STATE OF WISCONSIN COURT OF APPEALS DISTRICT IV

STATE OF WISCONSIN,

Plaintiff-Respondent,

v. **Appeal Nos. 22-AP-1855**
22-AP-1856
22-AP-1857

RICHARD QUINLAN,

Defendant-Appellant.

ON APPEAL FROM THE DENIAL OF A MOTION TO SUPPRESS EVIDENCE AND A FINDING OF GUILT IN THE CIRCUIT COURT FOR JACKSON COUNTY ON SEPTEMBER 3, 2022, CASE NOS. 19-FO-20-, 19-FO-21, 19-FO-22, THE HONORABLE ANNA BECKER PRESIDING

BRIEF AND APPENDIX OF DEFENDANT-APPELLANT

Patrick J. Stangl
Stangl Law Offices, S.C.
Attorneys for Richard Quinlan
6441 Enterprise Lane, Suite 109
Madison, WI 53719
(608) 831-9200
State Bar #01017765

TABLE OF CONTENTS

TABLE OF AUTHORITIES **PAGE**

Wisconsin Statutes:

STATEMENT OF ISSUES PRESENTED

I. Whether the trial court applied the wrong legal standard and failed to properly analyze whether the State proved that Heather Bolin had actual or apparent authority to consent to the entry of the defendant's Mother's cabin by clear and convincing evidence thereby resulting in an erroneous use of discretion?

The trial court did not analyze the third-party consent issue and did not determine whether valid third-party consent to enter the cabin existed. Instead, the court determined that after law enforcement entered the cabin the defendant was not in custody and his statements were voluntarily.

II. Whether the State proved that Heather Bolin had actual or apparent authority to consent to the entry of the defendant's Mother's cabin?

The trial court did not analyze or determine the third-party consent issue.

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

Pursuant to §752.31 (3) Wis. Stats. this case shall be decided by one Court of Appeals Judge unless the Court, sua sponte, orders a three judge panel.

Oral argument is not requested at this time.

STATEMENT OF THE CASE AND FACTS

On or about September 20, 2017 Conservation Warden Kurt Haas received a tip from a Jason Miller that the defendant, Richard (Chad) Quinlan, had illegal bear bait on his property. (R. 43; p. 11, 24) (A-22-A-35). Haas was also familiar with a hunting show Quinlan was involved in called Final Pursuit and believed that a deer that was represented on the show as being harvested in Michigan was actually harvested in Wisconsin. Id.

On December 16, 2018 Haas and Conservation Warden Jamie McDermid went to the Quinlan property located at N2969 Arrow Road in Jackson County to interview Chad Quinlan about the alleged gaming violations. Id. at 13 (A-24). The property is posted with No Trespassing signs along the driveway leading into the property as well as on other parts of the property. (R. 36-38); (R. 43; p. 29-31) (A-40-42). The Wardens were dressed in plain clothes and were not wearing uniforms. (R. 43; p. 14) (A-25). They arrived in an unmarked truck and according to Haas knocked on the door of the residence of the home where the defendant's Mother, Joan Quinlan, was residing. (A-24-25). The wardens never knocked on the residence door. (R. 43; p. 20) (A-31). Instead, she saw them coming, exited the property and went out on the deck to talk with them. Haas assumed that she was the defendant's Mother, but never asked her who she was. Id. at 20 (A-31). (R. 43; p. 27) (A-38). He didn't tell Joan Quinlan why they were there. Id., (R. 43; p. 20) (A-31). Joan Quinlan thought Warden Haas was just a "regular guy" as he was dressed in a green or brown jacket wearing regular street clothes and a lot of people who visit have trucks. (R. 43; p. 37) (A-48). She did not see a gun, a badge, or any pepper spray on Warden Haas. Id. at 33 (A-44). Her contact with him lasted a couple of minutes. Haas asked if the defendant was there and Mrs. Quinlan told him that he was in the cabin next door,

approximately thirty feet away. Id. Subsequent to his contact with Joan Quinlan, Haas went to the small cabin and without identifying himself knocked on the door. (R. 43; p. 14) (A-25). An unknown female answered, Haas asked if he could come in and she agreed and opened the door. Id.

Haas didn't know at that time of entry who the female was, what her relationship was to the property, whether she was a guest or not, or whether she had mutual use of the property. (R. 43; p. 23) (A-34). At no time did Haas explain to the female, who let them in, the nature of their business, who they were or what they wanted. Id. at 24 (A-35).[1] He did not question the female, subsequently identified as the defendant's girlfriend, about her relationship to the property, whether she had mutual use of the property, whether she was a guest or any facts bearing on actual or apparent authority to consent to enter. Id. at 23-24 (A-34-35). When he entered the cabin Haas didn't know if Chad Quinlan was sleeping or not but he was laying down on either a bed or a couch. Id. at 14, 24 (A-25, 35). He then interviewed Quinlan for approximately one hour wherein he admitted to several gaming violations. Although Haas described his contact as a "personal contact," it was not, he was acting as a Conservation Warden. Id. at 22-28 (A-33-39).

The defendant was subsequently cited with seven (7) different forfeiture violations including failing to complete registration as required, Jackson County Case No. 19-FO-18 (R. 1; p. 1-2); the same violation in 19-FO-19 and the use of an automated feeder in 19-FO-20; and in 19-FO-21 for placing feed to attract wild animals. He was further cited for failure to keep records as required under Section 29.961 (2) (a) Wis. Stats. in 19-FO-22 and 19-FO-176. Finally, in 19-FO-177, he was cited for hunting deer in an unauthorized area contrary to NR

[1] Haas testified that he subsequently recognized the female as Quinlan's girlfriend from the Final Pursuit video, although he did not know her name. (R. 43; p. 21) (A-33).

10.104 (9). Not guilty pleas were entered on his behalf on February 7, 2019 along with a jury demand. (R. 4, 6).

Motions for discovery along with a motion for leave to file additional pretrial motions were filed on March 21, 2019. Additional motions including a motion to suppress evidence and a motion to suppress evidence for lack of consent to enter were filed on May 13, 2019. (R. 9-12) (A-9-12). The State filed their written responses to the motions on or about July 9, 2020 and no further substantive action occurred in the matters until May 10, 2022. (R. 23-25).

On May 10, 2022 an evidentiary hearing was held on the defendant's suppression motions. At the request of the court, at the beginning of the hearing, the defense set forth its argument that "…there was no legitimate third-party consent to enter into the cottage…" (R. 43; p. 8) (A-19). "She [Heather Bolin] didn't have authority to let them in, she didn't have actual or apparent authority to let them in the house." Id. at 10 (A-21). The State argued that there was no search or any seizure, and therefore the Fourth Amendment was not implicated. Id. at 9 (A-20). After hearing the testimony of Warden Haas the court concluded that the defendant was not seized and that no search of the premises occurred and therefore the defendant's statements were not to be analyzed under search and seizure law, but rather whether they were voluntarily made. Id. at 39 (A-50). The court then applied the reasonable person standard for arrest and whether a reasonable person would feel free to leave and because the defendant was not compelled or coerced to make any statements, there was "no basis in law or in fact" to suppress his incriminating statements. Id. at 39-40 (A-50-51). At the conclusion of the motion hearing the defense again argued to the court that the State did not prove legitimate third-party consent to enter the cabin and that the burden was on the State to prove that valid consent was given. (R.

43; p. 9, 40-41). It further argued that the court's analysis was wrong, that the Fourth Amendment was implicated and that the issue was again whether valid third-party consent to enter existed. Id. at 40 (A-51). If the entry into the cabin was illegal, then the suppression of Quinlan's statements was the appropriate remedy. (R. 43; p. 10) (A-21). The court denied the motion and the matter was set for trial. (A-50-53).

On September 14, 2022 the case was resolved and the defendant, through counsel, entered no contest pleas to the forfeiture violations alleged in Case Nos. 19-FO-20, 19-FO-21, and 19-FO-22 (A-1-6). The court imposed forfeitures in the amount of $343.50; $343.50 and $544.50, respectively. The court revoked the defendant's Chapter 29 privileges for a period of three (3) years. (R. 46) (A-1-6).

On or about October 10, 2022, nearly a month after the matter was resolved, the State filed a request for confiscation of the defendant's trail cameras along with a proposed order. (R. 48-49). The following day, on October 11, 2022, the defendant filed a letter with the court objecting to the confiscation request and the State filed a letter requesting that the Judgment of Conviction be amended to allow confiscation on October 13, 2022. (R. 51). The court issued an Order on October 17, 2022 denying the State's request for confiscation of the trail cameras on the grounds that it was untimely and was not the subject of negotiation which led to the resolution of the pending matters prior to trial. (R. 52) (A-7-8).

A timely Notice of Appeal was filed on October 27, 2022 and this appeal followed. (R. 56).

Further facts will be set forth below as necessary herein.

ARGUMENT

I. The Trial Court Applied The Wrong Legal Standard And Failed To Properly Analyze Whether The State Proved Actual Or Apparent Authority For Valid Third Party Consent To Enter The Defendant's Mother's Cabin By Clear And Convincing Evidence, Thereby Resulting In An Erroneous Exercise of Discretion.

A. Standard of Review

The Fourth Amendment to the United States Constitution and article I section 11 of the Wisconsin Constitution guarantee "[t]he right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures." Whether this guarantee has been violated presents a question of constitutional fact. State v. Tomlinson, 2002 WI 91, ¶19. When reviewing a circuit court's ruling on a motion to suppress evidence the trial court's factual findings will be upheld unless they are clearly erroneous, but the application of constitutional principles to those facts presents a question of law which is reviewed de novo. County of Grant v. Vogt, 2014 WI 76, ¶17; State v. Matalones, 2016 WI 7, ¶28.

B. Erroneous Exercise Of Discretion

In its analysis the trial court erroneously exercised its discretion because it failed to apply the correct legal standard of third-party consent to the facts adduced at the hearing in denying the defendant's motion. The court determined that search and seizure law did not apply and instead imposed a reasonable person standard and applied the law of arrest to determine only whether the defendant's statements were voluntary after the wardens entered the cabin. (R. 43; p. 39-40) (A-50-51). The law required the court to determine whether the defendant's girlfriend had

mutual use of the property, and "common authority" over the premises and actual or apparent authority to allow entry into Joan Quinlan's cabin. See United States v. Matlock, 415 U.S. 164, 171 (1974). The court stated:

> "The problem is, what we're talking about is search and seizure. There was no seizure of Mr. Quinlan and there was no search of the premises; there was no search of either the cabins; there was no evidence obtained."
>
> (R. 43, p. 39) (A-50).

This statement is erroneous because there was evidence obtained; Quinlan's statements. The statement is further erroneous because under the law there was a search. Law enforcement entry into a home is a search implicating the Fourth Amendment to the United States Constitution and article I, Section 11 of the Wisconsin Constitution. See State v. Boggess, 115 Wis.2d, 443, 449 (1983). A physical intrusion into the home is a search under the Fourth Amendment. Florida v. Jardines, 133 S. Ct. 1409, 1414 (2013).

The court continued:

> "The entire motion is premised on seizure law, which is based on Fourth Amendment privacy interests relating to whether someone [is] sic a legitimate interest in privacy in that item. But I believe what the motion is really trying to address is the statements made by Mr. Quinlan, which are not under the same analysis. The statements have to be analyzed not under search and seizure law, in my opinion, they need to be analyzed into [sic] whether they were voluntary statements." (R. 43; p. 39).

Whether the defendant's statements were voluntary or not is only one part of the analysis. The defense never contended that the defendant's statements were involuntary. The court erred when it determined there was no search and seizure and that the Fourth Amendment was not implicated. The issue before the court was whether Heather Bolin, who answered the door and allowed entry into the cabin, had mutual use of the premises and had either actual or apparent authority to consent to the entry. Lacking either actual or apparent authority to consent the

search was unconstitutional and therefore suppression of the defendant's statements is the appropriate remedy.

Defense counsel raised this issue to the court when he argued that "…[i]f the speech flows from an initial illegal entry because there is not valid third-party consent, then suppression is the remedy." (R. 43; p. 41) (A-52). "She didn't have authority to let them in, actual or apparent authority to let them in the house.' Id. at 10 (A-21). Nevertheless, the court determined that the defendant did not have an expectation of privacy in his speech and failed to analyze the third-party consent issue.[2] By failing to analyze whether Heather Bolin had "common authority" and had actual or apparent authority to consent to the entry of the property the court erroneously exercised its discretion based on an erroneous application of the law. "Common authority" is defined as mutual use of the property and joint access and control for most purposes. Matlock at 171 n. 7. "An exercise of discretion based on an erroneous application of the law is an erroneous exercise of discretion." State v. Martinez, 150 Wis.2d 62, 71 (1989), State v. Black, 2001 WI 31 ¶19; State v. Burchard, 276 Wis.2d 309 (Wis. App. 2004).

Here the court was required to analyze the facts adduced at the evidentiary hearing and to apply an objective standard under the "totality of the circumstances" considering whether the facts available to the officer at the moment "would warrant a person of reasonable caution in the belief that the consenting party had authority over the premises." Illinois v. Rodriquez, 497 U.S. 177, 188 (1990). This court is obliged to uphold a discretionary decision based on the facts in the record, but only if the court applied the correct standard of law and that application is the product of a rational mental process. Hartung v. Hartung, 102 Wis.2d 58 (1981). The trial court

[2] The court adopted the State's argument that there was neither a search or seizure. The State mistakenly contended: [W]e're not talking about search and seizure which is all of the law that has been referenced in the defense motion. None of it applies." (R. 43; p. 41) (A-52).

erroneously exercised its discretion when it failed to apply the correct legal standard of third party consent and failed to determine whether Heather Bolin possessed "common authority over or other sufficient relationship to the premises or effects sought to be inspected." Matlock at 171.

C. The State Failed To Prove The Defendant's Girlfriend, Heather Bolin, Had Common Authority Over The Premises and Possessed Either Actual Or Apparent Authority To Consent To The Entry Of The Defendant's Mother's Cabin.

Searches conducted without a warrant are "per se" unreasonable subject to a few limited exceptions. State v. Kieffer, 217 Wis. 2d. 531, 541 (1998). The exception at issue in this case is consent and the State has the burden of proving consent by clear and convincing evidence. State v. Tomlinson, 2002 WI 91, ¶21. In certain cases consent may be given by a party who is not the subject of a search and this third person must have either actual authority to consent or apparent authority on which the officer reasonably relied. Id. at ¶25. Here, the wardens entered Joan Quinlan's cabin without a warrant and they did not have her permission to enter. For consent to be valid the third party must "possess common authority over or other sufficient relationship to the premises or effects sought to be inspected." United States v. Matlock, 415 U.S. 164, 171 (1974). In order for common authority to exist the third party must have "joint access [to] or control" over the individual's property such that the subject of the search has "assumed the risk" of any intrusion. Matlock 415 U.S. at 171; n. 7. Whether common authority exists or not depends on the totality of the circumstances. Tomlinson at ¶¶21, 31. In determining third party consent the sufficiency of the consenting individual's relationship to the premises and use by persons generally having joint access or control for most purposes is considered. Matlock at 171. In this case, Heather Bolin's relationship to the property was insufficient to establish either

actual or apparent authority to consent to the Warden's entry.

On direct examination Haas described the woman who allowed entry only as a "female". (R. 43; p. 14) (A-25). He did not initially describe her as the defendant's girlfriend and he did not know her name. (R. 43; p. 14, 23) (A-25, 34). He asked the female if he could come in and she said yes. The record does not reflect Haas made any inquiry to establish her relationship to the property. He did not explore whether she was a guest or not or whether she had mutual use of the property or "common authority." He never explained who he was, why he was there, and he didn't know whether the female subsequently described as the defendant's girlfriend had the right to invite guests into the house or not. Id. at 22-24 (A-33-35). The defendant did not have any legal interest in the property. Id. at 27 (A-38). The property was owned by his Mother, Joan Quinlan. Heather Bolin did not have the right to invite guests into the cabin and did not have the right to invite anybody on to the Quinlan property. Id. at 34 (A-45). She did not have the right to stay at the property by herself and she had never been given permission to stay on the property without the defendant being present. Id. She did not have permission to let anybody into the cabin and did not have authority to go anywhere on the property or do whatever she wanted. Id. at 35 (A-46). If Ms. Bolin wanted to go anywhere on the property she need permission from Joan Quinlan. Id. In reviewing the totality of the circumstances the court must look at the officer's knowledge of the person allowing entry at the time and his or her relationship to the property in order to justify a third-party consent search. Here, Haas made no inquiry of the defendant's girlfriend or her right to invite guests or her relationship to and use of the property. He did not question her about whether she had the right to allow access to the property. The record does not establish her mutual use of the property or "common authority"

over it. In fact the record establishes the opposite. That mere fact that it was the defendant's girlfriend, who Haas later recognized as the female who opened the door, does not alone establish third-party consent by clear and convincing evidence under the totality of the circumstances. Here there is no evidence that Ms. Bolin possessed a key to the cabin, ever lived at the cabin, had any personal belongings at the cabin, or stayed there alone. Haas made no inquiry as to whether she received mail at the cabin or kept clothing at the cabin, did chores at the cabin, nor did he determine the length of her stay to support any conclusion that she had authority to consent to the entry. The factors considered as guidelines in determining third party consent in Sobczak were never established by the State or considered by the court. State v. Sobczak, 2013 WI 52 ¶20. See also Sobczak at ¶56. Shirley S. Abrahamson, C.J. (dissenting). As stated in Matlock the test which applies to all consenting persons as set forth by the United States Supreme Court depends on "common authority" and rests "on mutual use of the property by persons generally having joint access or control for most purposes" or "other sufficient relationship to the premises." 415 U.S. 164, 171 (1974).

In Illinois v. Rodriquez 497 U.S. 177, 181-82 (1990) the United States Supreme Court determined that a girlfriend who previously lived in the defendant's apartment, had a key and occasionally spent overnights did not have actual authority to consent to a search of the apartment. The former girlfriend in Rodriquez had a much stronger connection to the residence and the apartment than the consenting party in this case.

In State v. Kieffer, 217 Wis. 2d. 531 (1998) the Wisconsin Supreme Court determined that the defendant's father-in-law lacked actual and apparent authority to consent to a search of the loft above his garage where the defendant and his wife were living. In Kieffer, the court

further concluded that the police made insufficient inquiry and therefore could not reasonably rely upon the father in law having apparent authority to consent to the search of the living quarters. In Kieffer the officers only asked whether the Kieffer's paid rent and never made any further inquiries of the father in law, who owned the loft, as to their use of the loft or whether the defendant had ever entered the loft without first receiving the Kieffer's permission. Id. at 31. Here, the record is devoid of any questions asked by law enforcement to establish Bolin's relationship to the property and whether actual or apparent authority existed and this court should reverse the trial court's denial of the motion, if it reaches the merits of the third-party consent issue.

In order to conclude that the entry was legal, the court was required to determine whether the warden's reliance on the information he knew about Heather Bolin's relationship to the property at the time of entry was reasonable. Illinois v. Rodriquez, 497 U.S. 177, 188 (1990) "As with other factual determinations bearing upon search and seizure, determination of consent to enter must "be judged against an objective standard: would the facts available to the officer at the moment …warrant a (man) of a reasonable caution in the belief" that the consenting party had authority over the premises?" Illinois v. Rodriquez, 497 U.S. 177, 188 (1990) citing Terry v. Ohio, 392 U.S. (1968). The trial court failed to determine whether the facts known to the warden at the time would warrant Haas to reasonably rely on the girlfriend's common authority over the property at the time of entry. The trial court did not make any factual findings regarding third party consent based upon the record and did not apply those facts to the required objective standard under the totality of the circumstances to determine whether either actual or apparent authority to consent existed or whether the State had met that burden by clear and convincing

evidence. Rodriquez at 181. Haas did not have an objectively reasonable basis to conclude, under the totality of the circumstances, that Heather Bolin had common authority over the premises and the court was required to "look to the sufficiency of the consenting individual's relationship to the premises to determine mutual use by persons generally having joint access or control for most purposes." United States v. Matlock, 415 U.S. 164, 171 n. 7 (1974). It did not.

CONCLUSION

The entry into the home by Wardens Haas and McDermid implicated the Fourth Amendment and therefore the appropriate analysis was not just whether the defendant's statements were voluntary but whether Heather Bolin had mutual use of and "common authority" over the property and possessed either actual or apparent authority to lawfully consent to the entry of Joan Quinlan's cabin. The record in this case fails to establish that Heather Bolin had "common authority" or actual or apparent authority to allow entry. The record does not include demonstrable facts with respect to her ties to the property and does not satisfy the factors set forth in State v. Sobczak, 2013 WI 52, ¶20 in determining whether valid third party consent existed.

Under the totality of the circumstances there was a complete lack of objective facts based on law enforcement's knowledge about Bolin's relationship to the property at the time they entered the cabin and Warden Haas did not have an objectively reasonable basis to conclude that she had either actual or apparent authority to allow access. The State bears the burden of proving consent by clear and convincing evidence and it did not come close to meeting that burden.

The trial court erroneously exercised its discretion when it failed to apply the facts in the record to the correct legal standard to determine the existence of actual or apparent authority to

establish valid third-party consent to enter. Instead the court focused on the reasonable person standard for arrest and only analyzed whether the defendant's statements were voluntary or not. The defense never contended that the statements were involuntary. The court failed to apply the facts adduced at the suppression hearing to determine whether they established Ms. Bolin's mutual use of the property for most purposes and it failed to engage in a rationale reasoning process using the correct standard of law. It erroneously exercised its discretion.

The decision of the trial court denying the defendant's Motion to Suppress Evidence should be reversed.

Respectfully submitted this 27th day of February, 2023.

Electronically signed by:
Patrick J. Stangl
Stangl Law Offices, S.C.
Attorneys for Richard Quinlan
6441 Enterprise Lane, Suite 109
Madison, Wisconsin 53719
(608) 831-9200
State Bar No. 017765

CERTIFICATION

Undersigned counsel hereby certifies that this appellate brief conforms to the rules contained in §809.19(8)(b) and (c) Wis. Stats. for a brief produced with the proportional serif font. The length of this brief is 4,926 words.

Electronically signed by:

Patrick J. Stangl

CERTIFICATION BY ATTORNEY

I hereby certify that filed with this brief is an appendix that complies with s. 809.19 (2) (a) and that contains, at a minimum: (1) a table of contents; (2) the findings or opinion of the circuit court; (3) a copy of any unpublished opinion cited under s. 809.23 (3) (a) or (b) and (4) portions of the record essential to an understanding of the issues raised, including oral or written rulings or decisions showing the circuit court's reasoning regarding those issues.

I further certify if this appeal is taken from a circuit court order or judgment entered in a judicial review of an administrative decision, the appendix contains the findings of fact and conclusions of law. If any, and final decision of the administrative agency.

I further certify that if the record is required by law to be confidential, the portions of the record included in the appendix are reproduced using one or more initials or other appropriate pseudonym or designation instead of full names of persons, specifically including juveniles and parents of juveniles, with a notation that the portions of the record have been so reproduced to preserve confidentiality and with appropriate references to the record.

Electronically signed by:

Patrick J. Stangl