2011 IL App (2d) 100737-U
No. 2—10—0737
Order filed August 11, 2011

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellant, v. JAMES D. HENDRON, Defendant-Appellee.	)	Appeal from the Circuit Court of Boone County. Nos. 08—DT—307 08—TR—11908 08—TR—11909 08—TR—11910 08—TR—11911 Honorable John H. Young, Judge, Presiding.

JUSTICE SCHOSTOK delivered the judgment of the court.
Justices McLaren and Hudson concurred in the judgment.

ORDER

Held: The trial court properly granted defendant's motion to quash his arrest after a warrantless entry into a private home: the police were not in hot pursuit; no exigent circumstances existed, as (although some of the relevant factors favored the State) the offense (DUI) was not sufficiently serious and there was no indication that defendant was armed or would escape.

¶ 1 The State appeals from an order of the circuit court of Boone County granting the motion of defendant, James D. Hendron, to quash his arrest and suppress evidence in a prosecution for driving

under the influence of alcohol and other traffic offenses. Defendant was arrested inside a private home by officers who lacked either a warrant or consent to enter the home. The State argues that the entry was nonetheless lawful. We disagree and therefore affirm the order granting defendant's motion.

¶ 2 Evidence presented at the hearing on the motion establishes that at about 11 p.m. on September 26, 2008, Sergeant Darren Rowe of the Boone County sheriff's department and Boone County Sheriff's Deputy Scott Bowers responded to a dispatch indicating that a possibly intoxicated individual had left a bar in Capron—the Stumble Inn—on a motorcycle. Bowers testified that, while en route, he was advised that the subject had traveled a short distance, "wrecked" the motorcycle, and left on foot. Rowe was the first to arrive at the location where the motorcycle had been left. He found it parked and he observed scratches on both sides. He learned that the motorcycle was registered to defendant at an address in Belvidere. Rowe then traveled to the home of Julie Wanfalt, which was located at 105 Rainbow Drive in Capron. When he arrived, he was flagged down by Cindy Tippy, who advised him that she had reported the motorcycle accident. Tippy did not know whether the rider was hurt. She told Rowe that she followed the rider from the scene of the accident to Wanfalt's home. Tippy indicated that the rider had difficulty walking and that he fell five or six times along the way. Bowers joined Rowe at Wanfalt's home, as did a Deputy Smyth. Wanfalt refused to admit the officers into the house, but they entered nonetheless. According to Rowe, they did so only after Bowers reported that he had looked into the home through a kitchen window on the side of the home and had observed Wanfalt trying to put defendant into a cabinet in order to hide him.

¶ 3 When the officers entered the home they found defendant sitting at the kitchen table. Bowers testified that he believed defendant was drinking an alcoholic beverage. Bowers detected a strong odor of an alcoholic beverage when he made contact with defendant. In addition, defendant's speech was slurred, and he was unable to stand on his own. Rowe testified that defendant was uncooperative and that Bowers and Smyth placed him under arrest. Bowers testified that he did not enter the house with the intention of arresting defendant; he went in to check on him. Bowers did not know whether defendant had been injured. He acknowledged that Wanfalt had indicated that defendant was "fine," but he added that the officers could not verify that that was the case. Rowe testified that he went to Wanfalt's home not to arrest defendant, but rather to investigate the accident.

¶ 4 Wanfalt's neighbor, Pamela Jenkins, testified that she visited Wanfalt's home on the evening of September 26, 2008. Defendant, who lived with Wanfalt, arrived at the house at about 10 p.m. or 10:30 p.m. The police arrived at the house roughly 10 to 15 minutes later. After refusing to admit them into the house, Wanfalt attempted to close the door, but one of officers forced the door open and pushed Wanfalt onto a couch. One of Wanfalt's friends, Judy Szczerba, was also present that evening. She testified that defendant arrived at the house at 11 p.m. or shortly thereafter. When the police arrived, she heard shouting. The officers proceeded to the kitchen, pushed defendant down, and placed him in handcuffs. According to Szczerba, the officers struck defendant in the back with batons after he was handcuffed. Szczerba did not recall what, if anything, the police said to defendant other than telling him to "shut up."

¶ 5 Wanfalt testified that at 11 p.m. on September 26, 2008, she was at home with defendant, Jenkins, and Szczerba. The police arrived at her house at about 11:30 or midnight. Wanfalt told the officers that they could not enter the house without a warrant. She closed the door, but the police

opened it, pushed her into the living room, and placed her in handcuffs. The officers did not ask if defendant was hurt or inquire about his well-being. According to Wanfalt, the officers pulled defendant out of his chair and threw him to the floor. One of the officers hit defendant on the head with a billy club, and one punched defendant in the mouth.

¶ 6 On appeal from a trial court's ruling on a motion to quash and suppress, the reviewing court "will accord 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." *People v. Close*, 238 Ill. 2d 497, 504 (2010). However, the trial court's ultimate decision to grant or deny the motion is subject to *de novo* review. *Id.*

¶ 7 Our supreme court has observed that "[t]he physical entry of the home is the chief evil against which the wording of the fourth amendment is directed." *People v. Wear*, 229 Ill. 2d 545, 562 (2008). As a rule, the fourth amendment prohibits law enforcement officials from entering a private residence without a warrant. *People v. Wimbley*, 314 Ill. App. 3d 18, 24 (2000). Entry without a warrant is permissible, however, where exigent circumstances exist. *Id.* In determining whether exigent circumstances excuse the warrant requirement, courts consider the totality of the circumstances, including, but not limited to, "(1) whether the offense under investigation was recently committed; (2) whether there was any deliberate or unjustifiable delay by the officers during which time a warrant could have been obtained; (3) whether a grave offense is involved, particularly one of violence; (4) whether the suspect was reasonably believed to be armed; (5) whether the police officers were acting upon a clear showing of probable cause; (6) whether there was a likelihood that the suspect would have escaped if not swiftly apprehended; (7) whether there was strong reason to believe that the suspect was on the premises; and (8) whether the police entry, though

nonconsensual, was made peaceably." *People v. Foskey*, 136 Ill. 2d 66, 75 (1990). Apart from this multi-factor analysis, "an exigent circumstances exception [exists] when it is reasonably necessary for officers to make a warrantless entry into a home for the purpose of rendering emergency aid." *People v. Paudel*, 244 Ill. App. 3d 931, 939 (1993). Under the "emergency exception" to the warrant requirement, the officers must have reasonable grounds to believe that an emergency exists requiring their immediate assistance to protect life or property and "there must be some reasonable basis, approximating probable cause, to associate the emergency with the area or place to be entered." *People v. Ferral*, 397 Ill. App. 3d 697, 705 (2009). In addition, exigent circumstances justify a warrantless entry when police are in "hot pursuit" of a suspect who attempts to take refuge in a private residence. *United States v. Santana*, 427 U.S. 38, 42-43 (1976).

¶ 8 The State first argues that the warrantless entry here was permissible under the emergency exception. The State acknowledges that it did not raise this theory during the proceedings below and that it is therefore forfeited. See, *e.g.*, *People v. Estrada*, 394 Ill. App. 3d 611, 626 (2009) ("It is axiomatic that arguments may not be raised for the first time on appeal."). The forfeiture rule applies to the State as well as to the defendant. *Id.* As the State correctly notes, it has been held that "[t]he [forfeiture] rule is one of administrative convenience rather than jurisdiction, and the goals of obtaining a just result and maintaining a sound body of precedent may sometimes override considerations of [forfeiture]." *People v. Farmer*, 165 Ill. 2d 194, 200 (1995).[1] However, the State

[1]We note that in recent years our supreme court has insisted that reviewing courts refrain from considering errors forfeited by criminal defendants that do not strictly meet the requirements of the plain-error rule. See *People v. Hillier*, 237 Ill. 2d 539, 549 (2010) ("We remind the appellate court that when the State asserts that a defendant has forfeited review of an issue, the court must first

does not explain how this principle is applicable to this case, and it is not evident why the goals identified in *Farmer* militate against forfeiture in this case to a greater degree than in any other case in which the State has failed to properly preserve an issue for appellate review. Thus, we see no reason to relax the forfeiture rule here.

¶ 9 The State also argues that the *Foskey* factors establish the existence of exigent circumstances. We disagree. The most serious offense that defendant might have committed was DUI. In our view, DUI does not rank among the types of crimes that have been considered "grave" within the meaning of *Foskey*. See *In re D.W.*, 341 Ill. App. 3d 517, 529 (2003) ("Grave crimes are usually first degree murder, armed robbery and assault."); *Ferral*, 397 Ill. App. 3d at 711 (burglary is not a grave offense). But see *People v. Wehmas*, 246 P.3d 642, 648 (Colo. 2010) ("a first-time DUI offense is a sufficiently grave offense such that warrantless home entry may be valid"). In addition, there was nothing to indicate that defendant was armed and there was no reason to believe that escape was a realistic concern. The factors that do support the warrantless entry into Wanfalt's home include the recency of the crime, the absence of delay by the police, and the high likelihood that the individual they were seeking was on the premises. However, even assuming that there was clear probable cause to believe that defendant committed a crime, and further assuming that the entry was made peaceably, the factors favoring the State would not justify relaxing the warrant requirement. See *People v. Davis*, 398 Ill. App. 3d 940, 950 (2010) ("While it is true that defendant's arrest occurred in close temporal proximity to the [commission of a battery], that the police did not engage in any

---

determine if the State is correct. If the reviewing court finds that the defendant forfeited the issue, then the court must hold the defendant to his burden of demonstrating plain error."). Arguably, the same rule should apply to forfeitures by the State.

unjustifiable delay, that the police had probable cause to arrest defendant, that the police had reason to believe defendant was in the apartment, and that the police entered the apartment peaceably, we are not persuaded that these circumstances, without more, necessitated prompt action by the police in the form of a warrantless entry and arrest.")

¶ 10 As noted, warrantless entry is sometimes permissible under the "hot-pursuit" doctrine. The State acknowledges that the police were not in hot pursuit of defendant when they entered Wanfalt's residence and placed him under arrest. The State argues, however, that this case is similar to *Wear*—a decision upholding a warrantless entry under the hot pursuit doctrine—inasmuch as, according to the State, the defendants in both cases were "seeking to avoid detection of one or more offenses by retreating into a private area after having engaged in conduct, which gave rise to probable cause, in a public area." The argument is meritless. The governing principle in *Wear* was that "a suspect may not defeat an arrest that was set in motion in a public place by escaping to a private place." *Wear*, 229 Ill. 2d at 567-68 (citing *Santana*, 427 U.S. at 43). This reasoning does not support the rule the State advocates: that police may enter a residence to make an arrest for *any* recently committed crime. That a crime has been recently committed is but one factor in determining whether exigent circumstances justify warrantless entry. See *Foskey*, 136 Ill. 2d at 75. To hold, as the State asks us to do, that this factor is sufficient in itself would severely undermine the warrant requirement.

¶ 11 For the foregoing reasons, the judgment of the circuit court of Boone County is affirmed.

¶ 12 Affirmed.