

**COURT OF APPEALS
DECISION
DATED AND FILED**

September 21, 2010

A. John Voelker
Acting 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. 2009AP2175-CR

Cir. Ct. No. 2008CF82

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

JAFFER T. DEANE,

DEFENDANT-APPELLANT.

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

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

¶1 PER CURIAM. Jaffer Deane appeals a judgment convicting him of possessing more than forty grams of cocaine with intent to deliver. Deane entered a no contest plea after the court denied his motion to suppress evidence found in his bedroom in his parents' home. He argues the evidence should have been

suppressed because his parents lacked actual or apparent authority to consent to the search and their consent was not voluntary. We conclude Deane's parents had actual authority to consent to the search and their consent was voluntary. Therefore, we need not address apparent authority and we affirm the judgment.

BACKGROUND

¶2 The Brown County Drug Task Force received information Deane was selling cocaine. Agent Bernard Bolf interviewed Deane and asked whether Deane's parents would consent to a search. Deane answered "I believe so. I don't know. That's up to them, really. It's their house. It's not my house." When Bolf suggested Deane sign a consent form so they could just go into his room, Deane responded "I'd just, I'd leave it up to them. I wouldn't give any consent." Three investigators then went to Deane's parents' home and asked for permission to search. They informed Deane's parents Deane was in custody and evidence of selling cocaine may be in his bedroom. They asked Deane's parents whether they had access to the room, and learned the bedroom did not have a lock. The investigators testified Deane's mother told them she would enter the room to do laundry, and his father had computer equipment for work in Deane's room. Investigators asked for consent to search the bedroom and Deane's parents, expressing their belief nothing would be found, gave oral and written consent. The investigators testified that, in their fifteen minute conversation, they did not coerce the Deanes, promise their son's return home if they consented to the search, or threaten the loss of their house.

¶3 Deane's family contradicted the State's witnesses. They testified they would not enter Deane's bedroom unless they had his permission. If he was not at home, his parents would call to ask permission. When Deane's mother

wanted to clean the room or enter to get laundry or a movie, she called for permission. Likewise, when Deane's father wanted access to computer equipment he kept in Deane's room, he called for permission. They also testified they were pressured to provide consent and told that if consent was given, Deane would be allowed to return home. If consent was not given, they indicated that the investigators would return to search the entire house and hold Deane's parents liable for their son's actions. They testified they signed the written consent form without reading it or receiving an explanation of its contents.

¶4 The trial court denied the motion to suppress the evidence, concluding Deane's parents had actual or apparent authority to consent to the search and their consent was voluntary. The court found Deane had no reasonable expectation of exclusive control of his bedroom. Based on its determination that the investigators were more credible than Deane's family, his parents' written consent, their prior experience with the criminal justice system based on Deane's prior burglary charge and the investigators' conduct, the court found the consent was not based on deception or intimidation.

DISCUSSION

¶5 When reviewing the legality of a search, this court defers to the trial court's findings of fact and applies its findings to the governing law. *State v. Vorburger*, 2002 WI 105, ¶32, 255 Wis. 2d 537, 648 N.W.2d 829. Actual authority to consent to a search rests on mutual use of the property. *United States v. Matlock*, 415 U.S. 164, 171 (1970). When people have joint access to property, it is reasonable for a cohabitant to assume the risk another cohabitant might permit a search. *Id.*

¶6 Deane's parents had actual authority to consent to a search of their son's bedroom. Deane assumed the risk his parents might consent based on their joint access to the property. His own statements to investigators acknowledged his parents' authority to consent to the search. His parents had frequent access to their son's unlocked bedroom. As the arbiter of the witnesses' credibility, the trial court reasonably rejected Deane's family's testimony that they would call for permission to enter his room to do his laundry or access computer equipment.

¶7 Sufficient evidence also supports the trial court's finding that Deane's parents freely and voluntarily consented to the search. That finding is based on the court's assessment of the parents' and investigators' credibility. The credibility of witnesses and the weight to be accorded their testimony is a matter committed to the trier of fact. *State v. Young*, 2009 WI App 22, ¶17, 316 Wis. 2d 114, 762 N.W.2d 736. The investigators gave Deane's parents substantial time to discuss the search and Deane's parents, having prior experience with the criminal justice system, consented to the search orally and in writing. Deane's argument on appeal is based entirely on his and his family's testimony, which the trial court found less credible than the investigators'.

By the Court.—Judgment affirmed.

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

