

NOTICE

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2015 IL App (5th) 140570-U

NO. 5-14-0570

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

NOTICE

This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	St. Clair County.
)	
v.)	No. 13-CF-334
)	
JOSHUA REHMER,)	Honorable
)	Zina R. Cruse,
Defendant-Appellee.)	Judge, presiding.

JUSTICE SCHWARM delivered the judgment of the court.
Justices Welch and Stewart concurred in the judgment.

ORDER

¶ 1 *Held:* The circuit court's granting of the defendant's motion to suppress is affirmed because the defendant had standing to claim protection of the fourth amendment, having a legitimate expectation of privacy in his mother's home where he stored personal belongings and periodically stayed overnight, and the officers' warrantless entry into the invaded area was not reasonable based on the totality of the circumstances.

¶ 2 Upon being charged with unlawful possession of a firearm by a felon (720 ILCS 5/24-1.1(a) (West 2012)), the defendant, Joshua Rehmer, filed a motion to suppress weapons found during a search of his mother's home. The State appeals the circuit court's order granting the defendant's motion to suppress. We affirm.

¶ 3

BACKGROUND

¶ 4 On March 2, 2013, the defendant was charged by information with one count domestic battery (720 ILCS 5/12-3.2(a)(2) (West 2012)) and three counts unlawful possession of a firearm by a felon (720 ILCS 5/24-1.1(a) (West 2012)). The information alleged that on February 28, 2013, the defendant had struck his sister, Andrea Rehmer, on the face with his hand and that, on the same day, he was knowingly in possession of a 12-gauge shotgun, a 9-millimeter handgun, and a .22-caliber rifle, after having previously been convicted of a felony.

¶ 5 On November 15, 2013, the defendant filed a motion to suppress the firearms that had been found in his mother's home. In his motion, the defendant asserted that the police officers had entered the residence of his mother, Donna Smith, without her permission, her consent, or a search warrant. The defendant alleged that the officers had kicked in a locked bedroom door and a locked closet door and had improperly seized weapons which had been found behind these locked doors. On September 17, 2014, the circuit court conducted a hearing on the defendant's motion. At the hearing, the following evidence was adduced.

¶ 6 At 6:30 p.m. on February 28, 2013, law enforcement officers were dispatched to Donna's residence due to a report of a domestic disturbance. After arriving at the scene, St. Clair County Sheriff's Deputy Xavier Blackburn spoke with a distraught Andrea Rehmer, the defendant's sister, who indicated that the defendant had slapped her in the face and that she wanted to press charges for domestic battery. She further indicated that the defendant had entered Donna's home, where Donna lived with Andrea and Andrea's

daughter. The officers thereafter entered Donna's home without a warrant. While inside the residence on the second floor, they forcibly entered a locked bedroom looking for the defendant and seized weapons which were located in the room. The bedroom included an unmade bed and two closets, but the defendant was not present in the bedroom. The defendant was later arrested in the downstairs area of Donna's home.

¶ 7 Donna testified that the defendant lived with his father, Thomas Rehmer, who had joined the defendant on the day of the arrest to view her newly-purchased vehicle. Donna testified that when the police arrived, she did not know where the defendant was located. Donna testified that three police officers walked into her home, from the deck to the enclosed porch and into the kitchen. Donna testified that she did not invite them into her home nor did they knock or ask for permission to enter.

¶ 8 Donna testified that the officers asked where the defendant was and walked through the first floor of the home. Donna testified that without asking permission, the officers proceeded to the second floor of her home, which included two bedrooms, one locked and another unlocked, and she walked upstairs with them. Donna testified that while Andrea and her granddaughter stayed in the unlocked bedroom, she locked the other bedroom because her deceased husband's guns, knives, and ammunition were in the bedroom's closet. Donna testified that the locked bedroom also held the defendant's personal belongings. Donna testified that she also kept the closet door in that bedroom locked at all times.

¶ 9 Donna testified that at least two officers walked upstairs and asked her if the defendant could be in the locked bedroom. Donna testified that the officers asked for the

key but did not allow her time to acquire it before they kicked the locked bedroom door open, breaking the door off its hinges. Donna testified that the officers further broke into the locked closet. Donna testified that the defendant did not have a key to the bedroom or to the bedroom closet.

¶ 10 Donna testified that the defendant periodically stayed overnight at her home, usually sleeping in the downstairs living room. Donna testified that she welcomed the defendant to stay overnight and tried to make the defendant feel safe and at home, giving him a sense of privacy. Donna testified that the defendant did not sleep in the locked bedroom because she controlled it and did not allow anyone to stay in there.

¶ 11 Deputy Blackburn testified that after St. Clair County Sheriff's Deputy Calvin Savage and Sergeant Brad Clossen arrived on the scene, he and the other officers entered the home with Andrea's permission. Deputy Blackburn testified that Donna had told him that the defendant was upstairs in his bedroom, that she directed him to this bedroom, which was locked, and that she gave him permission to enter the bedroom. Deputy Blackburn testified that the officers first looked in an open bedroom adjacent to the locked bedroom but did not find the defendant. Deputy Blackburn testified that while standing at the door of the locked bedroom, the officers heard noises in the bedroom, including the sound of a window opening, and he asked Donna for consent to force entry of the door.

¶ 12 Deputy Blackburn testified that Donna had told him she did not have the key. Deputy Blackburn testified that the officers called out for the defendant and announced their presence, requesting that he open the door. Deputy Blackburn testified that he then

kicked in the door and thereafter noticed two closets, both large enough for a person to hide. Deputy Blackburn testified that he did not force either closet door because they were at least partially open. Deputy Blackburn looked inside the bedroom and closets to see if the defendant was hiding, but he did not find him. After looking in the second closet, Deputy Blackburn found several guns inside and seized them. Deputy Blackburn testified that the defendant later stated that he had been on top of the roof.

¶ 13 Deputy Calvin Savage also testified that Donna had told the officers that the defendant was upstairs in a bedroom that was his. Deputy Savage testified that this bedroom was locked. Deputy Savage testified that the officers heard a noise behind the closed door, asked if Donna had a key, and Donna stated she did not have a key to the locked room. Deputy Savage testified that Deputy Blackburn had asked Donna for consent to search the room, and Donna had consented to the search. Deputy Savage testified that after Deputy Blackburn forced entry into the locked bedroom, there were several guns out in the open. Deputy Savage acknowledged that upon entering the home, there was no emergency situation.

¶ 14 On October 28, 2014, the circuit court entered its order granting the defendant's motion to suppress. In its order, the circuit court found that the defendant had standing to present the motion, because of the nature of the relationship between the homeowner and the defendant, the frequency of visiting his mother's residence, and his reasonable expectation of privacy such that he would be justified to believe that he could retreat there, secure against governmental intrusion. Noting discrepancies in the officers' testimonies, the court concluded that the evidence did not support that the incident was a

consensual search. The circuit court further found no exigent circumstances to justify the search and seizure. Accordingly, the circuit court suppressed the weapons seized as a result of the search. The State filed a timely notice of appeal.

¶ 15

DISCUSSION

¶ 16 "Review of a circuit court's ruling on a motion to suppress presents both questions of law and fact." *People v. Richardson*, 234 Ill. 2d 233, 251 (2009). "Findings of fact and credibility determinations made by the circuit court are accorded great deference and will be reversed only if they are against the manifest weight of the evidence." *Id.* "This deferential standard of review 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." *Id.* However, the decisive question of whether or not a defendant has standing to contest an allegedly unlawful search or seizure is a question of law that we review *de novo*. *Glisson v. City of Marion*, 188 Ill. 2d 211, 220 (1999); *People v. Parker*, 312 Ill. App. 3d 607, 612 (2000). Likewise, "a court reviews *de novo* the ultimate legal question posed by the challenge to the circuit court's ruling on the suppression motion." *Richardson*, 234 Ill. 2d at 251.

¶ 17 The State argues that the circuit court erred in granting the defendant's motion to suppress because the defendant lacked standing to object to the search. The State argues that the defendant did not own or live in Donna's home, was only an occasional visitor, infrequently slept on the sofa in her living room, and had no access to the bedroom where the guns were found.

¶ 18 "The fourth amendment to the United States Constitution protects the 'right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.' U.S. Const., amend. IV." *People v. Rosenberg*, 213 Ill. 2d 69, 77 (2004). "Similarly, article I, section 6, of the Illinois Constitution of 1970 provides that the 'people shall have the right to be secure in their persons, houses, papers and other possessions against unreasonable searches [and] seizures.' Ill. Const. 1970, art. I, § 6." *Rosenberg*, 213 Ill. 2d at 77. It is well-settled that "[f]ourth [a]mendment rights are personal rights which, like some other constitutional rights, may not be vicariously asserted." (Internal quotation marks omitted.) *Rakas v. Illinois*, 439 U.S. 128, 133-34 (1978). "A person who is aggrieved by an illegal search and seizure only through the introduction of damaging evidence secured by a search of a third person's premises or property has not had any of his [f]ourth [a]mendment rights infringed." *Id.* at 134. Thus, the protections of the exclusionary rule should only benefit defendants whose own fourth amendment rights have been violated. *Id.*; *Rosenberg*, 213 Ill. 2d at 77.

¶ 19 Accordingly, standing to claim fourth amendment protection against unreasonable government search and seizure depends on whether the person claiming protection has a legitimate expectation of privacy in the invaded place. *Rakas*, 439 U.S. at 143; *People v. Kidd*, 178 Ill. 2d 92, 135 (1997). "A subjective expectation of privacy is legitimate if it is one that society is prepared to recognize as reasonable." *Kidd*, 178 Ill. 2d at 135-36. Thus, the question becomes whether the defendant demonstrated a reasonable expectation of privacy in either the area searched or the items seized. See *Rakas*, 439 U.S. at 143; *People v. Johnson*, 114 Ill. 2d 170, 191 (1986); *People v. Brown*, 277 Ill. App. 3d 989,

994 (1996) (a defendant is without standing to seek suppression of items seized from a residence where he does not reside unless he proves that he possessed a legitimate expectation of privacy in the areas searched or in the property seized).

¶ 20 "Property ownership, while not dispositive, is a factor to be considered in determining whether an individual has standing to test the constitutionality of a search and seizure." *Johnson*, 114 Ill. 2d at 191. "Other factors relevant in determining whether a reasonable privacy expectation exists include whether defendant was legitimately present in the area searched; his possessory interest in the area or property seized; prior use of the area searched or property seized; ability to control or exclude others' use of the property; and a subjective expectation of privacy in the property." *Id.* at 191-92. Whether a defendant has a reasonable expectation of privacy in the area searched or the items seized must be determined in light of the totality of the circumstances of the particular case. *Kidd*, 178 Ill. 2d at 136; *Johnson*, 114 Ill. 2d at 192.

¶ 21 "Illinois courts have repeatedly declined to grant standing for purposes of contesting a search and seizure to persons who are guests or merely present in someone else's home or on another person's property which is searched." *People v. Wimbley*, 314 Ill. App. 3d 18, 23 (2000). "Overnight guests in private homes, however, have a sufficiently legitimate expectation of privacy in the premises to confer standing to challenge the search." *Wimbley*, 314 Ill. App. 3d at 23; see also *Minnesota v. Olson*, 495 U.S. 91, 98-99 (1990). "The overnight guest seeks shelter in another's home precisely because it provides him privacy and a place where he and his possessions will not be disturbed." *Id.*

¶ 22 Viewing the totality of the circumstances in this case, we conclude that the defendant had standing to challenge the search of his mother's home. In so concluding, we recognize initially that the defendant did not have an ownership right in his mother's residence. However, while important, ownership is not dispositive of the issue of standing. See *People v. Alexander*, 272 Ill. App. 3d 698, 703 (1995).

¶ 23 The defendant presented Donna's testimony, which revealed that although the defendant was not an overnight guest at the time of the search, he periodically stayed as an overnight guest in his mother's home. The defendant was legitimately present in Donna's home and had stored personal belongings in the upstairs bedroom, thereby exercising ownership rights over items in the area searched. See *Parker*, 312 Ill. App. 3d at 614 ("fact that defendant kept personal effects in a bedroom at his mother's home demonstrates not only that defendant was legitimately present in his mother's home that night but that he had a possessory interest in the clothes seized from this location"); *People v. Johnson*, 237 Ill. App. 3d 860, 865 (1992) (although the defendant did not stay overnight at the residence, he had a legitimate expectation of privacy in the premises "because of the storage of his possessions in the residence and his [frequent and ready] access to the property"); compare *People v. Ervin*, 269 Ill. App. 3d 141, 147 (1994) (no reasonable expectation of privacy at home of ex-wife despite weekly visits considering that defendant did not stay the night or keep any clothes in the home while away).

¶ 24 Indeed, in charging the defendant with possession of the weapons, the State must maintain that the defendant had knowledge of the weapons and control over the area or that the defendant had possession of the guns found in the locked bedroom. See *Johnson*,

114 Ill. 2d at 192 (to determine standing, court considers whether defendant had possessory interest in the area or property seized). In light of these facts, and despite evidence that Donna testified that the defendant did not have a key to the locked bedroom where he kept personal belongings, we find the defendant's subjective expectation of privacy to be reasonable and one which society would recognize as legitimate. See *Alexander*, 272 Ill. App. 3d at 703-04 (evidence that defendant did not have a key to garage did not rebut evidence that the defendant had standing to challenge search and seizure, considering he used the garage and stored personal effects there). Accordingly, because the defendant possessed a reasonable expectation of privacy in the premises, he maintained standing to contest the search.

¶ 25 Thus, the defendant met his burden to demonstrate that he had standing to challenge the search. Moreover, the State's evidence, including Donna's references to the invaded room as the defendant's, further supported the defendant's standing to challenge the search. See *People v. Keller*, 93 Ill. 2d 432, 440 (1982) (court considered all evidence to determine whether defendants had standing to assert violation of fourth amendment rights); *People v. Nichols*, 2012 IL App (2d) 100028, ¶ 41 (to determine standing to challenge search, court considered entire record on appeal); see generally *Richardson*, 234 Ill. 2d at 252 ("reviewing court may consider evidence adduced at trial as well as at the suppression hearing").

¶ 26 The State next argues that the circuit court erred in granting the defendant's motion to suppress because the officers had reasonable grounds to believe the defendant had

committed domestic battery, thus, they were entitled to use necessary and reasonable force to enter the locked bedroom and closet to arrest the defendant.

¶ 27 The physical entry into the home is the chief evil against which the fourth amendment is directed. *Payton v. New York*, 445 U.S. 573, 585 (1980). The fourth amendment applies to seizures of persons and to seizures of property and prohibits the police from making a warrantless, nonconsensual entry into a private residence to effectuate a felony arrest, absent exigent circumstances. *Id.* at 583; *People v. Foskey*, 136 Ill. 2d 66, 74 (1990); *People v. Abney*, 81 Ill. 2d 159, 168 (1980). Thus, we reject the State's contention that the officers' warrantless, nonconsensual entry to effectuate the defendant's arrest was proper because the officers had reasonable grounds to believe the defendant had committed domestic battery.

¶ 28 We also reject the State's contention that exigent circumstances existed to support the officers' warrantless and nonconsensual entry. Although the police are not required to obtain a warrant to enter a home if exigent circumstances exist, the State bears the burden to demonstrate that exigent circumstances authorized a warrantless entry by the police. *People v. McNeal*, 175 Ill. 2d 335, 345 (1997); *Foskey*, 136 Ill. 2d at 75. "The cornerstone of an exigency analysis is whether the police officers acted reasonably." *Wimbley*, 314 Ill. App. 3d at 24; see also *People v. Williams*, 161 Ill. 2d 1, 26 (1994). Each case involving a warrantless residential arrest must be decided on the individual facts presented. *Abney*, 81 Ill. 2d at 173.

¶ 29 In *Abney*, the Illinois Supreme Court articulated factors to determine whether a warrantless, nonconsensual entry into a home is justified. Thus, to establish the existence

of exigent circumstances, the court considers (1) whether the offense under investigation was recently committed; (2) whether there was any deliberate or unjustifiable delay by the officers during which time a warrant could have been obtained; (3) whether a grave offense was involved; (4) whether the suspect was reasonably believed to be armed; (5) whether the police officers were acting upon a clear showing of probable cause; (6) whether there was a likelihood that the suspect would have escaped if not swiftly apprehended; (7) whether there was a strong reason to believe that the suspect was on the premises; and (8) whether the police entry, though nonconsensual, was made peaceably. *Abney*, 81 Ill. 2d at 169-72; *Williams*, 161 Ill. 2d at 26. This is not an exhaustive list of relevant factors; the court is to consider the totality of the circumstances in judging whether the police acted reasonably. *Id.* The fourth amendment bars the admission of evidence obtained as a result of an unreasonable search. U.S. Const., amend. IV; *Wimbley*, 314 Ill. App. 3d at 24.

¶ 30 In the present case, the officers went to the defendant's mother's home to investigate an allegation that the defendant had slapped his sister across the face. The officers had probable cause to believe that the defendant had assaulted Andrea, the offense had been recently committed, and the officers had been told that the defendant was on the premises. However, there was no emergency which required a quick response.

¶ 31 The offense involved was not a particularly grave offense, no weapons were seen by the police prior to their entry, and there was no indication that the police had reason to believe that the defendant was armed or dangerous. Compare *Abney*, 81 Ill. 2d at 169

(exigent circumstances existed where suspect was apprehended 1½ hours after victim was beaten with a crowbar and pistol, and officers reasonably believed that suspect was armed with deadly weapons and exhibited signs of a violent character). The officers did not assert a likelihood that the defendant would have escaped if not swiftly apprehended. Cf. *People v. Yates*, 98 Ill. 2d 502, 516-17 (1983) (exigent circumstances existed given defendant's probable flight and the risk of a violent confrontation). Instead, there were several officers present at the scene who could have guarded the home and yard to prevent any attempt at flight while a warrant was obtained. See *Wimbley*, 314 Ill. App. 3d at 34 (no exigent circumstances where more than enough officers were present to secure basement apartment while warrant was obtained); *People v. Johnson*, 99 Ill. App. 3d 863, 866 (1981) ("[k]nowing the identity and home address of the suspect, the police officers had ample opportunity to obtain a warrant before the arrest"). Moreover, the police entry into the invaded area was not made peaceably. See *Payton*, 445 U.S. at 576 (police gained entry by prying open door with crowbar); *Wimbley*, 314 Ill. App. 3d at 29 (kicking down a door to enter is a forced, not peaceable, entry). Indeed, Officer Savage acknowledged at the hearing that no exigent circumstances existed.

¶ 32 Accordingly, after reviewing the testimony presented at the hearing on the motion to suppress, we are convinced that the circuit court acted properly in granting the defendant's motion. Considering the totality of the circumstances known to the officers at the time of the warrantless entry, although the police had probable cause to arrest the defendant, they lacked sufficient exigent circumstances to justify a warrantless entry, and therefore, their conduct was not reasonable. See *Wimbley*, 314 Ill. App. 3d at 27. The

weapons seized were, therefore, "fruits of the poisonous tree" and were properly suppressed. See *Mapp v. Ohio*, 367 U.S. 643, 655-60 (1961).

¶ 33 CONCLUSION

¶ 34 For the foregoing reasons, we hereby affirm the circuit court's order granting the defendant's motion to suppress.

¶ 35 Affirmed.