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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 Winnebago County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 10-CF-2623
)	
ROBERT BROOKS, JR.,)	Honorable
)	Rosemary Collins,
Defendant-Appellant.)	Judge, Presiding.

PRESIDING JUSTICE BURKE delivered the judgment of the court.
Justices Hutchinson and Birkett concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial court did not err in denying the defendant's motion to quash the arrest and suppress evidence, but the DNA collection fee must be vacated because it had already been assessed in a prior case.
- ¶ 2 A jury found defendant, Robert Brooks, Jr., guilty of possession of a controlled substance (see 720 ILCS 570/402(c) (West 2012)), and the trial court sentenced him to five years' imprisonment. Before trial, the court found that defendant's wife, Jovan Daniels, consented to a warrantless search that disclosed defendant and the cocaine on which his conviction is based. Defendant appeals, arguing that (1) the trial court erred in denying his motion to quash the arrest

and suppress the evidence and (2) the DNA collection fee imposed at sentencing is invalid. We vacate the DNA fee and affirm the remainder of the conviction.

¶ 3

I. BACKGROUND

¶ 4 The State presented evidence that, on August 25, 2010, Rockford police officers Donato, Marko, Lange, and Matthews responded to an anonymous tip about the location of defendant, for whom the police had an arrest warrant for a domestic battery. The officers went to an apartment in Rockford, and Officer Marko knocked on the door and announced “police.” The door was answered by a three-year-old girl, who left the officers standing outside the doorway. From outside the open door, Officer Marko again announced “police.” A woman, later identified as Daniels, came to the door and asked the officers to come inside and close the door, which they did.

¶ 5 Officer Marko asked Daniels if she knew defendant, and Daniels said “yes.” Officer Marko asked where defendant was, and Daniels nodded toward a hallway. The officers walked down the hallway, checking and entering three bedrooms. In the third bedroom, the officers found defendant squatting behind a television with his hands in his pockets. One of the officers handcuffed defendant, and Officer Marko picked up a bag containing an off-white substance that he discovered at defendant’s feet. The substance field-tested positive for cocaine.

¶ 6 At the suppression hearing, Daniels disputed the officers’ account of events. She testified that she exited one of the bedrooms and saw that the police were already in the apartment. Daniels said she neither told the police that they could enter nor indicated that defendant was in the bedroom. According to Daniels, the police searched the bedrooms without asking.

¶ 7 Daniels also denied that defendant told her what to say in court. In rebuttal, Winnebago County sheriff’s deputy David Huff testified that the police recorded two telephone calls

between Daniels and defendant while he was in custody. The recordings showed defendant and Daniels had discussed how she would testify at the suppression hearing. Defendant testified that he never told Daniels to do anything but tell the truth.

¶ 8 The trial court denied defendant's motion to quash the arrest and suppress evidence, finding that the officers' testimony was consistent and credible. The court specifically found that (1) the officers did not enter the apartment until Daniels told them to do so and (2) the officers inquired about defendant's whereabouts and Daniels responded by nodding toward the rear of the apartment. The court concluded that Daniels' nonverbal conduct qualified as voluntary consent to search for defendant in the hallway and bedrooms, which were in the area she nodded toward.

¶ 9 The court inferred that Daniels did not speak but rather nodded toward defendant's location because she was reluctant to disclose his location for fear of retribution. The court pointed out that defendant's outstanding warrant was for an alleged domestic battery against Daniels, and one of the officers testified that, when defendant saw them, he yelled "[t]he bitch called on me." The court concluded that Daniels was not truthful when she denied at the hearing that she had consented to the search. The court ruled the arrest lawful and denied the motion to quash the arrest and suppress the cocaine found near defendant. Following a trial, a jury found defendant guilty of possession of a controlled substance (see 720 ILCS 570/402(c) (West 2012)), and this timely appeal followed.

¶ 10

II. ANALYSIS

¶ 11

A. Consent to Search

¶ 12 On appeal, defendant argues that the trial court erred in denying his motion to quash the arrest and suppress evidence because (1) Daniels did not consent to the search of the apartment

and (2) the police did not encounter any exigent circumstances to justify the search. A review of a trial court's ruling on a motion to quash an arrest and suppress evidence presents mixed questions of law and fact. A reviewing court will uphold findings of historical fact made by the trial court unless such findings are against the manifest weight of the evidence. This deferential standard of review is grounded in the trial court's superior position to determine and weigh the credibility of the witnesses, observe the witnesses' demeanor, and resolve conflicts in their testimony. *People v. Jones*, 215 Ill. 2d 261, 268 (2005). "The reviewing court then assesses the established facts in relation to the issues presented and may draw its own conclusions in deciding what relief, if any, should be granted." *People v. Clendenin*, 238 Ill. 2d 302, 328 (2010). Accordingly, we review *de novo* the ultimate legal question of whether suppression is warranted. *Clendenin*, 238 Ill. 2d at 328.

¶ 13 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. Reasonableness in this context generally requires a warrant supported by probable cause, though a warrantless search conducted with a defendant's voluntary consent does not violate the fourth amendment. *People v. Anthony*, 198 Ill. 2d 194, 202 (2001) (citing *Schneckloth v. Bustamonte*, 412 U.S. 218, 222 (1973) and *People v. Bull*, 185 Ill. 2d 179, 197 (1998)). The constitutionality of a consent search turns on two questions: "First, it must be determined whether or not consent was given and then, second, whether or not that consent was in fact voluntary." *People v. Parker*, 312 Ill. App. 3d 607, 616 (2000). Here, defendant focuses on whether consent was given, arguing that Daniel's actions were too ambiguous to allow the officers to infer consent. He does not argue that any consent given was not voluntary.

¶ 14 Defendant concedes the trial court's factual findings that Daniels gave express verbal

consent to enter the apartment and nodded toward the hallway in response to the question about defendant's whereabouts. These findings are not against the manifest weight of the evidence. Nevertheless, defendant argues that Daniels' nod to the hallway was merely an indication of his location and not an act of consent for the police to enter the hallway or the bedrooms.

¶ 15 In a situation like this one involving the issue of nonverbal consent, our supreme court has stated, "when a court is deciding whether consent was given *** the circumstances must have been such that the police could have reasonably believed they had been given consent to enter." *People v. Henderson*, 142 Ill. 2d 258, 299 (1990). In *Henderson*, the State presented evidence that two detectives knocked on the front door of the defendant's apartment, and the defendant's mother opened the door. *Henderson*, 142 Ill. 2d at 294. One of the detectives identified himself as a police officer and asked if the defendant was home. The defendant's mother answered "yes" and stepped back and pointed toward a bedroom. The detectives thanked her, walked into the bedroom, saw the defendant, and arrested him. *Henderson*, 142 Ill. 2d at 294. The supreme court affirmed the trial court's finding that the mother voluntarily consented to the search and held that stepping back from the open door and pointing toward the defendant's bedroom "was a wordless invitation to enter, and faced with this conduct the officers need not have asked for permission to enter and received verbal confirmation." *Henderson*, 142 Ill. 2d at 299.

¶ 16 This case is remarkably similar to *Henderson*. Here, the trial court found that Daniels gave express verbal consent to enter the apartment, and like in *Henderson*, gave a wordless invitation to enter the hallway and bedrooms to look for defendant. See *Henderson*, 142 Ill. 2d at 299-300. The trial court did not err in concluding that the totality of circumstances created an objectively reasonable belief in the officers that Daniels had consented to the search that

disclosed defendant. We reject defendant's assertion that the officers were required to ask permission to enter the hallway and enter the bedrooms.

¶ 17 Defendant cites *Anthony* for the proposition that the search was improper because Daniels' intent to consent to the search was not "unmistakably clear" and was too vague to be deemed consent. The *Anthony* court held that, where the State contends voluntary consent was granted by nonverbal conduct, the intent to grant consent "should be unmistakably clear" because "dueling inferences so easily arise from a single ambiguous gesture." *Anthony*, 198 Ill. 2d at 203. Defendant takes Daniels' nod out of context. The totality of the circumstances transformed the potentially ambiguous gesture of nodding toward the rear bedrooms into an unambiguous indication of intent to consent to the search. Defendant had an outstanding arrest warrant for allegedly committing a domestic battery on Daniels, which created the reasonable inference that she wanted him arrested but consented nonverbally because she feared retribution. This inference is consistent with Daniels granting verbal consent to enter the apartment. The *Anthony* court's concern regarding dueling inferences arising from a single ambiguous gesture is not present here.

¶ 18 Citing *People v. Dale*, 301 Ill. App. 3d 593 (1998), and *People v. Dawn*, 2013 IL App. (2d) 120025, defendant contends that, even if Daniels' nod qualifies as consent to enter the hallway, the officers' search of the bedrooms exceeded the scope of that consent. Defendant's reliance on those cases is misplaced.

¶ 19 In *Dale*, the appellate court ordered suppression of evidence disclosed in a search of the defendant's hotel room. The defendant consented to the police officers entering his hotel room, frisking him, and searching the room. However, as the police started searching his room, the defendant objected and withdrew his consent. The defendant agreed to leave the hotel room at

the hotel manager's request, and as he packed his belongings, an officer went to the closet, where the defendant's clothes were hanging, and started squeezing them "to make sure [they contained] no weapons or anything." *Dale*, 301 Ill. App. 3d at 595. The officer took the articles of clothing from the closet and handed them to defendant, who began packing them. During this process, a small, clear plastic bag containing a white powdery substance appeared on the floor at the defendant's feet. The substance field-tested negative and defendant was released; but the officers secured the hotel room and ordered the defendant to leave his belongings inside. A second chemical test yielded a positive result for cocaine. A judge issued a search warrant, and the search disclosed more drugs and evidence of drug trafficking. *Dale*, 301 Ill. App. 3d at 595.

¶ 20 Noting that the defendant consented only to having the police enter the room to talk with him, not to watch him pack his belongings, the appellate court concluded that the officers could not reasonably conclude that, absent a request for them to leave, the defendant's consent to their presence was ongoing. *Dale*, 301 Ill. App. 3d at 597. After the defendant told the officers that he did not wish for them to search his room, the officers' response essentially was that, if they could not search his belongings, they would stand by and watch him pack and even remove articles of clothing from the closet and squeeze them to find weapons or contraband. *Dale*, 301 Ill. App. 3d at 597-98. The appellate court construed the officers' conduct as a directive that was contrary to the defendant's withdrawal of consent. *Dale*, 301 Ill. App. 3d at 598. The court concluded that the defendant's previous consent for the officers to enter his motel room for the limited purpose of talking to him did not justify their presence there when the small plastic bag appeared on the floor. *Dale*, 301 Ill. App. 3d at 598.

¶ 21 This case is factually distinguishable in that the officers did not exceed Daniels' consent to search the hallway and bedrooms and Daniels did not withdraw consent or indicate in any way

that she was limiting her consent to the officers' entry into the apartment. Moreover, the evidence does not show that the officers' conduct was akin to a directive to allow them to search the hallway and the bedrooms.

¶ 22 In *Dawn*, the police officers discovered contraband after entering the home of the defendant's sister and following the defendant into the basement. This court agreed with the defendant that the officers exceeded the scope of the sister's consent to their warrantless entry. We held that "following [the] defendant into the basement, apparently on the hunch that he was involved in some criminal activity, [the officers] exceeded the scope of [the sister's] consent for them to enter her home. A reasonable person in their position would not have interpreted her request to 'Come in' as including permission to pursue defendant into the basement, apparently in the hopes of finding incriminating evidence or obtaining incriminating admissions. This context shows fatal disjunctions of purpose, person, time, and place." *Dawn*, IL App (2d) 120025, ¶ 39.

¶ 23 *Dawn* lacked any expression of consent, either nonverbal or explicit, to proceed farther into the home. In *Dawn*, the defendant's sister consented to the officers entering her home, after which the officers immediately pursued the defendant down the basement stairs without any further communication with the sister. Here, Daniels invited the officers into the apartment and also nodded toward the hallway and bedrooms in response to a question about defendant's whereabouts. Daniels' nonverbal communication with the officers distinguishes this case from *Dawn*.

¶ 24 The facts of *People v. Patrick*, 298 Ill. App. 3d 16, 25 (1998), and *People v. Adams*, 394 Ill. App. 3d 217, 225 (2009), are more like those in this case. In *Patrick*, the appellate court affirmed a finding that the detectives reasonably inferred consent to search from the grandmother

waving her hand over her shoulder toward a back bedroom. *Patrick*, 298 Ill. App. 3d at 25. The trial court credited the detectives' testimony that the defendant's grandmother answered the front door, told them who she was, and indicated that the defendant was "all the way in the back." *Patrick*, 298 Ill. App. 3d at 25. The appellate court held that "[i]t was reasonable for the detectives to believe that the grandmother had authority to consent when she gestured over her shoulder towards the back and allowed the detectives to enter. Her actions demonstrated that she generally had joint access or control for most purposes." *Patrick*, 298 Ill. App. 3d at 25.

¶ 25 Similarly, in *Adams*, the appellate court affirmed a finding that the detectives reasonably concluded they were welcome to enter the defendant's home, based on the nonverbal conduct of a woman who answered the door his apartment. *Adams*, 394 Ill. App. 3d at 225. The trial court credited the detectives' testimony that, when the detectives inquired as to whether the defendant was in the apartment, she responded by pointing to her right, saying "yeah, he's right here," stepping aside, and leaving the doorway unobstructed for the officers to enter. *Adams*, 394 Ill. App. 3d at 225. Although one of the detectives admitted that the woman never gave verbal consent to enter, at the doorway, he informed her that he needed to speak with the defendant and she "stepped aside, said 'Okay,' and pointed to him." The detective entered and saw the defendant standing in the entrance to a bathroom. The woman's conduct under the totality of the circumstances could reasonably be construed as consent to enter and look in the direction she indicated. *Adams*, 394 Ill. App. 3d at 225.

¶ 26 Daniels' nod toward the hallway and bedrooms, when viewed in conjunction with her verbal invitation for the officers to enter, is comparable to the nonverbal expressions of consent in *Patrick* and *Adams*. Because we conclude that Daniels voluntarily consented to the warrantless search that disclosed defendant and the contraband, we need not consider the parties'

alternative arguments regarding whether the search could be justified by exigent circumstances.

¶ 27

B. DNA Fee

¶ 28 Defendant next argues that the trial court erroneously imposed a DNA collection fee after defendant was already assessed the same fee in an earlier case. Under section 5-4-3(a) of the Unified Code of Corrections (Code) (730 ILCS 5/5-4-3(a) (West 2012)), any person convicted of a felony in Illinois must submit a DNA sample to the Department of State Police (DSP), to be analyzed and catalogued in a database. The person providing the sample must pay a fee of \$200. 730 ILCS 5/5-4-3(j) (West 2012). However, the fee may be assessed only once against an individual, and therefore it may not be assessed against a defendant whose DNA is already in the database per section 5-4-3(a) of the Code. *People v. Marshall*, 242 Ill. 2d 285, 296-97 (2011). The DSP indexing laboratory records reflect that defendant's DNA was collected and catalogued when he was previously convicted of burglary. The sample was collected on March 4, 2003, and received by the DSP indexing laboratory on March 5, 2003. The State confesses error, and we agree with the parties that the DNA fee must be vacated. See *Marshall*, 242 Ill. 2d at 302.

¶ 29

III. CONCLUSION

¶ 30 For the preceding reasons, the DNA fee is vacated and the remainder of the judgment of Winnebago County is affirmed.

¶ 31 Affirmed in part and vacated in part.