

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**MARCH 17, 1999**

Marilyn L. Graves  
Clerk, Court of Appeals  
of Wisconsin

**NOTICE**

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A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

**No. 98-1784-CR**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT II**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**RAUL M. CORDOVA,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment of the circuit court for Walworth County:  
ROBERT J. KENNEDY, Judge. *Affirmed.*

ANDERSON, J. Raul M. Cordova appeals from a judgment of conviction for marijuana possession and obstructing an officer in violation of § 161.41(3r) and § 946.41(1), STATS., 1993-94. He argues that the circuit court erred when it did not suppress evidence obtained from his home as a result of a warrantless search without the proper consent. We conclude that, under the totality of the circumstances, consent was voluntarily given and affirm.

On July 5, 1996, five officers went to Cordova's home. The officers did not have a search warrant but went to the home seeking to obtain voluntary consent to search the residence. The officers wore plain clothes, and the group consisted of Sergeant Bushey and Deputy McClory of the Walworth County Sheriff's Department and three additional officers from the county's Drug Enforcement Unit. Because the officers knew in advance that the residents of the Cordova home spoke Spanish, McClory, who speaks Spanish, was invited along to translate.

Maria Cordova, Cordova's nineteen-year-old sister, answered the door to the home. Maria speaks Spanish as her first language but does speak some English. Speaking in English, Bushey asked Maria if this was Cordova's residence and if her mother or father was at home. Cordova's mother, Feliberta, then came to the door. Feliberta speaks only Spanish and has no comprehension of English. Bushey asked if the officers could come inside the home; Maria answered "yes" and stepped back invitingly from the door.

Once inside, Bushey asked Maria several questions in English. During this conversation, Bushey would ask a question in English, Maria would translate the question into Spanish for Feliberta, and Maria would then give her mother's response to Bushey in English. At times, McClory would interject and facilitate the translations. Feliberta was questioned about whether Cordova was present and if there was marijuana in the home. Then, she was informed that the officers wanted to search the home for drugs. Bushey testified that after he made that statement, Maria turned to her mother and spoke some Spanish, Feliberta responded in Spanish to Maria, and then Maria, speaking English, said to Bushey, "You can go ahead and search."

The group proceeded to sit at a table and the officers began discussing the consent to search form. This form was written entirely in English. Bushey spoke about the form to Maria in English while McClory translated the form to her and Feliberta in Spanish. Bushey asked Feliberta to sign the form giving them permission to search the premises. Maria told the officers, in English, that her mother could not sign her own name to the form because she could not write. Maria signed the form on behalf of her mother. The officers then conducted a search of the premises.

At one point while the search was proceeding, Feliberta motioned to a laundry basket. Bushey testified that he believed this to be a gesture signaling that she was willing to remove the clothes from the basket if the officers desired to look inside it. Bushey further testified that neither Feliberta nor Maria appeared fearful at any time during the search. Ultimately, marijuana was found in Cordova's bedroom by reaching through a hole in the hallway wall that led to a hole underneath his bed. Cordova was subsequently arrested.

Afterward, Cordova moved the court to suppress the evidence found in his home. Cordova argued that the search was unconstitutional because consent was not freely given. Supporting his motion, Cordova claimed that Feliberta did not understand the search request because the request was not adequately presented in Spanish. He claimed that McClory only spoke in "broken Spanish" and often in an incorrect grammatical order that did not accurately convey his intended meaning. Additionally, he claimed that the alleged consent was not freely given because the officers told the women to sign the consent form, implying that the officers already had legal authority to search the house.

At the suppression hearing, McClory testified about his training and experience in the Spanish language. Considering himself fluent in the language, he began studying Spanish in the fifth grade and continued his studies at the college level. On the first day of the hearing, a tape recording was made of McClory translating the consent to search form from English to Spanish. When McClory was asked to recount what he had said in Spanish to Feliberta and Maria, the Spanish interpreter was unable to interpret his comments because it was “broken Spanish.” At that point, the court stated that the parties should obtain independent expert translators to evaluate McClory’s Spanish.

When the hearing reconvened, the parties had their language experts present to evaluate McClory’s Spanish-speaking ability. The State’s expert witness testified that McClory’s Spanish was understandable, but he had many problems when trying to translate the consent form verbatim. Cordova’s expert witness determined McClory’s Spanish-speaking ability to be very limited and, in particular, that his grammar formation did not adequately convey his intended meaning.

In opposition to the motion, the State asserted that consent for the search was effectively communicated according to the principles expressed in *State v. Xiong*, 178 Wis.2d 525, 504 N.W.2d 428 (Ct. App. 1993). In spite of finding McClory “inadequate for conveying information” in Spanish, the court found that consent was given based on the totality of the circumstances. In determining that the State had met its burden in proving that consent was freely and voluntarily given, the court found the following evidence conclusive:

Maria was being talked to, and Mrs. Cordova’s right next to her. And the officer says, “We want to search your house.” In English. Officer Bushey testified to that.

What happens then? Maria, who's not supposed to be able to understand English that well, turns to Mrs. Cordova and says something in Spanish. Then Mrs. Cordova answers back in Spanish. And Maria turns and says, "Yes, you can search the house."

In order for me to conclude that Mrs. Cordova did not consent to the search of the house, I would have to speculate as follows. I would have to speculate first of all that Maria did not understand what the word in English "search" meant.

I would also have to speculate that therefore when she translated it to Mrs. Cordova, she did not use a word that Mrs. Cordova could understand as asking for the consent to search.

I would further have to speculate that Mrs. Cordova then consented to whatever it was that Maria was telling her but it wasn't about search, and that Maria then turned around, and used the word: "Yes, it's okay for you to search the house" or "You can search the house." And I would have to conclude that Maria didn't know what she was talking about.

After the hearing, Cordova entered guilty pleas and was then sentenced by the court. Cordova appeals.

On appeal, Cordova argues that Feliberta and Maria did not give voluntary consent for the search of their house. He contends that the women understood that the form itself gave the officers prior permission to search the house. Accordingly, he claims that due to McClory's "broken Spanish," the officers misrepresented to the women that they had prior permission to conduct a search. Thus, he contends that such a misrepresentation must fail the *Xiong* court's requirement of effectively-communicated consent.

This presents the question of whether Feliberta's consent to the search was voluntary. The relevant facts are not in dispute. We will apply the following standards of review. If the trial court's finding is one of fact, it will not be disturbed unless clearly erroneous. *See State v. Santiago*, 206 Wis.2d 3, 17,

556 N.W.2d 687, 692 (1996). If the finding is one of constitutional fact, we will review it de novo. *See id.* Thus, we owe no deference to the trial court when determining whether the standard for voluntariness of consent has been met.

To determine the voluntariness of a consent to search, we look for the absence of coercive, improper police practices that are designed to overcome a person's resistance. *See Xiong*, 178 Wis.2d at 532, 504 N.W.2d at 430. We will consider the totality of the circumstances to reach this conclusion. *See id.* In a consent search, the State bears the burden of showing voluntariness by clear and convincing evidence. *See id.*

In his motion, Cordova put the State on notice that he was challenging the validity of the consent to search because of the alleged inadequacy of the foreign-language advisement. This placed the burden on the State to produce evidence that the foreign-language words used reasonably conveyed the meaning of the requested consent to search. In *Santiago*, the supreme court mandated that "an informing officer must, upon the accused's request, furnish testimony as to the foreign-language *Miranda* warnings given to the accused and that those words be preserved in the record." *Santiago*, 206 Wis.2d at 22, 556 N.W.2d at 694. In this case, once Cordova challenged the adequacy of the foreign-language advisement, the circuit court, following the *Santiago* mandate, preserved testimony of the Spanish-speaking officer's statements to Feliberta and Maria, utilized a court interpreter fluent in Spanish and English to record these statements, documented the officer's Spanish version of the entire text of the consent to search form onto tape, and instructed both parties to obtain independent expert witnesses in the Spanish language to evaluate the tape and the officer's Spanish-speaking ability. We commend the court for preserving such an

exemplary and thorough record for its findings regarding the voluntariness of the consent given.

Based on this evidence, the court found that McClory's Spanish-speaking ability was inadequate. Yet, despite this fact, it concluded that Feliberta's consent to search her home was voluntary. Cordova asserts that this was error. He claims that McClory effectively misrepresented to the women, through incorrect translations, that the consent to search document stated the officers already had permission to search the home. This misrepresentation, he asserts, is a form of coercion.

Indeed, as we have stated in *Xiong*, if an officer ineffectively communicates that a consent to search is only a voluntary decision, the result may be a form of coercion. *See Xiong*, 178 Wis.2d at 537, 504 N.W.2d at 432.

[L]anguage barriers make a determination of voluntariness more difficult. It is incumbent upon the police to effectively communicate their objectives when seeking consent to search. Merely providing an interpreter is not enough. The interpretation must convey what is intended to be communicated. Communication is effective only if it clearly and accurately relates all pertinent information to the listener. If effective communication is not provided, then that is a form of coercion.

*Id.*

Specifically, Cordova argues that the objectives expressed in the consent to search form were misrepresented to Feliberta and Maria. However, the consent to search form is not our only consideration for determining the voluntariness of consent. *Cf. State v. Rogers*, 148 Wis.2d 243, 248, 435 N.W.2d 275, 277-78 (Ct. App. 1988) (upholding a consent to search even though the persons conducting the search were different from those listed on the consent form). On the contrary, whether Feliberta's consent was voluntary is ascertained

by considering all of the circumstances present at the time, not just the representations from the consent to search form. This means that a consent to search need not be given verbally or result from a signature on a form. Consent may be in the form of words, gestures or conduct. See *State v. Phillips*, 218 Wis.2d 180, 196, 577 N.W.2d 794, 802 (1998).

Even though the Spanish translation may not have been the exact equivalent to the English version of the consent to search form,<sup>1</sup> we conclude, after considering all the surrounding circumstances, that Feliberta voluntarily consented to have her home searched by the officers. For instance, Feliberta allowed the officers to enter her home. After she was informed the officers wanted to search her home for drugs, she verbally agreed. She also had the consent form discussed and explained to her by Bushey, through her daughter Maria's translations, and by McClory. While the search was proceeding, Feliberta offered to remove clothes from a laundry basket to assist the officers' search. Furthermore, the women did not appear afraid or uncomfortable while the officers were present. For these reasons, we conclude that the totality of the circumstances indicates that the consent to search was voluntary.

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<sup>1</sup> Wisconsin is home to a large number of persons whose primary language is not English. We encourage police departments to create and use forms in the primary language of the different linguistic groups within their jurisdiction. Using multi-language forms would help to assure that persons whose primary language is not English receive the same information as English-speaking persons.



*By the Court.*—Judgment affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)4, STATS.

