

**COURT OF APPEALS
DECISION
DATED AND FILED**

March 6, 2007

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. 2006AP1500-CR

Cir. Ct. No. 2004CF566

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

JOSEPH P. LAPERE,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Brown County:
JOHN D. MCKAY, Judge. *Affirmed.*

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

¶1 PER CURIAM. Joseph P. LaPere appeals a judgment convicting him of two counts of burglary on his no contest pleas. He argues that the trial court should have suppressed evidence derived from the initial police intrusion

into his home and that he was denied his right to a speedy trial. We reject these arguments and affirm the judgment.

¶2 Police officers initially entered LaPere's home at the invitation of Dolores Couillard, who represented herself as a co-tenant. LaPere argues that Couillard lacked authority to consent to a search because she had moved out five days before she consented to the search, her belongings had been removed, her keys had been returned to LaPere, her name did not appear on the lease and she did not pay rent or bills. That argument fails for two reasons. First, it relies on a misstatement of facts. Second, the officers reasonably relied on Couillard's apparent authority to consent to the search.

¶3 Some of Couillard's possessions were still in the house at the time she invited the police to search the residence. LaPere acknowledged that fact when he testified that he instructed Couillard not to pick up her remaining belongings if he was not present. In addition, at the time Couillard invited the officers to search the residence, she had keys.

¶4 Considering the totality of the circumstances, Couillard had apparent authority to consent to the search. *See State v. Tomlinson*, 2002 WI 91, ¶31, 254 Wis. 2d 502, 648 N.W.2d 367. 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). The police had contact with Couillard at the residence five days before the initial intrusion when they were dispatched to check on her welfare. Five days later, Couillard went to the police station and informed officers that LaPere possessed stolen property in the house. She indicated she had been living in the home with

LaPere for approximately one year with her children and left the residence because she was afraid for her family's safety. The police ascertained that Couillard continued to maintain personal items in the home and still possessed keys. Under these circumstances, a reasonable person would have believed Couillard had common authority over the premises and could validly consent to a search.

¶5 LaPere's argument that he was denied his speedy trial right also fails for two reasons. First, the issue was waived by his no contest pleas. *See Hatcher v. State*, 83 Wis. 2d 559, 563, 266 N.W.2d 320 (1978). Second, his argument confuses his constitutional speedy trial right with a more restrictive statutory right set out in WIS. STAT. § 971.10 (2005-06). The remedy for violating his statutory right is release from custody pending trial. That remedy is not available at this time. Therefore, the issue is moot.

¶6 Considering the length of the delay, the reasons for the delay and LaPere's inability to identify any actual prejudice, he has not established any constitutional speedy trial violation. *See Barker v. Wingo*, 407 U.S. 514, 530 (1972). LaPere entered no contest pleas less than one year after he was charged. That delay was not presumptively prejudicial. LaPere argues that he was prejudiced by the delay because he could not locate two witnesses and some business records were lost. He did not establish that these witnesses and documents would have supported any defense to these charges or that they would have been available at an earlier date. The delay was caused in part by a second set of charges brought four months after these charges were filed. The defense joined in the State's request to adjourn proceedings in anticipation that the two sets of charges would proceed together. One month later, LaPere's counsel withdrew and the court had to appoint replacement counsel and grant a

continuance to allow counsel to familiarize himself with the cases. Under these circumstances, LaPere's constitutional speedy trial right was not violated.

By the Court.—Judgment affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5 (2005-06).

