Foskey*, 136 Ill. 2d 66, 75 (1990), the State argues that several factors favored the officers' warrantless entry: their detection of the odor of cannabis; their lack of delay in obtaining the search warrant; their reasonable belief that the suspect was on the premises; and their entry was peaceable. The State continues that exigent circumstances justified securing the

[2] *Franks v. Delaware*, 438 U.S. 154 (1978).

home while the officers obtained a search warrant. The known presence of illegal drugs plus the presence of additional persons inside the residence justified the search and the protective sweep.

¶ 30 Defendant responds that the trial court found the officers' testimony that they smelled cannabis incredible. Defendant argues that the court's credibility determinations were supported by the evidence, as the only cannabis recovered was upstairs in sealed containers. In addition, defendant argues that the overriding principle guiding an exigent circumstances analysis is whether the police acted reasonably based on the totality of the circumstances. Defendant contends that this case did not involve charges of violence and that possession of cannabis is a less serious offense. Moreover, the officers had no reason to believe that defendant was armed or that she would escape unless the police immediately entered the home.

¶ 31 We reject the State's argument that exigent circumstances justified the officers' warrantless entry. A trial court's ruling on motions to suppress evidence and quash search warrant can present questions of law and fact. *People v. Wise*, 2019 IL App (2d) 160611, ¶ 57. We must defer to the trial court's factual findings and credibility determinations, and we will not disturb findings of fact unless they are against the manifest weight of the evidence. *Id.*; *People v. Aaron*, 296 Ill. App. 3d 317, 323 (1998) (the reviewing court defers to the trial court's credibility determinations on a motion to suppress evidence). This deferential standard of review is warranted because the trial court is in a superior position to weigh the credibility of the witnesses, observe their demeanor, and resolve conflicts in their testimony. *People v. Jones*, 215 Ill. 2d 261, 268 (2005). Findings of fact are against the manifest weight of the evidence when they are unreasonable, arbitrary, or not based on the evidence. *People v. Pitts.*, 2016 IL App (1st) 132205, ¶ 42. In contrast to findings of facts, we review *de novo* the ultimate question of whether

the court properly granted a motion suppress evidence or quash a search warrant. *Wise*, 2019 IL App (2nd) 160611, ¶ 57.

¶ 32 Here, the trial court found it "highly unlikely" that the officers smelled cannabis emanating from defendant's home. In other words, the court found their testimony lacked credibility. The trial court's credibility assessment was supported by the record, including that the cannabis recovered from defendant's home was located upstairs in the master bedroom closet and was sealed either in a jar or a plastic bag. There was no testimony that cannabis was in plain sight from the front door or that any cannabis was recovered downstairs. The court also heard conflicting testimony concerning how far open the front door was and concerning the presence of cats and the smell of cat urine. Importantly, the State's exigent circumstances argument was primarily based on the olfactory detection of illegal drugs. Because the record supported the court's assessment that the officers did not smell cannabis emanating from the front door, we have no factual basis to reverse its ruling on exigent circumstances.

¶ 33 B. Independent Source

¶ 34 In the alternative, the State argues that no exigent circumstances were necessary because the evidence was later seized pursuant to an independently sourced search warrant. Here, the State argues there was no meaningful connection between the officers' entry into defendant's home and the issuance of the search warrant because Draftz's information establishing probable cause was independent of the officers' entry. To wit, Draftz's complaint for the search warrant was based on the smell of cannabis emanating from the open door, and neither his complaint nor his affidavit recited information gleaned from the officers' entry into defendant's home. The State cites *People v. Segura*, 468 U.S. 796 (1984), to support application of the independent

source doctrine, arguing that the effects of the officers' illegal entry must be distinguished from the fruits of their lawful search pursuant to the warrant.

¶ 35 Defendant responds that the independent source doctrine is inapplicable because the search warrant was not independent of the officers' illegal entry. Rather, she argues that Draftz's decision to seek a warrant was influenced by the illegal entry. She cites Draftz testimony that, before the officers entered defendant's home, he told Madison he was going to call the State's Attorney to begin the warrant application process. Defendant contrasts this testimony with his cross-examination, where he testified he did not know how much time elapsed before he called the State's Attorney's office; he did not know where the other officers were when he was on the phone; and he did not speak to Madison after she retrieved her cat. Defendant points to her testimony that the police sought a warrant only after they searched her home, including going upstairs, rummaging through her closet, and finding cannabis. Defendant further argues that the court implicitly believed defendant's version of events when it found the officers' testimony "highly unlikely" that they smelled cannabis emanating through the front door.

¶ 36 Evidence obtained during an illegal search may not serve as the basis for issuing a search warrant, and a search warrant obtained based on evidence discovered during an illegal search should be quashed. *People v. Davis*, 398 Ill. App. 3d 940, 958 (2010) (citing *People v. Crowder*, 99 Ill. App. 3d 500, 504 (1981)). Moreover, evidence is generally excluded if it is obtained through an illegal search. *People v. Durgan*, 281 Ill. App. 3d 863, 867 (1996). One exception to exclusion is the independent source doctrine. *Id.* Under the independent source doctrine, evidence should not be excluded, despite a prior illegal entry, when the evidence is later recovered pursuant to an independently sourced search warrant. *Segura*, 468 U.S. at 813-16.

¶ 37 The Supreme Court expounded on the independent source doctrine in *Murray v. United States*, 487 U.S. 533 (1988). There, the Court explained that the purpose of the independent source doctrine was to balance the interests of deterring unlawful police activity and of providing juries with all probative evidence of a crime. *Id.* at 537 (citing *Nix v. Williams*, 467 U.S. 431, 443 (1984)). The independent source doctrine did this by putting the government in the same, not a worse, position that it would have been in if no police misconduct had occurred. *Id.* The ultimate question was "whether the search pursuant to the warrant was in fact a genuinely independent source of the information and tangible evidence at issue." *Id.* at 542. A warrant-authorized search would not be independently sourced if the officers' decision to seek the warrant was prompted by what they had seen during the illegal entry or if the information obtained during the illegal entry was presented to the magistrate and affected the decision to issue the warrant. *Id.*

¶ 38 Illinois has interpreted *Murray* as setting forth a two-part test to determine whether a search and seizure pursuant to a warrant is independent of a prior illegal entry. *People v. Carter*, 284 Ill. App. 3d 745, 752 (1996) (citing *People v. Bielawski*, 255 Ill. App. 3d 635, 641 (1994), *overruled on other grounds by People v. Johnson*, 208 Ill. 2d 118 (2003)). A warrant-authorized search is independent of a prior illegal entry if (1) the illegal entry did not influence the officer's decision to seek the warrant, and (2) the information obtained from the illegal entry did not affect the magistrate's decision to issue the warrant. *Id.*

¶ 39 Here, the record supports that the trial court implicitly rejected the first prong of the independent source test. The warrant application alleged only two facts to establish probable cause: (1) the anonymous tip and (2) the smell of cannabis emanating through the front door. As discussed, *supra*, the court did not believe the officers' testimony that they smelled cannabis emanating from the house, and that finding was supported by the record. The record

undisputedly established that the officers entered defendant's home, walked through the home, and discovered sealed cannabis in the upstairs master bedroom. Defendant testified that, only after the officers found the cannabis, one of them said he was going to get a warrant. Given the trial court's rejection that the officers smelled cannabis from outside the home, the most reasonable inference is that the officers' illegal entry, where they discovered cannabis, influenced the decision to apply for the search warrant. Bolstering this inference, the State argued, in both its response to defendant's motion to suppress and its motion to reconsider, that the smell of cannabis alone, *i.e.*, independent of the illegal entry, established probable cause for the search warrant. The court rejected these arguments when it suppressed the evidence and denied the motion to reconsider. Accordingly, the search warrant was not independent of the officers' warrantless entry.

¶ 40 III. CONCLUSION

¶ 41 For the reasons stated, we affirm the judgment of the McHenry County circuit court.

¶ 42 Affirmed.