

court erred in granting the defendant's motion to suppress because the defendant's unwarned statements and consent to search were voluntary and the search pursuant to the search warrant was proper. For the following reasons, we affirm.

¶ 3 A hearing on the defendant's motion to suppress was held September 30, 2009, and October 21, 2009. During the hearing, Agent Robert Patterson, an Illinois State Police officer assigned to the Methamphetamine Response Team, testified that on July 24, 2008, an employee from a Walgreens pharmacy in Collinsville, Illinois, notified him that a man identified as the defendant had purchased a box of pseudoephedrine pills earlier that day. He explained that this information was significant because he had previously received several telephone calls from other pharmacies advising that the defendant had purchased pseudoephedrine pills and he was aware that the defendant had been the subject of prior methamphetamine investigations. The defendant also had a conviction related to methamphetamine production. Agent Patterson suspected that the defendant was purchasing the pseudoephedrine pills to make methamphetamine.

¶ 4 Agent Patterson and Agent Michael Fisher, an Illinois State Police officer also assigned to the Methamphetamine Response Team, went to the defendant's residence to speak with him regarding their suspicions. They arrived at approximately 4 p.m. The defendant's brother, Donald Totty, was standing in the driveway, and Agent Patterson and Agent Fisher approached him. Agent Patterson had previously been in contact with a police dispatcher, who informed him that there was an active arrest warrant for the defendant's arrest. The agents asked Donald if the defendant was inside the residence, and Donald stated that the defendant was inside. The agents asked Donald to get the defendant because they wanted to speak with him. Donald opened the door of the residence and told the defendant to come outside. The

defendant exited the residence and approached the agents, who were still standing in the driveway.

¶ 5 Agent Fisher notified the defendant that there was an active arrest warrant for him out of the Collinsville police department for failure to appear. The defendant was then placed under arrest and handcuffed. Thereafter, Agent Fisher questioned the defendant regarding his purchase of the pseudoephedrine pills earlier that day. Agent Fisher explained that the defendant was not placed under arrest for any offense relating to the purchase of the pills, but the agents were conducting an investigation into the pseudoephedrine purchase. Agent Fisher asked the defendant if he had purchased pseudoephedrine pills from a Collinsville Walgreens earlier that day, and the defendant responded that he had. Agent Fisher then asked the defendant where the pills were located, and the defendant said that they were in a cabinet above the kitchen sink. Agent Fisher requested permission to enter the residence and retrieve the pills. The defendant said that Agent Fisher could go inside the residence to get the pills as long as Donald went inside with him. Agent Fisher agreed.

¶ 6 Agent Fisher and Donald entered the residence and Donald directed him to the kitchen cabinet. Agent Fisher looked inside the cabinet and saw a Walgreens bag that contained a box of pseudoephedrine pills, a bottle of hydrogen peroxide, and two bottles of isopropyl alcohol. He seized the Walgreens bag, but left the peroxide and alcohol in the cabinet. He testified that isopropyl alcohol and hydrogen peroxide were used to manufacture methamphetamine. Agent Patterson testified that Agent Fisher and Donald were inside the residence for a minute or two, and Agent Fisher emerged carrying the box of pseudoephedrine pills. Agent Fisher walked up to the defendant, showed him the box of pills, and asked him if they were the same pills that he had purchased at Walgreens earlier that day. The defendant responded that they were.

Agent Fisher then asked the defendant for consent to search the residence for items associated with the production of methamphetamine, and the defendant refused.

¶ 7 Agent Fisher left the premises and obtained a search warrant to conduct a search for methamphetamine-related items at the defendant's residence. He returned to the defendant's residence later that day with the search warrant, and several items commonly associated with the production of methamphetamine were discovered during the search. Agent Fisher testified that neither he nor any other law enforcement agents coerced the defendant or made any promises to him at any point during the encounter that day. He stated that he would not have entered the defendant's residence to obtain the pseudoephedrine pills if the defendant had not given him consent.

¶ 8 During cross-examination, Agent Fisher acknowledged that he did not have any indication that methamphetamine-related items would be discovered inside the defendant's residence prior to his contact with the defendant on July 24. He also acknowledged that it was not illegal to purchase a single box of pseudoephedrine pills and that the purchase of the single box, by itself, would not establish probable cause to believe that the defendant was engaged in anything illegal. Agent Fisher could not recall whether he gave *Miranda* warnings to the defendant prior to questioning him at his residence that day, but he agreed that it was not mentioned in his police report. He acknowledged that he did not ask the defendant to sign a *Miranda* waiver form before the questioning and that he did not request that the defendant sign a consent-to-search form before initially gaining entrance to the defendant's residence. He admitted that other medicinal-type boxes were located in the kitchen cabinet where the pseudoephedrine pills were found, and he believed that it would be fair to characterize that cabinet as a medicine cabinet.

¶ 9 Douglas Totty II, the defendant's son, testified that on the afternoon of July 24, 2008, he was detained by three police officers who were with a drug enforcement unit. Douglas stated that the officers asked him why he had been at Walgreens earlier that day, and Douglas responded that he had not been at Walgreens. The officers did not believe him initially. They handcuffed him and transported him to his father's residence. While he was being detained in the squad car outside his father's residence, he observed a police officer asking his father for permission to go inside the house and the defendant denying the officer admittance. He could hear what was being said because the back door of the squad car was open. He did not see any of the officers enter the residence after his father's protests. When the officers discovered that he was not the Douglas Totty that purchased the box of pseudoephedrine pills from Walgreens earlier that day, they released him and told him to leave the premises. During cross-examination, he testified that his father was already in handcuffs when he arrived at the residence between 4:40 p.m. and 5 p.m.

¶ 10 The defendant testified that he bought a single box of pseudoephedrine pills from Walgreens between 3 p.m. and 4 p.m. on July 24, 2008. After making the purchase, he returned home and placed the pills in the medicine cabinet in the kitchen. Shortly thereafter, his brother, who was outside, informed him that a "swarm" of police officers were outside the residence. The defendant went outside. He asked the officers what was the problem, and one of the officers, Agent Fisher, informed him that Collinsville had an active arrest warrant for his arrest for arson and battery. He told Agent Fisher that they had the wrong guy. The defendant was then placed under arrest and handcuffed. After he was arrested, Agent Fisher called him a "MF-ing liar." The defendant recalled that the officers questioned him regarding the whereabouts of a girl who had been spotted in his vehicle at Walgreens. He testified

that one officer asked him how he would like "to get smacked in the chops." Agent Fisher asked the defendant about the pseudoephedrine pills, and the defendant responded that he had purchased the pills from Walgreens earlier that day and the pills were in the medicine cabinet inside the house. Agent Fisher said he was going inside the residence to get the pills. The defendant shouted that Agent Fisher did not have permission to enter the house. The defendant directed his brother Donald to go inside the house and get the pills. Agent Fisher then stated that he was going with Donald, and he entered the residence despite the defendant's protests. The defendant testified that he was not given *Miranda* warnings and was not asked to sign a *Miranda* waiver form prior to the officers questioning him.

¶ 11 The defendant testified that Agent Fisher exited the residence shortly thereafter, and he was carrying the box of pills. The defendant directed Donald to lock the door, and Agent Fisher approached another officer and described what he observed in the medicine cabinet. Agent Fisher and the other officer approached the defendant and asked him for permission to search the residence. The defendant refused their request. Agent Fisher then walked up to the defendant, snatched his keys from his belt, stated that he had permission to search the house, and reentered the residence. The defendant then began yelling that Agent Fisher did not have permission to search the residence. He believed that between 10 and 15 police officers were standing outside his house that day. He testified that the officers were visually searching the outside of the residence before the search warrant was obtained. He admitted that he had a prior conviction relating to methamphetamine.

¶ 12 After hearing all of the evidence, the trial court made the following oral statement concerning the case:

"I don't particularly care for the way that I think the *** Courts over the years

have put all kinds of orchestrated hyper-technical rules on arrests and searches done [by] police officers. I think it is an undue burden and has gone to extremes.

The nature of traffic stops, the nature of searches, the nature of some particular types of consents, even certain warnings that have to be given, all put the police officers in contact with a suspect or an accused in a very difficult situation.

But, having said that, the Courts *** superior to this one have also indicated that essentially rules [are] rules. I have to see how these rules that they have structured apply to these circumstances.

I don't fault the officers. I don't find that there was any significant lack of diligence or professional performance. The Illinois State Police, the testimony I have here, I don't find any reason to believe that there was any artifice or thought of artifice in this, or deception.

But [the defendant's attorney] isn't even arguing it. [He] is just arguing in his motion and in his presentation of the evidence and summary that the questioning under the circumstances was contrary to what the law would require. And I will look at that very carefully."

¶ 13 On December 8, 2009, the trial court entered a written order granting the defendant's motion to suppress. The court concluded that the defendant was in police custody and was therefore entitled to receive *Miranda* warnings (*Miranda v. Arizona*, 384 U.S. 436 (1966)) before the officers questioned him about the purchase and location of the pseudoephedrine pills. The court further concluded that the defendant's responses to the officer's questions led to the seizure of the pseudoephedrine pills from his residence, and the officer's entry into his residence, whether consensual or not, led to the issuance of the search warrant and the seizure of the methamphetamine-related items. Therefore, the court determined that all the

items seized and all the observations made were barred because the defendant had not been given *Miranda* warnings before he was questioned.

¶ 14 The State appealed the trial court's written order. This court vacated the suppression order and remanded the case for further proceedings because the trial court had made no "findings regarding whether the defendant's unwarned statements were coerced or voluntary and whether the conduct of the police infringed on the defendant's constitutional privilege against compelled self-incrimination or whether it violated the prophylactic rules of *Miranda*." *People v. Totty*, No. 5-10-0010, ¶ 16 (July 29, 2011) (unpublished order pursuant to Illinois Supreme Court Rule 23).

¶ 15 On remand, the trial court entered a written order on January 9, 2012, clarifying its previous order. The court stated as follows in the written order:

"The court finds and orders as follows. The previous order, and findings therein, filed 7 December 2009 is re-affirmed and restated as incorporated herein. Further the court finds that at the time of questioning of the defendant by the police, defendant's statements were not voluntarily made, were given under improperly coercive circumstances, and the conduct infringed upon the defendant's right against self-incrimination."

The State appeals.

¶ 16 A motion to suppress generally presents mixed questions of fact and law. *People v. Pitman*, 211 Ill. 2d 502, 512 (2004). In reviewing a circuit court's decision to grant or deny a motion to suppress, we consider whether the court's findings of facts are against the manifest weight of the evidence and review *de novo* the ultimate legal question of whether the evidence should be suppressed. *Id.* The deferential standard of review for findings of fact is grounded in the reality that the trial court is in a superior position to determine and weigh the credibility of the witnesses, observe

the witnesses' demeanor, and resolve conflicts in the witnesses' testimony. *Id.*

¶ 17 The State first argues that the trial court erred in determining that the defendant's unwarned statements were involuntary. The constitutional test for the admission of an inculpatory statement in evidence is whether the statement was voluntary. *People v. Richardson*, 234 Ill. 2d 233, 252 (2009). A statement is considered voluntary if it is made freely, voluntarily, and without compulsion or inducement of any sort. *People v. Gilliam*, 172 Ill. 2d 484, 500 (1996). To determine whether the defendant's inculpatory statement is voluntary, a court must consider the totality of the circumstances of the particular case. *People v. Nicholas*, 218 Ill. 2d 104, 118 (2005). "The question must be answered on the facts of each case; no single fact is dispositive." *Gilliam*, 172 Ill. 2d at 500. A court should consider the following factors in making this determination: the defendant's age, intelligence, background, experience, mental capacity, education, and physical condition at the time of questioning; the legality and duration of the interrogation; the presence of *Miranda* warnings; and the presence of any physical or mental abuse by the police, including the existence of threats or promises. *Richardson*, 234 Ill. 2d at 253-54.

¶ 18 Here, the defendant gave the following two statements as a result of questioning by the officers: that he purchased a single box of pseudoephedrine pills at Walgreens on July 24 and that the pills were inside a kitchen cabinet in his residence. The trial court concluded that the defendant's unwarned statements made in response to police questioning were involuntary and were given under improperly coercive circumstances. After reviewing the entire record, we agree with the trial court's determination that the defendant's statements were involuntary. The evidence revealed that the defendant's brother informed the defendant that a "swarm" of police officers were outside the residence. The defendant went outside to see what the

officers wanted, and he was immediately placed under arrest and handcuffed pursuant to an arrest warrant on an unrelated matter. Subsequently, the officers began questioning him about his purchase of a single box of pseudoephedrine pills at a Collinsville Walgreens earlier that day. The officers did not tell the defendant that he was under investigation for methamphetamine production as a result of this purchase. Further, the defendant was not given appropriate *Miranda* warnings prior to the questioning. Accordingly, the trial court did not err by concluding that the defendant's statements were involuntary.

¶ 19 The State also argues that the trial court erred by finding that the defendant's consent to search was involuntary. The defendant notes that his testimony revealed that he never granted the officers permission to search his residence. Initially, it is important to note that the search the parties are referencing is the initial search where Agent Fisher accompanied the defendant's brother inside the residence to get the single box of pseudoephedrine pills. This occurred before the officers obtained the search warrant.

¶ 20 "It is well settled under the fourth and fourteenth amendments that warrantless searches are unreasonable subject only to a few established exceptions." *People v. Prinzing*, 389 Ill. App. 3d 923, 932 (2009). One such exception to the warrant requirement is a search that is conducted with a defendant's voluntary consent. *Id.* Similar to determining the voluntariness of an inculpatory statement, the determination of whether a consent to search is voluntary requires an examination of the totality of the circumstances. *Id.* Consent is not considered voluntary when it is the product of coercion, intimidation, or deception. *Id.* Relevant factors for determining whether a consent to search was voluntary include the following: the defendant was in police custody; the arrest occurred late at night; the officers made

the arrest while displaying their weapons; the arrest was made by forcible entry or the use of force; the defendant was handcuffed or kept in close restraint; the officers gained a key or similar means of entry during a search incident to arrest for the place they were asking to search; the officers used the custody to make repeated requests for consent; the custody was used for leverage, such as the officer telling the defendant that he would be released if he consented; the defendant knew or was told that he had the right to refuse consent; and the consent was obtained after the officer refused to grant the defendant's request to consult with counsel. *People v. Redman*, 386 Ill. App. 3d 409, 424 (2008).

¶ 21 Although the State argues in the present case that the defendant gave limited consent for Agent Fisher to go inside and retrieve the pseudoephedrine pills, the defendant argues that he never gave Agent Fisher permission to enter the residence. Instead, the defendant testified that Agent Fisher repeatedly asked him (while he was under arrest and in handcuffs) for permission to enter the residence to retrieve the box of pseudoephedrine pills, and he denied Agent Fisher's request. He further testified that he told his brother to go inside and get the pills for Agent Fisher; however, Agent Fisher insisted on accompanying Donald inside. After hearing the testimony, the trial court concluded that Agent Fisher's observations of the contents of the kitchen cabinet, whether consensual or not, were barred and prohibited from being introduced at trial. We note that the defendant's response to Agent Fisher's initial request to enter the residence and retrieve the pills resulted from the same circumstances as his statements regarding the purchase and location of the pseudoephedrine pills. Therefore, we conclude that the defendant's "consent to search" was involuntary.

¶ 22 The State argues that the trial court's factual findings that the police *did not* act with artifice or deception were inconsistent with its legal conclusion that the

defendant's statements were involuntary and made under improperly coercive circumstances. In support of this argument, the State quotes the following excerpt from the court's oral pronouncement on October 21, 2009, the date of the hearing: "I don't fault the officers. I don't find that there was any significant lack of diligence or professional performance. The Illinois State Police, the testimony I have here, I don't find any reason to believe that there was any artifice or thought of artifice in this, or deception." Reviewing the court's oral pronouncement in its entirety reveals that the trial court's factual findings and legal conclusions were not inconsistent. Instead, the court was explaining that although it found that the officers violated the defendant's constitutional rights, it did not believe that the officers did so intentionally. Accordingly, we conclude that the trial court did not err in granting the defendant's motion to suppress with regard to the defendant's statements regarding the purchase and location of the pseudoephedrine pills and the initial search of the residence.

¶ 23 Finally, the State argues that the search pursuant to the search warrant was proper and the items seized during the execution of the search warrant should not have been suppressed. The affidavit in support of the search warrant signed by Agent Fisher contained the following information: (1) that the defendant had purchased pseudoephedrine pills on June 15, 2008, July 5, 2008, and July 24, 2008, from a Walgreens pharmacy in Collinsville; (2) the defendant had an active arrest warrant; (3) the defendant admitted to Agent Fisher that he purchased the pseudoephedrine pills on July 24; (4) the defendant gave Agent Fisher permission to enter his residence to retrieve the pseudoephedrine pills; (5) Agent Fisher retrieved the pills from a kitchen cabinet; (6) Agent Fisher observed a bottle of hydrogen peroxide and isopropyl alcohol in the same cabinet as the pills; and (7) Agent Fisher requested permission from the defendant to search the residence, but the defendant refused to

give him permission.

¶ 24 As explained above, the defendant's statements concerning the purchase and location of the pseudoephedrine pills and the initial search of the residence to retrieve the pills were properly suppressed by the trial court. The defendant's involuntary statements led to the seizure of the pseudoephedrine pills from the residence, and the officer's entry into the defendant's residence led to the issuance of the search warrant. Consequently, Agent Fisher's observation of the content of the defendant's kitchen cabinet and the resulting seizure of items commonly associated with methamphetamine production were also properly suppressed by the trial court as "fruit of the poisonous tree." See *People v. McCauley*, 163 Ill. 2d 414, 448 (1994) (evidence obtained by police conduct that infringes on a defendant's constitutional rights is subject to suppression as the fruit of that poisonous tree).

¶ 25 For the foregoing reasons, the judgment of the circuit court of Madison County is hereby affirmed.

¶ 26 Affirmed.