

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**March 11, 2008**

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. 2007AP1666-CR**

**Cir. Ct. No. 2006CF262**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT III**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**EDWARD B. PUTNAM,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment and an order of the circuit court for Shawano County: JAMES R. HABECK, Judge. *Affirmed.*

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

¶1 PER CURIAM. Edward Putnam appeals a judgment of conviction for possessing THC, second or subsequent offense, contrary to WIS. STAT.

§ 961.41(3g)(e).<sup>1</sup> He contends police violated his Fourth Amendment right against unreasonable searches and seizures because they did not have actual or apparent authority to search a bedroom in his aunt's house. We conclude police had apparent authority and therefore affirm.

### **BACKGROUND**

¶2 Putnam frequently stayed at the home of his aunt, Mildred Doxtator. In October 2006, Doxtator was cleaning the bedroom in which Putnam normally stayed and found a cigarette wrapper with marijuana in it. She put the marijuana in the drawer of a nightstand in the bedroom and called the police.

¶3 A few days later, deputy Todd Otradovec of the Stockbridge/Munsee Police Department went to Doxtator's home. Doxtator informed Otradovec that she had full access to the house, and the marijuana was still in the nightstand. She also informed Otradovec that Putnam did not pay rent and had his own house in Shawano. Doxtator gave Otradovec consent to search the house and pointed Otradovec to the bedroom where the marijuana were located.

¶4 The bedroom door was open, and Putnam was lying on the bed. Otradovec notified Putnam of Doxtator's complaint and asked Putnam about the contents of the nightstand. Putnam confirmed that he had "knowledge of what was in [the] nightstand." He also stated he had his own place in Shawano and that the nightstand belonged to Doxtator. Otradovec searched the nightstand and found the marijuana. Putnam was arrested. After an unsuccessful motion to suppress

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2006-06 version unless otherwise noted.

evidence, Putnam pled no contest and was found guilty of felony possession of THC.

## DISCUSSION

¶5 Putnam contends Doxtator did not have actual or apparent authority to consent to Otradovec searching the nightstand. We conclude Doxtator had apparent authority to consent to the search. Therefore, we need not address whether she also had actual authority. *See Gross v. Hoffman*, 227 Wis. 296, 300, 277 N.W.663 (1938) (where decision on one ground is sufficient to support a judgment, others need not be discussed).

¶6 Whether a search or seizure is reasonable under the Fourth Amendment is a question of constitutional fact. *State v. Kieffer*, 217 Wis. 2d 531, 541, 577 N.W.2d 352 (1998). We decide constitutional questions independent of the circuit court, though benefiting from its analysis. *Id.* We uphold the circuit court's findings of historical fact unless clearly erroneous. *Id.* The State bears the burden of proving a warrantless search is reasonable and in compliance with the Fourth Amendment by clear and convincing evidence. *Id.* at 541-42.

¶7 Warrantless searches are per se unreasonable, subject to limited exceptions. *Id.* One of those exceptions is valid third-party consent. *Id.* To give third-party consent, a person must have common authority over, or some other sufficient relationship to, the premises or effects sought to be searched. *United States v. Matlock*, 415 U.S. 164, 171 (1974). Even if the consenting third-party does not have actual common authority to consent, police may rely upon the party's apparent authority, if the reliance is reasonable given the information known at the time. *Kieffer*, 217 Wis. 2d at 548.

¶8 Here, both Putnam and the State rely upon our supreme court's decision in *Kieffer* to support their respective arguments about apparent authority. In *Kieffer*, police approached a homeowner, Garlock, and informed him that his son had been arrested on a drug charge. *Id.* at 534. They also told Garlock they had reason to believe there were drugs in a loft area above Garlock's garage where his daughter and son-in-law, the Kieffers, lived. *Id.* at 533-34. Police asked Garlock about the living arrangement and discovered that the Kieffers did not pay rent but sometimes helped pay the electric bills. *Id.* at 535. Police also learned the Kieffers used Garlock's home to take showers and make telephone calls. *Id.* at 550. Garlock led police into the garage and up some stairs to the loft area. *Id.* at 536. At the top of the stairs was a door with a lock, though it was unlocked at the time. *Id.* Garlock indicated that he usually knocked before entering the loft area. *Id.* However, because he was upset, he did not knock and simply opened the door and walked in, followed by police officers. *Id.* at 536-37. The officers then searched the loft with Garlock's consent. *Id.*

¶9 The *Kieffer* court concluded that police had insufficient information to reasonably believe Garlock had apparent authority to consent. *Id.* at 549-50. The court stated that police should have made further inquiry regarding Garlock's relationship to the loft area. *Id.* at 550-51. The court then gave some examples of questions that police could have asked:

For example, the officers could have asked whether the Kieffers had the right to exclude others from entry into the loft area. The officers could have asked Garlock whether it was his normal practice to enter and exit the loft area whenever he felt like it. The officers could have asked whether Garlock considered himself to be the Kieffers' "landlord." The officers could have asked whether the loft had a lock on the door, and if so, whether Garlock had a key to it. The officers could have asked whether Garlock made personal use of the loft area himself.

*Id.* at 551. Putnam concedes that Otradovec was not required to ask all of the example questions mentioned in *Kieffer*. However, he contends Otradovec should have engaged in some further inquiry.

¶10 We conclude Otradovec obtained sufficient information to reasonably rely upon Doxtator's apparent authority to consent to the search. In contrast to *Kieffer*, where police obtained no information about Garlock's access to, or use of, the loft area, Doxtator specifically told Otradovec that she had full access to the house. *See Kieffer*, 217 Wis. 2d at 550. Doxtator's assertion of full access was further supported by her knowledge of the marijuana's exact location within the bedroom.

¶11 Further, beyond the fact that Putnam did not pay rent, which was also known by officers in *Kieffer*, Otradovec was also informed that Putnam had his own home elsewhere. *See Kieffer*, 217 Wis. 2d at 535. Together, these facts weakened any inference that Putnam had exclusive access to, or use of, the bedroom in Doxtator's home.

*By the Court.*—Judgment and order affirmed.

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

