COURT OF APPEALS
DECISION
DATED AND FILED

October 18, 2001

Cornelia G. Clark
Clerk of Court of Appeals

No. 00-3175-CR

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

RANDY S. SIMPLOT,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Rock County: DANIEL T. DILLON, Judge. *Affirmed.*

Before Dykman, Roggensack and Lundsten, JJ.

¶1 PER CURIAM. Randy Simplot appeals a judgment convicting him of being party to the crimes of possession of cocaine with intent to deliver and maintaining a drug house, each as a repeat offender, and also an order denying his postconviction motion. He challenges the issuance of a warrant to search his home, the execution of the warrant, and the sufficiency of the evidence on the

elements of possession and intent to deliver. We affirm for the reasons discussed below.

BACKGROUND

¶2 Detective Douglas Anderson applied for a warrant to search Simplot's residence for drugs. Anderson provided an affidavit in support of his application averring, among other things, that: (1) he had assisted an undercover police officer buying crack cocaine from Simplot at the residence; (2) the undercover officer was told that Simplot was selling cocaine in $50 increments in order to finance a planned move the following week; (3) the undercover officer was told that Simplot used a runner known as T-Bone to deliver the cocaine which Simplot packaged inside the residence; (4) the undercover officer had purchased an off-white substance which tested positive for cocaine from T-Bone at the residence within 72 hours prior to the application; and (5) T-Bone told the undercover officer that he should ask for T-Bone or R-Rock if he wanted more cocaine. A court commissioner issued the warrant.

¶3 Anderson knocked twice on the back door of Simplot's house. A female asked who it was at the door. The officer asked whether Iroc[1] was there, and the female again asked who it was. The female then pulled back the shade covering the window in the door and observed Anderson in his police jacket for a couple of seconds. Anderson identified himself as a police officer, informed the woman that he had a warrant, and told her to open the door. Instead, she turned and yelled, "Randy, the cops are here." Anderson immediately directed a fellow

[1] It appears Iroc may have been the court reporter's phonetic attempt to transcribe R-Rock.

officer to force entry with a battering ram, which he did. Upon entering the residence, the officers found 2.7 grams of crack cocaine, individually packaged as seven rocks, hidden under a mattress in Simplot's bedroom. They also discovered assorted drug paraphernalia, including a postal scale with white power residue on it and numerous plastic baggies.

¶4 The State charged Simplot as a repeat offender with being party to the crimes of possession of cocaine with intent to deliver and maintaining a drug house. The matter went to trial after the trial court denied a suppression motion challenging the search. The jury convicted Simplot on both counts, and the trial court sentenced Simplot to concurrent terms of fifteen years for possession with intent to deliver and three years for maintaining a drug house, plus costs and a $1,855 fine. On appeal, Simplot renews his challenges to the issuance and execution of the search warrant and also claims the evidence was insufficient to show he possessed the cocaine or intended to deliver it.

ANALYSIS

Issuance of the Warrant

¶5 A magistrate must make a practical, common sense decision whether, given all the circumstances set forth in the affidavit, including the veracity and basis of knowledge of the persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place. ***State v. Ward***, 2000 WI 3, ¶23, 231 Wis. 2d 723, 604 N.W.2d 517. We will sustain a decision to issue a search warrant unless the facts presented were clearly insufficient to support a probable cause finding. ***Id.*** at ¶21.

¶6 Simplot claims the evidence presented to the magistrate was insufficient because the undercover officer did not state that he bought cocaine directly from Simplot, did not specify that the controlled buy from T-Bone took place inside of Simplot's house, and did not identify his source for the information that Simplot was using T-Bone as a runner to sell cocaine. We disagree.

¶7 Setting aside the statements from an unidentified source that Simplot was selling cocaine, the fact remains that an undercover officer purchased cocaine at an address identified by utility records as being occupied by Simplot. It would be reasonable to interpret the officer's statement in the affidavit that the sale occurred "at" Simplot's address to mean within the residence. Moreover, even if the transaction occurred outside the residence, it would still be reasonable to infer that the cocaine had been inside the residence prior to being sold. In either event, we are satisfied that the affidavit was not insufficient to support the magistrate's determination of probable cause to believe there would be contraband found within the residence.

Execution of the Warrant

¶8 Prior to forcibly entering a home to execute a search warrant, officers ordinarily must (1) announce their identity, (2) announce their purpose, and (3) wait until occupants either have refused admittance or have been allowed sufficient time to open the door. ***State v. Stevens***, 181 Wis. 2d 410, 423, 511 N.W.2d 591 (1994), *overruled on other grounds*, ***Richards v. Wisconsin***, 520 U.S. 385 (1997). Police may enter without complying with this announcement rule if they have a reasonable suspicion that knocking and announcing their presence, under the particular circumstances, would be dangerous or futile, or that it would inhibit the effective investigation of the crime by, for example, allowing the

destruction of evidence. ***Richards***, 520 U.S. at 394. The State must show "particular facts" supporting an officer's reasonable suspicion that exigent circumstances exist to justify a no-knock entry. ***State v. Meyer***, 216 Wis. 2d 729, 751, 576 N.W.2d 260 (1998). We will uphold the trial court's findings of historical fact regarding the circumstances of a search unless they are clearly erroneous, but will independently determine whether those facts pass constitutional muster. ***State v. Hughes***, 2000 WI 24, ¶ 15, 233 Wis. 2d 280, 607 N.W.2d 621.

¶9 The officers here announced their presence and their purpose. Simplot claims that they nonetheless violated the announcement rule by failing to wait for a reasonable period of time or for an explicit refusal of entry before breaking down the door, and that the State has failed to show exigent circumstances existed. We agree with the State, however, that the officers could reasonably have viewed an exclamation by an occupant of the residence that the cops were there as a warning to fellow occupants to avoid being caught with contraband. Therefore, regardless of whether the exclamation could be viewed as a constructive denial of entry, we are satisfied that it created an exigent circumstance justifying immediate entry. *See, e.g.,* ***United States v. Walker***, 871 F. Supp. 1, 2 (D.D.C. 1994) (occupant's shout of "police" would lead reasonable officers to fear the destruction of evidence).

Sufficiency of the Evidence

¶10 We will not overturn a jury verdict unless the evidence, viewed most favorably to the State and the conviction, is so lacking in probative value and force that no trier of fact, acting reasonably, could have found guilt beyond a reasonable doubt. ***State v. Poellinger***, 153 Wis. 2d 493, 507, 451 N.W.2d 752 (1990).

¶11 Simplot contends the evidence was insufficient to show that he possessed the cocaine which the police recovered because both he and Clarence Heath testified that Heath had brought the cocaine with him to Simplot's house and placed it on the dresser. However, Heath also testified the cocaine was still on the dresser when he left the bedroom, and the police found the cocaine hidden under the mattress. The jury could infer from Heath's testimony that Simplot had hidden the cocaine under the mattress. That was sufficient evidence from which to conclude that he possessed it.

¶12 Simplot further argues that the evidence was insufficient to show that he intended to sell the cocaine recovered by the police, primarily because it was undisputed that Simplot was a crack addict who had in the past used cocaine provided by Heath, and because there was no direct testimony that Simplot had ever sold cocaine to anyone. However, while it is possible that the evidence would have supported an inference that Simplot intended to use rather than sell the cocaine which the police recovered, or that Heath had intended to retain control of some or all of that cocaine, our standard of review limits us to considering only whether there was other evidence upon which the jury could have relied to reach its verdict.

¶13 A police officer testified that, in his experience, the quantity and packaging of the recovered cocaine indicated that it was for resale. There was also testimony that the police had recovered from Simplot's closet, along with materials which could be used to smoke crack, a postal scale, a knife and plate with white residue on them, and numerous baggies, all of which are commonly used to divide and package drugs. The jury could infer from the presence of these items that Simplot was involved in dealing drugs, and that he intended to resell the cocaine which he had just obtained from Heath.

By the Court.—Judgment and order affirmed.

This opinion will not be published. WIS. STAT. RULE 809.23(1)(b)5. (1999-2000).