

**COURT OF APPEALS
DECISION
DATED AND FILED**

January 14, 2003

Cornelia G. Clark
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. 02-1030-CR
STATE OF WISCONSIN**

Cir. Ct. No. 01-CF-478

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

DARIN L. FOGLE,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Brown County:
MARK A. WARPINSKI, Judge. *Affirmed.*

Before Cane, C.J., Hoover, P.J., and Peterson, J.

¶1 PER CURIAM. Darin Fogle appeals a judgment convicting him of burglary. He argues that the trial court erred when it denied his motion to suppress evidence seized pursuant to a search warrant that he contends resulted from an initial illegal police intrusion into the garage of his apartment building. We reject his argument and affirm the judgment.

¶2 Searches conducted without a warrant are presumptively unreasonable. *State v. Matejka*, 2001 WI 5, ¶17, 241 Wis. 2d 52, 621 N.W.2d 891. However, a search is valid if the State establishes by clear and convincing evidence that the officers had consent to search from an individual with actual or apparent authority to consent to the search. *Id.* *State v. Tomlinson*, 2002 WI 91, ¶25, 254 Wis. 2d 502, 648 N.W.2d 367. The consenting party's common authority rests on the mutual use of the property by persons generally having joint access or control for most purposes and is based on the premise that a person assumes the risk that any other co-inhabitant might permit the search. *Tomlinson*, 2002 WI 91 at ¶¶29, 31. Courts must consider the totality of the circumstances when determining whether the consenting party has authority to consent. *Id.* at ¶31. The validity of the consent must be judged against an objective standard: "Would the facts available to the officer at the moment warrant a man of reasonable caution in the belief that the consenting party had authority over the premises?" *Illinois v. Rodriguez*, 497 U.S. 177, 188 (1990). When reviewing the legality of a search, this court gives deference to the trial court's findings of evidentiary or historical fact, but independently evaluates those facts against a constitutional standard to determine whether the search was lawful. *See Matejka*, 2001 WI 5 at ¶16.

¶3 The officers who made the initial intrusion into the garage at Fogle's apartment complex reasonably relied on the consent of another tenant, Norma Perez. The officers initially attempted to make contact with Fogle, but were unsuccessful. They then made contact with a woman in another apartment who, although she would not give the officers permission to search the garage, indicated that she lived in the apartment and that other tenants had access to the garage. The officers then made contact with Perez in another apartment in the

same complex. She gave permission for the officers to enter the garage and offered to assist them in gaining entry if necessary. Under these circumstances, the officers reasonably relied on Perez's authority to give consent to search the common area of the garage.

¶4 Fogle argues that the officers failed to independently establish that Perez lived in the apartment. He suggests that they should have checked the mailbox for her name, asked for the name of the landlord, describe the interior of the garage and the last time she was in it, inquire whether she stored anything in the garage or show a utility bill with her name on it. A reasonable officer would have believed that he had valid consent to search without engaging in that type of investigation or cross-examination of the consenting party. Perez came to the door of the unit when the officers knocked. She told them she was a resident of the building. She represented that she had common authority over the garage, a fact that was confirmed by the other tenant's statement that all of the tenants had access to the garage. She volunteered to assist the officers in entering the garage if necessary, suggesting ready access. Perez's statements and the totality of the circumstances justified the officers' belief that Perez had common authority over the garage.

By the Court.—Judgment affirmed.

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

