NOTICE
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2026 IL App (5th) 241004-U

NO. 5-24-1004

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

NOTICE
This order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Jefferson County.
	)	
v.	)	No. 24-CF-96
	)	
ERIC A. POWELL,	)	Honorable
	)	Jerry E. Crisel,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE McHANEY delivered the judgment of the court.
Presiding Justice Cates and Justice Sholar concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court erred in denying defendant's motion to suppress where officers exceeded the scope of the implied license before attempting consensual contact, and the challenged evidence was obtained through the resulting unlawful curtilage intrusion. The State's plain-view, plain-smell, exigent-circumstances, hot-pursuit, and protective-sweep theories did not render the derivative evidence admissible. Because the handgun was essential to the defendant's conviction for unlawful possession of a weapon by a felon, the conviction is reversed.

¶ 2 Following a stipulated bench trial, the defendant, Eric A. Powell, was convicted of count III, unlawful possession of a weapon by a felon. 720 ILCS 5/24-1.1(a) (West 2022). The parties presented an agreed sentencing recommendation, which the court accepted, imposing a term of eight years in the Illinois Department of Corrections followed by six months of mandatory supervised release. On appeal, the defendant argues that the trial court erred by denying his motion to suppress evidence that law enforcement officers unlawfully entered his curtilage and home

without consent or a warrant, thus tainting the subsequent search warrant and evidence obtained from the property. For the following reasons, we reverse.

¶ 3 I. BACKGROUND

¶ 4 On March 29, 2024, while investigating a reported theft of anhydrous ammonia from a storage tank on Base Line Road, officers received information linking a red Chevrolet pickup truck to the reported theft. The investigation ultimately led the officers to the defendant's residence on Divide Road, where they conducted surveillance from a neighbor's property before approaching the residence to speak with the defendant. The defendant was subsequently arrested.

¶ 5 On April 1, 2024, the State charged the defendant with two counts of armed violence (720 ILCS 5/33A-2(a) (West 2022)) and one count of unlawful possession of a weapon by a felon (*id.* § 24-1.1(a)). The defendant moved to suppress the evidence obtained as a result of the officers' warrantless entry onto his property and subsequent entry into his residence. He argued that the officers exceeded the scope of a permissible knock-and-talk[1] when they entered the curtilage and proceeded around the residence. He further argued that the evidence thereafter observed or recovered, including the cut garden hose, the damaged tailgate, the chemical odor, the handgun, and the controlled substances, were the fruit of the unlawful searches. The State responded that the officers lawfully approached the residence, that probable cause and exigent circumstances justified their subsequent actions.

¶ 6 A. Suppression Hearing

¶ 7 At the suppression hearing, Detective Troy Hails, Detective Marty Keoughan, and Detective Johnson[2] testified concerning the officers' investigation and their actions at the

[1]A "knock and talk" is an investigative technique in which an officer approaches the front door of a residence by an area impliedly open to the public in order to speak with the occupants. *People v. Redman*, 386 Ill. App. 3d 409, 418 (2008).

[2]The record does not reveal Detective Johnson's first name.

defendant's residence on March 29, 2024. Body-camera video recordings associated with Keoughan and Johnson were admitted into evidence during the hearing.

¶ 8 Hails testified that he was assigned to the narcotics task force. On March 29, 2024, at approximately 7:30 a.m., law enforcement received a report that anhydrous ammonia had been stolen from a location on Base Line Road. A witness reported seeing a white man carry a five-gallon bucket of anhydrous ammonia from a tank and leave in a red Chevrolet pickup truck. The vehicle was described as having a loud exhaust and damage to the rear of the truck. A cut green water hose was left behind at the scene of the theft. Hails responded to the area where the vehicle reportedly had traveled but did not locate the vehicle, so he returned to the Mt. Vernon Police Department.

¶ 9 Later that day, Deputies Mellott and Waide advised Hails that they believed they had located a red Chevrolet truck matching the general description of the vehicle involved in the theft at 17413 Divide Road in Jefferson County. The record does not clearly establish where the deputies were positioned when they made their observations. Hails testified, however, that the deputies reported seeing a white man exit the south-facing door of the residence and replace a tarp over the truck after the wind had blown it off. Based on that information, Hails traveled to Divide Road to investigate further. Hails testified that the deputies reported observing this event at approximately 1 p.m. and that they maintained continuous surveillance of the residence. According to Hails, the deputies reported that they did not observe anyone else arrive at or leave the residence during that period.

¶ 10 When Hails arrived at the Divide Road location, he drove past the residence and then back up the road, where he contacted the neighbor immediately west of the defendant's property. Hails testified that Deputies Mellott and Waide had reported that the red truck was located in the rear

curtilage of the property. According to Hails, the driveway was the only entrance to the property. From the driveway, he could see into the rear curtilage but could not see the door at the rear of the residence. Hails asked the neighbor for permission to enter his property to obtain a better view of the defendant's property, and the neighbor agreed.

¶ 11 Hails walked through the neighbor's woods and observed a red truck parked behind the defendant's residence. From that vantage point, Hails could see the front of the truck, which was parked at an angle. He observed that the truck did not have a rear tailgate and that its front license plate was bent slightly upward and obstructed. Hails described the area where the truck was parked as the "rear front of the residence." Hails testified that the defendant's residence was approximately 60 to 70 yards from the main road and that an apparently abandoned residence was situated in front of it. The property also contained outbuildings, sheds, and dog kennels. Hails believed the defendant's residence had four exterior doors, with one door on each side of the residence. The east-facing door was the door closest to the driveway.

¶ 12 After observing the truck from the neighboring property, Hails recorded his observations and left the area while deputies and other detectives continued surveillance of the residence from a distance. Before leaving, Hails had learned that the defendant stayed at the residence. The neighbor also told Hails that the defendant drove a red Chevrolet truck with a loud exhaust and regularly came and went from the residence in that vehicle. Hails reviewed the defendant's criminal history, which included cannabis-related offenses, possession of burglary tools, and drug-paraphernalia offenses.

¶ 13 Hails returned to the sheriff's department, where he met with the witness to the theft. The witness reported that he had encountered the theft in progress and followed the vehicle to the area of Stratford and Divide Roads before losing sight of it. Hails described that area as rural and

testified that the Divide Road location where deputies later observed the suspected vehicle was approximately one to one-and-a-half miles from the site of the theft. The witness described the individual involved as a white man approximately 5 feet 10 inches tall with a scruffy beard who was driving a red Chevrolet truck with rear-end damage and a loud exhaust; the witness also reported that he was unable to see the truck's front license plate. Hails showed the witness a photographic lineup that included the defendant's photograph, but the witness did not identify the defendant as the person he had seen during the theft. Hails also showed the witness a photograph of the red truck he had observed. The witness stated that the truck looked like the same vehicle, but he did not make a positive identification. After that interview, Hails acknowledged that he did not believe the information then available was sufficient to seek a search warrant.

¶ 14 After interviewing the witness, Hails returned to the residence with other detectives and deputies to conduct a "knock-and-talk." The officers did not have a search warrant. Hails recalled that they approached by the main driveway and then "split to go around the house like we commonly do." He explained that, for officer safety, multiple officers would walk in different areas around a residence in case someone fled or something occurred that presented a safety concern. Hails acknowledged that an ordinary visitor approaching a residence for the first time would not ordinarily split up and proceed around different sides of the residence.

¶ 15 Hails proceeded toward the south-facing entrance, passing two other exterior doors along the way. Before knocking, however, Hails went to the west side of the residence and spoke briefly with another officer before returning toward the south-facing entrance. Hails had not yet knocked when Jeffrey Wood exited through the south-facing door. Hails spoke with Wood, who told him that the defendant was inside the residence and that Wood had arrived there late that afternoon. During the encounter, Wood also stated that he did not live at the residence. Hails testified that

what Wood claimed about arriving there late in the afternoon was inconsistent with information received from the deputies conducting surveillance and that Hails knew of that inconsistency at the time. Wood did not completely close the door after exiting. Hails then made his way through the items on the porch and knocked at the partially open south-facing door. Hails testified that this was the first time any officer had knocked at the residence and that no officer previously had knocked at either of the other entrances.

¶ 16 Before Hails knocked at the south-facing door, he learned that Johnson had observed a cut green garden hose on the west side of the residence. Hails testified that the hose was significant because deputies responding to the theft had found a similarly cut green garden hose at the theft scene. Hails acknowledged that he could not see the hose from the neighboring property and did not know it was present until after the officers entered the defendant's property. Hails described the hose as lying on the ground between the red truck, a green Jeep, and an entrance to the residence. Johnson, however, later testified that he first observed the hose after approaching the west side of the residence and described it as being near the west-side door. Johnson informed Hails of the hose, after which Hails came to the west side, looked down at it, and then returned toward the south-facing entrance.

¶ 17 When the defendant answered the south-facing door, Hails began asking him investigative questions concerning the anhydrous-ammonia theft. Hails testified that the defendant appeared to be intoxicated, explaining that the defendant was "slow and lethargic." Hails also testified that, upon reaching the doorway, he detected "the smell of the anhydrous—or the smell of the chemical coming from the residence." When asked whether there was a chemical odor, Hails responded, "It was a chemical odor." Hails further testified that he had not detected the odor before he was positioned outside the door. Later, in response to questioning by the trial court, Hails described the

odor as "faint" and testified that he believed it to be anhydrous ammonia. Hails subsequently testified that, based on his training and experience, he could distinguish the odors of propane and anhydrous ammonia and that the odor he detected was not consistent with propane. Hails further testified that anhydrous ammonia can be used in the manufacture of methamphetamine and that he believed the stolen anhydrous was going to be used "illegally for narcotics." Hails also observed a red vehicle tailgate leaning against a couch inside the residence near the doorway. He testified that the tailgate was significant because the witness to the theft had described damage to the rear of the suspect vehicle. From his position at the doorway, Hails could see the interior side of the tailgate and testified that, because of his height, he could see that it was dented near the top.

¶ 18 After observing the chemical odor and the tailgate, Hails testified that he believed he had probable cause to obtain a search warrant. The defendant told Hails to "come back with a warrant." Hails responded that he was "securing it," after which, according to Hails, the defendant "fled back in." On cross-examination, Hails agreed that the defendant attempted to retreat into his home and that Hails tackled him before he could do so. Hails followed the defendant into the residence and detained him. Hails acknowledged that he entered the residence without a warrant and explained that, by "securing" the residence for a search warrant, he meant that the defendant was going to be detained.

¶ 19 Hails testified that he did not believe the officers could simply withdraw and seek a warrant without first securing the residence. He was concerned that the defendant could destroy evidence inside the home. Because the investigation involved liquid anhydrous ammonia, Hails agreed that liquids are easily disposed of and could be spilled or poured down a drain. Hails also characterized his entry as a "hot pursuit," explaining that he did not know whether the defendant was going back into the residence "to dispose of evidence" or to "grab a weapon and harm officers." Hails

nevertheless acknowledged that, before entering the residence, his view into the home was limited to the defendant and the tailgate. Hails further acknowledged that the defendant was wearing only his underwear.

¶ 20 After the defendant was removed from the residence, officers conducted what Hails described as a "protective sweep" of the property. Hails estimated that the encounter with the defendant and the sweep occurred "probably 15 minutes or less, give or take a little bit" after the officers arrived. When asked whether officers had searched the residence and found evidence before obtaining a warrant, Hails responded, "No. We did a protective sweep." He nevertheless acknowledged that officers made observations inside the residence during that sweep. Hails further testified that, although a propane tank was visible upon entering the residence, he was not aware of any anhydrous ammonia being recovered from inside the residence.

¶ 21 Hails did not recall the precise time the officers applied for the search warrant but agreed that it "could be close" to 9 p.m. A search warrant was subsequently obtained, and the residence was searched pursuant to that warrant. During the warranted search, officers recovered a .22-caliber handgun and items that field-tested positive for methamphetamine and fentanyl.

¶ 22 Keoughan was assigned to the Mt. Vernon Jefferson County Joint Narcotics Division. He was off duty on March 29, 2024, when Hails called and asked him to respond to the investigation of the anhydrous-ammonia theft. Keoughan did not interview any witnesses and described his role in the investigation as "just kind of backup." He arrived at the defendant's property at approximately 6 p.m. and drove up the driveway on the east side of the property. Keoughan recalled that Hails, Johnson, Detectives Jeremy and Justin Osborn, and Deputy Waide were present.

¶ 23 Keoughan testified that, upon approaching the property, he could see the defendant's residence behind the apparently abandoned residence. Keoughan could not recall precisely how many exterior doors were located on the defendant's residence, but he specifically recalled entrances on the east and south sides and possibly one on the north. Keoughan's body-camera recording depicts the officers approaching the residence by the main driveway and proceeding toward the south side of the property. Keoughan testified that the residence had multiple exterior entrances and that another officer was positioned near the east-facing entrance when he arrived. He described the area near the south-facing entrance as containing a significant amount of debris, including a four-wheeler.

¶ 24 Keoughan testified that, when he arrived, he believed Detective Justin Osborn was positioned near the east-facing entrance. Keoughan did not recall whether Osborn knocked at that door, and the body-camera recording did not show him doing so. He testified that he was not involved in determining which entrance Hails would use to make initial contact. Keoughan stated that he did not go to the opposite side of the residence before the search warrant was executed because "everybody was right here," and he was "standing with [his] guys." He acknowledged that the officers did not have a search warrant and were "just making contact." When Hails made contact at the south-facing entrance, the two other detectives were positioned near Hails, and Keoughan stood behind them.

¶ 25 Johnson testified that the defendant's residence was set back from the main road behind another apparently abandoned residence. No search warrant had been obtained before the officers entered the property. When asked whether the witness's failure to identify the defendant, together with the description of the red truck, was sufficient to obtain a warrant, Johnson responded, "No." Johnson testified that he initially accompanied Hails and another detective to the adjoining

property. He did not go through the woods to observe the defendant's property but remained in the neighbor's gravel driveway. Johnson later left that location and waited on a nearby public road until returning to the defendant's property for the knock-and-talk.

¶ 26 When Johnson returned for the knock-and-talk, he did not approach the residence by the main driveway. Instead, he parked west of the defendant's main driveway and walked through the grass toward the west side of the property. Johnson testified that, from that location, he could see the west side of the residence and into the rear portion of the property. Deputy Waide was also in Johnson's vicinity when Hails later approached the west side of the residence. Johnson described the route he used through the grass as an area that appeared to have been a "grown up driveway." He testified that the grass along the route was shorter than the surrounding grass and therefore appeared either to have been recently cut or traveled upon. Johnson explained that he selected that route because it was easier to walk through than parking behind the other vehicles and approaching the residence from that direction.

¶ 27 Johnson testified that he was not designated to make primary contact with the defendant. Rather, Hails was to conduct the knock-and-talk, while Johnson described his own role as "backing up a knock-and-talk." Defense counsel asked, "Would you agree that a knock-and-talk doesn't give officers the right to walk around the property and search?" Johnson responded, "I would agree." Defense counsel also asked whether the route Johnson used was "not normally the way a visitor would approach the home." Johnson responded, "Yes." Counsel then asked, "So a trick or treater or a Girl Scout, they are probably not walking up the way that you went to try to figure out who is there, correct?" Johnson answered, "Probably not." On cross-examination, Johnson testified that one officer-safety practice during knock-and-talks is to position officers on other portions of a residence so they can observe the officer making contact and more quickly observe anyone who

might come out of another building and attempt to harm an officer. Johnson agreed that his actions that day were consistent with that practice.

¶ 28 As Johnson approached the west side of the residence, he observed a cut garden hose. Johnson testified that he saw the hose in plain view and that it was significant because officers investigating the theft earlier that day had identified a green garden hose with a stripe that had been cut and used to remove anhydrous ammonia from the tank. Johnson testified that the hose he observed at the defendant's residence was not connected to anything and appeared consistent with the hose recovered at the theft scene.

¶ 29 Johnson testified that Hails subsequently came into view and approached the west side of the property. Johnson told Hails that there was a cut water hose near the door. Hails looked down at the hose and then proceeded back toward the south side of the residence. During publication of Johnson's body-camera recording, Johnson testified that Hails appeared to be attempting to position his body camera so as to obtain an image of the hose.

¶ 30 Johnson testified that, from his location on the west side, the entrance nearest him was probably not the first door a visitor arriving at the residence would attempt to use. Johnson further testified that, when Hails approached him, the two discussed which entrance should be used for the knock-and-talk. Johnson told Hails, "I think it's that one," referring to the south-facing entrance. Johnson testified that he believed the south-facing entrance was probably the primary entrance. He agreed that, at that point, it was not readily obvious to either him or Hails which entrance was the front entrance.

¶ 31 Johnson testified that Wood exited the residence before Hails knocked at the south-facing entrance. After Hails spoke with Wood, Wood was directed to remain with Johnson and Deputy Waide on the west side of the property. Johnson testified that Wood remained with him and Waide

while Hails proceeded toward the south-facing entrance. Johnson's body-camera footage was published during his testimony. Johnson testified that the recording fairly and accurately depicted the events shown. Johnson remained on the west side and did not know whether anyone had previously knocked at the east-facing entrance because he was not positioned on that side of the residence.

¶ 32 On August 13, 2024, the trial court denied the defendant's motion to suppress. In its written order, the court found that the south-facing entrance was "obviously the most used entrance" to the residence and stated that "whether Detective Hails chose to knock at either side door, the front door or the back door matters not." The trial court concluded that Hails lawfully approached the residence and that, once lawfully on the property, the officers could observe evidence lying in the open.

¶ 33 As to Hails's warrantless entry into the residence, the trial court found that, after the defendant told Hails to obtain a search warrant and attempted to retreat into the residence, Hails detained the defendant in order to secure the residence and preserve evidence while a search warrant could be obtained. The court concluded that the need to prevent the imminent destruction of evidence justified Hails's actions, reasoning that anhydrous ammonia, in liquid form, could be disposed of by pouring it down a drain. The court ultimately concluded that Hails had probable cause sufficient to justify issuance of a search warrant and denied the motion to suppress.

¶ 34 B. Stipulated Bench Trial

¶ 35 Following the denial of his motion to suppress, the parties proceeded to a stipulated bench trial on count III, unlawful possession of a weapon by a felon. The parties stipulated to the evidence that would be presented, but not to whether that evidence was sufficient to prove the charge beyond a reasonable doubt. The defendant expressly maintained his continuing objection to the trial court's

ruling on the motion to suppress. The stipulated evidence included a certified copy of the defendant's prior conviction for manufacture or delivery of cannabis in Marion County case No. 07-CF-216, a .22-caliber Taurus handgun, and a written stipulation concerning Hails's testimony. The handgun and the portions of the stipulation relating to it were admitted over the defendant's continuing objection.

¶ 36 After reviewing the stipulated evidence, the trial court found the defendant guilty of count III, unlawful possession of a weapon by a felon, beyond a reasonable doubt. The parties presented an agreed sentencing recommendation, which the trial court accepted. The court sentenced the defendant to eight years' imprisonment followed by six months' mandatory supervised release and awarded him 158 days of presentence custody credit. Counts I and II were dismissed pursuant to the parties' agreement. The defendant was sentenced on September 4, 2024, and filed a timely appeal.

¶ 37 II. ANALYSIS

¶ 38 On appeal, the defendant contends that the officers exceeded the scope of the implied license associated with a knock-and-talk when they entered and moved about the curtilage of his residence, and that the observations made as a result of that unlawful presence could not be used to establish probable cause. He further contends that, once any tainted information is excised, Hails lacked probable cause to search the residence and that no exigent circumstances justified Hails's warrantless entry into the home after the defendant told him to return with a warrant. Finally, the defendant maintains that the handgun and controlled substances later recovered pursuant to the search warrant were fruits of the earlier fourth amendment violations and were not saved by any exception to the exclusionary rule.

¶ 39 A. Standard of Review

¶ 40 A trial court's ruling on a motion to suppress presents mixed questions of law and fact. *People v. Manzo*, 2018 IL 122761, ¶ 25. A reviewing court affords deference to the trial court's factual findings and will reverse those findings only if they are against the manifest weight of the evidence. *Id.* We review *de novo*, however, the ultimate question of whether suppression was warranted under those facts. *Id.* Where relevant events were captured on video that a reviewing court is equally capable of reviewing, the rationale underlying deference to the trial court's factual findings may be diminished to the extent the issue depends upon what the recording objectively depicts. See *People v. Radojcic*, 2013 IL 114197, ¶ 34; *People v. Shaw*, 2015 IL App (1st) 123157, ¶ 29.

¶ 41 In its written order denying the motion to suppress, the trial court found that the south-facing entrance to the residence was "obviously the most used entrance" and concluded that "whether Detective Hails chose to knock at either side door, the front door or the back door matters not," relying on *People v. Woodrome*, 2013 IL App (4th) 130142, for the proposition that officers may approach alternative entrances when circumstances justify doing so. The court further concluded that, once lawfully on the property, officers were permitted to observe the cut green hose, the damaged red tailgate visible inside the doorway, and the chemical odor detected at the threshold. The trial court did not, however, make specific findings concerning the locations or movements of the other officers during the approach or whether their pre-knock movements remained within the scope of the implied license associated with a knock-and-talk. Because the admitted body-camera recordings objectively depict those movements, we consider that evidence together with the testimony in determining *de novo* whether the officers' conduct exceeded the limits of a permissible knock-and-talk.

¶ 42 B. Officers' Entry Onto the Property and the Scope of the Implied License

¶ 43 On appeal, the defendant argues that the officers exceeded the scope of the implied license associated with a knock-and-talk before Hails attempted to make consensual contact with him. He points to the officers' movements on the west side of the residence before Hails knocked. Johnson parked west of the main driveway and walked through the grass toward the west side of the property rather than approaching by the driveway. Waide, who had been in the driveway, later joined Johnson on the west side. The defendant further relies on Hails's testimony that the officers "split to go around the house" before the knock-and-talk was attempted. According to the defendant, those movements were not part of an ordinary visitor's approach to the residence but constituted an intrusion into portions of the curtilage not impliedly open to visitors.

¶ 44 The State responds that the officers remained within the implied license because the configuration of the property made the customary visitor entrance difficult to determine. The residence was located behind another residence that appeared abandoned and had multiple exterior entrances. The evidence also showed that Hails and Johnson discussed which entrance should be used for the knock-and-talk before Hails ultimately selected the south-facing entrance. Johnson described the route he used on the west side as what appeared to have been a "grown up driveway" and testified that the grass was shorter than in surrounding areas, suggesting that it had either been cut or traveled upon. He further testified that the route was easier to walk than parking behind the other vehicles and approaching from there. The State therefore maintains that the officers were attempting to determine the appropriate entrance rather than searching the curtilage. Johnson's testimony confirms both the appearance of the route and his reason for choosing it, although he could not say whether anyone had recently used it to access the residence.

¶ 45 The State also maintains that officer safety justified the officers' positions around the residence. Johnson testified that, during a knock-and-talk, officers may position themselves on other portions of a residence so they can maintain visual contact with the officer making contact and more quickly observe anyone who might exit another building and attempt to harm an officer. Johnson testified that those concerns were consistent with the actions he took at the defendant's residence. Hails similarly explained that multiple officers would "walk in different areas of the house" in case someone fled or presented a safety concern.

¶ 46 The fourth amendment protects not only the home but also its curtilage, which has been defined as the area " 'immediately surrounding and associated with the home.' " *People v. Brandt*, 2019 IL App (4th) 180219, ¶ 33 (quoting *Oliver v. United States*, 466 U.S. 170, 180 (1984)). A "search" occurs when law enforcement physically intrudes upon a constitutionally protected area without license in order to obtain information. *Id.* Nevertheless, the Supreme Court has recognized that an officer may approach a residence and knock without a warrant because an implied license permits an ordinary visitor to do the same. *Florida v. Jardines*, 569 U.S. 1, 8 (2013). That license ordinarily permits a visitor to approach the home by the front path, knock promptly, wait briefly to be received, and, absent an invitation to remain, leave. *Id.* The scope of the license is limited by both place and purpose. *Id.* at 9. Police officers possess no greater license than private citizens. *Id.* at 8. The *Jardines* court illustrated the ordinary nature of that license: "Complying with the terms of that traditional invitation does not require fine-grained legal knowledge; it is generally managed without incident by the Nation's Girl Scouts and trick-or-treaters." *Id.* at 8.

¶ 47 A properly conducted knock-and-talk is not a search for fourth amendment purposes. *Brandt*, 2019 IL App (4th) 180219, ¶ 34. "When reviewing a police officer's actions during a 'knock-and-talk,' our courts have focused on the reasonableness of the officer's actions given the

totality of the circumstances presented. [Citations.] We have specifically considered whether the manner in which an officer approached a home to conduct a 'knock-and-talk' constituted 'reasonable police actions.' " *Id.* ¶ 35.

¶ 48 The defendant maintains that *People v. Kofron*, 2014 IL App (5th) 130335, is instructive. In *Kofron*, six officers went to a residence for what the State characterized as a consensual knock-and-talk. *Kofron*, 2014 IL App (5th) 130335, ¶¶ 9-10. Two officers went to the front entrance, while the State's witness testified that he believed the remaining four officers went to the rear of the residence. *Id.* ¶ 10. The officers stationed at the rear were already there when the defendant exited through the back door; the record did not support the State's contention that the officers first approached the principal entrance and proceeded to the rear only after being invited there. *Id.* ¶¶ 14, 23. The State in *Kofron* relied upon *People v. Redman*, 386 Ill. App. 3d 409 (2008), to justify positioning officers at different entrances during a knock-and-talk. *Kofron*, 2014 IL App (5th) 130335, ¶ 24. *Kofron* explained, however, that *Redman* arose in materially different circumstances because the officers in *Redman* approached the residence believing that a crime was occurring inside and intending to arrest its occupants. *Id.* Under those circumstances, placing one officer at the front and another at the rear in case an occupant attempted to leave and the first officer needed protection was reasonable. *Id.*

¶ 49 *Kofron* declined to extend that reasoning to an ordinary consensual knock-and-talk. It rejected the broad proposition that it is always permissible, "under the aegis of a consensual 'knock-and-talk,' " for multiple officers to position themselves at multiple entrances before even waiting to determine whether the knock at the principal entrance will be answered. *Id.* ¶ 25. The court explained that "[p]roblems arise *** when officers go beyond what any private citizen might do" because a knock-and-talk is constitutionally permissible only as a consensual encounter, the

inherent limits of which police must recognize. *Id.* ¶ 26. The purpose of the encounter is to make an investigatory inquiry or seek consent to search, not to create a show of force, make demands upon the occupants, or raid the residence. *Id.*

¶ 50 The court in *Kofron* found "no legitimate rationale" for deploying multiple officers to cover multiple entrances in an effort to prevent occupants from "escaping" a consensual encounter. *Id.* ¶ 27. Because the encounter remained consensual, the defendant and anyone else in the residence had "every right to use the back door—or any other door—to avoid a 'consensual' encounter they did not wish to have." *Id.* The *Kofron* court likewise concluded that, absent evidence demonstrating that officer safety necessitated the intrusion, "officer safety" could not be invoked as a blanket excuse for positioning multiple officers at multiple entrances during a consensual knock-and-talk. *Id.*

¶ 51 The State attempts to distinguish *Kofron* on its facts. It notes that, unlike the residence in *Kofron*, the defendant's property did not display a "No Trespassing" sign. The State also emphasizes that the officers here possessed more information connecting the defendant and his red Chevrolet truck to the reported theft and that the residence had multiple exterior entrances, whereas *Kofron* discussed only front and rear entrances. We agree that the cases are not factually identical. Those distinctions, however, do not address the aspect of *Kofron* that controls our analysis—whether officers conducting what the State maintains is a consensual knock-and-talk may, before attempting consensual contact, move to different portions of the curtilage for officer-safety and anti-flight purposes.

¶ 52 The circumstances here are similar to those this court found significant in *Kofron*. In both cases, multiple officers went to a residence for what the State maintained was a consensual knock-and-talk, and officers positioned themselves at different portions of the residence as part of that

encounter. In *Kofron*, officers were already positioned at the rear before the defendant attempted to leave through that entrance. *Id.* ¶¶ 14, 23. Here, before Hails ever knocked, Johnson had approached the west side of the residence, Waide had joined him there, and Hails testified that the officers had split up and moved around the residence for officer safety and in case someone attempted to flee. Hails's explanation illustrates precisely the concern identified in *Kofron*: the officers employed a police-specific practice that Hails himself acknowledged an ordinary visitor would not undertake during an approach to a residence.

¶ 53 We are not persuaded that uncertainty concerning the customary entrance explains the officers' pre-knock presence on the *west side* of the property. We do not disagree that the configuration of the residence made the appropriate entrance less apparent than it might be at a conventional residence. Johnson and Hails themselves discussed which entrance should be used, and Johnson testified that it was not readily obvious to either of them which door constituted the primary entrance. Thus, while the property's unusual layout may explain why the officers were unsure which door to approach, that is a different question from the one before us. Even accepting the officers' uncertainty, it does not expand the scope of the implied license, which permits no more than an ordinary visitor's approach, to the officers' routes and positions around the curtilage before anyone knocked. Whether Hails could ultimately have knocked at the south door is not the issue; whether the officers could lawfully fan out across the property before they knocked is.

¶ 54 Johnson's own testimony is significant on the issue of whether the officers' pre-knock movements stayed within the implied license. He did not enter by the main driveway. He parked west of the driveway and walked through the grass toward the west side of the residence. Although Johnson later described that area as appearing to have been a grown-up driveway and explained that the route was easier to walk, he could not say whether anyone had recently used it to access

the residence. More importantly, when asked whether his route was "not normally the way a visitor would approach the home," Johnson answered, "Yes." When asked whether a trick-or-treater or Girl Scout would probably not approach the residence in the manner he had, Johnson responded, "Probably not." Thus, the officer who selected the west-side route acknowledged that it was not the route an ordinary visitor would normally use.

¶ 55 Waide's movement reinforces that conclusion, although his route was different from Johnson's. Waide did not initially make the same west-side approach as Johnson. Rather, the body-camera evidence shows that Waide had been in the driveway before moving over to join Johnson on the west side. By the time Hails approached Johnson, Johnson testified that Waide was also in his vicinity. The significance of Waide's movement is therefore not that he independently chose Johnson's route from the public road, but that he left the ordinary driveway approach and joined Johnson in an area Johnson himself acknowledged was not where an ordinary visitor would normally approach the home.

¶ 56 Hails's testimony further demonstrates that these movements were not attributable solely to uncertainty about which door to knock on. Hails recalled that the officers "split to go around the house like we commonly do." When asked whether an ordinary visitor approaching the residence for the first time would split up and go around the house, Hails answered, "No, but we're not just ordinary visitors." He explained that officers would walk in different areas around a residence for officer safety and in case someone attempted to flee. Hails also acknowledged that, before he had knocked, he went to the west side to speak with an officer and then returned toward the entrance.

¶ 57 The officer-safety justification does not bring that conduct within the implied license. We do not hold that officer safety can never justify additional precautions during police contact at a residence. *Redman* itself demonstrates otherwise. But *Redman*, as *Kofron* emphasized, involved

officers who believed a crime was occurring inside the residence and who intended to arrest its occupants. *Kofron*, 2014 IL App (5th) 130335, ¶ 24. The record here presents materially different circumstances. Hails testified that, when the officers entered the property and separated around the residence, he did not believe the information then available was sufficient to seek a search warrant.

¶ 58 Nor did the officers describe a safety concern particular to the defendant or to circumstances confronting them before the knock. Hails described splitting around a residence as something officers "commonly do." Johnson, likewise, described positioning officers on other portions of a residence as a tactical practice employed during knock-and-talks to maintain visual contact and respond if someone emerged and presented a danger. Officer safety is a legitimate law-enforcement concern. But *Kofron* requires more than a generalized or routine invocation of officer safety to justify expanding a consensual knock-and-talk beyond the implied license. Rather, there must be evidence from which the court can conclude that concern for officer safety necessitated the intrusion. *Id*. ¶ 27. Here, the officers described a general practice employed during knock-and-talks, not a safety concern particular to the defendant or the circumstances confronting them before Hails knocked.

¶ 59 The anti-flight rationale is even more directly addressed by *Kofron*. Because the encounter the officers intended to initiate was consensual, the defendant was not required to remain inside and await contact with them. He, like the occupants in *Kofron*, was free to leave through another entrance to avoid an encounter he did not wish to have. *Id.* Thus, the possibility that someone might leave the residence could not, without more, justify expanding the knock-and-talk beyond the areas an ordinary visitor would be impliedly licensed to enter.

¶ 60 Accordingly, we conclude that the officers exceeded the scope of the implied license before Hails attempted to make consensual contact with the defendant. The unusual configuration of the

property may have complicated the selection of an entrance, but it did not authorize the officers' pre-knock conduct which consisted of Johnson's approach on the west side by a route he admitted an ordinary visitor would not use, Waide's departure from the driveway to join him, or the decision for the officers to split up and move around the residence for generalized officer-safety and anti-flight purposes. We need not decide whether Hails could lawfully have approached the south-facing door, because the constitutional violation was complete before any knock. The officers already had exceeded the implied license when they moved around the curtilage, and every observation the defendant challenges flowed from that unlawful presence on the curtilage. A permissible approach to the front door afterward could not retroactively cleanse what the officers had already done. We therefore resolve the case on the pre-knock conduct alone.

¶ 61 C. The Challenged Evidence

¶ 62 Having concluded that the officers exceeded the scope of the implied license before Hails attempted consensual contact with the defendant, we consider the evidence the defendant sought to suppress: the cut green garden hose, the chemical odor detected at the doorway, the damaged tailgate observed inside the residence, the handgun, and the controlled substances. Evidence obtained in violation of the fourth amendment is generally inadmissible under the exclusionary rule. That bar reaches not only what officers seize during the violation itself, but also evidence they later derive from it, also known as "fruit of the poisonous tree." *People v. Bonilla*, 2018 IL 122484, ¶ 35.

¶ 63 A constitutional violation does not require suppression of everything that follows from it, however. *People v. Henderson*, 2013 IL 114040, ¶ 34. The issue is whether the officers obtained the evidence by exploiting their unlawful conduct, or by means "sufficiently distinguishable to be

purged of the primary taint." (Internal quotation marks omitted.) *Id.* ¶ 33. With that framework in mind, we consider each category of challenged evidence in turn.

¶ 64 The challenged evidence falls into two groups, and these principles apply differently to each. The first group includes the cut hose, the chemical odor, and the detached tailgate which consists of observations the officers made directly from their position on the curtilage. For that evidence, the question is simply whether the officers were lawfully positioned when they perceived it. The second group includes the handgun and the controlled substances which were not perceived from the curtilage. Rather, the items were seized from inside the defendant's residence during the search conducted under the later warrant, and so it is admissible only if the warrant purged the taint of the unlawful intrusion by resting on an independent source. Where a search warrant affidavit contains information that should not have been considered, the inclusion of that information does not automatically invalidate the warrant. *People v. Bielawski*, 255 Ill. App. 3d 635, 642 (1994), overruled on other grounds by *People v. Johnson*, 208 Ill. 2d 118, 138 (2003). Rather, the improperly obtained information is excised, and the court determines whether the remaining information is sufficient to establish probable cause. *Franks v. Delaware*, 438 U.S. 154, 171-72 (1978); *Bielawski*, 255 Ill. App. 3d at 642-43. Where the remaining information independently establishes probable cause, the warrant is not invalidated by the inclusion of the improperly obtained information. *Bielawski*, 255 Ill. App. 3d at 644. We consider each group in turn.

¶ 65 1. The Hose, the Odor, and the Interior Tailgate

¶ 66 The cut hose, the chemical odor, and the detached tailgate were each perceived by officers while they were present on the curtilage in excess of the implied license. The State defends its use under the plain-view doctrine—the hose and tailgate as items seen in plain view, and the chemical

odor as something the officers could lawfully smell from where they stood. But the State's argument presupposes that the officer lawfully reached the vantage point from which the evidence was perceived. A fourth amendment search does not occur when an officer conducting a knock-and-talk observes what is in plain view or detects an odor, so long as "his or her movements are restricted to places visitors could be expect[ed] to go." *Brandt*, 2019 IL App (4th) 180219, ¶ 40. Here, the State's argument fails. It makes no difference whether the officer used his eyes or his nose; an observation from a place he had no right to be is not made lawful by the sense he happened to use.

¶ 67 This court applied that principle in *Kofron*, 2014 IL App (5th) 130335, ¶ 23, rejecting a plain-view theory once the officers' lawful presence in the protected area had been disproved. So too here. The officers had already exceeded the implied license when Johnson observed the hose on the west side, when Hails detected the chemical odor at the threshold, and when Hails observed the detached, dented tailgate inside the doorway. Because those observations were made from a vantage the officers had no lawful right to occupy, plain view cannot validate them, whether seen or smelled, and they may not be used against the defendant.

¶ 68 2. The Handgun and the Controlled Substances

¶ 69 The handgun and the controlled substances stand on a different footing from the curtilage observations, because officers did not perceive them from the curtilage. They were observed inside the home after Hails's warrantless entry, which followed the defendant's statement to "come back with a warrant" and his attempt to retreat, and they were recovered during the later search conducted under a warrant. This evidence is therefore subject to suppression as fruit of the unlawful intrusion unless an independent, lawful source broke the connection between the unlawful intrusion and the discovery of the evidence. The State offers three theories as to why the

evidence should not have been suppressed: exigent circumstances and hot pursuit, which it contends justified the warrantless entry; the protective sweep; and the later search warrant. We consider each in turn.

¶ 70 The exigent-circumstances exception, including the hot pursuit theory the State invokes, cannot justify the warrantless entry. A warrantless entry to prevent the destruction of evidence is reasonable only "[w]here *** the police did not create the exigency by engaging or threatening to engage in conduct that violates the fourth amendment." *Kentucky v. King*, 563 U.S. 452, 462 (2011). Officers may not manufacture an exigency through their own constitutional violation and then rely on it to enter a home. That is what occurred here, and it defeats both rationales the State advances: the chemical odor suggesting that anhydrous ammonia could be destroyed, and the defendant's retreat into the home, each arose only after, and as a continuation of, the unlawful curtilage intrusion. Because the entry was therefore not independently lawful, it supplied no lawful basis to break the connection between the unlawful intrusion and the evidence recovered inside.

¶ 71 The protective sweep fails as well, and for two reasons. A protective sweep is permissible only where officers are lawfully present and possess "a reasonable belief based on specific and articulable facts that the area to be swept harbors an individual posing a danger to those on the arrest scene." *Maryland v. Buie*, 494 U.S. 325, 337 (1990). Even then it is limited to "a cursory inspection of those spaces where a person may be found" and lasts no longer than is necessary to dispel the reasonable suspicion of danger. *Id*. at 335-36. First, the officers were not lawfully present on the curtilage. As previously explained, their warrantless entry was justified by neither a warrant nor any exigency independent of their own misconduct. Second, the officers invoked only generalized officer safety concerns and a routine practice of stationing officers around a residence, not the specific, articulable facts of a concealed dangerous individual that a protective sweep

requires. Because the officers were not inside the home under any exception to the warrant requirement, their observation of the handgun and the other evidence must be suppressed.

¶ 72 Nor did the later warrant break the chain. A warrant that follows an unlawful search breaks the chain only if, once the tainted information is excised from the affidavit, the remaining untainted information independently establishes probable cause. *Bielawski*, 255 Ill. App. 3d at 642-44. Excising the observations we have held were obtained by exploiting the violation which consist of the cut hose, the chemical odor, and the detached tailgate, the information lawfully known to the officers did not establish probable cause to search the residence. The information that remained after the items were excised consisted of the theft report; the description of the suspect and of the red Chevrolet truck; the truck's presence at the residence; the neighbor's information; the defendant's criminal history; Hails's observations from the neighboring property, including that the truck lacked a rear tailgate; and the witness's failure to identify the defendant or to positively identify the truck. Standing alone, the information did not establish a fair probability that evidence of a crime would be found inside the residence. The officers recognized as much: Hails acknowledged that the information known before the entry was insufficient to seek a warrant, and the State's position was that probable cause arose only once that information was combined with the hose, the odor, and the tailgate. Because the warrant depended on the tainted observations, it rested on no source independent of the unlawful intrusion, and the handgun and the controlled substances seized under it were fruit of that intrusion.

¶ 73 Accordingly, the cut green garden hose, the chemical odor, the damaged tailgate observed inside the residence, the handgun, and the controlled substances were obtained by exploiting the officers' unlawful curtilage intrusion and should have been suppressed. The trial court therefore erred in denying the motion to suppress.

¶ 74 Having concluded that the handgun and the other evidence recovered from the defendant's residence should have been suppressed, we must determine the appropriate disposition. The double jeopardy clause does not preclude retrial when a conviction is reversed because of an error in the trial proceedings, but retrial is barred when the evidence introduced at the initial trial was insufficient to sustain the conviction. *People v. Drake*, 2019 IL 123734, ¶ 20. In determining the sufficiency of the evidence for double jeopardy purposes, we consider all of the evidence admitted at the original trial, including evidence that was improperly admitted. *Id.* ¶ 21. Thus, retrial generally is the appropriate remedy where the evidence presented at the original trial, including improperly admitted evidence, was sufficient to sustain the conviction. *Id.*

¶ 75 Applying that standard here, we conclude that the evidence admitted at the defendant's stipulated bench trial was sufficient to sustain his conviction. To sustain a conviction for unlawful possession of a weapon by a felon, the State was required to prove that the defendant had a prior felony conviction and that he knowingly possessed a firearm. *People v. Thompson*, 2017 IL App (3d) 160503, ¶ 18. The stipulated evidence on count III consisted of a certified copy of the defendant's prior felony conviction, the .22-caliber Taurus handgun, and Detective Hails's stipulated testimony, and the handgun and the portions of the stipulation relating to it were admitted over the defendant's continuing objection. Viewed in the light most favorable to the State, and considering the improperly admitted handgun, that evidence was sufficient for a rational trier of fact to find the defendant guilty of unlawful possession of a weapon by a felon. *Drake*, 2019 IL 123734, ¶ 21. Accordingly, our reversal is not based upon insufficient evidence presented at the defendant's original trial.

¶ 76 That conclusion, however, does not end our inquiry. Several Illinois appellate decisions have held that outright reversal is appropriate where the State cannot prevail on retrial without the

evidence that must be suppressed. *People v. Harris*, 2015 IL App (1st) 132162, ¶ 47 (collecting cases). In *Harris*, the court distinguished cases in which "it was evidence of the crime itself that was suppressed," explaining that outright reversal was appropriate in those circumstances because, "without evidence of the commission of a crime, the prosecution could not proceed." *Id.*; see *People v. Lara*, 2012 IL 112370, ¶ 17 (the State must prove beyond a reasonable doubt both that a crime was committed and the identity of the person who committed it).

¶ 77 The cases discussed in *Harris* illustrate that distinction. In *People v. Trisby*, 2013 IL App (1st) 112552, ¶ 19, the court reversed the defendant's conviction outright because the State could not prevail on remand without the drugs recovered during the unlawful search. Similarly, in *People v. Elliot*, 314 Ill. App. 3d 187, 193 (2000), the court reversed a conviction for possession of a controlled substance because the State could not prevail without the drugs that should have been suppressed. Of particular relevance here, in *People v. Leigh*, 341 Ill. App. 3d 492, 497 (2003), this court reversed a conviction for possession of a firearm by a felon without remand because the State could not prevail without the suppressed firearm. *Leigh* itself stated that, because "the State cannot prevail on remand without the suppressed evidence," the conviction was reversed without further proceedings. *Id.*

¶ 78 The same reasoning applies here. The search of the defendant's residence did not merely produce evidence connecting the defendant to the charged offense; it produced the handgun that constituted the offense itself. The .22-caliber Taurus handgun supporting count III was recovered from the residence during the search conducted under the warrant that followed the officers' unlawful curtilage intrusion, and it must therefore be suppressed. Once the handgun is suppressed, no independent evidence remains to establish that the defendant knowingly possessed a firearm.

The certified copy of the defendant's prior conviction established his status as a felon, but it does not show that he knowingly possessed one.

¶ 79 Here, suppression eliminates the evidence of the offense itself. Because the State cannot prevail on retrial without the suppressed evidence, we reverse the defendant's conviction outright and need not remand for further proceedings.

¶ 80 III. CONCLUSION

¶ 81 For the foregoing reasons, we reverse the defendant's conviction.

¶ 82 Reversed.