No. 127037

IN THE SUPREME COURT OF ILLINOIS

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

BRIEF AND APPENDIX OF PLAINTIFF-APPELLANT ABDULLAH ALJOHANI

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ORAL ARGUMENT REQUESTED

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NATURE OF THE CASE

Following denial of Appellant's motion to suppress evidence, this matter proceeded to bench trial in the Circuit Court of Cook County, Illinois. The trial court denied Appellant's motion to suppress evidence (Sup. R. 66)) and found him guilty of first-degree murder at the conclusion of the trial. (R. 84). The ruling on the motion to suppress and the judgment at trial were timely appealed, with the appellate court affirming the rulings of the trial court, although on a different basis for the motion to suppress. Specifically, the appellate court affirmed the denial of the motion to suppress, not on the basis of the community caretaking doctrine, but based on the emergency aid exception to the warrant requirement. *People v. Aljohani*, 2021 IL App (1st) 190692, ¶ 47 ("Since a reviewing court may affirm a trial court's ruling on a motion to suppress on any basis found in the record … it does not matter whether the emergency aid exception is a subset of the community caretaking doctrine or that the trial court did not rely on this exception,").

This is a direct appeal from the ruling of the appellate court. No question is raised on the pleadings.

ISSUES PRESENTED FOR REVIEW

1. Whether the Appellate Court erred in affirming the trial court's denial of Mr. Aljohani's motion to suppress, relying on the emergency aid exception to the warrant requirement.

2. Whether the Appellate Court's decision exacerbated an existing conflict among the districts as to the proper application of the emergency aid exception, requiring resolution.

3. Whether the appellate court's overall affirmation of the trial court's decision on the motion to suppress essentially approves of its misapplication of the community caretaking doctrine.

4. Whether the Appellate Court erred in affirming the trial court's finding that the State presented sufficient evidence to prove Mr. Aljohani's guilt beyond a reasonable doubt.

STATEMENT OF JURISDICTION

On September 29, 2021, this Court allowed the Appellant's petition for leave to appeal. Accordingly, this Court has jurisdiction under Illinois Supreme Court Rules 315 and 612(b).

STATUTES OR CONSTITUTIONAL PROVISIONS INVOLVED

U.S. Const., amend. IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Ill. Const., 1970, art. I, § 6

The people shall have the right to be secure in their persons, houses, papers and other possessions against unreasonable searches, seizures, invasions of privacy or interceptions of communications by eavesdropping devices or other means. No warrant shall issue without probable cause, supported by affidavit particularly describing the place to be searched and the persons or things to be seized.

STATEMENT OF FACTS

Mr. Aljohani was arrested for the March 15, 2015 death of Talal Aljohani[1], and was subsequently charged by indictment with six counts: five counts of first degree murder of Talal Aljohani and one count of armed robbery.

The Motion to Suppress

Mr. Aljohani filed a motion to suppress and proceeded to a combined bench trial. Mr. Aljohani sought suppression of various evidence obtained from the second-floor apartment at 5038 N. Harding on March 15, 2015 – the home he shared with Talal Aljohani. The State argued that the officers' warrantless entry into the apartment was within the "emergency aid" exception. (A-14, ¶ 46). In so arguing, the State submitted that the officers were "[m]erely investigating the concerns of a downstairs neighbor and concerns that are corroborated by their own independent observations of open gates, open doors in the middle of the night." (Sup R 14). In support of the motion, Mr. Aljohani called Chicago Police Officer Banito Lugo who testified that he was working with his partner, Officer Anthony Richards, during the overnight and early morning hours of March 14 into March 15, 2015. (Sup R 17-18). Officer Lugo testified that he and his partner responded to a "battery in progress" shortly after 4:00a.m. at 5038 N. Harding Avenue. *Id*. The officers responded to the three-flat building surrounded by a chain-link fence with a gate in front and a rod iron fence and gate in the rear. (Sup R 20, 35). The first-floor resident, Khalid Ali, spoke with the officers outside and informed them he

[1] Although they share the same last name, Abdullah Aljohani and Talal Aljohani were not related. For clarity throughout this brief, Abdullah Aljohani will be referred to as "Mr. Aljohani" or "Appellant", and Talal Aljohani will be referred to by both his first and last name.

heard two males arguing in Arabic in the upstairs apartment. (Sup R 21). Without identifying who the two males were, Mr. Ali stated he thought he heard two people wrestling, and one man saying something in Arabic followed by "are you okay, get up." (Sup R 24-25). Mr. Ali then allowed the officers access to the apartment building through the front door. (Sup R 26-27).

Upon entering the building, the officers went upstairs and were met by the closed door to the second-floor apartment. (Sup R 27-28). Officer Lugo did not hear any wrestling, yelling, or arguing from outside the door. (Sup R 28). The officers knocked, and Mr. Aljohani opened the door and told the officers "everything was okay." The officers asked to speak with Mr. Aljohani's brother, although no one told them Mr. Aljohani's "brother" was in the apartment (referring to Talal Aljohani). (Sup R 29-30). Mr. Aljohani told them his brother was sleeping, at which point Officer Lugo and his partner decided to leave. (Sup R 30). Neither of the officers asked to enter the apartment, nor did they ask to see Talal Aljohani. At the conclusion of the conversation, Mr. Aljohani closed the door. *Id*.

Upon returning to the first floor, the officers met with Mr. Ali. (Sup R 30). Officer Lugo informed Mr. Ali that "everything seemed okay" and that they did not have any concerns. (Sup R 31). Mr. Ali, however, was adamant about what had occurred, believing someone had been hurt. (Sup R 46). Officer Lugo and his partner then went upstairs for a second time, knocked, and received no response. (Sup R 32). The officers returned to the first floor, told Mr. Ali to call the police should he hear anything else, and exited the building. *Id*. The officers then got into their squad car and sent a message to dispatch "to indicate that they had completed their assignment and everything was

"okay." (A-3, ¶ 9). But the officers did not leave; instead, they drove to the alley behind the building because "something didn't feel right." *Id*.

Upon arriving in the alley directly behind 5038 N. Harding, Officer Lugo parked his squad car, walked through an open rear gate, and looked inside an open side-door to a garage. (Sup R 35-36). Officer Lugo did not recall what, if anything, he saw inside the garage. (Sup R 37). The officers then noticed the shared, side entrance to the apartment building was open and they entered. (Sup R 38-39). At this point, they had not heard any noise near the open side-entrance to the apartment, had not spoken with or heard from Mr. Ali again, and had not called anything into dispatch. (Sup R 38-39). Nonetheless, the officers went upstairs again, and saw the back door to Mr. Aljohani's apartment was open. (Sup R 39). The officers knocked, announced their presence, and entered the apartment. (Sup R 40). The officers' entrance into the apartment occurred 15-20 minutes after the officers' first conversation with Mr. Ali. (Sup R 55-57). At this point, again, the officers heard no unusual noises, wrestling, or yelling from inside the apartment. (Sup R 40).

Although the officers did not see or hear anything suspicious before entering the apartment, they went through the apartment room by room. (Sup R 41). They did not see Mr. Aljohani, but did locate Talal Aljohani in the southeast bedroom, lying unresponsive on a mattress. (Sup R 41-42).

Following Officer Lugo's testimony, Mr. Aljohani rested his case. The State called no witnesses and the trial court heard argument on the motion to suppress. The State relied on the "emergency aid doctrine." (A-4, ¶ 12). Mr. Aljohani argued that the police officers responded to Mr. Ali's concerns, did not observe anything that concerned

them, and had "no community service responsibilities based on what their investigation had yield[ed]…" (Sup R 64).

After hearing argument, the trial court held that Mr. Aljohani's situation was analogous to that in *People v. Hand*, 408 Ill.App.3d 695 (2001), related to the "community caretaking exception to the prohibition against warrantless searches." (Sup R 69). In so finding, the trial court considered whether the officers were performing some function other than investigating a crime, and whether the scope of the search was reasonable. (Sup R 69-70). The trial court held that the "circumstances herein taking place without any warrant by the police falls squarely within the community caretaking function…" and denied the motion to suppress. (A-5, ¶14). The court then proceeded with the bench trial.

The Trial

At the outset, the State and Mr. Aljohani agreed to incorporate their opening statements from the Motion to Suppress hearing held earlier in the day for purposes of the bench trial. (Sup R 76). At that point, the State began its case-in-chief by calling Mr. Abdulhadi Aljohani. (Sup R 76).

Abdulhadi testified as a resident of the city of Medina, Saudi Arabia, and as the brother of Talal Aljohani. (Sup R 77). Abdulhadi explained that he had spoken with his brother on the telephone one day prior to his death. (Sup R 79). The testimony is unclear whether Abdulhadi meant that he spoke with Talal Aljohani some hours prior to Officer Lugo and his partner discovering the body of Talal Aljohani in the early morning hours of March 15, 2015, or an entire day prior on March 13, 2015. (Sup R 77-81). The State next called Mr. Khalid Ali.

Mr. Ali explained that he was born in Somalia and at some point, emigrated to the United States, settling in Chicago in 2004. (Sup R 82, 84). Mr. Ali understands some level of Arabic but is not proficient. (Sup R 83-84, 86). On March 15, 2015, Mr. Ali lived on the first floor of the apartment building at 5038 N. Harding Avenue with his wife, and five children. (Sup R 84). In addition to the first and second floor apartments, there was also a basement apartment. (Sup R 84). Talal Aljohani and the Appellant lived in the second-floor apartment. (Sup R 85).

In the early morning hours of March 15, 2015, Mr. Ali's wife woke him up. (Sup R 87). Mr. Ali's wife told him that she heard singing earlier in the evening, around "1:00 o'clock, 2:00 o'clock, something like that." (Sup R 100). Mr. Ali did not wake from his slumber because of any noises coming from the second floor apartment; rather, the only thing that woke him up was his wife. (Sup R 103-04).

When he awoke, Mr. Ali heard wrestling, and what he initially described as "yelling and screaming…." (Sup R 86). When the trial court questioned Mr. Ali on the point of "yelling and screaming," it was clarified as follows: "[t]he apartment upstairs, hear, not that moment, but a little bit Abdullah calling and mentioning the name of Talal, Talal, and I hear like ah, ah, something like that, some panic." (Sup R 87). Mr. Ali later admitted that he did not know who was arguing upstairs. (Sup R 115). Based on the sounds, Mr. Ali did not know how many people were wrestling. (Sup R 106).

At some point after that, Mr. Ali went upstairs and knocked on the back door to the second-floor apartment. (Sup R 87-88, 90). Mr. Aljohani answered the door "right away" and appeared normal. (Sup R 88). Mr. Aljohani told Mr. Ali that there was a small argument, but that everything was okay, and gave Mr. Ali "two thumbs, everything

is okay, okay,". (Sup R 88). Mr. Aljohani did not tell Mr. Ali who was involved in the argument – only that there was a "little argument." (Sup R 109). At that point, Mr. Ali could not see the entire apartment, and did not know if there were other people in the apartment. (Sup R 110). Mr. Ali returned to his downstairs apartment. (Sup R 89).

Mr. Ali stayed in his apartment "a little bit." (Sup R 89). While in his own apartment Mr. Ali did not know whether anyone left the upstairs apartment either through the front or back stairwell. (Sup R 111). Mr. Ali returned to the upstairs apartment and knocked on the back door again. (Sup R 89, 90). Mr. Aljohani again answered and opened the door "all the way…." (Sup R 89). Mr. Ali questioned where Talal Aljohani was, to which Mr. Aljohani stated he was in the bathroom. (Sup R 89). The back door of the apartment, when opened wide, fully displays the bathroom of the apartment. (Sup R 90). Although Mr. Ali said he could see into the bathroom and could see that Talal Aljohani was not there (Sup R 90-91), he later admitted that he could not see the whole bathroom from where he was standing. (Sup R 125).

When Mr. Ali again asked where Talal Aljohani was, Mr. Aljohani explained that he was on the phone with his family. (Sup R 91). Mr. Ali then requested to speak with Talal Aljohani, to which Mr. Aljohani repeated that Talal Aljohani was on the phone with his family. (Sup R 91). Mr. Ali then asked to see Talal Aljohani, at which point Mr. Aljohani told Mr. Ali to "do whatever," and then closed the door. (Sup R 91). Mr. Ali returned to his first-floor apartment and called 911. (Sup R 91). While waiting for the police to arrive, Mr. Ali was not watching either of the two stairwells to the second floor. (Sup R 112).

When CPD officers responded to the call, Mr. Ali allowed them entrance to the apartment building, and pointed them towards the second floor apartment. (Sup R 93). Mr. Ali again described what he told the officers about the noises he heard from the second floor. (Sup R 93). Although defense counsel objected, that objection was withdrawn and Mr. Ali explained that the spoken words he heard from the second floor were in Arabic. (Sup R 93). Upon the trial court's questioning, Mr. Ali further explained: "What did I hear? I hear Abdullah calling Talal, Talal, and saying come, come, meaning stand up or wake up." (Sup R 93). Mr. Ali did not see Mr. Aljohani on the evening of March 14 into March 15, 2015 prior to knocking on his back door. (Sup R 104-05). Mr. Ali did not know at what time Mr. Aljohani arrived home to his second-floor apartment, did not know what time Talal Aljohani arrived home, did not know if Talal Aljohani invited anyone over that evening, and did not know whether there were other people in the second-floor apartment when his wife woke him up. (Sup R 105). When the police officers left the building, they told Mr. Ali to call them back if he heard "wrestling" or "something else." (Sup R 119).

The State next called Mr. David Ryan as a witness. (Sup R 125). At the time of the testimony, Mr. Ryan was recently retired from thirty-two years of service with the Chicago Police Department. (Sup R 127). In the early morning hours of March 15, 2015, Mr. Ryan responded to 5038 N. Harding in his role as a forensic investigator with the mobile crime lab for CPD. (Sup R 127). Mr. Ryan photographed the scene and collected evidence. (Sup R 128). As part of his duties, he found Talal Aljohani on a bed in the southeast bedroom. (Sup R 128).

Among the exhibits admitted through Mr. Ryan was People's 20, which showed a "seven and a half inch steak knife with – that has a blade, four inch long blade, and three and a half inch long handle," which Mr. Ryan found after moving a suitcase on the floor in the southeast bedroom. (Sup R 132-33). Mr. Ryan inventoried the knife he found under No. 13395760, and fingernail scrapings he recovered from Talal Aljohani under the same number. (Sup R 134-35). Mr. Ryan identified several blood stains in the apartment, marked them, and swabbed them to preserve them. (Sup R 139).

In addition to the knife that Mr. Ryan found after moving the suitcase (inventoried under No. 13395745), he also found a second metal knife blade that was four inches long in the southeast bedroom, with a broken-off handle. (Sup R 142). The knife blade was inventoried as No. 13395750 and the handle was inventoried as No. 13395746. (Sup R 143). The two knives which Mr. Ryan found in the southeast bedroom appeared to be part of a four-piece steak knife set which he located in a kitchen-cabinet. The set in the kitchen was missing two knives. (Sup R 153). Mr. Ryan also located an inch long cigar butt in the drain area of the kitchen sink and preserved it with the hope that DNA evidence might be extracted from the cigar butt. (Sup R 153-54). To the best of Mr. Ryan's knowledge, no one tested the cigar butt. (SUP 154). To the best of Mr. Ryan's knowledge, no one requested that the blood swabs maintained as part of Inventory No. 13395762 be analyzed by the crime lab. (SUP 141). Mr. Ryan also collected and preserved numerous other pieces of evidence including clothing and blood swabs. (Sup R 144, 147, 149-50).

The parties stipulated to the credentials of Dr. Kristen Alvarenga, as well as to her expertise in the field of forensic pathology. (Sup R 157-58). Dr. Alvarenga examined

Talal Aljohani on March 16, 2015, and determined his cause of death to be a stab wound to the abdomen. (Sup R 167). Dr. Alvarenga further opined that the manner of death was homicide. (Sup R 168). Dr. Alvarenga was unable to determine a time of death for Talal Aljohani. (Sup R 172). At this point, the trial court recessed for the day and continued the matter.

Upon resuming the trial on November 2, 2018, the State continued its case-in-chief by calling twenty-two year veteran CPD Officer Anthony Acevez. (R 15). On March 17, 2015, Officer Acevez was part of the 17th District Robbery/Burglary Team for the CPD, and was assigned to follow up on an investigative alert and warrant for the arrest of Mr. Aljohani. (R 15). Officer Acevez received information that Mr. Aljohani was near Lawrence Ave. and Pulaski Rd. in Chicago. (R 16). Officer Acevez found Mr. Aljohani nearby in the 4800 block of N. Keystone Avenue. (R 16-17). Officer Acevez was wearing plain clothes but had on a police vest with police designators. (R 16-17). At some point, Officer Acevez made eye contact with Mr. Aljohani who began to run away. (R 18). Officer Acevez chased Mr. Aljohani and an unnamed man he was with. (R 18). The other person was also running away from Officer Acevez. (R 18-19).

Officer Acevez caught up with the unnamed other man and tripped him. (R 18, 24). When tripped, the other man fell into Mr. Aljohani, causing both men to land on the ground. (R 18, 24). Officer Acevez placed Mr. Aljohani in custody (R 18), but did not recall what happened to the other man. (R 25).

Following Officer Acevez, the State proceeded by way of stipulation, that CPD evidence technician Abdullah Abuzonet would testify that he was an evidence technician with the Department on March 17, 2015, and was assigned to photograph Mr. Aljohani.

(R 33). Additionally, Gerald Poradzisz would testify that he was an evidence technician employed by the Chicago Police Department on March 17, 2015. (R 34). On that date, Mr. Poradzisz photographed Mr. Aljohani's clothing (People's Exhibits 44-47), inventoried Mr. Aljohani's clothing under No. 13397564, and sent all of Mr. Aljohani's clothing to the crime lab. (R 34-35).

The State continued to present evidence by way of stipulation. Specifically, the parties stipulated that CPD evidence technicians recovered: a blood stain from Mr. Aljohani's underwear (inventory number 13397564), a swab of blood from a knife blade (inventory number 13395745), a swab from a knife handle (inventory number 13395745), a blood standard from Talal Aljohani (inventory number 13396543), and a buccal swab from Mr. Aljohani (inventory number 13397960). (R 35-36). All of these items were submitted for DNA analysis. (R 35).

The parties further stipulated that Illinois State Police forensic chemist Meghan Ness received these inventoried items, would be qualified as an expert in the field of DNA analysis, and would offer the following testimony:

- The blood stain on Mr. Aljohani's underwear contained a DNA mixture of at least two people, including the DNA profile of Talal Aljohani and excluding Mr. Aljohani;
- The swab of blood from the knife blade matches the DNA profile for Talal Aljohani and does not match the profile of Mr. Aljohani;
- The knife handle contained a mixture of DNA profiles containing at least two people, and matched the DNA profile of Mr. Aljohani and did not match that of Talal Aljohani;
- The exact number of contributors to the DNA profiles could not be determined;
- Profiles from additional contributors to this mixture are potentially incomplete and are not suitable for comparison.

(R 35-38). The parties stipulated that Mr. Aljohani's t-shirt, as depicted in People's Exhibit number 46, was packaged and inventoried, but no one requested that it be tested. (R 40). The parties further stipulated that should CPD Officer Lugo be called during the State's case-in-chief, he would provide the same testimony during trial that he provided during the course of the Motion to Suppress hearing the day before. (R 38). The State then moved People's Exhibits 1-51 into evidence without objection, and rested its case-in-chief. (R 41).

After the State rested its case-in-chief, Mr. Aljohani argued for a directed finding. (R 41-42). The trial court denied Mr. Aljohani's motion. At that time, Mr. Aljohani began his case-in-chief.

The defense proceeded exclusively by way of stipulation, with its first witness being Assistant Medical Examiner Kristen Alvarenga, who previously testified for the State. (R 42). Upon being recalled, Dr. Alvarenga would testify that she extracted blood from Talal Aljohani during the course of her autopsy and submitted blood to the toxicology section of the Medical Examiner's Office for analysis of the presence of drugs or alcohol. (R 42). Mr. Aljohani would then call Mr. Peter Koin, a toxicologist from the Medical Examiner of Cook County. (R 43). Mr. Koin would be qualified as an expert in the field of toxicological examinations of various body fluids. (R 43). Mr. Koin would testify that he did in fact conduct testing of the blood of Talal Aljohani, previously drawn by Dr. Alvarenga, in samples 1-06 and 1-07. (R 44). Sample 1-06 of Talal Aljohani's blood reflected a converted blood alcohol concentration of 0.138, and sample 1-07 reflected a converted blood alcohol concentration of 0.106. (R 43-44).

As a final stipulation, Mr. Aljohani offered that, if recalled, Meghan Ness would again be qualified as an expert in the field of forensic chemistry. (R 45). Ms. Ness would testify that some DNA evidence was not suitable for comparison, and some items recovered were never tested. (R 46-47).

After the trial court accepted the stipulations into evidence, Mr. Aljohani chose not to testify and rested his case-in-chief. (R 47, 51, 52). The parties presented their closing arguments.

Following a brief recess the trial court offered its opinion in the matter, and provided a thorough recitation of the State's theory of the case, as well as Mr. Aljohani's. (R 86-87, 88-89). The trial court stated that it believed the testimony of the various witnesses, including Mr. Ali. (R 89, 91). The court found that Mr. Ali and Officer Lugo both concluded that Mr. Aljohani was lying to them. (R 95). The trial court further concluded that Officer Lugo did not actually believe that everything was okay when he left the front door of the second-floor apartment. (R 95). The trial court found that, although Talal Aljohani and Mr. Aljohani were not "assiduous housekeepers," it is "difficult beyond measure to conclude that they would be that cavalier that one would wear the bloody underwear of another." (R 96-97).

Although the trial court understood Mr. Aljohani's argument that he might lie to Mr. Ali and the CPD Officers for fear "of that person [whom killed Talal Aljohani], out of fear of police and the foreign justice system," but believes the DNA evidence on the knife handle, knife blade, and Mr. Aljohani's underwear diminishes that argument. (R 97). The trial court then found Mr. Aljohani guilty of first degree murder as set forth in counts one and two of the indictment. (R 98).

Mr. Aljohani filed post-trial motions which the trial court denied, and a motion to reconsider which was also denied. (C 161, 162). The trial court sentenced him to 23 years' incarceration. Mr. Aljohani timely filed an appeal in the First District on October 23, 2019, arguing that the trial court erred in denying his motion to suppress, in finding that the State proved his guilt beyond a reasonable doubt, in attributing evidence of flight to consciousness of guilt, and in denying his motion for a directed finding. The Appellate Court affirmed the trial court's rulings and Mr. Aljohani's conviction on September 30, 2020 (A-32) and denied Mr. Aljohani's Petition for Rehearing on January 25, 2021. The Appellate Court then filed a modified opinion on January 28, 2021 and a corrected, modified opinion shortly thereafter. (A-1). Important for this Petition is the fact that the Appellate Court affirmed the denial of Mr. Aljohani's motion to suppress *not* based on the community caretaking doctrine to the warrant requirement but on the emergency aid exception. This appeal follows.

ARGUMENT

I. Whether Through Application of the Community Caretaking Doctrine or the Emergency Aid Exception to the Warrant Requirement, the Lower Courts Erred in Denying Appellant's Motion to Suppress, and Their Respective Reasoning Exacerbated Existing Conflicts Among the Appellate Districts

a. Standard of Review

The trial court erred in denying Appellant's motion to suppress. A reviewing court in Illinois defers to the trial court's findings of fact in a motion to suppress, upholding those findings unless they fail to comport with the manifest weight of the evidence. *People v. Absher*, 242 Ill.2d 77, 82 (2011). The court then assesses the established facts in relation to the issues presented and draws conclusions to decide what

relief, if any, should be granted. *Id*. Accordingly, the court reviews *de novo* the ultimate legal question of whether the facts warrant suppression. *Id*.

In a motion to suppress, the Appellant bears the burden to make a *prima facie* showing that the evidence to which the Appellant objected was obtained in an illegal search or seizure. *People v. Gibson*, 203 Ill.2d 298, 306-07 (2003). The United States and Illinois Constitutions guarantee the right of an individual to be free from unreasonable searches and seizures. U.S. Const. amend. IV; Ill. Const. 1970, art. I, § 6.

"The 'very core' of this guarantee is 'the right of a man to retreat into his home and there be free from unreasonable governmental intrusion.'" *Caniglia v. Strom*, 593 U.S. ___, 3 (2021), quoting *Florida v. Jardines*, 569 U.S. 1, 6 (2013). When it comes to this right, "the home is first among equals." *Jardines*, 569 U.S. at 4; see also *Kentucky v. King*, 563 U.S. 452, 455 (2011) ("Home intrusions, the Court has said, are indeed 'the chief evil against which … the Fourth Amendment is directed,'"); *Payton v. New York*, 445 U.S. 573, 585 (1980); *People v. Kulpin*, 2021 IL App (2d) 180696, ¶ 40 ("The chief evil against which the fourth amendment is directed is entry into the home,").

A warrantless search is per se unreasonable. *Arizona v. Gant*, 556 U.S. 332, 338 (2009), quoting *Katz v. United States*, 389 U.S. 347, 357 (1967). Thus, a warrantless search or entry is impermissible unless it fits within a specifically established and well-delineated exception to the warrant requirement. *Mincey v. Arizona*, 437 U.S. 385, 390 (1978). In the case of a warrantless search or entry, "… the police bear a heavy burden … when attempting to demonstrate an urgent need that might justify warrantless searches." *Welsh v. Wisconsin*, 466 U.S. 551, 559 (2004).

Here, the trial court denied Appellant's motion to suppress based on the Community Caretaking Doctrine, while the appellate court affirmed the decision on a different exception to the warrant requirement: the emergency aid exception. Regardless of which theory is considered, neither are applicable to the facts of this case and both decisions were in error. Compounding these errors is the divide among appellate districts in Illinois on the proper application of the emergency aid doctrine.

b. The Appellate Court's Failure to Overrule the Trial Court's Ruling on the Motion to Suppress Affirmed a Misapplication of the Community Caretaking Doctrine and is Now in Conflict with United States Supreme Court Precedent

The trial court denied Appellant's motion to suppress the warrantless entry into his home based on the "community caretaking exception to the prohibition against warrantless searches." (Sup R 69). Although the United States Supreme Court recently held in *Caniglia v. Strom*, 593 U.S. ___ (2021) that the community caretaking duties of the police do not create "a standalone doctrine that justifies warrantless searches and seizures of the home," that decision had yet to be rendered at the time the trial court ruled. *Id*. As such, the trial court relied on the reasoning in *People v. Hand*, 408 Ill.App.3d 695 (2001) to support its finding, as discussed below.

The community caretaking doctrine "refers to a capacity in which the police act when they are performing some task unrelated to the investigation of crime, such as helping children find their parents, mediating noise disputes, responding to calls about missing persons or sick neighbors, or helping inebriates find their way home." *People v. McDonough*, 239 Ill.2d 260, 269 (2010). As a function of the police, "community caretaking" describes a stop and check on a person's well-being, without any initial thought of criminal activity. *People v. Simac*, 321 Ill.App.3d 1001, 1004 (2001).

Under Illinois precedent, for the community caretaking doctrine to apply as a justification for a warrantless search or seizure, two general criteria must be satisfied. *McDonough*, 239 Ill.2d at 272. First, the court must determine that the police were performing some function other than the investigation of a crime. *Id*. Second, the court must determine if the search or seizure was "reasonable because it was undertaken to protect the safety of the general public." *Id*. The question of reasonableness in both criteria is measured by objective terms by looking at the totality of the circumstances. *Id*. The court must balance a citizen's interest in going about his or her business free from police interference against the public's interest in having police officers perform services in addition to strictly enforcement of the laws. *Id*.

Recently, however, the United States Supreme Court in *Caniglia* explained that the community caretaking doctrine does not extend to the warrantless search of a home. 593 U.S. at 4. In light of this, the misapplication of the Doctrine by the trial court and the appellate court's failure to expressly overrule that misapplication, there is now a conflict with Supreme Court precedent.

i. Application of the Rule announced in *Caniglia v. Strom*

In *Caniglia*, the Court assessed whether the "caretaking" duties discussed in *Cady v. Dombrowski*, 413 U.S. 433 (1973) created a standalone doctrine which "justifies warrantless searches and seizures in the home." *Id*. at 1. In a straightforward answer, the Court explained: "[i]t does not." *Id*.

In *Caniglia*, officers responded to a couple's shared home at the request of the wife, whom spent the night away from the home and her husband due to an argument. Specifically, the wife called police to perform a "welfare check" of her husband based on

his behavior the night prior and his failure to answer her telephone calls. When police responded to the home, they found Mr. Caniglia sitting on his front porch and they eventually convinced him to go to the hospital for a psychiatric evaluation. After he was removed from the scene, without a warrant or consent, the officers entered the home and seized Mr. Caniglia's firearms. Mr. Caniglia sued alleging the police officers violated the Fourth Amendment through their actions.

The district court granted summary judgment to the defendants, and the First Circuit affirmed because their actions "fell within a 'community caretaking exception' to the warrant requirement." 593 U.S. ___ at 2, citing lower court 953 F.3d 112, 121-23 (1st Cir. 2020). In its decision, the Court acknowledged that the Fourth Amendment does not "prohibit all unwelcome intrusions 'on private property,' – only 'unreasonable ones.'" *Id*. at 3 [internal citation omitted], quoting *Florida v. Jardines*, 569 U.S. 1, 6 (2013). Recognizing that some intrusions are permitted, the Court provided examples, including searches and seizures pursuant to a warrant, or without a warrant if certain exigent circumstances exist. *Caniglia*, 593 U.S. at 3. One such situation where exigent circumstances may exist is "the need to 'render emergency assistance to an injured occupant or to protect an occupant from imminent injury.'" *Id*., quoting *King*, 563 U.S. at 460, 470; see also *Brigham City v. Stuart*, 547 U.S. 398, 403-04 (2006) (listing other examples).

Although the First Circuit's reliance on *Cady* was based on some factual similarities – a warrantless search for a firearm – the search in *Cady* was of an impounded vehicle. "In fact, *Cady*, expressly contrasted its treatment of a vehicle already under police control with the search of a car 'parked adjacent to the dwelling place of the

owner.'" *Caniglia*, 593 U.S. at 4, quoting *Cady*, 413 U.S. at 446-48 (citing *Coolidge v. New Hampshire*, 403 U.S. 443 (1971). The distinction between vehicles and homes is the foundation upon which "community caretaking" is based. The *Caniglia* Court explained that the idea of "community caretaking" expressed in *Cady* comes from:

> … a portion of the opinion explaining that that 'frequency with which … vehicle[s] can become disabled or involved in … accident[s] on public highways' often requires police to perform noncriminal 'community caretaking functions,' such as provided aid to motorists. 413 U.S. at 441. But, this recognition that police officers perform many civic tasks in modern society was just that – a recognition that these tasks exist, and not an open-ended license to perform them anywhere.

Id. at 4. The Supreme Court continues to decline the invitation to expand the scope of exceptions for warrantless entry into the home, and notes that what is reasonable for searches of vehicles is different from what is reasonable for the home. Here, the warrantless entry and search of Mr. Aljohani's home was impermissible.

The trial court held that the situation in this case was comparable to the situation in *Hand*, related to the "community caretaking exception to the prohibition against warrantless searches." (Sup R 69). Previous cases have helped define whether specific police activity qualifies as "caretaking" that is "totally divorced from an officer's tasks of investigation and detection." *City of Highland Park v. Lee*, 291 Ill.App.3d 48, 52 (1997)[2]. In *McDonough*, the police seized the defendant after seeing a car pulled over on the shoulder of a busy, four-lane highway at night, without headlights activated. 239 Ill.2d at 273. The court found this was an objectively reasonable exercise of the officer's

[2] Overruled on other grounds by *People v. Luedemann*, 222 Ill.App.2d 530 (2006); *People v. Dittmar*, 954 N.E.2d 263 (2d Dist. 2011) (invalidating *Lee*, holding that "[o]nce a seizure has occurred, an officer is not acting in his community caretak[ing] function, even if his original intention had nothing to do with detection or investigation of a crime,").

community caretaking function in that he initiated the stop "to offer any aid required under the circumstances." *Id*. In *People v. Robinson*, the court found that an officer's actions when responding to a call concerning a person slumped over the wheel of a parked car were a valid exercise of his community caretaking function. 368 Ill.App.3d 963, 965 (2006). The officer's act of tapping on the car window and attempting to engage in conversation with the defendant was divorced from the detection, investigation, or acquisition of evidence and thus, his encounter with the defendant was not an unreasonable seizure. *Id*. at 970. While those decisions may still be valid in light of *Caniglia's* distinction between searches or seizures of vehicle and home, the instant case is different.

Although the Supreme Court's clear finding that the community caretaking doctrine does not act as a standalone exception to the warrant requirement did not exist at the time of the trial court's decision, current precedent is clear. The trial court's application of the community caretaking doctrine is in error. While the appellate court affirmed the finding on different grounds, it did not expressly rule on whether the community caretaking doctrine *would* apply. The Supreme Court has now made a clear ruling on the issue, which Appellant submits overrules the finding of the trial court that this doctrine made the warrantless entry into Appellant's home reasonable.

Even if this Court finds that *Caniglia* does not expressly overrule the application of the community caretaking doctrine to the home, the situation here is vastly different than other Illinois cases applying the exception.

ii. The trial court misapplied the Community Caretaking Doctrine and the appellate court's failure to overrule essentially approved of this misapplication

By affirming the trial court's ruling on the motion to suppress and failing to expressly overrule that application, the appellate court allowed the misapplication to stand. Previous Illinois cases have helped to define whether specific police activity satisfies the first of the two-factor test for community caretaking; that is, "caretaking" which is independent of the investigation of criminal activity. See *e.g.*, *McDonough*, and *Robinson, supra*; see also *People v. Kolesnikov*, 2020 IL App (2d) 180787, ¶ 1 (finding the community caretaking doctrine applied where officers arrived on scene after receiving a call that a resident was suicidal, and subsequently saw cannabis in plain view); *People v. Woods*, 2019 IL App (5th) 180336, ¶ 34 (community caretaking doctrine applied to a report of an infant left unattended in a house).

In *Hand*, to which the trial court compared the Appellant's case, the court addressed whether a police officer's warrantless entry and search of the defendant's residence were valid under the community caretaking doctrine. 408 Ill.App.3d 695 (2001). There, Officer Kozeluh was responding to a man's request that the officers accompany him into his apartment, both to retrieve his belongings and to check on the welfare of his children. *Id*. at 696, 699. The man worried for the children's safety, stating that his wife may not be feeding them and was not mentally well. *Id*. When one officer knocked on the door and announced his name and office, there was no response from the wife, whom neighbors confirmed was inside. *Id*. The officer then used a key provided by the husband to open the door. The woman responded by trying to hold the door closed and eventually attempted to hit the officer with a baseball bat. *Id*. at 696-97. The officer

was ultimately able to gain entry to the apartment and arrested the woman. The defendant moved to suppress the evidence obtained as a result. *Id*.

The court in *Hand* found that it was reasonable for the officer to enter the residence under the community caretaking doctrine. The court explained how the actions of Officer Kozeluh were objectively divorced from the investigation of a crime, stating:

> [the entry was founded] on the police officer's reasonable concern for the welfare of the children. [Husband] had told Kozeluh that he feared his children were not being fed. Also, [husband] was concerned about the children's well-being in the context of the defendant's mental health because she had told him she talked with the dead and mentioned witchcraft and sorcery to him. The defendant's failure to respond further to Kozeluh after she acknowledged his knock on the door and announcement of his office was not what the police officer expected when performing a routine well-being check. The defendant would not open the door or talk to Kozeluh. The defendant resisted Kozeluh's attempt to open the door even after she agreed to open it for him. Evaluating the totality of the circumstances, Kozeluh was justified under the community caretaking exception to enter the defendant's apartment.

Id. at 703. The *Hand* court therefore affirmed the trial court in holding that children inside the residence with a mentally unstable parent presented the officer with an emergency situation and created an immediate need for the officer's assistance. *Id*. at 700-01. The court went on to stress that the "community caretaking exception is necessary for the public's protection when a police officer objectively and reasonably believes there is a need to seek information about an individual's well-being." *Id*. at 703. Having determined that the officer was performing a function rather than investigation, the court addressed the second criteria, and found that the officer's search once inside the residence did not exceed the scope of justification for his entry. *Id*.

The facts in *Hand* are not analogous to the instant case. Here, it is clear that the officers who entered 5038 N. Harding were not acting in their community caretaking function. The officers in *Hand* were responding to a cohabitant father's request to enter

his own home to help his children who were in danger. 408 Ill.App.3d at 696. Here, the officers were responding to a potential battery in progress after an uninvolved neighbor reported overhearing wrestling. (A-2, ¶ 8). The officers in *Hand* arrived on the scene of an active emergency – children who had not been fed for an unknown amount of time in the home, alone with a mentally unwell mother. *Id*. at 700-01. Here, the officers arrived at a scene involving two adults after all noise and possible fighting had ceased and heard nothing unusual during their time there. (A-3, ¶ 9; A-4, ¶ 12). The officers in *Hand* were refused entry to check on the endangered children by the same person accused of endangering them, who then confirmed their suspicions by attempting to hit the officers with a baseball bat. *Id*. at 696-97. Here, the officers had no knowledge who was inside the apartment or who, if anyone, was in danger. The officers did not request entry into the apartment. The officers instead spoke with Appellant, who opened the door and responded to their questions. (A-3, ¶ 9). The similarities between the cases start and end with officers entering the apartment – the reason for their arrival on scene, the matters to which they believed they were responding, and the manner of entry into the homes all make it clear that while *Hand* involved actions totally divorced from law enforcement, the instant case solely involves investigation of criminal activity.

The *Hand* court's finding that the totality of the circumstances justified the officer's warrantless entry into the home under the community caretaking doctrine is simply inapplicable. Unlike in *Robinson*, there is no indication in the record that the officers initiated any of their actions based on a concern for someone's well-being. 368 Ill.App.3d 963. Unlike in *McDonough*, there is no indication in the record that the officers observed a person in a situation that would require their assistance. 239 Ill.2d

260. An officer who thinks that "something didn't feel right" must still comply with the Fourth Amendment, and the officers here failed to do so. (Sup R 47).

Alternatively, even if this Court finds that the officers were performing a caretaking function at some point in the encounter, the resulting entry and search of Appellant's home exceeded the scope permissible under that function. The records shows there was no evidence discovered while the officers were first at the apartment which would justify their ever-broadening scope of intrusion. Comparing the case with *Hand*, where the officers were justified in entering the apartment and searching for the children, there was actual confirmation the children could be in danger after the officers made contact with the mother prior to entry. 408 Ill.App.3d at 703. Here, the officers continuously widened the scope of their search without any evidence to support that action: first, based on Mr. Aljohani's failure to answer the door a second time, and next, based on open doors at the rear of the property, which Officer Lugo admitted could have been opened by someone else at some other time. (Sup R 36-37). The officers continued to extend their search based on nothing more than open doors, until they were inside a private residence, in the middle of the night, without a warrant. Ultimately, the extended the search as far as they could, searching the entire apartment room by room. (A-3, ¶ 10).

The same theme runs through the above cases: when police activity is not connected to the investigation of a potential crime, but is instead for the purpose of ensuring the immediate well-being of the community, it may fall within the community caretaking doctrine. Although the First District court affirmed the trial court on a different basis, by not overruling the trial court's decision the appellate court allowed the applied exception to include police conduct in direct response to criminal activity.

This Court should find that the community caretaking doctrine does not apply where officers respond to a possible battery and conduct a warrantless entry into a home – a finding which would ensure proper application of the doctrine, as well as that in *Caniglia*. Appellant requests this Court make such a finding and remand with instructions.

c. Emergency Aid Exception to the Warrant Requirement in Illinois

The history of the emergency aid exception to the warrant requirement in Illinois is marked by a divergent line of decisions among the Districts. At present, the different Districts apply a two or three-factor test which uses a sometimes objective, sometimes subjective test, depending on the District. The two-factor test is objective, while the three-factor test adds a subjective consideration. The decision of the First District in this matter exacerbates the existing conflict and must be resolved by this Court.

i. History and existing conflict on application of test

In *People v. Clayton*, 34 Ill.App.3d 376, 378 (1975), the First District appellate court had the opportunity to discuss the beginnings of Illinois' approach to the emergency aid exception to the warrant requirement. The *Clayton* court relied on the previous First District case of *People v. Brooks*, 7 Ill.App.3d 767 (1972), which itself relied on the holding of the United States Court of Appeals from the District of Columbia, explaining:

> In our opinion, determination of legality of the entry here depends upon the circumstances which confronted the police as determined from their point of view. If the entirety of all of the circumstances known to the police reasonably convinced them that an emergency or exigent circumstances existed which required immediate action, then they acted properly in entering the private home. In other words, 'breaking into a home by force is not illegal if it is reasonable in the circumstances.'

Id., quoting *Wayne v. United States*, 318 F.2d 205, 212, *cert. denied* 375 U.S. 860 (1963). The opinion in *Clayton* provided the basis for the Fifth District in *People v. Bondi*, 130 Ill.App.3d 536 (5th Dist. 1984) to formulate a three-factor test for application of the emergency aid exception.

In *Bondi*, the Fifth District cited *Clayton* for the proposition that "no warrant is necessary when, as here, the authorities' entry into and search of a premises was for the purpose of providing aid to persons or property in need thereof." 130 Ill.App.3d at 539. Citing Professor Wayne LaFave's treatise on Search and Seizure (2 W. LaFave, Search & Seizure, sec. 6.6(a), at 469 (1978)), the *Bondi* court then announced the following test for the emergency aid exception:

> (1) The police must have reasonable grounds to believe that there is an emergency at hand and an immediate need for their assistance for the protection of life or property.
>
> (2) The search must not be primarily motivated by intent to arrest and seize evidence.
>
> (3) There must be some reasonable basis, approximating probable cause, to associate the emergency with the area to be searched.

Id. at 539. By examining both the subjective motivations of the officers and the need for an objectively reasonable basis for the search - "approximating probable cause" - the Fifth District created a hybrid test for the use of the emergency aid exception. This hybrid test was then adopted by other districts. *See People v. Smith*, 242 Ill.App.3d 668, 673-74 (1st Dist. 1992) (citing the three-factor test in *Bondi*); *People v. Feddor*, 355 Ill.App.3d 325, 329-30 (2d Dist. 2005) (Second District referencing the three-factor *Bondi* test, citing *Bondi* as it basis).

The year after its decision in *Feddor*, the Second District appellate court formally abandoned the *Bondi* test in *People v. Lewis*, 363 Ill.App.32d 516, 523 (2d Dist. 2006). In *Lewis*, the Second District court explained that, although it holds the first and third factor of the *Bondi* test remain sound:

> we depart from *Bondi* and its progeny on factor two, which requires that the search not be primarily motivated by the intent to arrest a suspect or seize evidence. That is, we hold that scrutiny of an emergency-assistance search should be based on the objective circumstances of the situation, not on the subjective motives of the officers involved.

Id. (internal citations omitted). Thus, the Second District formally created a conflict with the Fifth District. Subsequently, the United States Supreme Court invalidated the subjective factor of the formerly three-part test in *Brigham City v. Stuart*, 547 U.S. at 404-05 (holding that the United States Supreme Court's previous cases "'make clear' that 'the subjective motivations of the officers … ha[ve] no bearing on whether a particular seizure is 'unreasonable' under the Fourth Amendment,"); See also *People v. Lomax*, 2012 IL App (1st) 103016, n.2.

The First District adopted the two-factor approach of the Second District in *Lomax*, 2012 IL App (1st) 103016, explaining that the Second District "has used a two-step test for determining whether the exception applies." *Id*. at ¶ 29, citing *People v. Ferral*, 397 Ill.App.3d 697 (2009). Thus, as of 2012, the First and Second District appellate courts employed a two-factor, objective test for use of the emergency aid exception. This was recently confirmed in *People v. Kulpin*, which employed the two-factor test. 2021 IL App (1st) 180696, ¶ 41. The Fifth District, however, continues to use the three-factor, hybrid approach first announced in *Bondi*, albeit most recently in unpublished, non-precedential opinions. *See People v. Berg*, 2019 IL App (5th) 160272-

U, ¶ 46. Thus, there continues to be a significant conflict among the districts in the fundamental approach to evaluating the applicability of the emergency aid exception.

ii. Application of either the two or three-part test weighs in favor of granting Appellant's motion to suppress

Regardless of whether this Court employs a two or three-factor test to evaluate the application of the emergency aid exception, the factors still weigh in favor of the Appellant. Both sides of the District-split apply two of the factors: 1) that there are reasonable grounds to believe that there is an emergency at hand which requires the intrusion, and 2) "there must be some reasonable basis, approximating probable cause, to associate the emergency with the area to be searched." *Bondi*, 130 Ill.App.3d at 539, *Kulpin*, 2021 IL App (2d) 180696, ¶ 41. Setting aside the additional, subjective factor, the emergency aid doctrine does not apply here as an exception to the warrant requirement.

As the *Kulpin* court explained, "[t]he reasonableness of an officer's belief that an emergency exists is determined by the 'entirety of the circumstances known to the officer at the time of entry.'" *Id*., quoting *Ferral*, 397 Ill.App.3d at 705. In this matter, the entirety of the circumstances known to the officers at the time of entry do not support a finding of exigency.

The reasonable grounds to believe an emergency was at hand which required the warrantless intrusion of the police are limited, if any exist. Other than the report of the downstairs neighbor that he heard an argument and wrestling sounds, the officers had no reason to believe that anyone inside the upstairs apartment was injured or in need of aid. They heard no noises, no wrestling, no scuffle. Appellant answered the door and spoke with the officers, even answering their questions. The officers did not ask to enter the apartment to check on anyone. The officers then left the upstairs apartment.

After the officers left and returned to the upstairs apartment at the behest of the neighbor, no one answered the knocks of the officers. This fact does not suggest that something was amiss; instead, it is a realistic response that the people inside to not wish to continue talking in the 4 o'clock hour of the morning, after already speaking with police. The officers believed the same because they left and reported to OEMC that everything was okay. None of these facts rise to the level of reasonable grounds to believe there is an emergency which requires their instrusion.

This analysis also does not change in light of the open doors the officers found at the rear of the property. As Officer Lugo testified, he had no idea how long the rear gate or side door to the garage had been open. Upon discovering the rear door to the apartment building open, the officers did not attempt to re-initiate contact with the downstairs neighbor, who was clearly more than willing to assist. Instead, they continued upstairs and into the Appellant's apartment. The only additional facts which could support their warrantless entry are the open gate and doors. There is nothing about the open doors which would offer *reasonable* grounds to believe there was an emergency. Simply put, through the lens of "reasonable grounds," there was no basis to believe there was an emergency which required police assistance. Indeed, any such notion would have been dispelled when the officers initially returned to their patrol car and informed OEMC that everything was okay.

The passage of time also supports a finding that there existed no reasonable grounds to believe there was an emergency at hand. As Officer Lugo testified, approximately 15-20 minutes passed from when the officers first spoke with the downstairs neighbor and when the entered Appellant's apartment. While the passage of

time alone is not dispositive, when considering the totality of the facts (or lack thereof) supporting an emergency, the passage of time is a vital consideration, as discussed in *Lomax*, 2012 IL App (1st) 103016.

In *Lomax*, officers responded to numerous 911 calls that shots had been fired in or near the first-floor, rear apartment of a two-flat unit. Officers arrived within two or three minutes, knocked on the front door, and when answered, asked the occupants of the apartment to exit. 2012 IL App (1st) 103016, ¶¶ 6-7. The officers entered to perform a "visual safety check" to ensure no one was injured. *Id*. During the visual safety check the offices found "body armor, a pistol holster, pistol belt, and pistol ammunition" while another officer found a separate pistol. *Id*. at ¶ 8. These items were found in plain view and there is nothing to suggest that any more detailed search was conducted.

The circuit court granted the defendant's motion to suppress. After moving the court to reconsider, the State argued that the officers were justified "in believing that their entry into the defendant's residence was necessary to prevent injury or death." 2012 IL App (1st) 103016 at ¶ 14. The appellate court found that nothing in the record showed the officers ever looked in drawers or crawlspaces. *Id*. at ¶ 23 ("At the suppression hearing, the trial court restated the facts of the case and included a statement that the police went through drawers and looked in crawl spaces when there is nothing in the record to support this finding. Nothing in the record suggests that the police officers did anything more than perform a plain view search,"). The appellate court reversed the circuit court's decision.

In coming to its conclusion, the *Lomax* court cited *People v. Feddor*, 355 Ill.App.3d 325 (2005), to distinguish a case in which there was no emergency aid

exception to the warrant requirement. *Id*. at 34. One of the reasons for finding that there was no emergency in *Feddor* was the passage of time. The *Lomax* court explained the specific facts of *Feddor*:

> the police knew that the defendant had been in an accident, that he had driven himself home, that the [911] caller had not noticed anything physically wrong with the defendant, and that the defendant did not answer the door. Based upon these facts, the court concluded that the police could not reasonably believe an emergency was occurring. Nothing would reasonably suggest to the police that the defendant required immediate aid to "safeguard his [physical] well-being.

Lomax, 2012 IL App (1st) 103016, at ¶ 34, citing *Feddor*, 355 Ill.App.3d at 327. Similar to *Feddor*, the officers in this case could not have formed a reasonable basis to believe there was an emergency to support the emergency aid exception to the warrant requirement. The *Lomax* court also considered that that police in *Feddor* waited ten minutes outside the defendant's home before requesting aid from the fire department – a fact which the court found strongly suggested the police did not believe there was an emergency. *Lomax*, 2012 IL App (1st) 103016 at ¶ 34, 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 in doubt,").

Here, If the officers were concerned about the safety and well-being of a third party in the Appellant's home, they would have acted on that concern as soon as they arrived, rather than waiting 15-20 minutes. Instead of asking the Appellant to step into the hallway and entering to conduct a brief search as in *Lomax*, the officers here talked to the Appellant, reassured the downstairs neighbor, and ended the service call with dispatch indicating everything was okay. Fifteen to twenty minutes after initial contact, the officers entered the curtilage and then the apartment of the Appellant without a warrant.

More important, no officer ever testified that they believed any emergency existed. This supports that it is not objectively reasonable to believe that an emergency existed. Regardless of which test is applied, this factor does not support the application of the emergency aid exception to the warrant requirement.

Moving on to the last factor which is shared by both the two and three-part test, the court must examine, there must be "some reasonable basis, approximating probable cause, to associate the emergency with the area to be searched." *Bondi*, 130 Ill.App.3d at 539, *Kulpin*, 2021 IL App (2d) 180696, ¶ 41; *People v. Aljohani*, 2021 IL App (1st) 190692, ¶48. Appellant must concede that the events at issue happened near Appellant's apartment and will not test the intelligence of the Court by asserting otherwise. However, it is Appellant's firm assertion that there was simply no reasonable basis to believe an emergency existed – instead, the officers simply helped themselves to open doors after concluding that everything was okay.

As for the third factor only used by the Fifth District – that the search must not be primarily motivated by the intent to arrest and seize evidence, there can be little argument as to the officer's motivations. At no time did Officer Lugo express a belief that someone inside the apartment might be injured. Indeed, none of the facts would support such a finding. The Appellant came to the door when summoned and answered the questions of the officers. When they left the apartment the first time, Officer Lugo was satisfied he had done his job. (Sup R 52). When the officers left the apartment, they manifested this belief by informing OEMC that everything was okay. But, when responding to a call of a battery, and armed with the hunch that "[s]omething didn't feel right," (Sup R 47), the officers continued investigating. The officers continued their investigation by entering

open doors where they found them, ultimately entering and searching Appellant's apartment without a warrant and absent exigency. The third factor weighs in favor of the Appellant.

If the First District Appellate Court used the approach of the Fifth District, they would have assessed the objective fact that the officers indicated to OEMC that everything was okay, while still proceeding with the warrantless entry and search of the Appellant's apartment based on nothing more than a subjective hunch. The facts contained in the record do not support the appellate court's affirmance of the denial of the motion to suppress on any grounds, let alone the emergency aid exception. Appellant requests this Court reverse the decision of the appellate court and remand with instructions.

iii. Once Talal Aljohani's body was discovered, exigency dissipated and a warrant should have been obtained

Assuming, *arguendo,* that the officers warrantless entry was supported by the emergency aid exception, once the body was discovered, exigency on that basis no longer existed. At that point, officers should have ceased their search and investigation, secured the scene, and obtained a warrant. As such, it was improper for officers to continue to search and gather evidence after the exigency dissipated, which ultimately led to discovery of the murder weapon. Although the appellate court in *Kulpin* did not take up the issue, it did note that the trial court relied on officer actions after they discovered the body of the person for whom they were searching. *Kulpin,* 2021 IL App (2d) 180696, ¶ 29 (explaining the trial court's rationale for allowing warrantless entry under the emergency aid exception, noting that once the body was discovered, the officers "immediately left the premises" and ultimately secured a warrant.

II. Other Matters on which the Appellate Court Erred

a. The Appellate Court erred in finding the evidence presented was sufficient to prove guilt beyond a reasonable doubt, and misstated critical facts in the process

"Where a criminal conviction is challenged based on insufficient evidence, a reviewing court, considering all the evidence in the light most favorable to the prosecution, must determine whether any rational trier of fact could have found beyond a reasonable doubt the essential elements of the crime." *People v. Brown*, 2013 IL 114196, ¶ 48. In this case, there was not sufficient evidence to find Mr. Aljohani guilty beyond a reasonable doubt, especially where the Appellate Court's original opinion misstated critical facts in affirming the trial court.

In its order affirming the decision of the trial court, the Appellate Court incorrectly stated one of the most significant facts presented at trial. Specifically, the appellate court relied on the misapprehension that the Appellant's blood was located on the handle of the alleged murder weapon throughout its original opinion, and used that misunderstanding, in part, to support its holding. These four occasions are listed as follows:

- "The parties stipulated that a forensic chemist would testify that DNA from blood on the knife blade matched the victim and DNA from the blood on the knife handle matched the defendant's DNA." (A-33, ¶ 5), compare (A-2, ¶ 5);
- "Margaret Ness, a forensic chemist, if called to testify, would testify that she analyzed the material in this case and found … (3) that the blood stain from the knife handle was a mixture of at least two people and contained a

DNA profile that 'matches the DNA profile of the defendant and does not match the DNA profile of [the victim].'" (A-41, ¶ 27), compare (A-10, ¶ 27);

- "The DNA evidence established that the victim's blood was present on defendant's underwear when he was arrested, that blood on the knife blade was from the victim, and that blood on the knife's handle was from the defendant." (A-58-59, ¶ 86) compare (A-27-28, ¶ 86);
- "In addition, the victim's blood was found on the knife blade, while defendant's blood was on the handle. Where the victim's blood was found on both defendant and the blade of the apparent murder weapon and where the defendant's blood was found on the weapon's handle, we cannot find that the trial court, as factfinder, was irrational for not inferring that the DNA of a third person would have been found in other blood stains." (A-59, ¶ 89) compare (A-28, ¶ 89).

This mistake of fact is problematic because the appellate court relied on it as partial support for its holding related to the sufficiency of the evidence. The record is devoid of any mention of a blood stain on the handle of the alleged murder weapon; instead, the record reflects that there was no blood on the knife handle. The DNA recovered from the handle appears to be the result of touch or trace DNA.

The parties stipulated that evidence technicians recovered evidence and submitted it for DNA analysis, including "[b]lood stain from the defendant's underwear, inventoried under inventory number 13397564. A swab of blood stain from a knife blade inventoried under number 13395745. A swab from the knife handle, inventoried under

13395745." (R 35-36). The delineation between blood stains and the mere knife handle was maintained in the parties' stipulation about Illinois State Police forensic chemist Meghan Ness.

In discussing the results of Ms. Ness's DNA analysis, the parties stipulated as follows:

> A human male profile was identified in the swab of the *blood stain* from the knife blade which matches the DNA profile of Talal Aljohani and does not match the DNA of the defendant. This profile would be expected to occur in approximately one in nine point six sextillion blacks. One in fifteen sextillion white. One in fifty-three sextillion Hispanic unrelated individuals.
>
> A mixture of human DNA profiles was identified in the swab from the knife *handle*, which would be interpreted as a mixture of at least two people. A major human male DNA profile was identified in the swab from the knife *handle* which matches the DNA profile of the defendant and does not match the DNA profile of Talal Aljohani.

(R 37-38) (emphasis added). This differentiation between blood stain and knife handle was argued by the State in closing arguments (R 87) and was relied on by the trial court. (R 97) ("… physical evidence which show's Talal's blood on the knife blade, defendant's DNA on the knife handle. And Talal's blood on the defendant's underwear,"). At first blush this may seem a distinction without a difference, but the difference is significant.

In his appellate briefs, Appellant argued that there was little physical evidence tying him to the murder of Talal Aljohani. Appellant further argued that his DNA being present on the knife handle should be expected. After all, the alleged murder weapon was part of a steak knife set found in the kitchen of Appellant's apartment; an apartment he lived in for months before the murder. Indeed, his DNA was likely to appear on the handle of the steak knife, or any cutlery in the kitchen of his apartment. Had the DNA evidence on the handle of the knife come from a blood stain belonging to Appellant, the

appellate court would be justified in relying on that fact. But the record is without any mention of a blood stain on the handle of the knife believed to have been used to murder Talal Aljohani. Moreover, the record creates a clear divide between DNA evidence taken from blood stains and that taken from other sources. The appellate court apparently agreed with this recitation of the record because it issued a modified opinion correcting these facts.

Despite the appellate court's heavy reliance on this misunderstanding to support its conclusion, the appellate court simply corrected the wording of its opinion, but not the reasoning, and came to the same conclusion – essentially erasing all support it previously found in the incorrect blood stain evidence.

If the Appellant's blood was found on the handle of the alleged murder weapon, the evidence in this case would be entirely different. Instead of his blood, however, it was his DNA alone found on the knife handle and was likely present on many if not all of the utensils in his kitchen. The defense's argument at trial and Appellant's argument today is that the presence of his DNA on the handle of a kitchen utensil in his own home proves nothing. The appellate court's modified opinion, in part based on the statement that the Appellant's blood was on the handle of the knife, thus cannot stand, and simply fixing the offending sentences in a modified opinion is not sufficient to sustain the Appellant's conviction. Such action was in error and should be correct by this Court.

CONCLUSION

WHEREFORE, Defendant-Petitioner 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: November 3, 2021

Respectfully submitted,

By: /s/ Stephen F. Hall
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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 40 pages.

By: /s/ Stephen F. Hall
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NO. 127037

IN THE SUPREME COURT OF ILLINOIS

ABDULLAH ALJOHANI,	) Appeal from the Appellate Court
	) of Illinois, First District,
Plaintiff-Appellant,	) No. 1-19-0692
	)
	) There on Appeal from the Circuit
v.	) Court of the First Judicial Circuit,
	) Cook County, Illinois
	) No. 15 CR 6105
PEOPLE OF THE STATE OF ILLINOIS,	)
	) The Honorable
	) Timothy J. Joyce,
Defendant-Appellee.	) 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 November 3, 2021, 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 Brief and Appendix of Plaintiff-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 November 3, 2021.

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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

APPENDIX

Table of Contents to the Appendix

corrected copy

2021 IL App (1st) 190692
No. 1-19-0692
Modified opinion filed January 28, 2021

FOURTH DIVISION

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. ABDULLAH ALJOHANI, Defendant-Appellant.	)	Appeal from the Circuit Court of Cook County. No. 15 CR 6105 The Honorable Timothy Joseph Joyce, Judge, presiding.

PRESIDING JUSTICE GORDON delivered the judgment of the court, with opinion. Justices Lampkin and Reyes concurred in the judgment and opinion.

OPINION

¶ 1 After a bench trial in Cook County circuit court, defendant Abdullah Aljohani, age 27, was convicted of the first degree murder of his roommate, Talal Aljohani, who was found stabbed to death in their apartment on March 15, 2015. Although they shared the same last name, the victim and defendant were not related. Defendant was sentenced to 23 years with the Illinois Department of Corrections (IDOC).

¶ 2 On this direct appeal, defendant claims (1) that the trial court erred in denying his motion to suppress evidence, on the ground that the police officers' warrantless entry into the

apartment immediately after the murder was not justified by the community caretaking exception, (2) that the trial court erred by admitting evidence of defendant's flight as circumstantial evidence of his guilt, and (3) that the State's evidence was insufficient either to prove defendant guilty beyond a reasonable doubt or to justify denying defendant's motion for a directed finding.

¶ 3 For the following reasons, we do not find these claims persuasive and affirm.

¶ 4 BACKGROUND

¶ 5 In brief, the State's evidence at trial established that defendant's downstairs neighbor heard sounds of wrestling and screaming coming from the apartment above. When the neighbor knocked on defendant's apartment door, defendant answered and stated that there had been an argument but everything was okay. Shortly thereafter, officers found the victim stabbed to death inside the apartment, with a broken and bloody knife nearby. The parties stipulated that a forensic chemist would testify that DNA from blood on the knife blade matched the victim and DNA found on the knife handle matched defendant's DNA.

¶ 6 I. Pretrial Proceedings

¶ 7 At the suppression hearing on defendant's pretrial motion to suppress, defendant bore the burden of proof, and he argued that the officers' "entry" into his apartment was illegal without a warrant and anything "recovered pursuant to the illegal entry" should be suppressed.

¶ 8 The defense called Officer Banito Lugo of the Chicago Police Department as its sole witness. Lugo testified that, on March 15, 2015, at 4:15 a.m., he and his partner, Officer Anthony Richards, responded to a call concerning a battery in progress at defendant's apartment building. Khalid Ali, a neighbor and the person who had called the police, met them outside the building. Ali told the officers that he understood Arabic and that he had heard a

loud verbal argument between two men in Arabic in the apartment above, which was followed by the sound of two people wrestling. Ali then heard a person asking "are you ok, get up," and he heard the wrestling stop. Ali further informed the officers that he went upstairs, where he spoke with defendant, and that defendant stated that the victim, whom defendant described as his brother, was in the bathroom.

¶ 9 Lugo testified that, after Ali let them into the building, they went upstairs and knocked on defendant's apartment door and talked to defendant. Defendant stated in English that everything was okay. The officers asked if they could speak with his "brother," and defendant replied that he was sleeping. The officers went back downstairs, where Ali was "adamant" that someone was seriously injured, so the officers went back upstairs and knocked again on defendant's door. This second time, the officers knocked for five minutes and received no response. Then they exited the building and returned to their squad vehicle, where they punched in a code to indicate that they had completed their assignment and everything was okay. Despite punching in the code, the officers did not depart. Instead, they drove around the building and into the alley behind the building because, as Officer Lugo explained, "[s]omething didn't feel right." After parking, they observed that the back gate was open. The officers then proceeded into the yard and found that the garage door was open and the side entrance to the back of the building was also open. The officers entered the side entrance and went back up to the second-floor apartment, where they observed that the back door to the apartment was "wide open."

¶ 10 Lugo testified that they knocked on the back door and announced their "office" but received no response. The officers entered the apartment, walking first into a hallway where they did not observe anything unusual. The officers then decided to look through the apartment

room by room, until they arrived at the southeast bedroom, where they observed the victim lying on a mattress. Observing no wounds at first, the officers again announced their "office" and received no response. After determining that the victim was unresponsive and not breathing, they called for an ambulance. Defendant was no longer present in the apartment. The officers were not asked any questions about any further search after the discovery of the body.

¶ 11 Prior to closing argument on the suppression motion, the trial court asked defense counsel what exactly defendant was seeking to suppress. Counsel responded that there was a subsequent search of the apartment and it was the items recovered during this subsequent search that defendant was seeking to suppress. The court then asked: "So the defense is seeking to suppress anything the State wants to put into evidence that was recovered from this apartment up on the second floor?" When both parties agreed, the court explained that it wanted to ensure that "we're on the same page with respect to what the defense is trying to do." When both parties said yes, the court stated: "I'll consider that a stipulation."

¶ 12 In closing, the State argued that "this falls squarely within the emergency aid doctrine." The State also argued forfeiture by wrongdoing and inevitable discovery. With respect to forfeiture, the State argued that defendant cannot be allowed to silence the only other person who would have been able to consent to the police's entry to help him. The defense argued that "there was nothing unusual" about defendant's behavior when he answered the door and the officers did not ask him at that time for consent to enter the apartment because they had no concerns. When the officers drove to the back of the building, they had no information about how long the gate or the door had been open.

¶ 13 After listening to the testimony and the arguments of counsel, the trial court found, "first[,] I believe Officer Lugo." The court observed that, when the police went back up to the second-floor apartment a second time and knocked for a solid five minutes at "4:15 in the morning," the fact that no one answered "clearly gave them pause," and "that's why" they went downstairs and drove to the back of the building. At the back of the building, they observed "a garage door open, the back gate open, this side door to the apartment building open," and the back door to the apartment open. The trial court found it "reasonable" that "they wanted to make sure that no one is in any distress." The trial court found that the officers "were not investigating a crime, they had no reason to believe a particular crime had taken place. They wanted to make sure that everyone was okay." This desire was further supported by the fact that the police knew that there had just been "some kind of physical altercation *** where somebody was heard to say are you okay, get up."

¶ 14 In conclusion, the trial court found that "the circumstances herein taking place without any warrant by the police falls squarely within the community caretaking function," and the motion to suppress was denied.

¶ 15 II. Trial

¶ 16 The bench trial proceeded immediately after the conclusion of the pretrial suppression hearing, and the parties stipulated that, if called to testify, Officer Lugo would provide the same testimony that he had provided during the pretrial suppression hearing. The trial court accepted the stipulation, "[s]ubject to an appreciation of whatever he testified to in the motion was admissible in the motion and might not be admissible at trial, [and] would be so considered by the Court."

¶ 17 The State's first witness at trial was Abduilhadi Aljohani, who testified that he was a police officer in Medina, Saudi Arabia. After identifying a photo of the victim as his brother, the witness testified that the victim grew up in Saudi Arabia and came to Chicago in December 2014 to attend college. In Chicago, the victim lived with defendant. Although the victim and defendant share the same last name, they were not related. The witness testified that he last spoke to the victim on the telephone the day before the victim died.

¶ 18 The State's next witness was Khalid Ali, the neighbor who had originally contacted the police. Ali, 46 years old, testified that he was born in Somalia and can understand Arabic. Since 2004, he has been a taxicab driver in Chicago. Ali lives with his wife and five children on the first floor of the same building where defendant and the victim lived on the second floor. Defendant and the victim moved into the building in December 2014, and Ali met them in January 2015. When they spoke together, they spoke mainly in Arabic.

¶ 19 Ali testified that in the early morning hours of March 15, 2015, his wife woke him up. After he woke up, he heard, first, the sounds of wrestling, and then he heard yelling and screaming, all coming from the upstairs apartment. Ali then heard defendant calling the victim's first name, "Talal, Talal," and next he heard "ah, ah," which sounded to him like "panic." Ali also heard defendant stating "come, come" which he understood to mean "stand up or wake up." Ali went upstairs and knocked on defendant's door, and defendant answered. When Ali asked "what happened," defendant replied that there was a small argument, but then defendant gave a two-thumbs up sign and stated "everything is okay."

¶ 20 Ali testified that, after defendant shut the door, Ali returned to his own apartment. However, after a few minutes, Ali went upstairs and knocked on defendant's back door. When defendant opened the back door, defendant stated again that "everything is okay." Ali asked

where the victim was, and defendant replied that the victim was in the bathroom. However, through the open back door, Ali could observe the inside of the bathroom and could observe that the victim was not in it. The bathroom is directly in front of the back door. Ali testified that he had been in defendant's apartment before and there is only one bathroom. Ali asked defendant again where the victim was, and this time defendant replied that the victim was on the telephone talking with his family.

¶ 21 Ali testified that he asked defendant if he could observe the victim, and defendant repeated that the victim was on the telephone talking with his family. Ali asked again, and then defendant appeared "a little bit mad" and stated "do whatever" and closed the door. After returning to his own apartment, Ali called 911 to "mak[e] sure that Talal is okay." When the officers arrived, Ali met them outside, told them what he had heard, and let them into the building.

¶ 22 On cross-examination, Ali testified that, when his wife woke him up, she told him that she had heard defendant and the victim singing earlier that morning, at 1 or 2 a.m. Twenty or thirty minutes before she woke him up, she heard something being thrown and someone expressing pain and saying "awe." After Ali heard the wrestling, he called the owner of the building and told him the "upstairs guys are fighting."

¶ 23 Ali testified that he had had a good relationship with defendant, and he knew that both defendant and the victim were attending school. Ali had never heard defendant and the victim argue before and had never observed the victim drinking alcohol. Ali did not know whether defendant and the victim had invited anyone to their apartment that evening. The noise that Ali heard sounded to him like two people wrestling, but it could have been more people. Ali added that, after he heard defendant saying "Talal, Talal," he heard "somebody dragging like a leg or

something" on the floor and somebody walking. Ali testified that the shower had a glazed-glass door and he could tell if someone was taking a shower. However, he admitted that he could not observe the bathroom sink from the back door.

¶ 24 David Ryan testified that he recently retired from the Chicago Police Department but that he had been the forensic investigator who examined defendant's apartment after the homicide. Ryan arrived on the scene at 5:50 a.m. on March 15, 2015, where he observed the victim lying on one of two mattresses in the southeast bedroom. Ryan observed a wound on the victim's hip, a large wound in the victim's midsection, and the victim's bloody shirt. When Ryan moved a suitcase on the floor of the southeast bedroom, he found a steak knife with a 3½-inch handle and a 4-inch blade with blood on the blade. In the same bedroom, Ryan found a second steak knife that was broken in two, with the 4-inch blade broken off the handle. Ryan obtained fingernail scrapings from the victim at the scene. Ryan also observed blood on the lower part of the south wall in the southeast bedroom near the light switch, on the west wall, and on the exterior side of the bedroom door.

¶ 25 Dr. Kristin Escobar, an assistant medical examiner and pathologist, testified that she performed the autopsy on the victim. During the autopsy, she observed injuries to his face, neck, chest, abdomen, and legs. The lower right side of his face and his chest each had a cluster of abrasions, and incised wounds were present on his chest, hip, and legs. The pathologist explained that an incised wound was "a superficial cut" caused by a sharp-edged weapon. There was also a stab wound on the upper right side of the abdomen, which was eight centimeters deep. During the internal examination, she observed that the stab wound resulted in a "sharp force injury to his liver as well as the inferior vena cava and the aorta." The pathologist found, within a reasonable degree of medical and scientific certainty, that the

victim died from the stab wound to his abdomen. She testified that the other wounds that she described were "fresh" from "around the time" of the victim's death. She explained that she was able to determine this because there was hemorrhaging around the wounds, which indicates that the victim was still "alive around the time that these injuries were inflicted." At the conclusion of her direct examination, she testified that she had found, within a reasonable degree of medical and scientific certainty, "that the manner of death was a homicide, meaning that he was killed by another person." On cross-examination, she testified that a knife fight between two people was "a possibility." She also agreed with defense counsel's statement that she had "no way of determining whether or not the victim in this case was in the process of attempting to attack somebody else." In response to a question by the court, she opined that, with this type of injury, a person would live only a couple of minutes.

¶ 26 Officer Anthony Acevez, the arresting officer, testified that on March 17, 2015, in the early afternoon, he observed defendant on the street with another man in an area with retail stores. Acevez was in plain clothes but was also wearing a police vest with "police" on the back and a gun holster. Acevez was with two other officers who were also in plain clothes. When Acevez first observed defendant on the street, Acevez was sitting in an unmarked vehicle and made eye contact with defendant. Acevez was 10 to 15 feet away from defendant, and the weather was clear. When they made eye contact, defendant immediately began to run, and Acevez chased him on foot. Defendant's companion ran with defendant, and the two men ran for about three-quarters of a block, until Acevez tripped the other man, who then fell into defendant. Both defendant and the other man landed on the ground. Acevez then placed defendant in custody. When defendant was running Acevez observed that defendant "had run out of his shoes." When Acevez arrested defendant, defendant was in his socks, and his shoes

were still on the street at the location where they had first made eye contact. The arrest happened at 1 p.m., two days after the homicide and four blocks from where the homicide occurred.

¶ 27 After Acevez testified, the parties stipulated (1) that certain police officers, if called to testify, would testify that they took photos of defendant and his clothing when he was arrested and (2) that blood stains from defendant's underwear and from a knife blade, as well as swabs from a knife handle, from defendant and from the victim, were inventoried and sent for testing. Margaret Ness, a forensic chemist, if called to testify, would testify that she analyzed the material in this case and found (1) that the blood stain from defendant's underwear was a mixture of at least two people and contained a DNA profile "which matches the DNA profile" of the victim, (2) that the blood stain from the knife blade "matches the DNA profile of [the victim] and does not match the DNA of the defendant," and (3) that the swab obtained from the knife handle contained a mixture of at least two people and contained a DNA profile that "matches the DNA profile of the defendant and does not match the DNA profile of [the victim]." The parties further stipulated that defendant's T-shirt was properly packaged and inventoried but was not submitted for testing. After the stipulations, the State rested.

¶ 28 After the State rested, defense counsel moved for a direct finding. Since this is an issue on appeal, we provide the defense's entire motion and argument below:

> "Judge, at the conclusion of the State's case we'd respectfully ask your Honor to consider a motion for a directed finding. Your Honor has heard the testimony at this point. We wouldn't wish to argue that further."

The trial court denied the motion.

¶ 29 As part of the defense case, the parties stipulated (1) that, if the assistant medical examiner were recalled, she would testify that she extracted blood from the victim which was submitted to the toxicology unit of her office for drug and alcohol analysis, (2) that if Peter Koin of the toxicology unit were called to testify, he would testify that the victim had a blood alcohol level of .106, which is more than "the legal limit" in the State of Illinois, (3) that, if Megan Ness, the forensic chemist, were called to testify, she would testify that the victim's fingernail scrapings contained a mixture of DNA profiles that were either not suitable for comparison or from which defendant could be excluded, and (4) that Ness would further testify that she was not called upon to analyze other exhibits other than those already described in the parties' stipulations. The defense then rested.

¶ 30 After listening to closing arguments, the trial court first made credibility findings, stating that it believed Officers Lugo, Acevez, and Ryan; Dr. Alvarenga, the assistant medical examiner; and Ali, the neighbor. After reviewing the evidence and arguments in detail, the court found defendant guilty of first degree murder. The transcript of the sentencing hearing is not in the appellate record; however, defendant does not raise any issues on this appeal regarding his sentence or the sentencing hearing. The mittimus reflects that, on January 25, 2019, the court sentenced defendant to 23 years with IDOC. Defendant's posttrial motion for a new trial was denied on March 1, 2019, and his motion to reconsider sentence was denied on March 18, 2019. Thus, his notice of appeal was timely filed on March 18, 2019, and this appeal followed.

¶ 31 ANALYSIS

¶ 32 I. Pretrial Motion to Suppress

¶ 33 On appeal, defendant claims first that the trial court erred in denying his pretrial motion to suppress.

¶ 34 A. Standard of Review

¶ 35 "The defendant bears the burden of proof at a hearing on a motion to suppress." *People v. Gipson*, 203 Ill. 2d 298, 306 (2003); 725 ILCS 5/114-12(b) (West 2018) ("the burden of proving that the search and seizure were unlawful shall be on the defendant"). "A defendant must make a *prima facie* case that the evidence was obtained by an illegal search or seizure." *Gipson*, 203 Ill. 2d at 306-07. "If a defendant makes a *prima facie* case, the State has the burden of going forward with evidence to counter the defendant's *prima facie* case." *Gipson*, 203 Ill. 2d at 307. "However, the ultimate burden of proof remains with the defendant." *Gipson*, 203 Ill. 2d at 307.

¶ 36 "In reviewing a ruling on a suppression motion, we apply the familiar two-part standard of review announced by the United States Supreme Court in *Ornelas v. United States*, 517 U.S. 690, 699 (1996)." *People v. Lindsey*, 2020 IL 124289, ¶ 14. "Under that standard, we give deference to the factual findings of the trial court, and we will reject those findings only if they are against the manifest weight of the evidence." *Lindsey*, 2020 IL 124289, ¶ 14. "We remain free, however, to decide the legal effect of those facts, and we review *de novo* the trial court's ultimate ruling on the motion." *Lindsey*, 2020 IL 124289, ¶ 14.

¶ 37 *De novo* consideration means that a reviewing court performs the same analysis that a trial judge would perform. *People v. Begay*, 2018 IL App (1st) 150446, ¶ 34. By contrast, a judgment is against the manifest weight of the evidence " 'only when an opposite conclusion

is apparent or when findings appear to be unreasonable, arbitrary, or not based on evidence.' " *People v. Daniel*, 2013 IL App (1st) 111876, ¶ 21 (quoting *Bazydlo v. Volant*, 164 Ill. 2d 207, 215 (1995)). The deferential standard accorded a trial court's factual findings is " 'grounded in the reality that the circuit court is in a superior position to determine and weigh the credibility of the witnesses, observe the witnesses' demeanor, and resolve conflicts in their testimony.' " *Daniel*, 2013 IL App (1st) 111876, ¶ 21 (quoting *People v. Jones*, 215 Ill. 2d 261, 268 (2005)).

¶ 38 "When reviewing the trial court's ruling on a motion to suppress, we may consider evidence both from the trial and the suppression hearing." *People v. Eubanks*, 2019 IL 123525, ¶ 61. In addition, we may affirm the trial court's ruling on a suppression motion "on any basis appearing in the record, whether or not the trial court relied on that basis or its reasoning was correct." *Daniel*, 2013 IL App (1st) 111876, ¶ 37.

¶ 39 B. Fourth Amendment

¶ 40 The fourth amendment to the United States Constitution provides the people with the right "to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const., amend. IV. Similarly, the Illinois Constitution of 1970 provides "the right to be secure" against unreasonable searches and seizures. Ill. Const. 1970, art. I, § 6. In addition, through the due process clause of the fourteenth amendment (U.S. Const., amend. XIV), the federal protection of the fourth amendment extends to searches and seizures conducted by the states. *People v. Hill*, 2020 IL 124595, ¶ 19.

¶ 41 "Generally, a search is *per se* unreasonable if conducted without a warrant supported by probable cause and approved by a judge or magistrate." *Hill*, 2020 IL 124595, ¶ 20. However, there are a few "clearly recognized" exceptions to the warrant requirement. *Hill*, 2020 IL 124595, ¶ 20.

¶ 42 C. Community Caretaking Doctrine

¶ 43 The trial court found the officers' warrantless search of the apartment permissible under the community caretaking exception, which is a well-established exception to the warrant requirement. See *People v. McDonough*, 239 Ill. 2d 260, 268-69 (2010). The phrase "community caretaking refers to a capacity in which the police act when they are performing some task unrelated to the investigation crime, such as *** calls about missing persons or sick neighbors." *McDonough*, 239 Ill. 2d at 269.

¶ 44 The community caretaking exception applies when the following two conditions are satisfied. "First, law enforcement officers must be performing some function other than the investigation of a crime." *McDonough*, 239 Ill. 2d at 272. "In making this determination, a court views the officer's actions objectively." *McDonough*, 239 Ill. 2d at 272. "Second, the search or seizure must be reasonable because it was undertaken to protect the safety of the general public." *McDonough*, 239 Ill. 2d at 272. " 'Reasonableness, in turn, is measured in objective terms by examining the totality of the circumstances.' " *McDonough*, 239 Ill. 2d at 272 (quoting *Ohio v. Robinette*, 519 U.S. 33, 39 (1996)). "The court must balance a citizen's interest in going about his or her business free from police interference against the public's interest in having police officers perform services in addition to strictly law enforcement." *McDonough*, 239 Ill. 2d at 272.

¶ 45 D. Emergency Aid Exception

¶ 46 At the pretrial hearing, the State argued that the officer's actions fell "squarely within the emergency aid exception." In its brief on appeal, the State argues that the emergency aid exception is an "example" of the community caretaking doctrine.

¶ 47 Since a reviewing court may affirm a trial court's ruling on a motion to suppress on any basis found in the record (*People v. Bahena*, 2020 IL App (1st) 180197, ¶ 25), it does not matter whether the emergency aid exception is a subset of the community caretaking doctrine or that the trial court did not rely on this exception.

¶ 48 The emergency aid exception allows police to enter and search a home without a warrant in emergency situations. *People v. Lomax*, 2012 IL App (1st) 103016, ¶ 29. The exception involves a two-part test. *Lomax*, 2012 IL App (1st) 103016, ¶ 29. "First, the police must have 'reasonable grounds' to believe there is an emergency at hand; and second, the police must have some reasonable basis, 'approximating probable cause,' associating the emergency with the area to be searched or entered." *Lomax*, 2012 IL App (1st) 103016, ¶ 29 (quoting *People v. Ferral*, 397 Ill. App. 3d 697, 705 (2009)).

¶ 49 "The reasonableness of the officers' beliefs as to the existence of an emergency is determined by the totality of the circumstances known to the officer at the time of entry." *Lomax*, 2012 IL App (1st) 103016, ¶ 29. "[E]mergency situations include instances when someone may be injured or threatened with injury." *Lomax*, 2012 IL App (1st) 103016, ¶ 29.

¶ 50 1. Belief That an Emergency Exists

¶ 51 In the case at bar, the officers had reasonable grounds to believe an emergency existed. First, the police received a 911 call concerning a battery in progress at defendant's apartment building. " 'A 911 call is one of the most common—and universally recognized—means through which the police and other emergency personnel learn that there is someone in a dangerous situation who urgently needs help.' " *Lomax*, 2012 IL App (1st) 103016, ¶ 31 (quoting *United States v. Richardson*, 208 F.3d 626, 630 (7th Cir. 2000)). Second, this was not an anonymous caller but a call from a neighbor, who was waiting outside to speak to the police

officers, thereby giving them the opportunity to assess his credibility. See *Lomax*, 2012 IL App (1st) 103016, ¶ 58 ("Generally, anonymous tips to the police lack sufficient reliability."). Third, the neighbor had no apparent motive or bias against defendant. Fourth, Officer Lugo testified that the neighbor informed the officers that he had heard a loud verbal argument between two men in Arabic in the apartment upstairs, followed by what sounded like two people wrestling and then one person asking if the apparently injured person was "ok" and begging the injured person to please "get up." Fifth, finding the neighbor's narrative credible, the police knocked on defendant's door in the middle of the night, not once but twice. Sixth, when the officers appeared to be leaving, the neighbor was still adamant that someone was seriously injured. Seventh, defendant failed to answer his door the second time the police knocked, although it was shortly after their first knock. Officer Lugo testified that, instead of leaving, they drove to the back of the building because "[s]omething didn't feel right." *Cf. Lomax*, 2012 IL App (1st) 103016, ¶ 38 ("an unanswered return call is sufficient to create the reasonable belief that an emergency situation exists"). Lastly, after the officers observed that all the gates and doors leading to defendant's apartment were wide open, it was reasonable for them to infer from this fact, coupled with the fact that defendant failed to answer his door a second time, that the person who was injured in the apartment had now been left completely alone. It would have been a dereliction of duty for the officers to have left all alone a person who was, reportedly, injured to the point where he could not stand up and where at least two people were worried if he was "ok"—those two people being defendant and the neighbor. Thus, we find that the facts establish that the police officers had reasonable grounds to believe that an emergency existed. "[R]easonableness 'must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight,' " and the

calculus of reasonableness must allow for the fact that police officers are often forced to make decisions in response to circumstances that are uncertain and rapidly evolving. *Ryburn v. Huff*, 565 U.S. 469, 477 (2012) (*per curiam*) (quoting *Graham v. Connor*, 490 U.S. 386, 396 (1989)); *Lomax*, 2012 IL App (1st) 103016, ¶ 40.

¶ 52 Defendant argues that the passage of time in this case argues against finding an emergency, and he cites in support this court's opinion in *Lomax*. In *Lomax*, this court wrote: "Waiting 10 minutes undermines the purpose of the emergency aid exception because in that time, the emergency could pass." *Lomax*, 2012 IL App (1st) 103016, ¶ 35. However, in *Lomax*, we also wrote that "each case is decided by the totality of its own unique facts." *Lomax*, 2012 IL App (1st) 103016, ¶ 37. In *Lomax*, we found it reasonable for the police to act quickly in response to a report of shots being fired, where it was obviously important to act before more shots could be fired. *Lomax*, 2012 IL App (1st) 103016, ¶ 36. By contrast, in the case at bar, the disturbance involved not a firearm, which can injure many in a short space of time, but a physical fight that was apparently over. In the case at bar, the police acted prudently, waiting to enter until they had reasonable grounds to believe that the injured person had been abandoned and left alone.

¶ 53 Defendant argues that the following testimony establishes that the officers did not believe there was an emergency. Officer Lugo testified that, after knocking on defendant's door the first time and speaking with defendant, he was satisfied that he "had done [his] job" and he told the neighbor that he was satisfied that everything was okay. However, the neighbor was still concerned, and it was the neighbor's concern that caused the officers to reconsider and return and knock a second time. The second time, the officers knocked for a period of time and received no response. Again, they told the neighbor that they were satisfied that nothing

was wrong, and they exited the building, returned to their police vehicle, and punched in a code indicating their assignment was complete. Defendant argues to this court, as he did to the trial court, that this testimony establishes that the police did not believe there was an emergency.

¶ 54 In response to this argument, the trial court found: "The fact that the police tell Ali that they were satisfied is not fact—is not, I should say proof that, in fact, they did think everything is okay because clearly they didn't." The trial court found that "[t]he fact that nobody answers the door is something that I don't doubt gave them pause, clearly gave them pause, that's why they *** got in their car and went around to the back." The trial court's factual finding here is well supported by the evidence. The fact that the officers did not depart shows that they had begun to suspect that something was wrong, and in fact, Officer Lugo testified to just that. He testified: "Something didn't feel right." The lack of a response, after five minutes of knocking when the door had been promptly answered just minutes before, combined with the wide-open gates and doors, gave the officers reasonable grounds to believe an injured person had just been abandoned.

¶ 55 Defendant argues that the police had no idea how long the gates and doors had been left open. However, defendant's back apartment door was also "wide open," and the officers had already observed defendant carefully closing the front door after they had finished speaking to him. Thus, we do not find this particular point persuasive as to defendant's theory.

¶ 56 2. Emergency Associated With the Area

¶ 57 Second, the police must have some reasonable basis, " 'approximating probable cause,' associating the emergency with the area to be searched or entered." *Lomax*, 2012 IL App (1st) 103016, ¶ 29 (quoting *Ferral*, 397 Ill. App. 3d at 705). In the section above, we found reasonable grounds to believe an emergency existed. In this section, we discuss whether that

emergency was sufficiently associated with defendant's apartment to justify entering and searching it.

¶ 58 In the case at bar, practically every piece of information that the police officers had associated this emergency with the area to be searched or entered. The events described by the neighbor all occurred in defendant's apartment—the sound of wrestling and the statements asking the apparently injured person if he was "ok." The gates and the doors that were open all led, progressively, to defendant's apartment. The police had every reason to believe that the injured person was still inside defendant's apartment, since defendant, as overheard by the neighbor, had manifested a concern about whether the injured person had even the capacity to stand. Thus, we find that the facts establish that the police had a reasonable basis, approximating probable cause, to associate this emergency with the area to be searched or entered. There was no question here about whether the police had entered the correct apartment. See *Lomax*, 2012 IL App (1st) 103016, ¶ 54.

¶ 59 In sum, we find that the police officer's warrantless entry into defendant's apartment fits squarely within the emergency aid exception.

¶ 60 On appeal, defendant argues that, even if an exception existed that justified the officers' initial entry and search for a victim, the trial court erred by not finding that the police officers' subsequent search exceeded the scope of the emergency aid exception and community caretaking doctrine. Defendant now argues that, after the discovery of the victim's body, the police should have immediately stopped and obtained a warrant before searching further.

¶ 61 However, at the pretrial hearing, the officer was not asked a single question concerning any subsequent search after the discovery of the body, and the defense made no arguments to the trial court that the scope of any such search exceeded any applicable exception. As a result,

the trial court made no finding on this issue. As noted above, the defendant bears the burden of proof at a hearing on a motion to suppress, both the initial burden of going forward and establishing a *prima facie* case and the ultimate burden of proving the grounds for the motion. *Gipson*, 203 Ill. 2d at 306-07. Only if a defendant first establishes a *prima facie* case does the State have the burden of going forward with evidence to rebut the *prima facie* case established by defendant. *Gipson*, 203 Ill. 2d at 307. Where the defense did not introduce any evidence at the pretrial hearing regarding the officers' actions after the discovery of the victim's body and where the defense argued to the trial court about the illegal "entry" but made no arguments regarding the permissible scope of any applicable exceptions, this cannot now be a basis for finding that the trial court erred in denying defendant's pretrial suppression motion.

¶ 62 II. Defendant's Flight

¶ 63 Defendant argues that the trial court erred during trial by allowing the admission of certain evidence as evidence of flight. Specifically, defendant argues that the trial court erred by allowing evidence (1) that defendant fled from police when he left his apartment after the police knocked on his door on the day of the murder and (2) that he fled from police on the day of his arrest.

¶ 64 Flight is generally considered some evidence of a guilty mind. *People v. McNeal*, 2019 IL App (1st) 180015, ¶ 83; *People v. Ross*, 2019 IL App (1st) 162341, ¶ 32 ("Defendant's flight from police also demonstrates consciousness of guilt."). In particular, " '[h]eadlong flight' " is one factor, when taken together with others, that may support a finding of criminal activity. *In re D.L.*, 2018 IL App (1st) 171764, ¶ 30 (quoting *Illinois v. Wardlow*, 528 U.S. 119, 124 (2000)). It is well established that flight, when considered with all the other evidence,

is a circumstance that a factfinder may consider as tending to prove guilt. *E.g.*, *People v. Trzeciak*, 2014 IL App (1st) 100259-B, ¶ 64.

¶ 65 We review the admission of flight evidence, as we do the admission of other evidence generally, only for an abuse of discretion. *Trzeciak*, 2014 IL App (1st) 100259-B, ¶ 64. An abuse of discretion occurs when the trial court's decision is arbitrary, fanciful, or unreasonable or where no reasonable person would take the position adopted by the trial court. *McNeal*, 2019 IL App (1st) 180015, ¶ 28.

¶ 66 In his brief to this court, defendant concedes, as he must, that "[1] there was evidence offered that [defendant] left the apartment after he answered the door for the police the first time on March 15, 2015, and [2] there was evidence that he ran from plain-clothes police on March 17, 2015." However, defendant argues that "there was never any evidence that [defendant] was wanted for the killing of [the victim] or that he knew he was wanted." Therefore, defendant argues that the State failed to impute consciousness of guilt from these actions. In addition, defendant argues that he could have had a general "fear of the police or of a foreign justice system."

¶ 67 Whether an inference of guilt may be drawn from evidence of flight depends on the suspect's knowledge (1) that an offense has been committed and (2) that he or she may be suspected. *Trzeciak*, 2014 IL App (1st) 100259-B, ¶ 64; *People v. Wilcox*, 407 Ill. App. 3d 151, 169 (2010). While evidence that a defendant is aware that he may be a suspect is essential, actual knowledge of a possible arrest is not. *Trzeciak*, 2014 IL App (1st) 100259-B, ¶ 64; *Wilcox*, 407 Ill. App. 3d at 170 (" 'actual knowledge of his possible arrest is not necessary' " (quoting *People v. Lewis*, 165 Ill. 2d 305, 350 (1995))).

¶ 68 First, with respect to the day of the murder itself, both these factors are satisfied. It is reasonable to infer that when the police knocked on defendant's door, the victim was already dead. The medical examiner testified that the victim died from the stab wound and died within a couple of minutes. It is reasonable to infer that the moment when the neighbor heard screaming was also the moment when the victim was stabbed. The neighbor testified that he heard the sounds of wrestling, which were followed by yelling and screaming, and then he heard defendant calling the victim's name and pleading for the victim to stand up. The neighbor testified that, when he knocked on defendant's door a second time, defendant stated that the victim was in the bathroom, when the neighbor could observe that he was not. When the neighbor asked to observe the victim, defendant became mad and told him to "do whatever" and closed the door. In the case at bar, where the victim was stabbed in the abdomen by a knife and died within a couple of minutes, where the evidence establishes that defendant was in the apartment when the stabbing occurred, and where the neighbor testified to defendant's agitated and untruthful response to an inquiry about the victim's well-being, the State has established sufficient evidence from which a trier of fact could reasonably infer defendant's knowledge that an offense had been committed.

¶ 69 The evidence at trial also established that, on the day of the murder, defendant had reason to believe he was a suspect. The police had knocked on his door—twice—in the middle of the night. After defendant spoke with them and told them that everything was okay, the police still returned. While the police may not have known at that moment that a crime had been committed, defendant did. When the police walked away the first time, defendant may have thought that they had believed him. However, when they knocked a second time, for a

solid five minutes, he had to have known that they had begun to have their doubts—which they did.

¶ 70 As a result of their doubts, they did not leave the scene but drove to the back of the building, where they found the doors and gate leading to defendant's apartment wide open. The fact that the garage and back doors—even the apartment door—were open—was indicative of a headlong flight. Thus, the evidence establishes a reasonable inference that defendant was aware, at the moment that he fled the apartment on the day of the murder, that he would be a suspect for this crime.

¶ 71 Defendant argues that the evidence did not establish how long the gates and doors had been left open and, thus, this fact was not necessarily indicative of flight. However, defendant's back apartment door was wide open, and the neighbor had testified that defendant had closed this door after telling the neighbor to "do whatever." In addition, defendant had been present in the apartment minutes before and now was indisputably gone. Thus, it was reasonable to infer that the open gates and doors, including the apartment door, were evidence of a headlong flight.

¶ 72 The second instance of flight occurred immediately after defendant made eye contact with Officer Acevez in a retail shopping area, two days after the homicide and four blocks from where it occurred. Although the officer was in plain clothes and in an unmarked police vehicle, he was also in a police vest. After making eye contact, defendant did not stop running until Officer Acevez tripped defendant's companion, who then fell into defendant, knocking them both down. It was reasonable to infer from these actions that defendant was engaged in headlong flight from the police.

¶ 73 We already established above that the two factors for admission were satisfied. However, defendant argues that, instead of showing a guilty mind about the murder, defendant could have had a general fear of the police or fears about a foreign justice system. First, there is nothing in the record to suggest that defendant was in the United States illegally, as he was here as a student. In contrast, all the evidence indicates that he knew that there was a dead body in his apartment and the police knocked on his door for five minutes, even after he tried to assure them that the victim was okay. Thus, it was reasonable to infer that his headlong flight from the police was in response to the stabbing death of the victim.

¶ 74 For the foregoing reasons, we find that the trial court did not abuse its discretion by admitting evidence of defendant's flight from the police on the day of the murder and again two days later.

¶ 75 III. Insufficient Evidence

¶ 76 Defendant argues that the State's evidence was insufficient either to prove him guilty beyond a reasonable doubt or to withstand the defense's motion for a directed finding at the close of the State's case-in-chief.

¶ 77 Section 115-4(k) of the Code of Criminal Procedure of 1963 (725 ILCS 5/115-4(k) (West 2018)) governs motions for a directed finding. It provides, in relevant part, with respect to bench trials:

> "When, at the close of the State's evidence or at the close of all the evidence, the evidence is insufficient to support a finding or verdict of guilty the court may and on motion of the defendant shall make a finding ***, enter a judgment of acquittal and discharge the defendant." 725 ILCS 5/115-4(k) (West 2018).

¶ 78 When deciding a motion for a directed finding, the trial court determines only whether a reasonable mind could fairly conclude the guilt of the accused beyond a reasonable doubt, while considering the evidence most strongly in the State's favor. *People v. Cazacu*, 373 Ill. App. 3d 465, 473 (2007). " 'In moving for a directed verdict [or finding], the defendant admits the truth of the facts stated in the State's evidence for purposes of the motion.' " *Cazacu*, 373 Ill. App. 3d at 473 (quoting *People v. Kelley*, 338 Ill. App. 3d 273, 277 (2003)). This same standard applies whether the trial is a bench or a jury trial. *Cazacu*, 373 Ill. App. 3d at 473. Since a motion for a directed finding of not guilty presents a question of law, we review the trial court's ruling *de novo*. *Cazacu*, 373 Ill. App. 3d at 473. As we noted above, *de novo* consideration means that a reviewing court performs the same analysis that a trial judge would perform. *Begay*, 2018 IL App (1st) 150446, ¶ 34.

¶ 79 When an appellate court is asked to consider the sufficiency of the evidence after a trial, our function is not to retry the defendant. *People v. Beauchamp*, 241 Ill. 2d 1, 8 (2011). Instead, we determine whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *Beauchamp*, 241 Ill. 2d at 8. In this determination, we draw all reasonable inferences from the record in favor of the State. *Beauchamp*, 241 Ill. 2d at 8. A reviewing court will not reverse a conviction unless the evidence is so improbable, unsatisfactory, or inconclusive that it creates a reasonable doubt of the defendant's guilt. *Beauchamp*, 241 Ill. 2d at 8. Also, a conviction may generally be sustained on circumstantial evidence alone. *Beauchamp*, 241 Ill. 2d at 9.

¶ 80 In his brief to this court, defendant does not make any separate arguments with respect to his motion for a directed finding. Instead he argues that we should find that the trial court

erred in denying his motion "[f]or the reasons stated" in the prior section of his brief that argued that "the [S]tate failed to offer proof beyond a reasonable doubt that [defendant] was guilty of first degree murder." Similarly, before the trial court, defendant did not argue the motion. Thus, we consider together, as he did, the arguments concerning his motion and the sufficiency of the State's evidence.

¶ 81 A. *Corpus Delicti*

¶ 82 Defendant argues, first, that the States' evidence was insufficient because it failed to prove that the victim's death was caused by the criminal agency of another person.

¶ 83 "Proof of an offense requires proof of two concepts: first, that a crime occurred, or the *corpus delicti*, and second, that it was committed by the person charged." *People v. Ehlert*, 211 Ill. 2d 192, 202 (2004). "In a prosecution for murder, the *corpus delicti* consists of the fact of death and the fact that death was produced by a criminal agency." *Ehlert*, 211 Ill. 2d at 202-03.

¶ 84 Defendant argues that the State failed to prove that the victim's death was produced by a criminal agency. However, the pathologist testified that she opined, within a reasonable degree of medical and scientific certainty, that the victim died from a stabbing and "that the manner of death was a homicide, meaning that he was killed by another person." This testimony was sufficient to establish the *corpus delicti* for purposes of either a motion for a directed finding or a claim on appeal of insufficient evidence. See *People v. King*, 2020 IL 123926, ¶ 53 (where the pathologist testified that the victim died of strangulation, "this testimony alone," if believed by the factfinder, is "sufficient to permit a rational trier of fact to conclude beyond a reasonable doubt that [the victim's] death was produced by criminal agency").

¶ 85 In his brief to this court, defendant argues that the State's evidence failed to "dispel the notion that [the victim] was in the process of attacking someone else or that he received wounds during a knife fight." In support of this argument, he relies solely on the pathologist's testimony. The pathologist who performed the autopsy testified that she observed injuries to the victim's face, neck, chest, abdomen, and legs. The lower right side of his face and his chest each had a cluster of abrasions, and incised wounds were present on his chest, hip, and legs. The pathologist testified that these nonfatal wounds were "fresh" from "around the time" of the victim's death. She explained that she was able to determine this because there was hemorrhaging around the wounds, which indicates that the victim was still "alive around the time that these injuries were inflicted." In addition, she did not observe any defensive wounds on his hands or forearms. On cross-examination, she testified that a knife fight between two people was "a possibility" and that she had "no way of determining whether or not the victim in this case was in the process of attempting to attack somebody else."

¶ 86 However, there is no evidence in the record that a third person was present in the apartment and no evidence or argument made at either trial or on this appeal that defendant was acting in self-defense or in mutual combat. The pathologist testified that the time span between the fatal stabbing and the resulting death was only two minutes. The neighbor testified that he heard wrestling and then screaming, which, it is reasonable to infer, occurred at the moment of death. This is particularly reasonable to infer, in light of the fact that the neighbor then heard defendant repeating the victim's name and pleading for the victim to stand. When the neighbor knocked on defendant's door, defendant admitted that there had been an argument. The DNA evidence established that the victim's blood was present on defendant's underwear when he was arrested, that blood on a knife blade was from the victim, and that

DNA on the knife's handle was from defendant. If a third person was the culprit, then it would be reasonable to expect an outcry from defendant upon discovery of the offense or the victim's lifeless body. Not only was there no outcry, defendant reassured the police that everything was okay, although the evidence indicates that the victim was already dead when they inquired. In light of all this evidence, where no argument was made at trial or on appeal of either self-defense or mutual combat, and where no evidence existed of a third person being involved, we do not find this argument persuasive.

¶ 87 B. DNA Evidence

¶ 88 Defendant argues next that other items in the apartment could have been tested for DNA evidence, that additional testing would have more conclusively established the presence or absence of a possible third person, and that defendant's DNA on items in his own apartment does not prove his guilt.

¶ 89 In the case at bar, the blood stain on defendant's underwear contained the DNA of the victim. The trial court found this evidence "compelling, if not damning," and so do we. In addition, the victim's blood was found on the knife blade, while defendant's DNA was on the handle. Where the victim's blood was found on both defendant and the blade of the apparent murder weapon and where defendant's DNA was found on the weapon's handle, we cannot find that the trial court, as factfinder, was irrational for not inferring that the DNA of a third person would have been found in other locations. A trier of fact is not required to "search out all possible explanations consistent with innocence and raise them to a level of reasonable doubt." *People v. Jackson*, 2020 IL 124112, ¶ 70.

¶ 90 Defendant argues that he could have been wearing the victim's underwear, and there was no proof that the underwear he wore was his own. However, it is reasonable for a factfinder

to infer that the underwear that one is wearing is one's own underwear. "[T]he trier of fact is not required to disregard inferences that flow normally from the evidence before it ***." *Jackson*, 2020 IL 124112, ¶ 70.

¶ 91 C. Circumstantial Evidence

¶ 92 Lastly, defendant argues that the State's evidence was circumstantial and, thus, created a reasonable doubt of guilt. Defendant argues that there was no confession, no eyewitness, and no evidence of a motive or intent.

¶ 93 First, "[i]t has long been recognized" by our supreme court "that motive is not an essential element of the crime of murder, and the State has no obligation to prove motive in order to sustain a conviction of murder." *People v. Smith*, 141 Ill. 2d 40, 56 (1990).

¶ 94 Second, while there was no "eye" witness, there was an "ear" witness. The neighbor appears to have heard the wrestling before the stabbing, the screaming resulting from the stabbing, and defendant's subsequent pleading for the victim to stand during the two minutes that the pathologist testified it took for the victim to die.

¶ 95 Third, although we do not have an outright confession by defendant, his own words and actions are incriminating. If the victim's death was the result of an accident or the acts of a third person, one would have expected an immediate outcry by defendant to the police and neighbor who knocked on his door. However, what defendant did was just the opposite. Instead of seeking their aid, he sought to assure them that everything was okay and closed the door on their possible assistance.

¶ 96 Fourth, intent may be inferred from the type of injury and the force needed to inflict it. See *People v. Richardson*, 401 Ill. App. 3d 45, 51-52 (2010) (photos of the deceased's injuries were properly admitted to prove intent). In addition, the pathologist testified that she found, to

a reasonable degree of medical and scientific certainty, that the victim's death was a homicide. See *King*, 2020 IL 123926, ¶ 53. As already discussed above, flight was evidence of consciousness of guilt, as was defendant's attempted cover-up.

¶ 97 Finally, our supreme court has repeatedly found that circumstantial evidence is sufficient to sustain a murder conviction, so long as, viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the offense beyond a reasonable doubt. *King*, 2020 IL 123926, ¶ 52; *Jackson*, 2020 IL 124112, ¶¶ 64, 75.

¶ 98 In the section above discussing the flight evidence, we already detailed the evidence establishing defendant's presence at the scene, his knowledge of the offense, and his flight from the police officers. Nonetheless, we are aware that "[t]he mere presence of a defendant at the scene of the crime is *** insufficient to make a defendant accountable [for it], even if it is coupled with defendant's flight from the scene or defendant's knowledge that a crime has been committed." *People v. Johnson*, 2014 IL App (1st) 122459-B, ¶ 132.

¶ 99 However, in addition to presence, knowledge and flight, there was (1) the DNA evidence, which, as the trial court found, was "damning"; (2) the neighbor's testimony about the wrestling, the screaming, defendant's immediate pleading with the victim to rise, and defendant's subsequent admission of an argument; (3) the attempted cover-up by defendant, where he repeatedly asserted to both police and to a neighbor that everything was okay, although the evidence indicates that the victim was already dead by that time; and (4) a second flight, which showed that the first flight was no coincidence.

¶ 100 In sum, we find that the circumstantial evidence was sufficient for a factfinder to find defendant guilty beyond a reasonable doubt and sufficient to withstand a motion for a directed

finding. "[I]t is not necessary that the trier of fact find each fact in the chain of circumstances beyond a reasonable doubt," so long as the trier of fact finds that the evidence, taken together, supports a finding of defendant's guilt beyond a reasonable doubt. *Jackson*, 2020 IL 124112, ¶ 70. Taken together, the evidence in this case satisfied this standard.

¶ 101 CONCLUSION

¶ 102 For the foregoing reasons, we do not find defendant's claims persuasive, and we affirm his conviction and sentence.

¶ 103 Affirmed.

2020 IL App (1st) 190692
No. 1-19-0692
Opinion filed September 30, 2020

FOURTH DIVISION

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. ABDULLAH ALJOHANI, Defendant-Appellant.	)	Appeal from the Circuit Court of Cook County. No. 15 CR 6105 The Honorable Timothy Joseph Joyce, Judge, presiding.

PRESIDING JUSTICE GORDON delivered the judgment of the court, with opinion.
Justices Lampkin and Reyes concurred in the judgment and opinion.

OPINION

¶ 1 After a bench trial in Cook County circuit court, defendant Abdullah Aljohani, age 27, was convicted of the first degree murder of his roommate, Talal Aljohani, who was found stabbed to death in their apartment on March 15, 2015. Although they shared the same last name, the victim and defendant were not related. Defendant was sentenced to 23 years with the Illinois Department of Corrections (IDOC).

¶ 2 On this direct appeal, defendant claims (1) that the trial court erred in denying his motion to suppress evidence, on the ground that the police officers' warrantless entry into the

apartment immediately after the murder was not justified by the community caretaking exception, (2) that the trial court erred by admitting evidence of defendant's flight as circumstantial evidence of his guilt, and (3) that the State's evidence was insufficient either to prove defendant guilty beyond a reasonable doubt or to justify denying defendant's motion for a directed finding.

¶ 3 For the following reasons, we do not find these claims persuasive and affirm.

¶ 4 BACKGROUND

¶ 5 In brief, the State's evidence at trial established that defendant's downstairs neighbor heard sounds of wrestling and screaming coming from the apartment above. When the neighbor knocked on defendant's apartment door, defendant answered and stated that there had been an argument but everything was okay. Shortly thereafter, officers found the victim stabbed to death inside the apartment, with a broken and bloody knife nearby. The parties stipulated that a forensic chemist would testify that DNA from blood on the knife blade matched the victim and DNA from blood on the knife handle matched defendant's DNA.

¶ 6 I. Pretrial Proceedings

¶ 7 At the suppression hearing on defendant's pretrial motion to suppress, defendant bore the burden of proof, and he argued that the officers' "entry" into his apartment was illegal without a warrant and anything "recovered pursuant to the illegal entry" should be suppressed.

¶ 8 The defense called Officer Banito Lugo of the Chicago Police Department as its sole witness. Lugo testified that, on March 15, 2015, at 4:15 a.m., he and his partner, Officer Anthony Richards, responded to a call concerning a battery in progress at defendant's apartment building. Khalid Ali, a neighbor and the person who had called the police, met them outside the building. Ali told the officers that he understood Arabic and that he had heard a

loud verbal argument between two men in Arabic in the apartment above, which was followed by the sound of two people wrestling. Ali then heard a person asking "are you ok, get up," and he heard the wrestling stop. Ali further informed the officers that he went upstairs, where he spoke with defendant, and that defendant stated that the victim, whom defendant described as his brother, was in the bathroom.

¶ 9 Lugo testified that, after Ali let them into the building, they went upstairs and knocked on defendant's apartment door and talked to defendant. Defendant stated in English that everything was okay. The officers asked if they could speak with his "brother," and defendant replied that he was sleeping. The officers went back downstairs, where Ali was "adamant" that someone was seriously injured, so the officers went back upstairs and knocked again on defendant's door. This second time, the officers knocked for five minutes and received no response. Then they exited the building and returned to their squad vehicle, where they punched in a code to indicate that they had completed their assignment and everything was okay. Despite punching in the code, the officers did not depart. Instead, they drove around the building and into the alley behind the building because, as Officer Lugo explained, "[s]omething didn't feel right." After parking, they observed that the back gate was open. The officers then proceeded into the yard and found that the garage door was open and the side entrance to the back of the building was also open. The officers entered the side entrance and went back up to the second-floor apartment, where they observed that the back door to the apartment was "wide open."

¶ 10 Lugo testified that they knocked on the back door and announced their "office" but received no response. The officers entered the apartment, walking first into a hallway where they did not observe anything unusual. The officers then decided to look through the apartment

room by room, until they arrived at the southeast bedroom, where they observed the victim lying on a mattress. Observing no wounds at first, the officers again announced their "office" and received no response. After determining that the victim was unresponsive and not breathing, they called for an ambulance. Defendant was no longer present in the apartment. The officers were not asked any questions about any further search after the discovery of the body.

¶ 11 Prior to closing argument on the suppression motion, the trial court asked defense counsel what exactly defendant was seeking to suppress. Counsel responded that there was a subsequent search of the apartment and it was the items recovered during this subsequent search that defendant was seeking to suppress. The court then asked: "So the defense is seeking to suppress anything the State wants to put into evidence that was recovered from this apartment up on the second floor?" When both parties agreed, the court explained that it wanted to ensure that "we're on the same page with respect to what the defense is trying to do." When both parties said yes, the court stated: "I'll consider that a stipulation."

¶ 12 In closing, the State argued that "this falls squarely within the emergency aid doctrine." The State also argued forfeiture by wrongdoing and inevitable discovery. With respect to forfeiture, the State argued that defendant cannot be allowed to silence the only other person who would have been able to consent to the police's entry to help him. The defense argued that "there was nothing unusual" about defendant's behavior when he answered the door and the officers did not ask him at that time for consent to enter the apartment because they had no concerns. When the officers drove to the back of the building, they had no information about how long the gate or the door had been open.

¶ 13 After listening to the testimony and the arguments of counsel, the trial court found, "first[,] I believe Officer Lugo." The court observed that, when the police went back up to the second-floor apartment a second time and knocked for a solid five minutes at "4:15 in the morning," the fact that no one answered "clearly gave them pause," and "that's why" they went downstairs and drove to the back of the building. At the back of the building, they observed "a garage door open, the back gate open, this side door to the apartment building open," and the back door to the apartment open. The trial court found it "reasonable" that "they wanted to make sure that no one is in any distress." The trial court found that the officers "were not investigating a crime, they had no reason to believe a particular crime had taken place. They wanted to make sure that everyone was okay." This desire was further supported by the fact that the police knew that there had just been "some kind of physical altercation *** where somebody was heard to say are you okay, get up."

¶ 14 In conclusion, the trial court found that "the circumstances herein taking place without any warrant by the police falls squarely within the community caretaking function," and the motion to suppress was denied.

¶ 15 II. Trial

¶ 16 The bench trial proceeded immediately after the conclusion of the pretrial suppression hearing, and the parties stipulated that, if called to testify, Officer Lugo would provide the same testimony that he had provided during the pretrial suppression hearing. The trial court accepted the stipulation, "[s]ubject to an appreciation of whatever he testified to in the motion was admissible in the motion and might not be admissible at trial, [and] would be so considered by the Court."

¶ 17 The State's first witness at trial was Abduilhadi Aljohani, who testified that he was a police officer in Medina, Saudi Arabia. After identifying a photo of the victim as his brother, the witness testified that the victim grew up in Saudi Arabia and came to Chicago in December 2014 to attend college. In Chicago, the victim lived with defendant. Although the victim and defendant share the same last name, they were not related. The witness testified that he last spoke to the victim on the telephone the day before the victim died.

¶ 18 The State's next witness was Khalid Ali, the neighbor who had originally contacted the police. Ali, 46 years old, testified that he was born in Somalia and can understand Arabic. Since 2004, he has been a taxicab driver in Chicago. Ali lives with his wife and five children on the first floor of the same building where defendant and the victim lived on the second floor. Defendant and the victim moved into the building in December 2014, and Ali met them in January 2015. When they spoke together, they spoke mainly in Arabic.

¶ 19 Ali testified that in the early morning hours of March 15, 2015, his wife woke him up. After he woke up, he heard, first, the sounds of wrestling, and then he heard yelling and screaming, all coming from the upstairs apartment. Ali then heard defendant calling the victim's first name, "Talal, Talal," and next he heard "ah, ah," which sounded to him like "panic." Ali also heard defendant stating "come, come" which he understood to mean "stand up or wake up." Ali went upstairs and knocked on defendant's door, and defendant answered. When Ali asked "what happened," defendant replied that there was a small argument, but then defendant gave a two-thumbs up sign and stated "everything is okay."

¶ 20 Ali testified that, after defendant shut the door, Ali returned to his own apartment. However, after a few minutes, Ali went upstairs and knocked on defendant's back door. When defendant opened the back door, defendant stated again that "everything is okay." Ali asked

where the victim was, and defendant replied that the victim was in the bathroom. However, through the open back door, Ali could observe the inside of the bathroom and could observe that the victim was not in it. The bathroom is directly in front of the back door. Ali testified that he had been in defendant's apartment before and there is only one bathroom. Ali asked defendant again where the victim was, and this time defendant replied that the victim was on the telephone talking with his family.

¶ 21 Ali testified that he asked defendant if he could observe the victim, and defendant repeated that the victim was on the telephone talking with his family. Ali asked again, and then defendant appeared "a little bit mad" and stated "do whatever" and closed the door. After returning to his own apartment, Ali called 911 to "mak[e] sure that Talal is okay." When the officers arrived, Ali met them outside, told them what he had heard, and let them into the building.

¶ 22 On cross-examination, Ali testified that, when his wife woke him up, she told him that she had heard defendant and the victim singing earlier that morning, at 1 or 2 a.m. Twenty or thirty minutes before she woke him up, she heard something being thrown and someone expressing pain and saying "awe." After Ali heard the wrestling, he called the owner of the building and told him the "upstairs guys are fighting."

¶ 23 Ali testified that he had had a good relationship with defendant, and he knew that both defendant and the victim were attending school. Ali had never heard defendant and the victim argue before and had never observed the victim drinking alcohol. Ali did not know whether defendant and the victim had invited anyone to their apartment that evening. The noise that Ali heard sounded to him like two people wrestling, but it could have been more people. Ali added that, after he heard defendant saying "Talal, Talal," he heard "somebody dragging like a leg or

something" on the floor and somebody walking. Ali testified that the shower had a glazed-glass door and he could tell if someone was taking a shower. However, he admitted that he could not observe the bathroom sink from the back door.

¶ 24 David Ryan testified that he recently retired from the Chicago Police Department but that he had been the forensic investigator who examined defendant's apartment after the homicide. Ryan arrived on the scene at 5:50 a.m. on March 15, 2015, where he observed the victim lying on one of two mattresses in the southeast bedroom. Ryan observed a wound on the victim's hip, a large wound in the victim's midsection, and the victim's bloody shirt. When Ryan moved a suitcase on the floor of the southeast bedroom, he found a steak knife with a 3½-inch handle and a 4-inch blade with blood on the blade. In the same bedroom, Ryan found a second steak knife that was broken in two, with the 4-inch blade broken off the handle. Ryan obtained fingernail scrapings from the victim at the scene. Ryan also observed blood on the lower part of the south wall in the southeast bedroom near the light switch, on the west wall, and on the exterior side of the bedroom door.

¶ 25 Dr. Kristin Escobar, an assistant medical examiner and pathologist, testified that she performed the autopsy on the victim. During the autopsy, she observed injuries to his face, neck, chest, abdomen, and legs. The lower right side of his face and his chest each had a cluster of abrasions, and incised wounds were present on his chest, hip, and legs. The pathologist explained that an incised wound was "a superficial cut" caused by a sharp-edged weapon. There was also a stab wound on the upper right side of the abdomen, which was eight centimeters deep. During the internal examination, she observed that the stab wound resulted in a "sharp force injury to his liver as well as the inferior vena cava and the aorta." The pathologist found, within a reasonable degree of medical and scientific certainty, that the

victim died from the stab wound to his abdomen. She testified that the other wounds that she described were "fresh" from "around the time" of the victim's death. She explained that she was able to determine this because there was hemorrhaging around the wounds, which indicates that the victim was still "alive around the time that these injuries were inflicted." At the conclusion of her direct examination, she testified that she had found, within a reasonable degree of medical and scientific certainty, "that the manner of death was a homicide, meaning that he was killed by another person." On cross-examination, she testified that a knife fight between two people was "a possibility." She also agreed with defense counsel's statement that she had "no way of determining whether or not the victim in this case was in the process of attempting to attack somebody else." In response to a question by the court, she opined that, with this type of injury, a person would live only a couple of minutes.

¶ 26 Officer Anthony Acevez, the arresting officer, testified that on March 17, 2015, in the early afternoon, he observed defendant on the street with another man in an area with retail stores. Acevez was in plain clothes but was also wearing a police vest with "police" on the back and a gun holster. Acevez was with two other officers who were also in plain clothes. When Acevez first observed defendant on the street, Acevez was sitting in an unmarked vehicle and made eye contact with defendant. Acevez was 10 to 15 feet away from defendant, and the weather was clear. When they made eye contact, defendant immediately began to run, and Acevez chased him on foot. Defendant's companion ran with defendant, and the two men ran for about three-quarters of a block, until Acevez tripped the other man, who then fell into defendant. Both defendant and the other man landed on the ground. Acevez then placed defendant in custody. When defendant was running Acevez observed that defendant "had run out of his shoes." When Acevez arrested defendant, defendant was in his socks, and his shoes

were still on the street at the location where they had first made eye contact. The arrest happened at 1 p.m., two days after the homicide and four blocks from where the homicide occurred.

¶ 27 After Acevez testified, the parties stipulated (1) that certain police officers, if called to testify, would testify that they took photos of defendant and his clothing when he was arrested and (2) that blood stains from defendant's underwear, from a knife blade and from a knife handle, as well as swabs from defendant and the victim, were inventoried and sent for testing. Margaret Ness, a forensic chemist, if called to testify, would testify that she analyzed the material in this case and found (1) that the blood stain from defendant's underwear was a mixture of at least two people and contained a DNA profile "which matches the DNA profile" of the victim, (2) that the blood stain from the knife blade "matches the DNA profile of [the victim] and does not match the DNA of the defendant," and (3) that the blood stain from the knife handle was a mixture of at least two people and contained a DNA profile that "matches the DNA profile of the defendant and does not match the DNA profile of [the victim]." The parties further stipulated that defendant's T-shirt was properly packaged and inventoried but was not submitted for testing. After the stipulations, the State rested.

¶ 28 After the State rested, defense counsel moved for a direct finding. Since this is an issue on appeal, we provide the defense's entire motion and argument below:

> "Judge, at the conclusion of the State's case we'd respectfully ask your Honor to consider a motion for a directed finding. Your Honor has heard the testimony at this point. We wouldn't wish to argue that further."

The trial court denied the motion.

¶ 29 As part of the defense case, the parties stipulated (1) that, if the assistant medical examiner were recalled, she would testify that she extracted blood from the victim which was submitted to the toxicology unit of her office for drug and alcohol analysis, (2) that if Peter Koin of the toxicology unit were called to testify, he would testify that the victim had a blood alcohol level of .106, which is more than "the legal limit" in the State of Illinois, (3) that, if Megan Ness, the forensic chemist, were called to testify, she would testify that the victim's fingernail scrapings contained a mixture of DNA profiles that were either not suitable for comparison or from which defendant could be excluded, and (4) that Ness would further testify that she was not called upon to analyze other exhibits other than those already described in the parties' stipulations. The defense then rested.

¶ 30 After listening to closing arguments, the trial court first made credibility findings, stating that it believed Officers Lugo, Acevez, and Ryan; Dr. Alvarenga, the assistant medical examiner; and Ali, the neighbor. After reviewing the evidence and arguments in detail, the court found defendant guilty of first degree murder. The transcript of the sentencing hearing is not in the appellate record; however, defendant does not raise any issues on this appeal regarding his sentence or the sentencing hearing. The mittimus reflects that, on January 25, 2019, the court sentenced defendant to 23 years with IDOC. Defendant's posttrial motion for a new trial was denied on March 1, 2019, and his motion to reconsider sentence was denied on March 18, 2019. Thus, his notice of appeal was timely filed on March 18, 2019, and this appeal followed.

¶ 31 ANALYSIS

¶ 32 I. Pretrial Motion to Suppress

¶ 33 On appeal, defendant claims first that the trial court erred in denying his pretrial motion to suppress.

¶ 34 A. Standard of Review

¶ 35 "The defendant bears the burden of proof at a hearing on a motion to suppress." *People v. Gipson*, 203 Ill. 2d 298, 306 (2003); 725 ILCS 5/114-12(b) (West 2018) ("the burden of proving that the search and seizure were unlawful shall be on the defendant"). "A defendant must make a *prima facie* case that the evidence was obtained by an illegal search or seizure." *Gipson*, 203 Ill. 2d at 306-07. "If a defendant makes a *prima facie* case, the State has the burden of going forward with evidence to counter the defendant's *prima facie* case." *Gipson*, 203 Ill. 2d at 307. "However, the ultimate burden of proof remains with the defendant." *Gipson*, 203 Ill. 2d at 307.

¶ 36 "In reviewing a ruling on a suppression motion, we apply the familiar two-part standard of review announced by the United States Supreme Court in *Ornelas v. United States*, 517 U.S. 690, 699 (1996)." *People v. Lindsey*, 2020 IL 124289, ¶ 14. "Under that standard, we give deference to the factual findings of the trial court, and we will reject those findings only if they are against the manifest weight of the evidence." *Lindsey*, 2020 IL 124289, ¶ 14. "We remain free, however, to decide the legal effect of those facts, and we review *de novo* the trial court's ultimate ruling on the motion." *Lindsey*, 2020 IL 124289, ¶ 14.

¶ 37 *De novo* consideration means that a reviewing court performs the same analysis that a trial judge would perform. *People v. Begay*, 2018 IL App (1st) 150446, ¶ 34. By contrast, a judgment is against the manifest weight of the evidence " 'only when an opposite conclusion

is apparent or when findings appear to be unreasonable, arbitrary, or not based on evidence.' " *People v. Daniel*, 2013 IL App (1st) 111876, ¶ 21 (quoting *Bazydlo v. Volant*, 164 Ill. 2d 207, 215 (1995)). The deferential standard accorded a trial court's factual findings is " 'grounded in the reality that the circuit court is in a superior position to determine and weigh the credibility of the witnesses, observe the witnesses' demeanor, and resolve conflicts in their testimony.' " *Daniel*, 2013 IL App (1st) 111876, ¶ 21 (quoting *People v. Jones*, 215 Ill. 2d 261, 268 (2005)).

¶ 38 "When reviewing the trial court's ruling on a motion to suppress, we may consider evidence both from the trial and the suppression hearing." *People v. Eubanks*, 2019 IL 123525, ¶ 61. In addition, we may affirm the trial court's ruling on a suppression motion "on any basis appearing in the record, whether or not the trial court relied on that basis or its reasoning was correct." *Daniel*, 2013 IL App (1st) 111876, ¶ 37.

¶ 39 B. Fourth Amendment

¶ 40 The fourth amendment to the United States Constitution provides the people with the right "to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const., amend. IV. Similarly, the Illinois Constitution of 1970 provides "the right to be secure" against unreasonable searches and seizures. Ill. Const. 1970, art. I, § 6. In addition, through the due process clause of the fourteenth amendment (U.S. Const., amend. XIV), the federal protection of the fourth amendment extends to searches and seizures conducted by the states. *People v. Hill*, 2020 IL 124595, ¶ 19.

¶ 41 "Generally, a search is *per se* unreasonable if conducted without a warrant supported by probable cause and approved by a judge or magistrate." *Hill*, 2020 IL 124595, ¶ 20. However, there are a few "clearly recognized" exceptions to the warrant requirement. *Hill*, 2020 IL 124595, ¶ 20.

¶ 42 C. Community Caretaking Doctrine

¶ 43 The trial court found the officers' warrantless search of the apartment permissible under the community caretaking exception, which is a well-established exception to the warrant requirement. See *People v. McDonough*, 239 Ill. 2d 260, 268-69 (2010). The phrase "community caretaking refers to a capacity in which the police act when they are performing some task unrelated to the investigation crime, such as *** calls about missing persons or sick neighbors." *McDonough*, 239 Ill. 2d at 269.

¶ 44 The community caretaking exception applies when the following two conditions are satisfied. "First, law enforcement officers must be performing some function other than the investigation of a crime." *McDonough*, 239 Ill. 2d at 272. "In making this determination, a court views the officer's actions objectively." *McDonough*, 239 Ill. 2d at 272. "Second, the search or seizure must be reasonable because it was undertaken to protect the safety of the general public." *McDonough*, 239 Ill. 2d at 272. " 'Reasonableness, in turn, is measured in objective terms by examining the totality of the circumstances.' " *McDonough*, 239 Ill. 2d at 272 (quoting *Ohio v. Robinette*, 519 U.S. 33, 39 (1996)). "The court must balance a citizen's interest in going about his or her business free from police interference against the public's interest in having police officers perform services in addition to strictly law enforcement." *McDonough*, 239 Ill. 2d at 272.

¶ 45 D. Emergency Aid Exception

¶ 46 At the pretrial hearing, the State argued that the officer's actions fell "squarely within the emergency aid exception." In its brief on appeal, the State argues that the emergency aid exception is an "example" of the community caretaking doctrine.

¶ 47 Since a reviewing court may affirm a trial court's ruling on a motion to suppress on any basis found in the record (*People v. Bahena*, 2020 IL App (1st) 180197, ¶ 25), it does not matter whether the emergency aid exception is a subset of the community caretaking doctrine or that the trial court did not rely on this exception.

¶ 48 The emergency aid exception allows police to enter and search a home without a warrant in emergency situations. *People v. Lomax*, 2012 IL App (1st) 103016, ¶ 29. The exception involves a two-part test. *Lomax*, 2012 IL App (1st) 103016, ¶ 29. "First, the police must have 'reasonable grounds' to believe there is an emergency at hand; and second, the police must have some reasonable basis, 'approximating probable cause,' associating the emergency with the area to be searched or entered." *Lomax*, 2012 IL App (1st) 103016, ¶ 29 (quoting *People v. Ferral*, 397 Ill. App. 3d 697, 705 (2009)).

¶ 49 "The reasonableness of the officers' beliefs as to the existence of an emergency is determined by the totality of the circumstances known to the officer at the time of entry." *Lomax*, 2012 IL App (1st) 103016, ¶ 29. "[E]mergency situations include instances when someone may be injured or threatened with injury." *Lomax*, 2012 IL App (1st) 103016, ¶ 29.

¶ 50 1. Belief That an Emergency Exists

¶ 51 In the case at bar, the officers had reasonable grounds to believe an emergency existed. First, the police received a 911 call concerning a battery in progress at defendant's apartment building. " 'A 911 call is one of the most common—and universally recognized—means through which the police and other emergency personnel learn that there is someone in a dangerous situation who urgently needs help.' " *Lomax*, 2012 IL App (1st) 103016, ¶ 31 (quoting *United States v. Richardson*, 208 F.3d 626, 630 (7th Cir. 2000)). Second, this was not an anonymous caller but a call from a neighbor, who was waiting outside to speak to the police

officers, thereby giving them the opportunity to assess his credibility. See *Lomax*, 2012 IL App (1st) 103016, ¶ 58 ("Generally, anonymous tips to the police lack sufficient reliability."). Third, the neighbor had no apparent motive or bias against defendant. Fourth, Officer Lugo testified that the neighbor informed the officers that he had heard a loud verbal argument between two men in Arabic in the apartment upstairs, followed by what sounded like two people wrestling and then one person asking if the apparently injured person was "ok" and begging the injured person to please "get up." Fifth, finding the neighbor's narrative credible, the police knocked on defendant's door in the middle of the night, not once but twice. Sixth, when the officers appeared to be leaving, the neighbor was still adamant that someone was seriously injured. Seventh, defendant failed to answer his door the second time the police knocked, although it was shortly after their first knock. Officer Lugo testified that, instead of leaving, they drove to the back of the building because "[s]omething didn't feel right." *Cf. Lomax*, 2012 IL App (1st) 103016, ¶ 38 ("an unanswered return call is sufficient to create the reasonable belief that an emergency situation exists"). Lastly, after the officers observed that all the gates and doors leading to defendant's apartment were wide open, it was reasonable for them to infer from this fact, coupled with the fact that defendant failed to answer his door a second time, that the person who was injured in the apartment had now been left completely alone. It would have been a dereliction of duty for the officers to have left all alone a person who was, reportedly, injured to the point where he could not stand up and where at least two people were worried if he was "ok"—those two people being defendant and the neighbor. Thus, we find that the facts establish that the police officers had reasonable grounds to believe that an emergency existed. "[R]easonableness 'must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight,' " and the

calculus of reasonableness must allow for the fact that police officers are often forced to make decisions in response to circumstances that are uncertain and rapidly evolving. *Ryburn v. Huff*, 565 U.S. 469, 477 (2012) (*per curiam*) (quoting *Graham v. Connor*, 490 U.S. 386, 396 (1989)); *Lomax*, 2012 IL App (1st) 103016, ¶ 40.

¶ 52 Defendant argues that the passage of time in this case argues against finding an emergency, and he cites in support this court's opinion in *Lomax*. In *Lomax*, this court wrote: "Waiting 10 minutes undermines the purpose of the emergency aid exception because in that time, the emergency could pass." *Lomax*, 2012 IL App (1st) 103016, ¶ 35. However, in *Lomax*, we also wrote that "each case is decided by the totality of its own unique facts." *Lomax*, 2012 IL App (1st) 103016, ¶ 37. In *Lomax*, we found it reasonable for the police to act quickly in response to a report of shots being fired, where it was obviously important to act before more shots could be fired. *Lomax*, 2012 IL App (1st) 103016, ¶ 36. By contrast, in the case at bar, the disturbance involved not a firearm, which can injure many in a short space of time, but a physical fight that was apparently over. In the case at bar, the police acted prudently, waiting to enter until they had reasonable grounds to believe that the injured person had been abandoned and left alone.

¶ 53 Defendant argues that the following testimony establishes that the officers did not believe there was an emergency. Officer Lugo testified that, after knocking on defendant's door the first time and speaking with defendant, he was satisfied that he "had done [his] job" and he told the neighbor that he was satisfied that everything was okay. However, the neighbor was still concerned, and it was the neighbor's concern that caused the officers to reconsider and return and knock a second time. The second time, the officers knocked for a period of time and received no response. Again, they told the neighbor that they were satisfied that nothing

was wrong, and they exited the building, returned to their police vehicle, and punched in a code indicating their assignment was complete. Defendant argues to this court, as he did to the trial court, that this testimony establishes that the police did not believe there was an emergency.

¶ 54 In response to this argument, the trial court found: "The fact that the police tell Ali that they were satisfied is not fact—is not, I should say proof that, in fact, they did think everything is okay because clearly they didn't." The trial court found that "[t]he fact that nobody answers the door is something that I don't doubt gave them pause, clearly gave them pause, that's why they *** got in their car and went around to the back." The trial court's factual finding here is well supported by the evidence. The fact that the officers did not depart shows that they had begun to suspect that something was wrong, and in fact, Officer Lugo testified to just that. He testified: "Something didn't feel right." The lack of a response, after five minutes of knocking when the door had been promptly answered just minutes before, combined with the wide-open gates and doors, gave the officers reasonable grounds to believe an injured person had just been abandoned.

¶ 55 Defendant argues that the police had no idea how long the gates and doors had been left open. However, defendant's back apartment door was also "wide open," and the officers had already observed defendant carefully closing the front door after they had finished speaking to him. Thus, we do not find this particular point persuasive as to defendant's theory.

¶ 56 2. Emergency Associated With the Area

¶ 57 Second, the police must have some reasonable basis, " 'approximating probable cause,' associating the emergency with the area to be searched or entered." *Lomax*, 2012 IL App (1st) 103016, ¶ 29 (quoting *Ferral*, 397 Ill. App. 3d at 705). In the section above, we found reasonable grounds to believe an emergency existed. In this section, we discuss whether that

emergency was sufficiently associated with defendant's apartment to justify entering and searching it.

¶ 58 In the case at bar, practically every piece of information that the police officers had associated this emergency with the area to be searched or entered. The events described by the neighbor all occurred in defendant's apartment—the sound of wrestling and the statements asking the apparently injured person if he was "ok." The gates and the doors that were open all led, progressively, to defendant's apartment. The police had every reason to believe that the injured person was still inside defendant's apartment, since defendant, as overheard by the neighbor, had manifested a concern about whether the injured person had even the capacity to stand. Thus, we find that the facts establish that the police had a reasonable basis, approximating probable cause, to associate this emergency with the area to be searched or entered. There was no question here about whether the police had entered the correct apartment. See *Lomax*, 2012 IL App (1st) 103016, ¶ 54.

¶ 59 In sum, we find that the police officer's warrantless entry into defendant's apartment fits squarely within the emergency aid exception.

¶ 60 On appeal, defendant argues that, even if an exception existed that justified the officers' initial entry and search for a victim, the trial court erred by not finding that the police officers' subsequent search exceeded the scope of the emergency aid exception and community caretaking doctrine. Defendant now argues that, after the discovery of the victim's body, the police should have immediately stopped and obtained a warrant before searching further.

¶ 61 However, at the pretrial hearing, the officer was not asked a single question concerning any subsequent search after the discovery of the body, and the defense made no arguments to the trial court that the scope of any such search exceeded any applicable exception. As a result,

the trial court made no finding on this issue. As noted above, the defendant bears the burden of proof at a hearing on a motion to suppress, both the initial burden of going forward and establishing a *prima facie* case and the ultimate burden of proving the grounds for the motion. *Gipson*, 203 Ill. 2d at 306-07. Only if a defendant first establishes a *prima facie* case does the State have the burden of going forward with evidence to rebut the *prima facie* case established by defendant. *Gipson*, 203 Ill. 2d at 307. Where the defense did not introduce any evidence at the pretrial hearing regarding the officers' actions after the discovery of the victim's body and where the defense argued to the trial court about the illegal "entry" but made no arguments regarding the permissible scope of any applicable exceptions, this cannot now be a basis for finding that the trial court erred in denying defendant's pretrial suppression motion.

¶ 62 II. Defendant's Flight

¶ 63 Defendant argues that the trial court erred during trial by allowing the admission of certain evidence as evidence of flight. Specifically, defendant argues that the trial court erred by allowing evidence (1) that defendant fled from police when he left his apartment after the police knocked on his door on the day of the murder and (2) that he fled from police on the day of his arrest.

¶ 64 Flight is generally considered some evidence of a guilty mind. *People v. McNeal*, 2019 IL App (1st) 180015, ¶ 83; *People v. Ross*, 2019 IL App (1st) 162341, ¶ 32 ("Defendant's flight from police also demonstrates consciousness of guilt."). In particular, " '[h]eadlong flight' " is one factor, when taken together with others, that may support a finding of criminal activity. *In re D.L.*, 2018 IL App (1st) 171764, ¶ 30 (quoting *Illinois v. Wardlow*, 528 U.S. 119, 124 (2000)). It is well established that flight, when considered with all the other evidence,

is a circumstance that a factfinder may consider as tending to prove guilt. *E.g.*, *People v. Trzeciak*, 2014 IL App (1st) 100259-B, ¶ 64.

¶ 65 We review the admission of flight evidence, as we do the admission of other evidence generally, only for an abuse of discretion. *Trzeciak*, 2014 IL App (1st) 100259-B, ¶ 64. An abuse of discretion occurs when the trial court's decision is arbitrary, fanciful, or unreasonable or where no reasonable person would take the position adopted by the trial court. *McNeal*, 2019 IL App (1st) 180015, ¶ 28.

¶ 66 In his brief to this court, defendant concedes, as he must, that "[1] there was evidence offered that [defendant] left the apartment after he answered the door for the police the first time on March 15, 2015, and [2] there was evidence that he ran from plain-clothes police on March 17, 2015." However, defendant argues that "there was never any evidence that [defendant] was wanted for the killing of [the victim] or that he knew he was wanted." Therefore, defendant argues that the State failed to impute consciousness of guilt from these actions. In addition, defendant argues that he could have had a general "fear of the police or of a foreign justice system."

¶ 67 Whether an inference of guilt may be drawn from evidence of flight depends on the suspect's knowledge (1) that an offense has been committed and (2) that he or she may be suspected. *Trzeciak*, 2014 IL App (1st) 100259-B, ¶ 64; *People v. Wilcox*, 407 Ill. App. 3d 151, 169 (2010). While evidence that a defendant is aware that he may be a suspect is essential, actual knowledge of a possible arrest is not. *Trzeciak*, 2014 IL App (1st) 100259-B, ¶ 64; *Wilcox*, 407 Ill. App. 3d at 170 (" 'actual knowledge of his possible arrest is not necessary' " (quoting *People v. Lewis*, 165 Ill. 2d 305, 350 (1995))).

¶ 68 First, with respect to the day of the murder itself, both these factors are satisfied. It is reasonable to infer that when the police knocked on defendant's door, the victim was already dead. The medical examiner testified that the victim died from the stab wound and died within a couple of minutes. It is reasonable to infer that the moment when the neighbor heard screaming was also the moment when the victim was stabbed. The neighbor testified that he heard the sounds of wrestling, which were followed by yelling and screaming, and then he heard defendant calling the victim's name and pleading for the victim to stand up. The neighbor testified that, when he knocked on defendant's door a second time, defendant stated that the victim was in the bathroom, when the neighbor could observe that he was not. When the neighbor asked to observe the victim, defendant became mad and told him to "do whatever" and closed the door. In the case at bar, where the victim was stabbed in the abdomen by a knife and died within a couple of minutes, where the evidence establishes that defendant was in the apartment when the stabbing occurred, and where the neighbor testified to defendant's agitated and untruthful response to an inquiry about the victim's well-being, the State has established sufficient evidence from which a trier of fact could reasonably infer defendant's knowledge that an offense had been committed.

¶ 69 The evidence at trial also established that, on the day of the murder, defendant had reason to believe he was a suspect. The police had knocked on his door—twice—in the middle of the night. After defendant spoke with them and told them that everything was okay, the police still returned. While the police may not have known at that moment that a crime had been committed, defendant did. When the police walked away the first time, defendant may have thought that they had believed him. However, when they knocked a second time, for a

solid five minutes, he had to have known that they had begun to have their doubts—which they did.

¶ 70 As a result of their doubts, they did not leave the scene but drove to the back of the building, where they found the doors and gate leading to defendant's apartment wide open. The fact that the garage and back doors—even the apartment door—were open—was indicative of a headlong flight. Thus, the evidence establishes a reasonable inference that defendant was aware, at the moment that he fled the apartment on the day of the murder, that he would be a suspect for this crime.

¶ 71 Defendant argues that the evidence did not establish how long the gates and doors had been left open and, thus, this fact was not necessarily indicative of flight. However, defendant's back apartment door was wide open, and the neighbor had testified that defendant had closed this door after telling the neighbor to "do whatever." In addition, defendant had been present in the apartment minutes before and now was indisputably gone. Thus, it was reasonable to infer that the open gates and doors, including the apartment door, were evidence of a headlong flight.

¶ 72 The second instance of flight occurred immediately after defendant made eye contact with Officer Acevez in a retail shopping area, two days after the homicide and four blocks from where it occurred. Although the officer was in plain clothes and in an unmarked police vehicle, he was also in a police vest. After making eye contact, defendant did not stop running until Officer Acevez tripped defendant's companion, who then fell into defendant, knocking them both down. It was reasonable to infer from these actions that defendant was engaged in headlong flight from the police.

¶ 73 We already established above that the two factors for admission were satisfied. However, defendant argues that, instead of showing a guilty mind about the murder, defendant could have had a general fear of the police or fears about a foreign justice system. First, there is nothing in the record to suggest that defendant was in the United States illegally, as he was here as a student. In contrast, all the evidence indicates that he knew that there was a dead body in his apartment and the police knocked on his door for five minutes, even after he tried to assure them that the victim was okay. Thus, it was reasonable to infer that his headlong flight from the police was in response to the stabbing death of the victim.

¶ 74 For the foregoing reasons, we find that the trial court did not abuse its discretion by admitting evidence of defendant's flight from the police on the day of the murder and again two days later.

¶ 75 III. Insufficient Evidence

¶ 76 Defendant argues that the State's evidence was insufficient either to prove him guilty beyond a reasonable doubt or to withstand the defense's motion for a directed finding at the close of the State's case-in-chief.

¶ 77 Section 115-4(k) of the Code of Criminal Procedure of 1963 (725 ILCS 5/115-4(k) (West 2018)) governs motions for a directed finding. It provides, in relevant part, with respect to bench trials:

> "When, at the close of the State's evidence or at the close of all the evidence, the evidence is insufficient to support a finding or verdict of guilty the court may and on motion of the defendant shall make a finding ***, enter a judgment of acquittal and discharge the defendant." 725 ILCS 5/115-4(k) (West 2018).

¶ 78 When deciding a motion for a directed finding, the trial court determines only whether a reasonable mind could fairly conclude the guilt of the accused beyond a reasonable doubt, while considering the evidence most strongly in the State's favor. *People v. Cazacu*, 373 Ill. App. 3d 465, 473 (2007). " 'In moving for a directed verdict [or finding], the defendant admits the truth of the facts stated in the State's evidence for purposes of the motion.' " *Cazacu*, 373 Ill. App. 3d at 473 (quoting *People v. Kelley*, 338 Ill. App. 3d 273, 277 (2003)). This same standard applies whether the trial is a bench or a jury trial. *Cazacu*, 373 Ill. App. 3d at 473. Since a motion for a directed finding of not guilty presents a question of law, we review the trial court's ruling *de novo*. *Cazacu*, 373 Ill. App. 3d at 473. As we noted above, *de novo* consideration means that a reviewing court performs the same analysis that a trial judge would perform. *Begay*, 2018 IL App (1st) 150446, ¶ 34.

¶ 79 When an appellate court is asked to consider the sufficiency of the evidence after a trial, our function is not to retry the defendant. *People v. Beauchamp*, 241 Ill. 2d 1, 8 (2011). Instead, we determine whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *Beauchamp*, 241 Ill. 2d at 8. In this determination, we draw all reasonable inferences from the record in favor of the State. *Beauchamp*, 241 Ill. 2d at 8. A reviewing court will not reverse a conviction unless the evidence is so improbable, unsatisfactory, or inconclusive that it creates a reasonable doubt of the defendant's guilt. *Beauchamp*, 241 Ill. 2d at 8. Also, a conviction may generally be sustained on circumstantial evidence alone. *Beauchamp*, 241 Ill. 2d at 9.

¶ 80 In his brief to this court, defendant does not make any separate arguments with respect to his motion for a directed finding. Instead he argues that we should find that the trial court

erred in denying his motion "[f]or the reasons stated" in the prior section of his brief that argued that "the [S]tate failed to offer proof beyond a reasonable doubt that [defendant] was guilty of first degree murder." Similarly, before the trial court, defendant did not argue the motion. Thus, we consider together, as he did, the arguments concerning his motion and the sufficiency of the State's evidence.

¶ 81 A. *Corpus Delicti*

¶ 82 Defendant argues, first, that the States' evidence was insufficient because it failed to prove that the victim's death was caused by the criminal agency of another person.

¶ 83 "Proof of an offense requires proof of two concepts: first, that a crime occurred, or the *corpus delicti*, and second, that it was committed by the person charged." *People v. Ehlert*, 211 Ill. 2d 192, 202 (2004). "In a prosecution for murder, the *corpus delicti* consists of the fact of death and the fact that death was produced by a criminal agency." *Ehlert*, 211 Ill. 2d at 202-03.

¶ 84 Defendant argues that the State failed to prove that the victim's death was produced by a criminal agency. However, the pathologist testified that she opined, within a reasonable degree of medical and scientific certainty, that the victim died from a stabbing and "that the manner of death was a homicide, meaning that he was killed by another person." This testimony was sufficient to establish the *corpus delicti* for purposes of either a motion for a directed finding or a claim on appeal of insufficient evidence. See *People v. King*, 2020 IL 123926, ¶ 53 (where the pathologist testified that the victim died of strangulation, "this testimony alone," if believed by the factfinder, is "sufficient to permit a rational trier of fact to conclude beyond a reasonable doubt that [the victim's] death was produced by criminal agency").

¶ 85 In his brief to this court, defendant argues that the State's evidence failed to "dispel the notion that [the victim] was in the process of attacking someone else or that he received wounds during a knife fight." In support of this argument, he relies solely on the pathologist's testimony. The pathologist who performed the autopsy testified that she observed injuries to the victim's face, neck, chest, abdomen, and legs. The lower right side of his face and his chest each had a cluster of abrasions, and incised wounds were present on his chest, hip, and legs. The pathologist testified that these nonfatal wounds were "fresh" from "around the time" of the victim's death. She explained that she was able to determine this because there was hemorrhaging around the wounds, which indicates that the victim was still "alive around the time that these injuries were inflicted." In addition, she did not observe any defensive wounds on his hands or forearms. On cross-examination, she testified that a knife fight between two people was "a possibility" and that she had "no way of determining whether or not the victim in this case was in the process of attempting to attack somebody else."

¶ 86 However, there is no evidence in the record that a third person was present in the apartment and no evidence or argument made at either trial or on this appeal that defendant was acting in self-defense or in mutual combat. The pathologist testified that the time span between the fatal stabbing and the resulting death was only two minutes. The neighbor testified that he heard wrestling and then screaming, which, it is reasonable to infer, occurred at the moment of death. This is particularly reasonable to infer, in light of the fact that the neighbor then heard defendant repeating the victim's name and pleading for the victim to stand. When the neighbor knocked on defendant's door, defendant admitted that there had been an argument. The DNA evidence established that the victim's blood was present on defendant's underwear when he was arrested, that blood on a knife blade was from the victim, and that

blood on the knife's handle was from defendant. If a third person was the culprit, then it would be reasonable to expect an outcry from defendant upon discovery of the offense or the victim's lifeless body. Not only was there no outcry, defendant reassured the police that everything was okay, although the evidence indicates that the victim was already dead when they inquired. In light of all this evidence, where no argument was made at trial or on appeal of either self-defense or mutual combat, and where no evidence existed of a third person being involved, we do not find this argument persuasive.

¶ 87 B. DNA Evidence

¶ 88 Defendant argues next that other items in the apartment could have been tested for DNA evidence, that additional testing would have more conclusively established the presence or absence of a possible third person, and that defendant's DNA on items in his own apartment does not prove his guilt.

¶ 89 In the case at bar, the blood stain on defendant's underwear contained the DNA of the victim. The trial court found this evidence "compelling, if not damning," and so do we. In addition, the victim's blood was found on the knife blade, while defendant's blood was on the handle. Where the victim's blood was found on both defendant and the blade of the apparent murder weapon and where defendant's blood was found on the weapon's handle, we cannot find that the trial court, as factfinder, was irrational for not inferring that the DNA of a third person would have been found in other blood stains. A trier of fact is not required to "search out all possible explanations consistent with innocence and raise them to a level of reasonable doubt." *People v. Jackson*, 2020 IL 124112, ¶ 70.

¶ 90 Defendant argues that he could have been wearing the victim's underwear, and there was no proof that the underwear he wore was his own. However, it is reasonable for a factfinder

to infer that the underwear that one is wearing is one's own underwear. "[T]he trier of fact is not required to disregard inferences that flow normally from the evidence before it ***." *Jackson*, 2020 IL 124112, ¶ 70.

¶ 91 C. Circumstantial Evidence

¶ 92 Lastly, defendant argues that the State's evidence was circumstantial and, thus, created a reasonable doubt of guilt. Defendant argues that there was no confession, no eyewitness, and no evidence of a motive or intent.

¶ 93 First, "[i]t has long been recognized" by our supreme court "that motive is not an essential element of the crime of murder, and the State has no obligation to prove motive in order to sustain a conviction of murder." *People v. Smith*, 141 Ill. 2d 40, 56 (1990).

¶ 94 Second, while there was no "eye" witness, there was an "ear" witness. The neighbor appears to have heard the wrestling before the stabbing, the screaming resulting from the stabbing, and defendant's subsequent pleading for the victim to stand during the two minutes that the pathologist testified it took for the victim to die.

¶ 95 Third, although we do not have an outright confession by defendant, his own words and actions are incriminating. If the victim's death was the result of an accident or the acts of a third person, one would have expected an immediate outcry by defendant to the police and neighbor who knocked on his door. However, what defendant did was just the opposite. Instead of seeking their aid, he sought to assure them that everything was okay and closed the door on their possible assistance.

¶ 96 Fourth, intent may be inferred from the type of injury and the force needed to inflict it. See *People v. Richardson*, 401 Ill. App. 3d 45, 51-52 (2010) (photos of the deceased's injuries were properly admitted to prove intent). In addition, the pathologist testified that she found, to

a reasonable degree of medical and scientific certainty, that the victim's death was a homicide. See *King*, 2020 IL 123926, ¶ 53. As already discussed above, flight was evidence of consciousness of guilt, as was defendant's attempted cover-up.

¶ 97 Finally, our supreme court has repeatedly found that circumstantial evidence is sufficient to sustain a murder conviction, so long as, viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the offense beyond a reasonable doubt. *King*, 2020 IL 123926, ¶ 52; *Jackson*, 2020 IL 124112, ¶¶ 64, 75.

¶ 98 In the section above discussing the flight evidence, we already detailed the evidence establishing defendant's presence at the scene, his knowledge of the offense, and his flight from the police officers. Nonetheless, we are aware that "[t]he mere presence of a defendant at the scene of the crime is *** insufficient to make a defendant accountable [for it], even if it is coupled with defendant's flight from the scene or defendant's knowledge that a crime has been committed." *People v. Johnson*, 2014 IL App (1st) 122459-B, ¶ 132.

¶ 99 However, in addition to presence, knowledge and flight, there was (1) the DNA evidence, which, as the trial court found, was "damning"; (2) the neighbor's testimony about the wrestling, the screaming, defendant's immediate pleading with the victim to rise, and defendant's subsequent admission of an argument; (3) the attempted cover-up by defendant, where he repeatedly asserted to both police and to a neighbor that everything was okay, although the evidence indicates that the victim was already dead by that time; and (4) a second flight, which showed that the first flight was no coincidence.

¶ 100 In sum, we find that the circumstantial evidence was sufficient for a factfinder to find defendant guilty beyond a reasonable doubt and sufficient to withstand a motion for a directed

finding. "[I]t is not necessary that the trier of fact find each fact in the chain of circumstances beyond a reasonable doubt," so long as the trier of fact finds that the evidence, taken together, supports a finding of defendant's guilt beyond a reasonable doubt. *Jackson*, 2020 IL 124112, ¶ 70. Taken together, the evidence in this case satisfied this standard.

¶ 101 CONCLUSION

¶ 102 For the foregoing reasons, we do not find defendant's claims persuasive, and we affirm his conviction and sentence.

¶ 103 Affirmed.

No. 1-19-0692

Cite as:	*People v. Aljohani*, 2020 IL App (1st) 190692
Decision Under Review:	Appeal from the Circuit Court of Cook County, No. 15-CR-6105; the Hon. Timothy Joseph Joyce, Judge, presiding.
Attorneys for Appellant:	Stephen F. Hall, of Chicago, for appellant.
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