2011 IL App (2d) 100549-U
No. 2-10-0549
Order filed September 21, 2011

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of Kane County.
Plaintiff-Appellant,	)	
v.	)	No. 09-CF-470
JOSHUA J. POPP,	)	Honorable Allen M. Anderson,
Defendant-Appellee.	)	Judge, Presiding.

JUSTICE BIRKETT delivered the judgment of the court.
Presiding Justice Jorgensen and Justice Hudson concurred in the judgment.

ORDER

Held: The trial court erred in granting defendant's motion to suppress: the court's finding that defendant's mother's consent to a search was invalid did not entitle defendant to suppression; defendant was entitled to suppression only if his own consent was invalid, and the court's finding to the contrary was not against the manifest weight of the evidence.

¶ 1 Defendant, Joshua J. Popp, was charged with unlawful possession of cannabis with the intent to deliver (720 ILCS 550/5(d) (West 2008)), unlawful possession of cannabis (720 ILCS 550/4(d) (West 2008)), and unlawful possession of a controlled substance (720 ILCS 570/402(c) (West

2008)). Defendant successfully moved to suppress the evidence found during a search of his house. The State appeals. For the reasons that follow, we reverse and remand.

¶ 2 BACKGROUND

¶ 3 At the hearing on defendant's motion to suppress, defendant testified as follows. On the morning of February 12, 2009, officers from the Aurora police department knocked on the door of the house in which defendant and his parents lived. Defendant went outside to speak with the officers. During the conversation, defendant gave the officers permission to go inside the house with him to retrieve the ring for which they were looking. Defendant signed a form authorizing the officers to search the residence, but defendant did not have the opportunity to fully read the form before signing it and believed that he was simply authorizing the officers to go inside the house to retrieve the ring. As defendant and one of the officers attempted to enter the house, defendant's mother locked the front door and refused to let the officer into the house. The officer became angry and began yelling at defendant's mother, telling her that she was hampering the investigation and that he would lock her out of her house for 24 hours if she did not let him inside. Defendant then told the officers that his mother was the legal homeowner and that, if she said they could not go inside, they could not go inside. Defendant placed his hands behind his back, and the officers handcuffed him and placed him in a squad car. Defendant believed that at that point he had withdrawn his consent for the officers to enter the house.

¶ 4 Defendant's mother, Jamie Popp, gave the following testimony. On the morning of February 12, 2009, she was awoken by members of the Aurora police department knocking on her front door. Defendant went outside to speak with the officers, and when defendant came to the door with an officer, she told the officer that they could not come into the house. She then exited the house to speak with the officer. The officer told Jamie that he needed to get into the house, so she needed

to get dressed because he was going to lock her out of the house for 24 hours while he obtained a search warrant. Jamie told the officer that he could not lock her out of the house, because she was on medication and had dogs. The officer, who was approximately 6'6", was standing over her and yelling at her, telling her that she was hampering his investigation. At that point, Jamie agreed to allow the officer into the house, and the officer gave her a piece of paper to sign. She told him that she did not want to sign the paper, but the officer told her that she had to sign it. She felt intimidated, so she signed the paper even though she was not given the opportunity to read it. The officer told her that he was going to search only defendant's room and went downstairs where defendant's room was located. Another officer sat in the kitchen with her while the search was conducted.

¶ 5 Sergeant Jeff Wiencek of the Aurora police department testified as follows. On the morning of February 12, 2009, he went to defendant's home to assist in a search of the home. A woman had advised the police that, while at defendant's home, defendant had raped and sodomized her. Afterward, defendant had taken her ring. Wiencek knocked on the door of the house, and defendant responded. When defendant exited the house, Wiencek explained to him that criminal allegations had been made against him and asked if defendant had the woman's ring. Defendant said that he had the ring and would retrieve it for the officers. Defendant asked if the officers would leave after he retrieved the ring, and Wiencek told defendant that they would not leave at that point because they wanted to process defendant's bedroom as a crime scene. After Wiencek explained that defendant was not required to allow the officers in but that his refusal would mean the officers would have to obtain a search warrant, defendant consented to a search and signed the waiver form Wiencek gave to him. Defendant's mother then came out of the house and stated that she did not want the officers to come into the house, because her attorney had advised her not to let them in.

Wiencek informed Jamie that defendant had already consented to a search and that, if she did not cooperate, the officers would be forced to obtain a search warrant, during which time she would not be allowed in her house. Jamie expressed concerns about her medication and dogs. Wiencek responded by telling her that she could bring her medications with her and that her dogs could be secured somewhere else. Jamie persisted in her refusal to consent, and twice during the conversation, Wiencek began to leave, telling Jamie that they would just obtain a search warrant. Each time, Jamie would call him back. Finally, Wiencek showed Jamie the waiver form that defendant signed and told her that if she wished to consent she would have to sign the form as well. Jamie held onto the form for approximately three to five minutes before she signed it.

¶ 6 Officer Michael Nilles of the Aurora police department gave the following testimony. On February 12, 2009, he responded to defendant's residence to assist Wiencek in obtaining Jamie's consent to search the house. Nilles calmly explained to Jamie that defendant's signature on the waiver form authorized them to conduct a search of the house and that they could also seek a search warrant from the court. After Nilles completed his explanation of the search waiver and search warrant processes, Jamie signed the waiver form right above defendant's signature. While the other officers conducted the search of the basement, Nilles had coffee with Jamie in the kitchen.

¶ 7 Following arguments by the parties, the trial court granted defendant's motion to suppress. The trial court found that defendant's consent was voluntary, not revoked, and not limited, but that Jamie's consent was involuntary and a result of police coercion. According to the trial court, the lack of voluntary consent from Jamie countermanded defendant's consent.

¶ 8 After an unsuccessful motion to reconsider, the State brought this timely appeal.

¶ 9 ANALYSIS

¶ 10 On appeal, the State argues that the trial court erred in granting defendant's motion to suppress, because (1) Jamie's lack of consent was immaterial given defendant's voluntary, unrevoked consent, and (2) the trial court's finding that Jamie's consent was involuntary was against the manifest weight of the evidence. Because we agree with the State's first contention, we reverse.

¶ 11 In reviewing a trial court's decision on a motion to suppress, we apply a two-part standard of review. First, the trial court's factual findings are given great deference and will be disturbed only if they are against the manifest weight of the evidence. *People v. Luedemann*, 222 Ill. 2d 530, 542 (2006). Second, the ultimate legal conclusion as to whether suppression is warranted is reviewed *de novo*. *Luedemann*, 222 Ill. 2d at 542.

¶ 12 The fourth amendment to the United States Constitution guarantees 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. The chief evil against which the fourth amendment is directed is the physical entry of the home. *Payton v. New York*, 445 U.S. 573, 585 (1980); *People v. Wear*, 229 Ill. 2d 545, 562 (2008). Thus, the fourth amendment "has drawn a firm line at the entrance to the house" (*Payton*, 445 U.S. at 590), and generally, a warrant is necessary to satisfy the reasonableness requirement of the fourth amendment (*People v. Sorenson*, 196 Ill. 2d 425, 432 (2001)). A warrant is unnecessary, however, where the defendant gives his voluntary consent to the search. *People v. Kratovil*, 351 Ill. App. 3d 1023, 1030 (2004).

¶ 13 Here, the trial court found that defendant's consent to search was voluntary, unrevoked, and unlimited, but that Jamie's consent was involuntary. According to the trial court, the lack of valid consent from Jamie countermanded defendant's valid consent and required suppression of the evidence seized during the search. The trial court erred in suppressing the evidence in the case against defendant, because Jamie's fourth amendment rights were the only ones the trial court found

to be violated and defendant is not entitled to assert the fourth amendment rights of his mother. The Supreme Court of the United States has made clear on numerous occasions that "Fourth Amendment 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). "[S]ince the exclusionary rule is an attempt to effectuate the guarantees of the Fourth Amendment [citation], it is proper to permit only defendants whose Fourth Amendment rights have been violated to benefit from the rule's protections." *Rakas*, 439 U.S. at 134; see also *United States v. Salvucci*, 448 U.S. 83, 95 (1980) ("we adhere to the view *** that the values of the Fourth Amendment are preserved by a rule which limits the availability of the exclusionary rule to defendants who have been subjected to a violation of their Fourth Amendment rights").

¶ 14 This case is readily distinguishable from *Georgia v. Randolph*, 547 U.S. 103 (2006). In *Randolph*, although the defendant refused to allow police to search his home, his wife consented. *Randolph*, 547 U.S. at 107. The United States Supreme Court held that, where the defendant is present and expressly objects to a search of his home, the consent of the defendant's cotenant does not render such a search reasonable. *Randolph*, 547 U.S. at 120. The difference between the present case and *Randolph* is obvious. In *Randolph*, the defendant was asserting his own fourth amendment rights when he sought to suppress the evidence seized during the search to which he refused to consent. Here, on the other hand, defendant is asserting not his own fourth amendment rights but those of his mother.

¶ 15 Given that defendant is not entitled to the exclusion of evidence against him on the basis that his mother's fourth amendment rights were violated, the only way to sustain the trial court's grant of defendant's motion to suppress is to find that defendant's consent was not valid. Defendant argues just that, contending that the trial court's finding that defendant's consent was not limited or

revoked was against the manifest weight of the evidence. See *People v. Prinsing*, 389 Ill. App. 3d 923, 932 (2009) (standard of review). According to defendant, his testimony that he believed the search was limited to retrieving the ring and that he told the officers they could not enter the house after his mother refused to let them in was consistent with the other evidence presented and, thus, demonstrated that his consent was always limited to retrieval of the ring and that he withdrew his consent once his mother refused. The fact that some of defendant's testimony was consistent with the testimony of other witnesses does not necessarily mean that the trial court's finding to the contrary was against the manifest weight of the evidence, especially where there is evidence supporting the trial court's finding. Defendant identified the waiver form he signed, and the form did not limit the officers' authority to search to the retrieval of the ring. Moreover, Wiencek testified that defendant carefully reviewed the form for several minutes prior to signing it and that he explained to defendant that the waiver would allow the officers to search for evidence and process the alleged crime scene. Despite defendant's testimony that, after his mother initially refused to allow the officers into the house, he told the officers they could not enter, Wiencek testified that defendant actually told his mother to allow the officers in because he had already signed the waiver form. Based on this evidence, we conclude that the trial court's finding that defendant's consent was not revoked or limited was not against the manifest weight of the evidence.

¶ 16 In sum, because defendant is not entitled to suppression of evidence against him on the ground that his mother's fourth amendment rights were violated, and because the trial court's finding that defendant gave valid consent to search was not against the manifest weight of the evidence, we reverse the trial court's grant of defendant's motion to suppress.

¶ 17 CONCLUSION

¶ 18 For the reasons stated, the judgment of the circuit court of Kane County is reversed and the matter remanded.

¶ 19 Reversed and remanded.