COURT OF APPEALS
DECISION
DATED AND FILED

March 27, 2018

Sheila T. Reiff
Acting Clerk of Court of Appeals

Appeal No. 2017AP801-CR **Cir. Ct. No. 2015CF1009**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT III

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

ROBERT CHARLES HOLMES,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Brown County: TAMMY JO HOCK, Judge. *Affirmed*.

Before Stark, P.J., Hruz and Seidl, JJ.

Per curiam opinions 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).

¶1 PER CURIAM. Robert Holmes appeals a judgment convicting him of manufacturing psilocin and maintaining a drug trafficking place. Holmes

argues his girlfriend's consent to a search of their residence was not voluntary, and the circuit court therefore erred by denying his motion to suppress evidence obtained during the search. He further argues the court erred by excluding a psychologist's testimony regarding his girlfriend's mental state at the time she gave consent and by refusing to rely on the psychologist's report. We reject these arguments and affirm.

BACKGROUND

¶2 According to a police report that was attached to Holmes' suppression motion, Green Bay police officer Matthew Knutson observed a car being driven recklessly at about 1:56 a.m. on July 16, 2015. Knutson stopped the vehicle, and the driver was identified as eighteen-year-old Tyra Diaz.[1] When Knutson asked Diaz about her driving, she responded she believed she had been driving in her sleep. She indicated she was a "lucid dreamer," and the last thing she remembered was falling asleep.

¶3 Diaz made several other odd or inconsistent statements while speaking to Knutson. For instance, she told Knutson she did not have any identification or wallet with her, but Knutson could see a wallet on her vehicle's passenger-side floorboard. In addition, although Diaz initially indicated she did not remember driving, she subsequently told Knutson "her dashboard told her she was driving the speed limit."

[1] In setting forth the facts related to this traffic stop, we rely on both Knutson's report and a dashboard camera video recording of the stop, which was introduced into evidence at the July 27, 2016 suppression hearing.

¶4 Knutson asked Diaz if she had taken any prescription medications, and she responded she had a prescription for marijuana but had not smoked any since the previous day. Shortly thereafter, Knutson learned there was a warrant out for Diaz's arrest. He then asked Diaz, who was barefoot, to put her shoes on and exit her vehicle. Knutson suspected Diaz was impaired, so he asked her to perform field sobriety tests.

¶5 During the field sobriety tests, Diaz had difficulty following the instructions Knutson provided. Apparently due to Diaz's confusion, Knutson asked Diaz what her highest level of education was, and she responded she had completed the eleventh grade. When Knutson asked whether Diaz was able to read and understand English, she responded that her primary language was "Egyptian" and she had been born in Egypt. However, she then told Knutson that she had lived in the United States for eighteen years and had completed all of her schooling in English.

¶6 Knutson ultimately placed Diaz under arrest and transported her to the OWI processing room at St. Vincent Hospital. There, Knutson read Diaz the "Informing the Accused" form, and she consented to a blood draw. After waiving her ***Miranda***[2] rights, Diaz was interviewed and underwent a drug recognition protocol conducted by Knutson and officer Bagley, a drug recognition expert from the De Pere police department.[3]

[2] Referring to ***Miranda v. Arizona***, 384 U.S. 436 (1966).

[3] An audio recording of this interview was introduced into evidence during the July 27, 2016 suppression hearing.

¶7 During the interview, Diaz admitted to having used marijuana, hallucinogenic mushrooms, and heroin the previous day. However, her answers to the officers' questions regarding her drug use were inconsistent, and sometimes odd. For instance, Diaz initially admitted having injected heroin into her arm the previous day, but she later denied injecting heroin, instead stating she was "really smart" and could draw heroin into her system "through the walls." At one point, Diaz told Bagley and Knutson the person who injected heroin was actually her husband, and at another point she stated, "No, that was actually Lucifer, not me." Diaz later reported that she did, in fact, remember injecting heroin. She told the officers she had her own needle and "funneled" heroin through her piercings. However, when Bagley later questioned Diaz about injecting heroin through her piercings, Diaz again insisted that she absorbed heroin through the walls.

¶8 Diaz also gave inconsistent answers about her relationship with Holmes. When Bagley asked Diaz how long she had been married, she replied, "Since '87," which was ten years before Diaz was born. Diaz subsequently told the officers that her husband's name was Robert Charles Holmes, he was twenty-one years old, they had met in Green Bay two years ago, and they had been living together for one year. However, Diaz later explained that she and Holmes were not legally married yet, and that was "just a thought that's been here."

¶9 Diaz indicated several times during the interview that she was tired and wanted to go to sleep. When Bagley asked when Diaz had last slept, she responded it had been three or four days. Diaz explained that she had "bad night terrors" and smoked marijuana and incense to help her sleep. At one point during the interview, Diaz indicated she was hungry, although she did not expressly ask the officers for food. When Bagley asked Diaz what she had eaten that day, Diaz responded that she only remembered eating chocolate ice cream.

¶10 Bagley expressly asked Diaz whether she was sick or injured, and Diaz responded in the negative. However, Diaz subsequently told Bagley her stomach hurt "[a] little bit." Shortly thereafter, Diaz asked to use the bathroom and was permitted to do so.

¶11 When questioning Diaz about her physical health, Bagley specifically asked whether Diaz suffered from epilepsy. Diaz provided a number of inconsistent answers to that question. While she initially stated she was not epileptic, shortly thereafter she told Bagley she had previously been diagnosed with depression, anxiety, and epilepsy. However, she then described her epilepsy as "undiagnosable," and immediately thereafter she again denied having epilepsy.

¶12 Later on, when a nurse arrived to perform the blood draw to which Diaz had previously consented, Diaz again stated she suffered from epilepsy. Knutson asked whether Diaz needed to see an emergency room doctor for that condition, and she responded that she did not. Following the blood draw, Bagley questioned Diaz about her inconsistent statements regarding epilepsy. Diaz apologized, stating she had been drifting in and out of sleep. She then told Bagley she had suffered from epilepsy since she was fourteen years old.

¶13 Several minutes later, Bagley asked Diaz to stand up to perform some tests.[4] However, immediately after standing, Diaz told the officers she needed to sit down. She reported feeling dizzy and stated she was having an epileptic episode. Bagley asked Diaz twice if she needed to see a doctor, and Diaz declined both times, indicating she was just tired. Knutson nevertheless went to

[4] The record does not clearly indicate the nature of these tests or their purpose. However, that information is not material to our analysis.

get a nurse. While he was gone, Diaz stated she felt like she was going to throw up.

¶14 When the nurse arrived, Diaz told him she had experienced an epileptic spell. The nurse asked whether Diaz wanted to be seen by a doctor, but she again declined, saying she just wanted to get some sleep. After the nurse left, Diaz confirmed that she was able to sit up and talk to Bagley. After performing an additional test while Diaz remained seated, Bagley asked Diaz how she was feeling, and Diaz responded that she was tired but no longer felt like she was going to vomit.

¶15 About one hour after the interview began, Diaz was permitted to lie down, and the officers left the room. Knutson returned about eight minutes later and told Diaz, "You don't have to wake up, I mean, you don't have to sit up, you can sit right where you are." He told Diaz he was concerned about some of the answers she had given regarding her drug use, and he wanted to search her apartment for the drugs she had reported using. Diaz immediately gave Knutson verbal permission to search her apartment. She confirmed her address and described the apartment for Knutson, although she momentarily forgot the word "kitchen." When Knutson told Diaz he would also like to search her phone, she immediately stated he was "more than welcome" to do so and volunteered her password.

¶16 Knutson then asked Diaz whether the key to her apartment was with her car keys, and she replied that it was. After telling another officer that her vehicle's window was open, so he could just reach in and take the keys, Diaz stated, "Then I'll just go home after this." The officers did not respond to that statement.

¶17 Instead, Knutson presented Diaz with a "Consent to Search" form and asked her to sign it if she still agreed to the search. After Diaz signed the form, Knutson thanked her, told her she could lie back down, and asked how she was feeling. Diaz responded she was "just really tired." Knutson then told her someone would be taking her to jail to resolve her warrants. He asked whether Diaz had any questions, and she indicated she did not.

¶18 Following the search of Diaz and Holmes' apartment, Holmes was charged with manufacturing psilocin; possession with intent to deliver psilocin; maintaining a drug trafficking place; possession of cocaine; possession of a controlled substance (methylenedioxymethamphetamine); possession of tetrahydrocannabinols; possession of drug paraphernalia; and obstructing an officer. Holmes moved to suppress the evidence found in the apartment on the grounds that Diaz did not have actual or apparent authority to consent to the search. A suppression hearing was held on January 25, 2016, at which Knutson was the only witness. During the hearing, Knutson testified Diaz made multiple "really bizarre comments" on the night of her arrest and gave "strange answers to questions," but she showed "comprehension and understanding" while being questioned by Bagley at the hospital.

¶19 After Knutson testified, defense counsel argued for the first time that the voluntariness of Diaz's consent was at issue. Counsel explained he was "not arguing voluntariness in the sense that coercive behavior was exhibited by the police." Instead, he contended a reasonable officer "would not have relied on [Diaz's] consent" due to Diaz's "behavior, the rather bizarre statements that she made throughout, and really not having any other information." The circuit court rejected that argument, finding Diaz's behavior was not "to the level of concern or some level of bizarre that would preclude her from voluntarily consenting to a

search of the residence." Although the court conceded Diaz was "[c]learly" under the influence of some type of drug and had made some "odd comments" on the night of her arrest, it credited Knutson's testimony that she ultimately "answered questions more consistent with what he would have expected." The court therefore concluded Diaz's consent was voluntary. The court also rejected Holmes' argument that Diaz lacked authority to consent to the search.

¶20 Following a change in counsel, Holmes filed a second suppression motion, again arguing Diaz's consent to the search was not voluntary. The second suppression motion asserted that, on the night of Diaz's arrest, "the situation had overborne her will and her capacity for self[-]determination was so impaired that the consent was not voluntary."

¶21 The circuit court held a second suppression hearing on July 27, 2016.[5] During that hearing, Diaz testified she had been diagnosed with epilepsy, depression, and anxiety and had spent time in two psychiatric facilities. She further testified she had used marijuana, mushrooms, and heroin the day before her arrest. Diaz confirmed she had outstanding warrants at the time of her arrest. Defense counsel asked, "Because of those warrants, were you just going to acquiesce and do whatever the officers wanted you to do?" Diaz responded, "Yeah, of course I was complying. I already knew I was going to jail."

¶22 Diaz testified she did not remember speaking to a drug recognition expert on the night of her arrest, nor did she remember consenting to a search of her home. Although she remembered telling the officers she had not slept in days,

[5] During the second suppression hearing, defense counsel conceded he was asking the court to reconsider its prior determination that Diaz's consent to the search was not voluntary.

she testified her memory was "off" and she had actually slept the night before. She denied that the officers had taken her to the hospital that night, instead asserting she was taken "straight to … the jail." When asked again whether she remembered giving the police consent to search her home, Diaz responded "I remember the whole night, and I know that I never gave consent."

¶23 Upon questioning by the circuit court, Diaz confirmed that her signature was on the "Consent to Search" form. However, she maintained she did not remember signing that document. Defense counsel then asked whether it was possible Diaz was having an epileptic seizure at the time she signed the form. Diaz responded she did not think that was possible because, had she been having a seizure, she "probably would have passed out and hit the ground." She further testified her epilepsy "never came up that day."

¶24 After Diaz testified, defense counsel informed the circuit court that he intended to elicit testimony from an expert witness, psychologist Amelia Brost, regarding Diaz's mental state at the time she consented to the search. Specifically, counsel informed the court Dr. Brost would testify regarding Diaz's mental illness, disorganized thought processes, intoxication, epilepsy, and sleep deprivation. In response, the court stated counsel was relying on facts not in evidence, given that Diaz's testimony indicated she was not sleep deprived at the time she gave consent and was not suffering an epileptic seizure.

¶25 Defense counsel then played the audio recording of Diaz's interview at the hospital for the circuit court. After the recording was played, the State argued the court should prohibit Dr. Brost from testifying because her testimony would not "add anything," given that the court had already heard both Diaz's testimony and the recording of her interview at the hospital. The State argued that

evidence, in and of itself, would permit a finding that Diaz "was coherent enough to give consent."

¶26 The circuit court agreed with the State, finding the recording of Diaz's interview supported its prior determination that she voluntarily consented to the search. The court stated Diaz spoke clearly during the interview, and it was "clear from the recording … that she was having an articulate conversation with the officer." The court again conceded some of Diaz's comments were "a bit odd," but it reasoned the mere fact that a person is under the influence of drugs or alcohol "doesn't mean they are not able to consent." The court further found there was "no evidence" in the recording that Diaz did not understand what was happening, that she was so intoxicated as to render her consent involuntary, or that she was having an epileptic seizure at the time she gave consent. Based on these findings, the court stated there was no need for additional testimony.

¶27 Defense counsel then asked the circuit court to consider Dr. Brost's curriculum vitae and report, which the court agreed to do. However, after reviewing those documents, the court explained, "The problem is the doctor's report is just not consistent with what I heard on the tape." In particular, the court found the recording did not support Brost's conclusion that Diaz was "either having an acute psychotic episode or experiencing drug-induced psychosis" at the time she consented to the search. The court stated, "I don't know how I can rely on this report as being accurate given what I heard, [and] given the record that's been made here about the conversation [at the hospital] and the clearness of that conversation." Consequently, the court found it could not accept Brost's report "as being credible." The court again concluded that Diaz voluntarily consented to the search of her apartment, and it therefore denied Holmes' suppression motion.

¶28 Holmes ultimately pled no contest to manufacturing psilocin and maintaining a drug trafficking place. He now appeals, arguing the circuit court erred by denying his motion to suppress, by excluding Dr. Brost's testimony, and by refusing to rely on her report.

DISCUSSION

I. Denial of Holmes' suppression motion

¶29 "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. A warrantless search is per se unreasonable, unless one of several clearly delineated exceptions to the warrant requirement applies. ***Id.***, ¶29. One such exception exists for searches conducted pursuant to a party's consent. ***Id.*** To determine whether the consent exception is satisfied, we consider: (1) whether consent was, in fact, given; and (2) whether the consent was voluntary. ***Id.***, ¶30. Here, Holmes does not dispute that Diaz consented in fact to the search of their apartment; he challenges only the voluntariness of her consent.[6]

¶30 The State bears the burden of proving by clear and convincing evidence that Diaz voluntarily consented to the search. *See* ***id.***, ¶32. Voluntariness of consent is a question of constitutional fact. ***Id.***, ¶23. As such, we accept the circuit court's findings of fact unless they are clearly erroneous, but we

[6] Holmes has also abandoned his argument that Diaz lacked authority to consent to the search. *See* ***A.O. Smith Corp. v. Allstate Ins. Cos.***, 222 Wis. 2d 475, 491, 588 N.W.2d 285 (Ct. App. 1998) (issues raised in the circuit court, but not raised on appeal, are deemed abandoned).

independently apply the constitutional principles to those facts to determine whether Diaz's consent was voluntary. *See* ***id.***

¶31 When evaluating the voluntariness of a party's consent to a search, we consider "the totality of all the surrounding circumstances." ***Id.***, ¶32 (quoting ***Schneckloth v. Bustamonte***, 412 U.S. 218, 226 (1973)). To qualify as voluntary, a party's consent must be an essentially free and unconstrained choice that is not the product of duress or coercion, whether express or implied. ***Id.*** The following nonexclusive factors are relevant to the voluntariness inquiry:

> (1) whether the police used deception, trickery, or misrepresentation in their dialogue with the defendant to persuade him to consent; (2) whether the police threatened or physically intimidated the defendant or "punished" him by the deprivation of something like food or sleep; (3) whether the conditions attending the request to search were congenial, non-threatening, and cooperative, or the opposite; (4) how the defendant responded to the request to search; (5) what characteristics the defendant had as to age, intelligence, education, physical and emotional condition, and prior experience with the police; and (6) whether the police informed the defendant that he could refuse consent.

Id., ¶33.

¶32 On balance, we conclude these factors support the circuit court's conclusion that Diaz voluntarily consented to the search of her apartment. Regarding the first three factors, there is no evidence that Knutson or Bagley used deception, trickery, or misrepresentation to persuade Diaz to consent to the

search.[7] The officers did not threaten or physically intimidate Diaz. Although Diaz indicated at one point that she was hungry, she did not repeat that complaint or ask the officers for food. When Diaz told the officers she needed to use the bathroom, they permitted her to do so. When Diaz indicated she was experiencing an epileptic seizure, the officers brought in a nurse to evaluate her, even though Diaz had repeatedly indicated she did not need medical attention. The audio recording of the interview confirms that the officers were congenial and nonthreatening toward Diaz at all times.

¶33 Regarding the fourth ***Artic*** factor, Diaz responded to Knutson's requests to search her apartment and cell phone by immediately consenting to both of those requests. After verbally consenting, she also signed a consent form. She described her apartment to Knutson, told him where to find her keys, and volunteered the password for her phone. Nothing about Diaz's response would have signified to the officers that her consent was involuntary.

¶34 Regarding the fifth ***Artic*** factor, the State concedes that Diaz was tired, was under the influence of drugs, and may have been suffering from a mental and/or physical illness during her interview with Knutson and Bagley. However, we agree with the State that nothing about Diaz's conduct during the interview would have suggested to the officers "that her mental and physical state

[7] Holmes suggests that, in order to obtain Diaz's consent, Knutson misrepresented—or at least allowed Diaz to believe—that she would be able to go home following the interview. We are not persuaded. Diaz did not raise the prospect of going home until after she had given verbal consent to the search. In response to her statement, neither officer indicated Diaz would be able to go home. Moreover, Diaz testified at the suppression hearing that she complied with the officers because she "already knew [she] was going to jail." This testimony undercuts Holmes' claim that Diaz consented to the search due to a mistaken belief that she would be permitted to go home if she cooperated.

overbore her ability to withhold consent." The circuit court found, based on the audio recording of the interview, that Diaz "was having an articulate conversation with the officer." Our review of the recording confirms that the court's finding in that regard is not clearly erroneous. Although some of Diaz's responses to the officers' questions were odd and inconsistent, she responded appropriately to other questions, and nothing about her speech patterns indicated that she was not lucid or that she was so tired, intoxicated, or ill as to be unable to voluntarily consent to a search. "When the evidence shows that the consenting party was 'responsive, lucid, and cooperative with the police officers,' post hoc claims of incompetency inspire suspicion." ***United States v. Coombs***, 857 F.3d 439, 449 (1st Cir. 2017) (quoting ***United States v. Reynolds***, 646 F.3d 63, 74 (1st Cir. 2011)).

¶35 Holmes emphasizes Diaz's "extreme fatigue" during the interview. We observe, however, that while Diaz told the officers she had not slept in three or four days, she testified during the suppression hearing that she had actually slept the night before. Moreover, the audio recording of Diaz's interview demonstrates that a reasonable observer would not have concluded she was so tired as to be incapable of voluntarily consenting to a search.

¶36 In addition, while Holmes asserts that Diaz was experiencing stomach pain and suffered "at least one epileptic seizure" during the interview, those claims do not convince us her consent was involuntary. Diaz indicated to Bagley on a single occasion during the interview that her stomach hurt "[a] little bit." She subsequently stated she felt like she was going to throw up, but shortly thereafter she indicated that was no longer true. On this record, we cannot conclude that whatever stomach issues Diaz may have been experiencing were severe enough to render her consent involuntary. While Diaz claimed during the interview that she had suffered an epileptic seizure, she repeatedly declined

medical help, even after the officers summoned a nurse to evaluate her. Moreover, Diaz's suppression hearing testimony calls into question whether she actually experienced a seizure during the interview.

¶37 Holmes also emphasizes that Diaz was only eighteen years old at the time of the interview, that she had only an eleventh-grade education, and that she had little prior experience with the police. He asserts Diaz "seemed anything but savvy about the situation she found herself in." To the contrary, however, Diaz testified during the suppression hearing that she knew she had outstanding warrants at the time of the interview, and she therefore cooperated with the officers because she "already knew [she] was going to jail." That testimony supports a conclusion that Diaz made a deliberate decision to cooperate with the police, rather than simply acquiescing to their requests because of her youth and inexperience.

¶38 Turning to the sixth ***Artic*** factor, it is true neither of the officers explained that Diaz could refuse to consent to the search. While this factor weighs against voluntariness, it is not determinative. *See* ***Artic***, 327 Wis. 2d 392, ¶60. To demonstrate that a party's consent was voluntary, the State is not required to show that the party knew he or she could refuse consent. ***State v. Phillips***, 218 Wis. 2d 180, 203, 577 N.W.2d 794 (1998). Rather, "[t]he state's burden in a consent search is to show voluntariness, which is different from informed consent." ***Id.*** (quoting ***State v. Xiong***, 178 Wis. 2d 525, 532, 504 N.W.2d 428 (Ct. App. 1993)).[8]

[8] This principle disposes of Holmes' argument that Diaz's consent "lacked the necessary element of intelligence." A party's consent to a search must be voluntary; however, the State need not also establish that the consent was knowing and intelligent. *See* ***State v. Xiong***, 178 Wis. 2d 525, 532, 504 N.W.2d 428 (Ct. App. 1993).

Here, although the officers did not inform Diaz that she could refuse to consent, the record shows that she immediately gave verbal consent to Knutson's requests to search her apartment and cell phone, and she later signed a consent form confirming that decision. She did not equivocate or do anything to suggest that she had doubts about her decision. There is no indication Diaz would have refused to consent had the officers informed her that doing so was an option.

¶39 For all of these reasons, we agree with the circuit court that the totality of the circumstances demonstrates Diaz voluntarily consented to the search of her apartment. We therefore reject Holmes' argument that the court should have granted his suppression motion because Diaz's consent was involuntary.

II. Treatment of Dr. Brost's testimony and report

¶40 Holmes next argues the circuit court erred by excluding Dr. Brost's testimony regarding Diaz's mental state. Whether to admit or exclude expert testimony rests within the circuit court's discretion. *See* ***State v. Giese***, 2014 WI App 92, ¶16, 356 Wis. 2d 796, 854 N.W.2d 687. "A circuit court's discretionary decision will not be reversed if it has a rational basis and was made in accordance with accepted legal standards in view of the facts in the record." ***Id.*** Here, the circuit court determined Dr. Brost's testimony was unnecessary. We conclude the court properly exercised its discretion in that regard.[9]

[9] As the State correctly notes, the rules of evidence do not apply with full force at suppression hearings. ***State v. Jiles***, 2003 WI 66, ¶¶29-30, 262 Wis. 2d 457, 663 N.W.2d 798. However, Holmes does not develop any argument that the circuit court therefore lacked authority to exclude Dr. Brost's testimony. Accordingly, we do not address that issue further.

¶41 In ***United States v. Grap***, 403 F.3d 439, 442 (7th Cir. 2005), the defendant argued his mother lacked the requisite mental capacity to voluntarily consent to a search. The Seventh Circuit concluded the defendant's mother voluntarily consented, "despite her mental infirmities." ***Id.*** at 443. The court reasoned that, "however potentially serious the effects of her psychosis, Mrs. Grap's behavior did not indicate that she lacked the requisite mental capacity to consent." ***Id.*** The court concluded voluntariness should be determined based on "what is reasonably apparent to a reasonable inquiring officer," rather than subsequently presented evidence that was unknown to the police at the time the party gave his or her consent. ***Id.*** at 444.

¶42 The ***Grap*** court emphasized that this approach was consistent with the purpose of the exclusionary rule—that is, deterring police from violating the Fourth Amendment. ***Id.*** at 444-45. The court explained, "Obviously, [officers] cannot be deterred by circumstances that are unknown to them, like the psychiatric history of the person consenting to the search." ***Id.*** at 445. Thus, although psychiatric testimony regarding the consenting party's mental state "might be of academic interest," the proper inquiry during a suppression hearing "focuses upon the objective facts, as presented to a reasonable inquirer, that would reasonably put him or her on notice that a voluntary consent could not be given." ***Id.***

¶43 The relevant inquiry in this case was therefore whether the objective facts—as known to the officers at the time Diaz consented to the search—would have put a reasonable officer on notice that Diaz's mental state rendered her unable to voluntarily consent. Doctor Brost's subjective opinions about Diaz's mental state were not relevant to that issue. Instead, relevant evidence was presented to the circuit court by way of: (1) Knutson's testimony; (2) Diaz's testimony; and (3) the audio recording of Diaz's interview. Based on that

evidence, the circuit court appropriately determined that Diaz's consent was voluntary. Under these circumstances, the court properly exercised its discretion by concluding Brost's testimony was unnecessary, and therefore preventing her from testifying.

¶44 For the same reasons, the circuit court properly declined to rely on Dr. Brost's report. Again, the subjective opinions set forth in Brost's report were not relevant to resolving the operative issue presented by Holmes' suppression motion—that is, whether the objective facts that existed at the time Diaz consented to the search would have put a reasonable officer on notice that she was unable to voluntarily consent. Moreover, while the circuit court considered Brost's report, it ultimately found other evidence in the record more convincing—specifically, the audio recording of Diaz's interview. The weight of expert evidence is for the fact finder to determine. ***Tony Spychalla Farms, Inc. v. Hopkins Agr. Chem. Co.***, 151 Wis. 2d 431, 441, 444 N.W.2d 743 (Ct. App. 1989). Here, for the reasons explained above, the circuit court reasonably decided to give no weight to Brost's report.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5. (2015-16).