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DISTRICT I

January 12, 2021

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

2019AP849-CR

State of Wisconsin v. Luis A. Beltran (L.C. # 2015CF3523)

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).

Luis A. Beltran appeals a judgment convicting him of possession of heroin with intent to deliver and possession of cocaine with intent to deliver, both as a second or subsequent offense and with use of a dangerous weapon. Beltran argues that: (1) his girlfriend Luisa Lopez did not have authority to consent to the search of their shared apartment because the police arrested Beltran

to prevent him from objecting to the search; and (2) Lopez's decision to give police permission to search their apartment was not voluntary. After review of the briefs and record, we conclude that summary disposition is appropriate. *See* WIS. STAT. RULE 809.21 (2017-18).¹ Accordingly, we affirm.

Beltran lived in the upper unit of a duplex with Lopez and Laura Martinez. The police obtained a warrant to search for narcotics and weapons in the lower unit, where they incorrectly believed that Beltran lived. While executing the warrant in the lower unit, the police saw Beltran on the outside porch of the upper unit. The police ordered him back into the apartment, arrested him in the back stairwell outside the upper unit and took him out of the building. The police searched the lower unit pursuant to the warrant. They also conducted a brief protective sweep of the upper unit after they arrested Beltran. The police then obtained Lopez's consent to search the upper unit, for which there was no search warrant. They found drugs, drug paraphernalia, and firearms. Beltran moved to suppress the items found in the search. The circuit court denied the motion.

Beltran first argues that Lopez did not have authority to consent to the search because the police arrested him and removed him from the building as a pretext to prevent him from refusing to give the police consent to search. "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

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

well-established exception to the warrant requirement is a search conducted pursuant to consent.”

Id.

“The Fourth Amendment recognizes a valid warrantless entry and search of premises when police obtain the voluntary consent of an occupant who shares, or is reasonably believed to share, authority over the area in common with a co-occupant who later objects to the use of evidence so obtained.” *Georgia v. Randolph*, 547 U.S. 103, 106 (2006); *State v. St. Martin*, 2011 WI 44, ¶19, 334 Wis. 2d 290, 800 N.W.2d 858. Even so, consent by one occupant may not be sufficient if there is “evidence that the police have removed the potentially objecting tenant from the entrance for the sake of avoiding a possible objection[.]” *Randolph*, 547 U.S. at 121. However, an improper motive does not invalidate an objectively justified decision by the police to arrest or remove the person with shared authority over a premises. *Fernandez v. California*, 571 U.S. 292, 302 (2014).

Milwaukee Police Officer Gregory Borst testified that Beltran had an outstanding arrest warrant from Racine County. Officer Borst further testified that Beltran was known to be in the country illegally and was wanted by the Department of Homeland Security, Immigration, and Customs Enforcement. Officer Borst testified that federal agents accompanied the Milwaukee police when they executed the search warrant and Beltran was turned over to the federal authorities immediately after his arrest. Officer Borst’s testimony, which the circuit court found to be credible, established that the police had an objectively justified reason to arrest Beltran, *regardless of whether they were also concerned that he might object to a search of his apartment*, an issue we need not reach. Therefore, we conclude that Lopez’s consent was not invalidated by Beltran’s arrest and removal from the premises.

Beltran next argues that Lopez's decision to consent to the search was not voluntary because the police deceived her to obtain her consent. Courts may consider multiple factors to determine whether consent to a search was voluntary including, as pertinent here, whether the police used deception or misrepresentation to persuade the person to give consent. *Artic*, 327 Wis. 2d 392, ¶33. 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. First, 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.*

After hearing testimony at the suppression hearing, the circuit court found the following facts. The police officers made Lopez feel comfortable when they asked for her permission to search the apartment she shared with Beltran. They explained to her that they had a search warrant for the lower unit, which is where they thought Beltran lived, but they did not have a warrant for the upper unit. Lopez gave the police both verbal and written consent to search the apartment. The police completely and accurately filled out the written consent form before Lopez signed it and they did not add anything to the form except for their signatures and identifying numbers after Lopez signed the form. The police did not deceive Lopez by altering the written consent form after she signed it, as argued by Beltran. The circuit court also found Lopez's testimony that the correct address of the apartment was not on the consent form when she signed it to be incredible. Our standard of review dictates that we accept the circuit court's factual findings and credibility determinations unless Beltran is able to show that the circuit court's findings were clearly erroneous. *See State v. Jenkins*, 2007 WI 96, ¶33, 303 Wis. 2d 157, 736 N.W.2d 24. He has not

done so. Based the circuit court's factual findings and the suppression hearing testimony, we conclude that Lopez's consent was voluntary as a matter of law.

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