

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 10, 2007

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. 2007AP160-CR

Cir. Ct. No. 2003CF337

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

JEFFREY R. HANSEN,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Outagamie County: JOHN A. DES JARDINS, Judge. *Affirmed.*

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

¶1 PER CURIAM. Jeffrey Hansen appeals a judgment convicting him of robbing three businesses. He argues that the testimony of his accomplice, Jared Gehrt, should have been suppressed because the police learned of Gehrt's participation in the robberies from statements they heard while conducting an

unlawful intrusion into Hansen's apartment. Because we conclude the intrusion was lawful based on valid consent from Hansen's live-in girlfriend, Jennifer Roberson, we affirm the judgment.

¶2 Robert V. and John Cowling, agreed to assist the police investigating the robberies. Each of them knew Hansen and Roberson, and had visited the couple at their apartment on numerous occasions. Each of them agreed to wear a wire and discuss the robberies with Roberson. Robert contacted Roberson at her place of employment and asked for a ride back to her residence after she finished work. Roberson agreed, as she had in the past. In the car, and later in Roberson's apartment, a discussion ensued that included Roberson providing details that Robert had not known and Roberson's explanation that she was trying to develop alibis for the robberies.

¶3 Nine days later, Cowling asked police whether he could wear a wire and converse with Roberson about the robberies. Officers drove him to Roberson's apartment where he visited with her. Roberson again provided details about the robberies that Cowling did not previously know and indicated she was trying to develop alibis for the robberies. From these conversations, police learned of Gehrt's role as Hansen's accomplice in two of the robberies.

¶4 Hansen sought suppression of the statements and recordings and all derivative evidence on the ground that the informants were acting as agents of the police and were sent to Hansen's residence where he had an expectation of privacy. The trial court denied the motion. Hansen moved for reconsideration, and requested a hearing to establish Hansen's reasonable expectation of privacy in his residence and that the informants were acting as agents of the police. The State opposed the motion and submitted affidavits from Robert, Cowling, the

investigator Randy Cook who facilitated the meetings and recordings, and Roberson. Roberson's affidavit stated she agreed to let Robert and Cowling come into her apartment and never asked them to leave. She averred that neither of the informants threatened her or made any promises. The trial court denied the motion for reconsideration.

¶5 The State met its burden of showing that the incursions into Hansen's residence were based on Roberson's valid consent. *See State v. Giebel*, 2006 WI App 239, ¶12, 297 Wis. 2d 446, 724 N.W.2d 402. The test for voluntariness asks whether consent was given in the "absence of actual coercive, improper police practices designed to overcome the resistance of the [person giving consent]." *Id.* In making this determination, no single factor is dispositive. Rather, we examine the totality of the circumstances. *Id.* The affidavits of Roberson, Cowling, Robert, and Cook establish that Roberson voluntarily admitted Robert and Cowling into the apartment she shared with Hansen. Her consent was not the product of coercion or intimidation, but merely resulted from inviting acquaintances into her home as she had done many times in the past. The fact that she was unaware of their cooperation with the police or that they were wearing a wire does not invalidate her consent for them to enter. *See State v. Johnston*, 184 Wis. 2d 794, 807, 518 N.W.2d 759 (1994).

¶6 Hansen argues that the court should have held a hearing on his motion for reconsideration rather than relying on the State's affidavits. However, in his offer of proof, Hansen itemized the facts that he intended to prove at the hearing. All of those facts relate to Hansen's privacy interest in the apartment he shared with Roberson and his allegations that Robert and Cowling were police agents. Assuming that all of the facts recited in the offer of proof were established

at the hearing, the evidence would not have invalidated Roberson's consent for Cowling and Robert to enter her apartment.

By the Court.—Judgment affirmed.

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

