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Criminal Law - Suppression of Evidence - The Owner of Leased Property Does Not Have Standing to Object to the Use of Evidence Obtained as a Result of an Illegal Search of the Leased Property Nor Is He Exempt from Establishing Standing Unless the Offense Charged Is Unlawful Possession of the Goods Seized

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In the instant case, the Illinois Appellate Court viewed the *Villareal* case as controlling and held that the defendant's motion to dismiss was an admission of the allegations contained in the complaint for the purpose of argument only. Plaintiff's complaint charged that the defendant was and continues to be in a position to divert business from the plaintiffs. The defendant could not be considered to have admitted the verity of such an allegation by his motion to dismiss.

By its decision in the *Phelan* case, the Illinois Appellate Court continues to assert that the discretionary power possessed by the trial court in granting temporary injunctions is not to be controlled by technical legal rules. However, the court has wisely held that verification of the complaint by affidavit or petition is one technical rule that the chancellor cannot overlook. The exercise of injunctive power requires great caution and deliberation and should not be exercised in doubtful cases. Therefore, it is necessary that the complaint for a temporary injunction clearly show a *prima facie* need for such relief. In *Phelan*, the court justifiably held that it is essential to such a showing that the allegations contained in the complaint be supported by a verified petition or affidavit.

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**CRIMINAL LAW—SUPPRESSION OF EVIDENCE**—THE OWNER OF LEASED PROPERTY DOES NOT HAVE STANDING TO OBJECT TO THE USE OF EVIDENCE OBTAINED AS A RESULT OF AN ILLEGAL SEARCH OF THE LEASED PROPERTY NOR IS HE EXEMPT FROM ESTABLISHING STANDING UNLESS THE OFFENSE CHARGED IS UNLAWFUL POSSESSION OF THE GOODS SEIZED.—In the recent case of *People v. DeFilippis*, 54 Ill. App. 2d 137, 203 N.E.2d 627 (1st Dist. 1964), the Appellate Court of Illinois held that the owner of leased property did not have "standing" to object to the use of evidence which was obtained as a result of an illegal search of the leased property in violation of the Constitution.¹ The court also held that the only exception to the rule, requiring a defendant to establish his "standing" before he can object to the use of evidence obtained as a result of an illegal search and seizure, arises when the proof of possession of the seized goods would also contribute proof of the crime charged.

In the *DeFilippis* case, FBI agents, acting without a warrant, entered a garage, arrested four of the defendants, and seized radios which were alleged to be stolen property. The fifth defendant, DeFilippis, was later

¹ "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." U.S. Const. amend. IV. Ill. Const. art. II § 6 is substantially the same.
DISCUSSION OF RECENT DECISIONS

arrested when he appeared outside the garage. DeFilippis was the owner of the garage but he had previously leased it to another.

The defendants were indicted for burglary and theft. On motions by the defendants, the trial court ordered the evidence suppressed. The Appellate Court reversed and remanded with directions to deny the motions because the defendants had failed to show their right to possession of the goods seized or their right to be on the premises searched. Although DeFilippis was the owner of the property searched, he failed to show that he had a right to the possession of the garage since he had previously leased it to another.² The Appellate Court also held that the defendants were not exempt from establishing "standing" because the crime with which they were charged was not the unlawful possession of the goods seized. A petition for rehearing was denied in a supplemental opinion.

The "exclusionary rule," excluding the use of evidence obtained as a result of an illegal search and seizure in violation of the Constitution,³ was established as a means of enforcing the right against illegal searches and seizures by agents of the Federal Government.⁴ The states were not required to exclude evidence so derived,⁵ but many states, including Illinois,⁶ adopted the "exclusionary rule" as a protection against unreasonable searches by agents of the State.⁷ In the recent case of Mapp v. Ohio,⁸ it was decided that the "exclusionary rule" is a Constitutional mandate and therefore binding upon the states.

Because the right to be free from an unreasonable search and seizure is personal,⁹ the "exclusionary rule" is based on the theory that the evidence is excluded to provide a remedy for a violation of the defendant's right.¹⁰ Therefore, the right to object to the search and seizure and to the use of the evidence obtained therefrom, may be invoked only by "the person whose rights have been invaded . . . ."¹¹ In the past, the courts have required the defendant to show a right to the possession of the seized property or a possessory interest in the property searched in order to establish his "standing" to object to the use of the evidence.¹² This re-

² The court cited Baumgardner v. Consolidated Copying Co., 44 Ill. App. 74, 75 (1st Dist. 1892) where it was stated that "a lease is an agreement for exclusive possession."
³ See note 1, supra.
⁵ See Wolf v. Colorado, 338 U.S. 25, 69 Sup. Ct. 1359 (1949), where the Court held that the "exclusionary rule" was a judicial rule of evidence of the Federal courts, and as such, was not binding upon the states.
⁶ People v. Castree, 311 Ill. 392, 143 N.E. 112 (1924).
⁷ See People v. Mayo, 19 Ill. 2d 136, 166 N.E.2d 440 (1960), where the court stated that the protection against unreasonable searches and seizures is based on the invasion of privacy rather than on the self-incriminatory effect of the evidence used.
⁹ People v. Pitts, 28 Ill. 2d 395, 186 N.E.2d 357 (1962).
¹¹ Coon v. United States, 36 F.2d 164, 165 (10th Cir. 1929).
¹² See, e.g., People v. Exum, 382 Ill. 204, 47 N.E.2d 56 (1943); People v. Perry, 1 Ill.
requirement was relaxed in the case of Jones v. United States. In the Jones case, the police, acting with a search warrant, entered the petitioner's apartment and found narcotics. The petitioner, who had been given the use of the apartment by a friend, was indicted on two charges: that he "purchased, sold, dispensed and distributed" narcotics which were not in the "original stamped package," in violation of 26 U.S.C. § 4707(a), and, that he "facilitated the concealment and sale of" narcotics, knowing that they had been illegally imported, in violation of 21 U.S.C. § 174. The statutes permitted conviction upon proof of possession of narcotics and proof of possession of narcotics which lacked the appropriate stamps. The petitioner moved to suppress the evidence on the grounds that the search warrant had been issued without probable cause. The United States Supreme Court abolished the common law distinctions of "guest," "invitee," "licensee," and "lessee," in determining the defendant's proprietary interest in the property searched, and held that anyone legitimately on the premises where the search occurs may object to the evidence obtained as a result of the illegal search. The same Court also made an exception to the requirement of "standing" in holding that where the same possession necessary to establish "standing" would also convict the defendant, he is not required to prove his "standing" to object to the use of the evidence. Recognizing that if the defendant were required to prove "standing," it would mean an admission that he had committed the offense, the Court stated:

... It is not consonant with the amenities, to put it mildly, of the administration of criminal justice to sanction such squarely contradictory assertions of power by the Government.

Illinois has complied with the Jones case but has declined to further relax its requirements for establishing "standing." Therefore, to establish "standing," a defendant must prove: (1) that he has a possessory interest in the premises searched; or (2) that he was legitimately on the premises searched; or (3) that he has a right to the possession of the property seized. A defendant is only exonerated from establishing "standing" where the proof of the possession of property seized would also constitute proof of the crime which he is charged with having committed.

In DeFilippis, the evidence seized consisted of stolen radios. The court held that the defendants did not come within the exception of the Jones case as possession of stolen radios was not in itself a crime, nor did the possession constitute proof of a crime. The court, in so holding, said:

14 Id. at 263-4, 80 Sup. Ct. at 732.
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. . . . But where the crime charged, as in the instant case, does not rest on possession, the principle laid down in the Jones case does not apply. 16

Although a valid distinction, the rationale of the Jones case would seem to apply, as the "unexplained possession of recently stolen property gives rise to an inference of guilt which may be sufficient to sustain a conviction for theft." 17 In such a case, the Government would be in the same contradictory position which the Jones case sought to eliminate.

The present status of the law, allowing anyone who is legitimately on the premises searched to object, in essence allows the defendant to assert the right of the person who has the possessory interest in the premises. In DeFilippis, the defendant, DeFilippis, was the owner of the premises searched. DeFilippis leased the premises and failed to show that he reserved a right to possession for himself. Therefore, he did not have "standing" to object to the use of evidence illegally seized in a garage which he owned. 18 It seems rather inconsistent to allow anyone legitimately on the premises to assert the right of the person who has a possessory interest in the premises but not to allow the owner of the premises to assert the right of his lessee in objecting to the use of evidence obtained as a result of an illegal search of the premises.

It would certainly seem that any defendant, against whom the fruits of an illegal search and seizure are to be used in evidence, would be a person sufficiently "aggrieved" to avail himself of the protection afforded by statute. 19 To abolish the requirement of "standing" and to allow a person so "aggrieved" to object to the evidence, would not only be logical but also the most practical means of protecting against violations of the Constitutional right to be free from unreasonable searches and seizures. 20

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18 See also United States v. Konigsberg, 336 F.2d 844 (3d Cir. 1964) where the court held that a defendant who was a lessee of the searched property did not have "standing" to challenge the search because he had in turn leased the premises to a third party. The DeFilippis case was decided one month prior to the Konigsberg case.
19 Ill. Rev. Stat. ch. 38, § 114-12 (1963) and 18 U.S.C.A., Rule 41(e) of the Federal Rules of Criminal Procedure allow "persons aggrieved" by an illegal search and seizure to move to suppress the evidence obtained as a result thereof.
20 See Stan. L. Rev. 515 (1957) for the apparent success that California has had in protecting against violations of the Constitution since it abolished the requirement of "standing" in People v. Cahan, 44 Cal. 2d 434, 282 P.2d 905 (1955).