OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS
110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688
Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT I

August 25, 2020

To:

Hon. T. Christopher Dee
Circuit Court Judge
Milwaukee County Courthouse
901 N. 9th St.
Milwaukee, WI 53233-1425

John Barrett
Clerk of Circuit Court
Room 114
821 W. State Street
Milwaukee, WI 53233

Karen A. Loebel
Deputy District Attorney
821 W. State St.
Milwaukee, WI 53233

Michael C. Sanders
Assistant Attorney General
P.O. Box 7857
Madison, WI 53707-7857

Cheryl A. Ward
Ward Law Office
10533 W. National Ave., Ste. 304
West Allis, WI 53227

You are hereby notified that the Court has entered the following opinion and order:

2019AP889-CR State of Wisconsin v. Angel Luis Gonzalez (L.C. # 2017CF5202)

Before Brash, P.J., Dugan and Donald, JJ.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Angel Luis Gonzalez appeals a judgment convicting him of unlawful possession of a firearm by a person previously convicted of a felony. He challenges the circuit court's order

denying his motion to suppress. After review of the briefs and record, we conclude that summary disposition is appropriate. *See* WIS. STAT. RULE 809.21 (2017-18).[1] Therefore, we affirm.

The police went to the four-unit apartment building where Gonzalez sometimes lived with his girlfriend, A.P., in order to arrest him. As they placed Gonzalez in a police car, some of the officers went into the apartment to conduct a protective sweep of the interior. After conducting the protective sweep, the police asked A.P. for permission to search the apartment. She initially refused to give permission but eventually consented. The police found a weapon under a cushion in the couch. Gonzalez moved to suppress the weapon, which formed the basis for charging him with unlawful possession of a firearm by a person previously convicted of a felony. He argued that A.P.'s consent was not voluntarily given. After a two-day evidentiary hearing, the circuit court denied the motion. Gonzalez then pled guilty to the charge.

"The Fourth Amendment to the United States Constitution and Article I, Section 11 of the Wisconsin Constitution prohibit unreasonable searches and seizures." ***State v. Artic***, 2010 WI 83, ¶28, 327 Wis. 2d 392, 786 N.W.2d 430. "Warrantless searches are per se unreasonable, subject to several clearly delineated exceptions." ***Id.*** ¶29. "One well-established exception to the warrant requirement is a search conducted pursuant to consent." ***Id.*** "The State bears the burden of proving [by clear and convincing evidence] that consent was given freely and voluntarily[.]" ***Id.***, ¶32.

Whether consent to search was voluntarily given presents 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 circuit court's determination of this mixed issue of fact and law using a two-step analysis. *See* ***id.*** First,

[1] All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

we review the circuit court's findings of evidentiary or historical fact and uphold them unless the findings are clearly erroneous. *See* ***id.*** Second, we independently apply the constitutional principles to the facts as found to determine whether the standard of voluntariness has been met. *See* ***id.***

When the police ask a person to consent to a search, the person's "response must be 'an essentially free and unconstrained choice,' not 'the product of duress of coercion, express or implied[.]'" *See* ***Arctic***, 327 Wis. 2d 392, ¶32 (citations omitted). Courts may consider multiple factors to determine whether consent to a search was voluntarily given, including: (1) "whether the police used deception, trickery, or misrepresentation" to persuade the person to give consent; (2) "whether the police threatened or physically intimidated" the person; (3) whether the conditions in which the request to search was made "were congenial, non-threatening, and cooperative, or the opposite"; (4) how the person "responded to the request to search"; (5) "what characteristics the [person] had as to age, intelligence, education, physical and emotional condition, and prior experience with the police"; and (6) whether the police informed the person that the person could refuse to consent to the search. ***Id.***, ¶33. This list is not exhaustive; rather, we look at the totality of the circumstances regarding the consent given and the characteristics of the person who gave it. *See* ***id.***

Gonzalez contends that his motion to suppress should have been granted because A.P.'s consent to the police search of the apartment was not voluntarily given. Gonzalez's argument is unavailing. The fatal flaw in his argument is that he ignores the standard of review governing the questions before us.

The first issue we must address is *what the facts were* surrounding A.P.'s decision to consent to the search of her apartment. We review the circuit court's findings of evidentiary or historical facts with deference and will uphold them unless they are clearly erroneous. ***Vorburger***, 255 Wis. 2d 537, ¶88. The circuit court found as a matter of fact that A.P. refused to sign the form consenting to the search three different times before finally agreeing to sign it. The circuit court found that the police did not deceive A.P. or lie to her to obtain her consent. Rather, the police told her what would happen if she did not agree to the search—they would seek a search warrant for the apartment. The circuit court found that the police did not threaten A.P. and did not physically intimidate her, although the circuit court acknowledged that one of the detectives speaking with A.P. was a large man and became even bigger with his police vest on, suggesting that his physical presence may have been formidable through no fault of his own. The circuit court found that A.P. was a sophisticated adult who was not unusually susceptible to intimidation. As this partial summary of the circuit court's findings of fact illustrates, the circuit court made detailed factual findings about the circumstances surrounding A.P.'s decision to consent to the search.

Gonzalez makes no reasoned argument explaining why he believes that the circuit court's findings of fact were clearly erroneous. Instead, he draws his own factual conclusions from the motion hearing testimony. For example, he asserts that the police deceived A.P. by telling her that she had to sign the consent form, but does not explain *why* he believes the circuit court's factual finding to the contrary was clearly erroneous. Our standard of review dictates that we accept the circuit court's factual findings unless Gonzalez is able to show that the circuit court's factual finding were clearly erroneous. He has not done so.

Turning to the legal question of voluntariness, Gonzalez argues that A.P.'s consent was not voluntary based on the facts *as he characterizes them*, rather than the facts found by the circuit

court. Our standard of review requires that we review the question of whether A.P.'s consent was voluntary *de novo* based on the evidentiary and historical facts found by the circuit court. *See* ***id.*** Our review of the circuit court's factual findings, summarized above and detailed at length in the circuit court's oral decision, persuades us that A.P.'s consent was voluntary as a matter of law because she made a free choice to consent after initially refusing to do so and she was not intimidated or coerced by the police based on all of the circumstances that existed when she granted the police permission to search. Therefore, we conclude that the circuit court properly denied the motion to suppress.

IT IS ORDERED that the judgment of the circuit court is summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Sheila T. Reiff
Clerk of Court of Appeals