

NOTICE

Decision filed 07/09/14. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2014 IL App (5th) 120496-U

NO. 5-12-0496

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,

Plaintiff-Appellant,

v.

BRANDON DAVIS,

Defendant-Appellee.

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Appeal from the
Circuit Court of
St. Clair County.

No. 12-CF-671

Honorable
Michael N. Cook,
Judge, presiding.

JUSTICE STEWART delivered the judgment of the court.
Justices Spomer and Schwarm concurred in the judgment.

ORDER

¶ 1 *Held:* The defendant failed to carry his burden to demonstrate that he personally had a reasonable expectation of privacy in his neighbor's garage and, therefore, is not entitled to claim the protection of the fourth amendment allowing for the exclusion of evidence.

¶ 2 The defendant, Brandon Davis, was charged with one count of residential burglary and three counts of burglary. The defendant moved to suppress the evidence against him. Following a suppression hearing, the trial court granted the defendant's motion. The State certified to the trial court that the suppression substantially impaired the State's ability to prosecute the case and filed a timely notice of appeal. We reverse.

¶ 4 The evidence at the hearing on the defendant's motion to suppress revealed that the defendant lived with his mother and his four siblings. In April 2012 the defendant, who was 18 years old, was kicked out of his mother's house. For approximately three weeks the defendant stayed either with his friend, Dustin Green, or at a neighbor's house down the street.

¶ 5 On May 1, 2012, the police were investigating a burglary in which some knives were stolen on April 21, 2012. They received an anonymous tip that Dustin Green was in possession of the stolen knives. Dustin's mother, who owned the home where Dustin lived, gave the police consent to search the residence. During the search, the police recovered knife sheaths and a backpack belonging to the defendant. Based on comments from Dustin's mother, the police suspected that the defendant might have participated in the theft. After transporting Dustin to the police station, the police officer headed to the defendant's residence to speak with him.

¶ 6 As the officer was parked on the defendant's street, he noticed two individuals emerge from between two houses heading toward the defendant's home. One of them was carrying a backpack and appeared to be too young to be out of school. The officer approached the individuals and asked their names and why they were not in school. The individuals were identified as the defendant and a 15-year-old male juvenile. The defendant responded that he was 18 years old and out of school; the juvenile told the officer that he had been suspended from school. The officer ran their names through dispatch to check for warrants. The individuals denied knowing anything about recent

burglaries that had been committed in the area. As the officer was speaking with the individuals, other officers arrived at the scene.

¶ 7 One of the arriving officers recognized the defendant from the defendant's previous job at a local pizza restaurant. The officer knew where the defendant's family lived and knew that the defendant was in and out of the family home quite a bit. The defendant agreed to speak with the officer. At first the defendant denied any knowledge of the stolen knives, but a few moments later he admitted that he knew about the theft of the knives. The officer testified that he advised the defendant of his *Miranda* rights. The defendant admitted to the officer that he was involved in the theft and reported that the stolen items were hidden in a "shop vac" in the garage of a neighbor's house where he had been staying on and off for the past few weeks.

¶ 8 The officer asked the defendant for consent to search the neighbor's garage, and the defendant signed the consent form. The defendant led the officers to the back door entrance into the garage and showed them where the stolen items were located. The defendant was placed under arrest.

¶ 9 On August 9, 2012, the defendant filed a motion to suppress the evidence obtained from the search of the neighbor's garage, alleging that he did not have authority to consent to a search of the premises. At the evidentiary hearing, the defendant testified that he told the officer that he lived with his mother but that he had been staying at either Dustin's or the neighbor's house for a few weeks. He testified that the night before the search of the garage, he had stayed at Dustin's house. The defendant also testified that he had not stayed at the neighbor's house since the previous night because he had learned

that the neighbor's wife was upset that he was staying there. He stated that he did not think he was able to stay with them any longer. The defendant did not keep any personal items at the neighbor's home. He slept on the couch in the living room and was not assigned a bedroom. Although he was not allowed inside the house while the neighbors were at work, he was permitted access during the day to the garage through an unlocked back door.

¶ 10 On October 4, 2012, the circuit court granted the defendant's motion and ordered the evidence suppressed. The circuit court found that the defendant was a "previous overnight guest" at the neighbor's house. The court further found that the defendant was not on the lease, did not have a key or permission to be in the residence while the homeowners were not present, and "was in fact residing at his mother's home at the time consent to search was given." The court concluded that the defendant did not have actual, apparent, or common authority to provide consent to search the neighbor's garage.

¶ 11 The State certified to the trial court that the suppression substantially impaired the State's ability to prosecute the case and filed a timely notice of appeal.

¶ 12 ANALYSIS

¶ 13 The issue before this court on appeal is whether the trial court properly granted the defendant's motion to suppress evidence. A defendant may move to suppress evidence obtained against him on the ground that the search and seizure without a warrant was illegal. 725 ILCS 5/114-12(a)(1) (West 2012). The burden to prove that the search and seizure were unlawful is on the defendant. 725 ILCS 5/114-12(b) (West 2012).

¶ 14 "When reviewing a trial court's ruling on a motion to suppress, we defer to the trial court's findings of fact, reversing them only if they are against the manifest weight of the evidence, but review *de novo* the court's ultimate determination of whether suppression is warranted." *People v. Burton*, 409 Ill. App. 3d 321, 327 (2011).

¶ 15 On appeal the State argues that because the defendant had no legitimate expectation of privacy in the neighbor's garage, he may not claim the protection of the fourth amendment allowing for the exclusion of illegally obtained evidence. We agree.

¶ 16 The fourth amendment to the United States Constitution and a similar provision in the Illinois Constitution protect individuals from unreasonable searches and, generally, searches without a warrant are presumptively unreasonable. *Burton*, 409 Ill. App. 3d at 328 (citing U.S. Const., amend. IV; Ill. Const. 1970, art. I, § 6). One exception to the warrant requirement exists where the police obtain consent to search either from the person whose property is being searched or from a third party who possesses the appropriate authority over the premises. *Id.* A defendant's fourth amendment rights may be enforced by the exclusion of evidence obtained against him in an illegal search. *People v. Rosenberg*, 213 Ill. 2d 69, 77 (2004). Because the fourth amendment protects people, not places (*Katz v. United States*, 389 U.S. 347, 351 (1967)), the issue is whether the disputed search " 'infringed an interest of the defendant which the Fourth Amendment was designed to protect.' " *Rosenberg*, 213 Ill. 2d at 77-78 (quoting *Rakas v. Illinois*, 439 U.S. 128, 140 (1978)). In order to claim the protection of the fourth amendment, a defendant must demonstrate that he *personally* had a reasonable expectation of privacy in the place searched. *People v. Nevarez*, 2012 IL App (1st) 093414, ¶ 50. On review, the

question of whether the defendant has established a legitimate expectation of privacy sufficient to permit him to contest a search or seizure is one of law, and our review is *de novo*. *Rosenberg*, 213 Ill. 2d at 77.

¶ 17 "Factors relevant in determining whether a legitimate expectation of privacy exists include the individual's ownership or possessory interest in the property; prior use of the property; ability to control or exclude others' use of the property; and subjective expectation of privacy." *People v. Johnson*, 237 Ill. 2d 81, 90 (2010). Review of the record indicates that the defendant's use of the garage during the day afforded him no possessory interest in the property. He was not given a key to the garage; he was merely allowed access through an unlocked back door of the garage. He was not allowed inside the residence when the homeowners were at work during the day. He did not have a bedroom but rather was allowed to sleep on a couch in the living room. No evidence was presented that the defendant had used his neighbor's garage prior to the three-week period that he stayed there on and off or even evidence of how much time he actually spent in the garage during those few weeks. There is no evidence that the defendant kept clothing or other personal property in the garage. The only evidence regarding the defendant's use of the garage was that he used it to store the stolen knives in his neighbor's shop vac. There is no evidence that the defendant had the ability to control or exclude others' use of the garage. Accordingly, we find that the defendant had no legitimate expectation of privacy in his neighbor's garage.

¶ 18 The defendant contends that the State waived the argument that he had no reasonable expectation of privacy in the garage when it failed to raise the issue at the

suppression hearing. The defendant further contends that the State implicitly conceded that he had a reasonable expectation of privacy in the garage. The defendant's waiver argument is unpersuasive as it was his burden to prove that the search was illegal, and the question of whether the defendant can challenge the search as being illegal turns on whether he had a legitimate expectation of privacy in the premises.

¶ 19 "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 Fourth Amendment rights infringed." (Emphasis added.) *Rakas*, 439 U.S. at 134. In the case at bar, the place searched was the defendant's neighbor's garage. As the defendant has failed to demonstrate that he *personally* had a reasonable expectation of privacy in his neighbor's garage, the fourth amendment is not implicated under the facts of this case. *Nevarez*, 2012 IL App (1st) 093414, ¶ 50. Because the defendant failed to carry his burden to demonstrate that he personally had a reasonable expectation of privacy in his neighbor's garage, he is not entitled to claim the protection of the fourth amendment allowing for the exclusion of evidence.

¶ 20

CONCLUSION

¶ 21 For the reasons stated, we reverse the order of the circuit court of St. Clair County suppressing the evidence and remand this cause for further proceedings.

¶ 22 Reversed and remanded.