COURT OF APPEALS DECISION DATED AND FILED

April 20, 2010

David R. Schanker
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. 2009AP292-CR **Cir. Ct. No. 2007CF1217**

STATE OF WISCONSIN **IN COURT OF APPEALS DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

TIMOTHY J. HALLET,

DEFENDANT-APPELLANT.

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

Before Hoover, P.J., Peterson and Brunner, JJ.

¶1 PER CURIAM. Timothy Hallet appeals a judgment convicting him of felon in possession of a firearm, felony bail jumping, carrying a concealed weapon, resisting or obstructing an officer and possession of cocaine as party to a crime. Hallet argues the trial court erroneously denied his pretrial motion to

suppress evidence found on him when he was arrested in a Green Bay hotel room. Specifically, Hallet contends the court erred by concluding the police had consent from another person to enter the room. Because we conclude the trial court properly denied Hallet's suppression motion, we affirm the judgment.

¶2 Consent is an exception to the rule that warrantless searches are per se unreasonable. ***State v. Verhagen***, 86 Wis. 2d 262, 265-66, 272 N.W.2d 105 (Ct. App. 1978). When a prosecutor seeks to rely upon consent to justify the lawfulness of a search, he or she has the burden of proving that consent was, in fact, freely and voluntarily given. ***State v. McGovern***, 77 Wis. 2d 203, 211, 252 N.W.2d 365 (1977). The prosecution is not limited to proof that consent was given by the defendant, and may show that permission to search was obtained from a third party who possessed common authority over, or other sufficient relationship to, the premises or effects sought to be inspected. ***Id.*** at 211. Common authority rests on mutual use of the property by persons generally having joint access or control for most purposes, so that it is reasonable to recognize that any of the cohabitants has the right to permit the inspection in his or her own right, and the others have assumed the risk that one of their number might permit the common area to be searched. ***Id.*** at 212.

¶3 In evaluating a trial court's suppression decision, we accept the trial court's underlying findings of fact unless they are clearly erroneous. *See* ***State v. Eckert***, 203 Wis. 2d 497, 518, 553 N.W.2d 539 (Ct. App. 1996). Further, we defer to the credibility determinations of the trial court. ***State v. McAllister***, 153 Wis. 2d 523, 533, 451 N.W.2d 764 (Ct. App. 1989). However, we independently determine "[w]hether a search or seizure passes constitutional muster." ***Eckert***, 203 Wis. 2d at 518 (citation omitted).

¶4 Here, Hallet contends the State failed to prove that police had consent to enter the hotel room. City of Green Bay Police Officer Jason Leick was the only witness of the search and arrest who testified at the suppression motion hearing. Leick testified that on December 3, 2007, he accompanied Officer Mark Scheld and Lieutenant Mark Graham to the Regency Suites in Green Bay to investigate a suspicious vehicle. Leick further testified that Scheld made contact with Christopher Buckman, one of the occupants of the subject hotel room, and Buckman consented to the officers searching the room. Buckman then handed Leick the room key card and because it was not working, a security guard ultimately gave Leick a different key card that he used to enter the room where Hallet was found.

¶5 Hallet emphasizes that on cross-examination, Leick was unable to recall the specific words from the conversation he overheard between Scheld and Buckman. Leick testified: "I remember Officer Scheld asking him for consent to search the room. I just don't know how Officer Scheld asked him, what words he used." Leick ultimately recalled the words "consent," "search," "room," and "yes." Because neither Scheld nor Buckman were called to testify at the suppression motion hearing, Hallet argues "there is no context for the four words heard by Officer Leick." We are not persuaded.

¶6 To the extent Hallet intimates that proof of consent can only be established by testimony from the actual participants in the conversation, rather than a person who overheard the conversation, he provides no authority for this argument. Ultimately, Hallet's challenge to the denial of his suppression motion is based on a selective reading of Leick's testimony. Although Leick conceded on cross-examination that he could not recall the subject conversation verbatim, Leick repeatedly testified unequivocally that consent was freely given. We

conclude this testimony was sufficient to establish that the officers had consent to search the room.[1]

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5 (2007-08).

[1] Because we conclude Leick's testimony was sufficient to establish that Buckman gave consent to search the hotel room, we need not address Hallet's challenge to the trial court's finding that Buckman's consent could be inferred from the fact he gave police the room key card. *See* ***Sweet v. Berge***, 113 Wis. 2d 61, 67, 334 N.W.2d 559 (Ct. App. 1983) (only dispositive issues need be addressed).