No. 127037

IN THE SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,	) Appeal from the Appellate Court
	) of Illinois, First District,
Plaintiff-Appellee,	) No. 1-19-0692
	)
	) There on Appeal from the Circuit
v.	) Court of the First Judicial Circuit,
	) Cook County, Illinois
	) No. 15 CR 6105
ABDULLAH ALJOHANI,	)
	) The Honorable
Defendant-Appellant.	) Timothy J. Joyce,
	) Judge Presiding.

REPLY BRIEF OF DEFENDANT-APPELLANT ABDULLAH ALJOHANI

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ORAL ARGUMENT REQUESTED

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ARGUMENT IN REPLY

I. The State Mischaracterizes an Important Fact in an Attempt to Justify a Warrantless Entry

In its attempt to demonstrate the reasonableness of the officers' warrantless entry into Mr. Aljohani's[1] home, the State overstates an important fact. Specifically, the State mischaracterizes the fact that Mr. Aljohani refused to allow the officers to see or talk to his roommate, Talal, when the officers and Mr. Aljohani initially interacted. *See* St. Br. 9 ("Officers responded to a call in the middle of the night from a neighbor who had heard an altercation and panicked words, were greeted by defendant who would not let the officers see his roommate …."); St. Br. 13-14 ("… and were greeted by defendant, who would not let the officers see the other resident of the apartment …."); St. Br. 23 ("… defendant refused to allow the officers to talk to Talal …."); St. Br. 25 (" … and entered the apartment only after defendant refused to allow them to speak with Talal ….").

The State's mischaracterization that Mr. Aljohani refused to allow the officers to see or talk to Talal appears nowhere in the record, the appellate court decisions (original or modified), or even in the State's own recitation of facts. The idea of refusal is taken from the testimony of Officer Lugo during the suppression hearing:

Q Okay. You asked Mr. Aljohani some questions, did you not?

A Yes.

Q And did you include those in your report?

A I believe so, it's just – he said everything was okay.

Q That's what Mr. Aljohani indicated to you, is that correct?

[1] For clarity throughout this brief, Abdullah Aljohani will be referred to as "Mr. Aljohani" and Talal Aljohani will be referred to by his first name.

A Yes.

Q After he told you that everything was okay, did you ask him any other questions or did you leave?

A We asked if we could speak to his brother.

Q And did somebody give you information that his brother was in the apartment?

A No.

Q And Mr. Aljohani responded to you, correct?

A Yes.

Q What was his response to you?

A That he was sleeping.

Q And at that point, did you and your partner decide to leave the apartment, the door where you were having a conversation with Mr. Aljohani?

A Yes.

Q And did Mr. Aljohani close the door?

A Yes.

SupR 29-30. At no point did the officers request to enter the apartment and check on Talal. At no time did the officers request that Mr. Aljohani go and wake up Talal so the officers could speak with him. If Mr. Aljohani had refused the officers' requests in either of those scenarios, it would be fair to say that Mr. Aljohani refused to allow officers to see or speak with Talal. But that is simply not what occurred. The State's repetition of this mischaracterization demonstrates how important this fact is to the State's arguments.

Once the officers responded to Mr. Ali's emergency call, they observed very little which would allow them to corroborate the neighbor's allegations. Upon arriving and ascending the stairs to the second floor, Officer Lugo did not hear any wrestling, yelling,

or arguing from outside the door. SupR 28. Once the officers returned to the first floor to again talk with Mr. Ali, and then made a second trip upstairs to knock on the door of Mr. Aljohani's apartment, the only additional observation they made was that Mr. Aljohani did not answer the door this second time. SupR 32. Even after the officers left the apartment building and drove to the rear of it, they only additional observations they only noticed the open rear doors.

Thus, the added detail of Mr. Aljohani affirmatively refusing the officers request to speak with or see Talal would have been a substantial additional fact. This additional fact would aid the State in its argument that the warrantless entry was justified.[2] But that is not what happened. This mischaracterizatin must be noted for a full and fair review of this matter in light of the actual facts of the case. When that is done, this Court should find that the warrantless entry of the officers was not reasonable, and the decisions of the lower courts were in error.

II. The Warrantless Entry Was Not Reasonable

In its responsive brief, the State argues two bases on which this Court may deny Mr. Aljohani's requested relief. First, the State argues that the emergency aid exception applies to the warrantless search of Mr. Aljohani's apartment because the officers "reasonably believed the defendant's roommate may have suffered a serious injury and needed medical attention." St. Br. 9. Second, the State argues that despite the United States Supreme Court's holding in *Caniglia v. Strom*, 141 S. Ct. 1596 (2021), the good

[2] This is further demonstrated by the State's argument that the officers' lack of knowledge about Talal made their "entry into the apartment *more* reasonable than if they had already ascertained the status" of those inside the apartment. St. Br. 15-16 (emphasis in original). There is no spectrum in the cited cases of what is more or less reasonable – a warrantless entry is either reasonable or it is not. Here, the entry was not reasonable.

faith exception to the exclusionary rule applies because the officers reasonably relied on then-existing precedent allowing their warrantless entry under the community caretaking doctrine. Both arguments fail because the officers' actions were not reasonable and the factual scenario of this case is distinguishable from precedent cited by the State.

a. The emergency aid exception is inapplicable because there was no reasonable belief that someone was in need of immediate aid

The State argues that the officers' actions and belief of an emergency were reasonable, therefore, their warrantless entry into Mr. Aljohani's apartment is saved by the emergency aid exception to the warrant requirement. But the cases cited by the State in support of its position are clearly distinguishable because in our case, the officers failed to corroborate the allegations of a neighbor.

The State relies in part on *Michigan v. Fisher*, 558 U.S. 45 (2009) for the proposition that officers "do not need ironclad proof of a likely serious, life-threatening injury," sufficient to support use of the emergency aid exception. St. Br. 14-15. There are only two similarities between this case and *Fisher*. Like in this case, the officers in *Fisher* responded to the residence based on a reported disturbance. 558 U.S. at 45. Like in this case, bystanders directed the officers to the scene. *Id*. There end the similarities between the two cases.

Once at the scene of the incident in *Fisher*, the officers "found a household in chaos:

> a pickup truck in the driveway with its front smashed, damaged fenceposts along the side of the property, and three broken house windows, the glass still on the ground outside. The officers also noticed blood on the hood of the pickup and on clothes inside of it, as well as on one of the doors to the house … Through a window, the officers could see respondent, Jeremy Fisher, inside the house, screaming and throwing things. The back door was locked, and a couch had been placed to block the front door.

558 U.S. at 45-46. The officers could also see that Mr. Fisher had a cut on his hand, he was screaming at officers to go and get a search warrant, and when they attempted to venture into the home, Mr. Fisher pointed a rifle at them. *Id*. at 46.

The Court in *Fisher* found that the officers' actions in entering the home were objectively reasonable under the Fourth Amendment, noting the extensive observations which the officers made prior to entering the home. The court explained that the "role of a peace officer includes preventing violence and restoring order, not simply rendering first aid to casualties." *Fisher*, 558 U.S. at 49, *quoting Brigham City v. Stuart*, 547 U.S. 398, 406 (2006). As such, it was reasonable "to believe that Fisher had hurt himself (albeit nonfatally) and needed treatment that in his rage he was unable to provide, or that Fisher was about to hurt, or had already hurt, someone else." 558 U.S. at 49. The significant difference between *Fisher* and this case is corroboration by observation. The officers in this matter corroborated almost none of Mr. Ali's concerns *before* entering the home. The situation in *Brigham City* shares the same distinguishing factor and the State's reliance on it is similarly misplaced.

In *Brigham City*, officers were called to a report of a loud party at a residence at 3:00 in the morning. 547 U.S. at 400. Upon arriving at the home, the officers heard shouting from inside the home and saw juveniles drinking beer in the backyard. *Id*. From the backyard, the officers were able to see inside the home and observed an altercation taking place in the kitchen. *Id*. at 401. The officers watched as four adults attempted to restrain a juvenile. *Id*. The juvenile eventually broke free, "swung a fist and struck one of the adults in the face," causing the victim to spit blood into a nearby sink. *Id*. The officers continued to observe as the other adults again tried to restrain the juvenile, pushing him

against a refrigerator with sufficient force that the refrigerator began to move. *Id*. It was not until this time that the officers entered the residence to end the violence.

The Court in *Brigham City* found the officers' warrantless entry into the home plainly reasonable, finding that they had an "objectively reasonable basis for believing both that the injured adult might need help and that the violence in the kitchen was just beginning." 547 U.S. at 406. The differences between the instant case and *Brigham City* are as clear as the differences between it and *Fisher*. The main distinction, however, is that upon responding to the residence based on a call, the officers corroborated their concerns with their own observations.

Here, Mr. Ali expressed his concern to the responding officers of a possible fight in the upstairs apartment. When the officers went to investigate, Mr. Aljohani opened the door and told them everything was okay. They neither heard nor saw anything which would arouse their suspicions. They left the door to Mr. Aljohani's apartment and went back downstairs. They were able to make two observations which the State argues made reasonable their belief of someone inside being injured: that Mr. Aljohani did not answer the door on the officers' second attempt at contact; and that the rear doors to the apartment building and Mr. Aljohani's apartment were open. These two additional details are a far cry from the type of corroborating evidence which the police gathered in *Fisher* and *Brigham City*. In this case, the officers only had open doors equating to little more than a hunch.

The State essentially confirms that the officers' possessed merely a suspicion when it repeatedly states that Talal *might* have required aid. St. Br. 20 ("…when they obtained additional evidence that Talal might be injured and in need of help …."); St. Br.

26 ("… all reasonably suggesting that someone inside might require immediate aid"). According to this Court's precedent and in line with the United States Supreme Court, a hunch is not enough. *People v. Close*, 238 Ill.3d 497, 518 (2010) ("The Fourth Amendment requires that the police officer articulate something more than an inchoate and unparticularized suspicion or hunch"). Beyond the officer's unparticularized suspicions, the passage of time also weighs against a finding of reasonableness.

The State argues that Mr. Aljohani's discussion of 15-20 minutes passing goes to an inapplicable, subjective factor. While this Court does need to address the conflict among the districts regarding subjective or objective tests, the passage of time in this context is not subjective. Regardless, the State overlooks an important point: the passage of time has been a significant factor for courts in Illinois when applying the emergency aid exception.

In support of its arguments the State cites *People v. Lomax*, 2012 IL App (1st) 103016, and explains that "[m]uch like in *Lomax*, once defendant refused to allow the officers to speak with Talal, they had no means of confirming Talal's safety without entering the apartment." St. Br. 19. As addressed above, Mr. Aljohani never refused to allow the officers to speak with Talal, but more importantly, the court in *Lomax* assessed whether officers had a reasonable belief that an emergency situation existed when officers entered an apartment 2-3 minutes after being called. *Id*. at ¶5. Using the two-part test, the *Lomax* court applied the emergency aid exception in that scenario because there was almost no passage to time. The court also took the opportunity to distinguish the facts of *People v. Feddor*, 355 Ill.App.3d 325 (2005).

As the *Lomax* court explains, application of the emergency aid exception in *Feddor* was not appropriate because "[n]othing would reasonably suggest to the police that the defendant required immediate aid to 'safeguard his [physical] well-being.'" 2012 IL App (1st) 103016, *quoting Feddor*, 355 Ill.App.3d at 327. After responding to the defendant's home, the police waited ten minutes before requesting aid from the fire department. The *Lomax* court explained that the *Feddor* officers' waiting ten minutes before calling for aid "strongly suggests that the police did not believe an emergency situation existed …." 2012 IL App (1st) 103016, ¶ 35; *citing People v. Koester*, 341 Ill.App.3d 870, 875 (2003) ("holding that because the police officers waited for half an hour before entering the defendant's residence, their testimony that they believed an emergency situation existed was placed into doubt"). The *Lomax* court expounded on this concept, noting that "[a]lthough the standard is objective, rather than subjective, the fact that the police waited indicates that the officers did not have a belief, objective or subjective, that they were responding to an emergency situation." 2012 IL App (1st) 103016, ¶ 35. The court in *Lomax* reasoned that, in an emergency situation someone is in need of "immediate aid," thus waiting ten minutes undermines the purpose of the exception because in only ten minutes, the emergency could pass. The same is certainly true here.

Whether objective or subjective, the passing of 15-20 minutes before the officers entered Mr. Aljohani's apartment undermines the purpose of the emergency aid exception. The passage of 15-20 minutes also serves to cast doubt on whether the officers' believed that an emergency was at hand which would justify their warrantless entry. For all of these reasons, the emergency aid exception does not apply to this

situation and there was not a reasonable belief that someone was in need of immediate aid.

b. Even under then-controlling precedent, the officers' warrantless entry was not reasonable

The parties appear to agree that the United States Supreme Court's decision in *Caniglia v. Strom*, holds that there is no freestanding community caretaking exception which allows officers to enter a home. Despite this, the State argues that the actions of the officers were acceptable because, "at the time of the officers' entry, Illinois courts had unanimously held that the community caretaking doctrine *did* apply to homes." St. Br. 24 (emphasis in original). While there was binding precedent in place at the time of the officers' entry into Mr. Aljohani's apartment, the officers' belief that the precedent applied to their situation was incorrect and their application of the community caretaking doctrine was not reasonable.

The State argues that is position is supported by *People v. Hand*, 408 Ill.App.3d 695 (1st Dist. 2011), but for a variety of reasons *Hand* is readily distinguishable from the instant matter. First, the complainant in *Hand* was the husband of the woman inside their home with their children. The complainant requested that the officers accompany him to their shared apartment so he could retrieve belongings and check on the welfare of his children. *Id*. at 696, 699. When the officers knocked and announced their presence, the wife would not answer the door. The husband provided a key to the apartment and the officers used it to open the door. The wife actively tried to hold the door shut and eventually swung a baseball bat at the officers when they tried to enter. These actions could reasonably be considered "refusal" to allow entry into the home.

Importantly in *Hand*, the officers were looking into the welfare of the children and their conduct was totally divorced from the investigation of a crime. 408 Ill.App.3d at 703. Here, the officers were responding to a call of a battery in progress and were investigating that potential crime. There is nothing in the record to suggest that the officers' concern was for the well-being of Talal or that their entry into the apartment was based on something other than the investigation of a crime. Indeed, the State asserts that the officers' investigation never ended: "… throughout this time the officers' investigation was ongoing, and they discovered additional evidence of an emergency …." St. Br. 19 (discussing application of the emergency aid exception). If the officers responded to and investigated a call for a battery in progress and their investigation was ongoing, then their entry into the apartment necessarily was not divorced from the investigation of a crime.

The State also briefly cites *Woods* for the proposition that "[t]he relevant inquiry … [is] whether the entry was a reasonable response to concerns about the well-being of those in the apartment." St. Br. 24, *citing Woods*, 2019 IL App (5th) 180336, ¶ 34. Like *Hand*, the facts and analysis in *Woods* are clearly distinguishable from the case at issue.

In *Woods*, the officers responded to a call from a neighbor that the defendant left her infant at home, unattended. 2019 IL App (5th) 180336, ¶ 33. Officers responded and were able to confirm the neighbor's concerns by peering through the defendant's windows. When the officers looked, they saw that there was, in fact, an unattended infant in a rear bedroom. *Id*. at ¶¶ 10-12. Similar to *Fisher* and *Brigham City*, the officers responded to a complaint and used their own observations to corroborate the information they received from witnesses and complainants. There was no such corroboration here.

The officers had a hunch, acted on that hunch, and then entered Mr. Aljohani's home without a warrant. Without any corroboration there cannot a reasonable belief or application of the community caretaking doctrine even under pre-*Caniglia* precedent in Illinois.

III. The State Waived its Forfeiture Argument

In the appellate court and before this Court, Mr. Aljohani asserts that even if the officers' warrantless entry was supported by the emergency aid exception, exigency dissipated once the officers discovered Talal. At that point, the officers should have ceased their search and investigation, secured the scene, and obtained a warrant. The State takes exception to this argument, believing that it has been forfeited. Specifically, the State claims that "defendant forfeited this argument by not raising it in the trial court at the suppression hearing" and that it was further forfeited by failing to offer sufficient argument and authority. As to the first allegation of forfeiture, the State waived this argument.

Here, the State raises its forfeiture argument for the first time in its responsive brief before this Court. St. Br. 26. Forfeiture arguments are "in the nature of an affirmative defense that the State may either raise, waive, or forfeit …" *People v. Beachem*, 229 Ill.2d 237, 255 n.2 (2008), *quoting People v. Blair*, 215 Ill.2d 427, 442 (2005); *People v. Stivers*, 338 Ill.App.3d 262, 264 (2003); *People v. Williams*, 193 Ill.2d 306, 347-48 (2000) ("The rules of waiver are applicable to the State as well as the defendant in criminal proceedings, and the State may waive an argument that the defendant waived an issue by failing to argue waiver in a timely manner").

Rather than assert its affirmative defense of forfeiture before the appellate court, the State chose to substantively argue the matter. Addressing the argument that the officers should have obtained a warrant after discovering Talal's body, the State argued at the appellate court that upon entering Mr. Aljohani's apartment, "[i]t was clear a crime, in fact a violent crime had been committed, and the officers had every right to search that apartment." St. App. Br. 23. The State further offered argument to distinguish the instant case from that of *People v. Mikrut*, 371 Ill.App.3d 1148 (2007). In so many words, the State waived any argument of forfeiture on this point by failing to raise it and by addressing the substance of Mr. Aljohani's assertions.

As to the second allegation of forfeiture, the State argues that Mr. Aljohani forfeited his argument before this Court "by failing to provide sufficient argument and citation to authority" citing Illinois Supreme Court Rule 341(h)(7). St. Br. 28. Illinois Supreme Court Rule 341 addresses the required form of briefs and does not provide an explanation of what constitutes "sufficient argument and citation to authority." The State concedes, as they must, that Mr. Aljohani cited precedent in support of his position. Def. Br. 35, *citing People v. Kulpin*, 2021 IL App (2d) 180696, ¶ 29. That the cited precedent does not address Mr. Aljohani's argument to the satisfaction of the State is not a basis for forfeiture of the argument, and Mr. Aljohani respectfully requests that this Court consider the matter.

CONCLUSION

WHEREFORE, Defendant-Appellant respectfully requests that this Court reverse the decisions of the trial and appellate courts, remand with instructions, and provide such further relief as is just.

Dated: April 6, 2022.

Respectfully submitted,

/s/ Stephen F. Hall
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/s/ Julian S. Crozier
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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Illinois Supreme Court Rules 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a) is 13 pages.

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	) Judge Presiding.

NOTICE OF FILING AND PROOF OF SERVICE

TO: The Honorable Chief Justice and the Honorable Justices of the Illinois Supreme Court

PLEASE TAKE NOTICE that on April 6, 2022, I caused to be filed with the Clerk of the Supreme Court of Illinois, by use of the Court's e-filing system, the foregoing Reply Brief of Defendant-Appellant Abdullah Aljohani in the above-entitled cause.

I further caused the foregoing to be served on the persons entitled thereto and named below by United States mail on April 6, 2022.

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STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

VERIFICATION BY CERTIFICATION

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that she verily believes the same to be true.

/s/ Stephen F. Hall
Stephen F. Hall