

**COURT OF APPEALS
DECISION
DATED AND FILED**

September 7, 2006

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. 2005AP2613-CR

Cir. Ct. No. 2004CF1404

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

JEREMY M. DAHL,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Dane County:
DAVID T. FLANAGAN, Judge. *Affirmed.*

Before Dykman, Vergeront and Deininger, JJ.

¶1 PER CURIAM. Jeremy Dahl appeals a judgment convicting him of three counts of sexually assaulting a child. Dahl entered no contest pleas to the charges after the trial court denied his motion to suppress evidence collected during a warrantless search. On appeal, he challenges the trial court's

determination that the search was consensual and therefore constitutional. We affirm.

¶2 Police went to a trailer home owned by Brenda Dahl, Dahl's mother, to investigate sexual assault allegations against Dahl. An officer asked Brenda for permission to search the bedroom that Dahl had been staying in. Brenda consented, and the officer found potentially inculpatory evidence in the room. The officer then asked Brenda about two of Dahl's shirts, and Brenda located them in another area of the house and gave them to the officer. The officer did not have a warrant to enter and search the trailer. Dahl moved to suppress the evidence, alleging an unconstitutional search.

¶3 Based on the evidence summarized above, the trial court found that valid consent was given for the search. The trial court resolved conflicts in testimony between the officer and Brenda regarding whether she consented to the officer merely seeing the bedroom, as opposed to searching it, by finding the officer more credible based on his clearer recollection of the events. Dahl contends that Brenda's consent was invalid because she gave it in response to the police officer's show of authority and because he did not advise her of her right to refuse consent. He also contends that the two shirts were seized outside the area for which consent to search was given, and Brenda lacked authority to consent to a search of an area in which Dahl had a reasonable expectation of privacy.

¶4 There is no Fourth Amendment violation where consent to a search is freely and voluntarily given. *State v. Phillips*, 218 Wis. 2d 180, 196, 577 N.W.2d 794 (1998). The State must show by clear and positive evidence that the search was the result of a free, intelligent, unequivocal and specific consent without duress or coercion, actual or implied. *State v. Johnson*, 177 Wis. 2d 224,

233, 501 N.W.2d 876 (Ct. App. 1993). Whether consent is voluntary is a mixed question of fact and law. *State v. Vorburger*, 2002 WI 105, ¶88, 255 Wis. 2d 537, 648 N.W.2d 829. We review the trial court's findings of fact under the clearly erroneous standard, but we independently apply those facts to the constitutional standard. *Id.*; *State v. Tomlinson*, 2002 WI 91, ¶36, 254 Wis. 2d 502, 648 N.W.2d 367. The use of coercion, trickery or deceit invalidates a consent to search. *Village of Little Chute v. Walitalo*, 2002 WI App 211, ¶11, 256 Wis. 2d 1032, 650 N.W.2d 891.

¶5 The State met its burden to demonstrate that Brenda Dahl voluntarily consented to the search of the trailer bedroom. In deciding the question, we look both to the circumstances surrounding the consent and the characteristics of the person giving consent. *Vorburger*, 255 Wis. 2d 537, ¶89. The testimony here showed a brief, straightforward interaction between the officer and Brenda resulting in her consent. There was no testimony that the officer tricked Brenda or lied to her, or that he engaged in any conduct that one could reasonably describe as coercive. The record contains no evidence that Brenda lacked the characteristics necessary to give a free and voluntary consent. Dahl stresses the fact that the officer did not inform Brenda that she had the right to refuse consent. However, the failure to advise a person of the right to refuse does not, by itself, render a consent involuntary. *See id.*, ¶98. Additionally, there is no evidence in the record that Brenda was unaware of her right to refuse consent, or that she would have, in fact, refused consent had the officer advised her of her right.

¶6 Similarly Dahl established no grounds to suppress the evidence located outside the bedroom of the trailer. It is undisputed that the consent to search was limited to the bedroom. However, there is no evidence that the officer searched outside that area. Both the officer and Brenda testified that he did not.

Both testified that Brenda located the items without his assistance and then freely gave them to the officer.

¶7 Finally, we reject Dahl's contention that Brenda lacked authority to consent to a search of the bedroom he occupied and of his property located within the bedroom. He raises this issue for the first time on appeal, and it was therefore waived. *See State v. Konrath*, 218 Wis. 2d 290, 296 n.8, 577 N.W.2d 601 (1998). In any event, Brenda owned the trailer and there is no evidence that Dahl was staying there other than temporarily, or that he had exercised any dominion over the bedroom, which was normally occupied by his sister. *See State v. Whitrock*, 161 Wis. 2d 960, 989, 468 N.W.2d 696 (1991) (reasonable expectation of privacy in property depends, in part, on whether the person exercised dominion over the property).

By the Court.—Judgment affirmed.

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

