

**COURT OF APPEALS
DECISION
DATED AND FILED**

June 11, 2013

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. *See WIS. STAT. § 808.10 and RULE 809.62.*

Appeal No. 2012AP928-CR

Cir. Ct. No. 2010CF926

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

MAURICE COLLINS,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Milwaukee County: RICHARD J. SANKOVITZ, Judge. *Affirmed.*

Before Curley, P.J., Fine and Brennan, JJ.

¶1 PER CURIAM. Maurice Collins appeals a judgment convicting him of four counts of armed robbery, as a party to a crime, and one count of possessing a firearm as a felon, as a habitual criminal. Collins also appeals an order denying his motion for postconviction relief. The issues are: (1) whether

Autumn Morgan had actual authority to grant the police permission to search the upstairs unit of a duplex she owned; and (2) whether Morgan's consent to the search was coerced by the police. We affirm.

¶2 Collins was charged with six counts of armed robbery, as a party to a crime, and one count of possessing a firearm as a felon. After a jury trial, he was convicted of four counts of armed robbery and the possession charge, and acquitted of two counts of armed robbery. In his postconviction motion, Collins argued that evidence seized from the upstairs unit of Morgan's duplex should have been suppressed. The circuit court denied the motion.

¶3 "The Fourth Amendment to the United States Constitution and Article I, Section 11 of the Wisconsin Constitution prohibit unreasonable searches and seizures." *State v. Artic*, 2010 WI 83, ¶28, 327 Wis. 2d 392, 786 N.W.2d 430. "Warrantless searches are *per se* unreasonable, subject to several clearly delineated exceptions." *Id.*, ¶29. "Exceptions to the warrant requirement include voluntary third-party consent." *State v. Matejka*, 2001 WI 5, ¶17, 241 Wis. 2d 52, 621 N.W.2d 891. "The State bears the burden of establishing, clearly and convincingly, that a warrantless search was reasonable and in compliance with the Fourth Amendment." *Id.*

¶4 Collins argues that Morgan did not have actual authority to grant the police permission to search the upstairs unit of the duplex because it was *his* apartment. A third party may consent to a search of another person's living area as long as they have common authority over the area. *State v. Kieffer*, 217 Wis. 2d 531, 542, 577 N.W.2d 352 (1998). In determining whether a third party's consent to a search is reasonable under the Fourth Amendment, the issue is whether the third party who granted consent for the search "possessed common

authority over or other sufficient relationship to the premises or effects sought to be inspected.” *United States v. Matlock*, 415 U.S. 164, 171 (1974).

¶5 Morgan owned the duplex that was searched and allowed Collins to stay in the upstairs unit. The upstairs apartment could only be accessed through the downstairs unit, which Morgan controlled, and Collins did not have keys for the apartment. Collins had stayed in the upstairs unit about twice a week over three months and left some of his personal things there, though he listed his residence as at his mother’s address when he was arrested. If Collins wanted to stay in the apartment when Morgan was at work, he would go there to get keys from her. Collins did not have a lease to rent the apartment from Morgan, he received no mail there, and he paid no rent. Based on these facts, we conclude that Morgan had actual authority over the upstairs apartment.¹

¶6 Collins next argues that the police coerced Morgan into consenting to the search. Consent is voluntary if it is “an essentially free and unconstrained choice” and “not the product of duress or coercion, express or implied.” *Artic*, 327 Wis. 2d 392, ¶32 (internal quotation marks and citation omitted). “The determination of ‘voluntariness’ is a mixed question of fact and law based upon an evaluation of ‘the totality of all the surrounding circumstances.’” *Id.* (citation omitted).

¹ Collins also argues that the police should not have relied on Morgan’s apparent authority to grant them permission to search. We need not address this issue because we have concluded that Morgan had actual authority to grant the police permission to search. *See Turner v. Taylor*, 2003 WI App 256, ¶1 n.1, 268 Wis. 2d 628, 673 N.W.2d 716 (if a decision on one point disposes of an appeal, we need not decide the other issues raised).

¶7 To determine whether consent is voluntary, a court should consider a number of factors, which we will address one by one. First, a court should determine whether the police used deception, trickery, or misrepresentation to get consent to search. *See State v. Phillips*, 218 Wis. 2d 180, 198, 577 N.W.2d 794 (1998). The police officers did not deceive Morgan to obtain her consent; they told her that Collins had been arrested for a string of armed robberies and asked her permission to search the upstairs of her duplex where he had been intermittently staying because they suspected that Collins may have been keeping a gun there. While they asked Morgan to consent to the search, they also told her that she could choose not to give it.

¶8 Second, a court should consider whether the police threatened or physically intimidated the person to obtain consent. *Id.* It is undisputed that Morgan was not deprived of anything she requested or needed. Third, a court should consider whether the conditions attending the request to search were congenial, non-threatening, and cooperative, or the opposite. *Id.* Morgan was not restrained and the door to the interview room was kept open. Fourth, a court should consider how the person responded to the request to search. *Id.* Here, Morgan gave written consent to the officers to search her residence and did not do anything to suggest that she felt pressured or upset by the request. Fifth, a court should consider the person's personal characteristics like age, intelligence, education, physical and emotional condition, and prior experience with the police. *Id.* There is nothing about Morgan that suggests she was unusually susceptible to police pressure. Finally, a court should consider whether the police informed the person that he or she could refuse to consent. *Id.* The police informed Morgan that she could refuse to consent to the search, but explained truthfully that they would then seek a search warrant, which would delay her return home. Based on

all of these factors, we conclude that Morgan was not coerced into consenting to the search of her upstairs apartment.

By the Court.—Judgment and order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5. (2011-12).

