

No. 1-12-0933

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 10 CR 19214
)	
CASSANDRA PAYTON,)	Honorable
)	Vincent M. Gaughan,
Defendant-Appellant.)	Judge Presiding.

JUSTICE PIERCE delivered the judgment of the court.
Presiding Justice Harris and Justice Liu concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial court properly denied defendant's motion to quash arrest and suppress evidence where police officers had probable cause to arrest defendant after observing defendant engage in three suspected narcotics transactions and flee when officers approached her.
- ¶ 2 Following a bench trial, defendant Cassandra Payton was convicted of possession of a controlled substance with intent to deliver and was sentenced to eight years' imprisonment. Defendant appeals, contending the trial court erred in denying her motion to quash arrest and suppress evidence, where the police jumped over a locked gate, followed her into a residence and arrested her without a warrant, probable cause, or exigent circumstances.

¶ 3 Defendant's trial and hearing on her motion to quash arrest and suppress evidence were held simultaneously. Officer Justin Mielcarz testified that he had been a police officer for five and one-half years. On September 30, 2010, at 12:47 a.m., he set up narcotics surveillance with his two partners, Officers Edwards and Babicz, in the area of 636 North Springfield in Chicago, Illinois. Mielcarz was positioned about 50 feet from defendant. Although it was dark outside, there was "good" artificial lighting because there were street lights and lights attached to the building. Defendant was standing in the front yard of 636 North Springfield, a "two-flat" building, inside a black wrought iron fence enclosing the front yard.

¶ 4 During the surveillance, Mielcarz observed an unknown black male riding a bicycle up and down the 600 block of Springfield. The unknown male engaged in three hand-to-hand transactions with three different people during which the unknown male retrieved a small item from his waistband and gave it to each of the people. Between these transactions, the unknown male went to 636 North Springfield and received an item from defendant. Mielcarz saw the male approach defendant "two or three times." Each time the male received the item from defendant, he returned to riding his bicycle along the 600 block of Springfield, and then engaged in another hand-to-hand transaction.

¶ 5 After observing the male complete three hand-to-hand transactions, the officers broke surveillance and approached defendant in an unmarked vehicle and dressed in civilian clothing with vests and badges. As Mielcarz approached defendant, he said, "police," and asked defendant to "step up." Defendant looked in the officers' direction and then ran into the front door of 636 Springfield. She did not close the door.

¶ 6 The front gate was locked, so Mielcarz's partner, Officer Babicz, jumped over the fence and opened the gate. Mielcarz ran past Babicz, and, as he was entering the threshold of the front

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door, about 20 feet from defendant, he observed defendant drop two items from her left hand while she stood at the base of the stairs. Mielcarz also observed defendant attempt to hand off a purple bag to a man and woman who stood on the landing between the first and second floor. The bag fell to the floor and the two people continued to the second floor. Mielcarz detained defendant and recovered the two items defendant dropped from her left hand which were two tape strips containing suspected heroin in tinfoil wrappers. One strip held five wrappers and the other seven.

¶ 7 Mielcarz also testified regarding the chain of custody for the evidence. He inventoried the small purple bag and found it contained 84 mini Ziploc bags of suspected crack cocaine and 57 tinfoil wrappers of suspected heroin. The 57 wrappers of suspected heroin were on tape strips, packaged similarly to the items that defendant dropped from her left hand.

¶ 8 On cross-examination, Mielcarz testified that he did not see defendant with a purple bag or with tape strips of suspected narcotics while she stood outside in the yard. Defendant gave the unknown male an item that was about the size of a golf ball or smaller. Mielcarz admitted that he did not include in his police report that he announced his office when he approached defendant.

¶ 9 Officer Jason Edwards testified that he observed Mielcarz detain defendant in the front hallway of the building. An unknown male, later identified as codefendant John Van, and unknown female fled up the stairs to the second floor when Officer Babicz went up the stairs in pursuit. He observed Van drop suspected crack cocaine to the floor and enter the first bedroom of the second floor apartment.

¶ 10 On cross-examination, Edwards also testified that the front gate was locked and that Babicz climbed over the fence and opened it for the other officers. He did not see anything in

defendant's hands while she was outside. Edwards admitted that, as written, the police report read that after the unknown male on the bike made three exchanges, he then went to defendant and she gave him an unknown item, at which point the officers broke surveillance. However, Edwards explained that actually, the unknown male went to defendant between each transaction.

¶ 11 Officer Sajdak testified that he responded to the scene as an enforcement officer and he recovered the purple bag on the first floor landing. The bag contained 84 packets of suspected cocaine and 57 packets of suspected heroin. The bag remained in Sajdak's possession until he gave it to Mielcarz at the 11th district police station. The State then proceeded by way of stipulation as to the chain of custody and weight and chemical composition of the substance, namely that officers recovered 15.1 grams of heroin, and then rested its case-in-chief.

¶ 12 Nicole Payton, defendant's 35-year-old daughter, testified for the defense. Nicole was visiting her cousin who lived at 636 N. Springfield and was standing on the stairs between the first and second floors talking to a man named Walter Brewer at the time of the incident. She saw defendant sitting outside on the front stoop with a man named James Coleman. She saw her uncle, Dwayne Young, on a bicycle on the sidewalk outside of the wrought iron fence that surrounded the building. Young asked defendant for a cigarette, and defendant stood up and reached for the door to the building. The police arrived and called Young by name. Young was halfway through a missing slat in the fence when one of the officers grabbed and handcuffed him to the gate. Defendant was opening the door to retrieve her cigarettes for Young when one of the officers stepped on Young's handcuffs, jumped over the gate, and kicked in the front door. An officer grabbed defendant and "tussled" with her, and two other officers jumped through the locked gate. She testified that defendant did not drop tinfoil packets or a purple bag.

¶ 13 Nicole further testified that she and defendant were placed in handcuffs and brought to the lower landing on the stairs. When she went outside, defendant was in the street with officers. Officer Sadjack went to a white car in a vacant lot across the street and retrieved a black plastic bag, and then went downstairs into the basement apartment. Nicole did not see anyone run into Van's apartment, which Van shared with defendant on the second floor of the building. On cross-examination, Nicole testified that officers kicked in the front door and caused damage.

¶ 14 Codefendant Van testified that he was asleep in the second floor apartment when he was awakened by an officer patting him down. It was at this time that the officer recovered a handgun. Van testified that the officers threatened him saying that if Van did not tell them anything about the drugs or the gun, they would put the drugs on him. Van then told the officers that he "bought a gun from a shorty" because he feared he would be charged with possession of a controlled substance. The defense rested after Van's testimony.

¶ 15 The trial court identified some inconsistencies in the officers' testimony, but found that they did not affect their credibility. The court did not find Nicole Payton credible "at all." It denied defendant's motion to quash arrest and suppress evidence and found defendant guilty of two counts of possession of a controlled substance with intent to deliver. Later, the court denied defendant's motion to reconsider the guilty finding and for a new trial and sentenced her to eight years' imprisonment. Defendant appeals.

¶ 16 On appeal, defendant argues that her motion to quash arrest and suppress evidence should have been granted where the police illegally entered the private residential building without a warrant, probable cause, or exigent circumstances. In reviewing a trial court's ruling on a motion to suppress, we use a two-part standard. *People v. Colyar*, 2013 IL 111835, ¶ 24. "We afford great deference to the trial court's factual findings, and will reverse those findings only if they are

against the manifest weight of the evidence. [Citation.] We review *de novo*, however, the trial court's ultimate legal ruling on whether suppression is warranted." *Id.*, citing *People v. Oliver*, 236 Ill. 2d 448, 454 (2010).

¶ 17 The State argues that defendant forfeited this issue for review where defendant failed to object at trial and failed to include the issue in a posttrial motion. We decline to find that defendant forfeited this issue in light of our supreme court's recent decision in *People v. Cregan*, 2014 IL 113600. Citing *People v. Enoch*, 122 Ill. 2d 176, 190 (1988), the *Cregan* court held that where, as here, a defendant appeals the trial court's denial of her motion to quash arrest and suppress evidence based on an alleged fourth amendment violation, this claim is not forfeited despite the failure to include it in a post-trial motion. *Cregan*, 2014 IL 113600, ¶ 16, 20. The court explained that forfeiture is inapplicable where the unpreserved claim involves a constitutional issue that was properly raised at trial and may be raised later in a postconviction motion. *Cregan*, 2014 IL 113600, ¶ 20. It is a matter of judicial economy to decide the issue here, "rather than requiring a defendant to raise it in a separate postconviction petition." *Id.* at ¶ 18. We also note that defendant filed a posttrial motion contesting the sufficiency of the evidence and challenging the credibility of the officers involved in this case. Because this was a simultaneous motion to suppress hearing and a bench trial, we find the trial court, in considering and ruling upon the posttrial motion, had sufficient opportunity to address the defendant's claim such that forfeiture should not be invoked. *People v. Cooper*, 2013 IL App. (1st) 113030, ¶ 90.

¶ 18 The fourth amendment guarantees "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const., amend. IV; accord Ill. Const. 1970, art. I, §. 6. "An arrest executed without a warrant is valid only if supported by probable cause." *People v. Jackson*, 232 Ill. 2d 246, 275 (2009). "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." *People v. Hopkins*, 235 Ill. 2d 453, 472 (2009), quoting *Jackson*, 232 Ill. 2d at 274-75. Whether probable cause exists depends upon the totality of the circumstances at the time of the arrest. *Id.* Probable cause determinations are not technical. *Id.* Rather, "they are the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act." *Id.*, quoting *People v. Love*, 199 Ill. 2d 269, 279 (2002).

¶ 19 After conducting narcotics surveillance, the Officer Mielcarz observed what he believed to be three drug transactions. This occurred after midnight. At 12:47 a.m., the man on the bicycle tendered three small items from his waistband to three separate individuals during three distinct encounters. Further, the man approached defendant between each suspected drug transaction and received small items from her. A reasonable view of these events indicates that an innocent explanation for this series of events is implausible. Although it is possible that defendant gave the man on the bicycle a non-contraband item, e.g. a cigarette, once, his contact with three unknown individuals and repeated exchanges with defendant make such an innocent explanation implausible. See e.g., *People v. Love*, 199 Ill. 2d 269, 277 (2002) (concluding that "innocent explanations" for the defendant's pulling an item from her mouth in exchange for money are "implausible," where "common sense dictates that the man probably did not go out at 1:50 a.m. in late January for prechewed gum."). Officer Mielcarz testified that he had over five years' experience as a police officer. Although he did not specify how many narcotics surveillances he previously engaged in, this goes to the weight to be given his testimony and does not discredit the remainder of his testimony. The events testified to by all of the officers, as recounted above, after Mielcarz first approached the defendant clearly established probable

cause. Based on the totality of these circumstances, we find that the officers had probable cause to arrest defendant. See *People v. Harris*, 352 Ill. App. 3d 63, 67-68 (2004) (after examining the totality of the circumstances, the appellate court found probable cause where the officer observed the defendant engage in several hand-to-hand transactions and the officer had substantial professional experience in narcotics transactions). While the parties raise the issue of whether the officers had reasonable suspicion to stop and investigate defendant, we need not reach that issue having found the officers had probable cause to arrest defendant.

¶ 20 Defendant also argues that exigent circumstances also did not justify the warrantless entry and arrest on private property. We disagree. The testimony established that the defendant engaged in three suspected narcotics transactions as she stood out in the open, albeit in the locked front yard of the building, and consequently, the officers had probable cause to arrest defendant. Defendant, however, impermissibly attempted to thwart this seizure by fleeing into a two story residential structure. See *People v. Wear*, 371 Ill. App. 3d 517, 534 (2007) ("when the police commence a reasonable seizure of a person in a public place, that person cannot thwart the seizure by retreating into a private place").

¶ 21 Defendant argues that she had a reasonable expectation of privacy as she stood within the locked wrought-iron fence of her front yard, which, she claims, constituted protected curtilage. This argument is unsuccessful because defendant had no reasonable expectation of privacy where, as here, she was "exposed to public view, speech, hearing, and touch, as if she had been standing completely outside her house." *U.S. v. Santana*, 427 U.S. 38, 42 (1976).

¶ 22 Defendant relies on *People v. Davis*, 398 Ill. App. 3d 940, 948 (2010), and *In re D.W.*, 341 Ill. App. 3d 517, 523 (2003), to support her argument that the police were not operating under exigent circumstances. In *Davis*, the officers responded to a call of a battery and the

victim informed the officers of the defendant's location and that the defendant sold cocaine from the home. *Davis*, 398 Ill. App. 3d at 941-42. Officers proceeded to the location and arrested defendant's girlfriend, who also attacked the victim. The arresting officer then entered the apartment without consent or a warrant. *Id.* at 942. The appellate court determined there was no exigency because battery was not a grave offense, there was no evidence that the defendant was armed or posed a threat to police, or that the defendant was likely to flee if he was not swiftly apprehended. *Id.* at 949.

¶ 23 In *In re D.W.*, a citizen approached the arresting officer in person and informed him that someone was selling narcotics in front of a nearby building, and provided the address. 341 Ill. App. 3d at 520. Thirty minutes elapsed before officers went to the location. *Id.* When they arrived, the officers motioned to the defendant that they needed to speak to him and the defendant ran up the stairs into an apartment. *Id.* The officer followed, and observed the defendant attempt to conceal narcotics in a bedroom. *Id.* at 521. The officer testified that he did not see the defendant engage in any hand-to-hand narcotics transactions while outside, before fleeing up the stairs. *Id.* The officer also did not conduct surveillance of the area and did not observe the defendant violate any laws. *Id.*

¶ 24 *Davis* and *In re D.W.* are distinguishable from the instant case because in those cases, the officers did not have first-hand knowledge of the defendant's committing crimes in a public place, open to public view and hearing. Rather, they received tips, albeit from the victim of a crime and an in-person informant. Here, however, Mielcarz testified to observing defendant commit suspected crimes contemporaneously to the arrest, while she stood visible to public view and hearing. Therefore, because Mielcarz had probable cause to arrest defendant, he did not

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violate her fourth amendment right when he followed her as she fled from a place in full public view into a private residence.

¶ 25 Based on the foregoing, we conclude that officers had probable cause to arrest defendant and affirm the judgment of the circuit court of Cook County finding defendant guilty of possession of a controlled substance with intent to deliver.

¶ 26 Affirmed.