COURT OF APPEALS
DECISION
DATED AND FILED

November 13, 2001

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 01-1619-CR **Cir. Ct. No. 00 CM 5716**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

RYAN ROSS,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Milwaukee County: CARL ASHLEY, Judge. *Affirmed.*

¶1 SCHUDSON, J.[1] Ryan Ross appeals from a judgment of conviction, following his guilty plea, for possession of a controlled substance,

[1] This appeal is decided by one judge pursuant to Wisconsin Statute § 752.31(2).

contrary to WIS. STAT. § 961.41(3g)(e).[2] Ross contends that the trial court erred in denying his motion to suppress.[3] Specifically, Ross argues that his "Fourth Amendment rights were violated when the police [while executing a search warrant for his premises] smashed in the door to his house instead of letting him unlock the door." This court rejects his argument and affirms.

I. BACKGROUND

¶2 The relevant facts are undisputed. At approximately 6:15 p.m. on June 27, 2000, West Allis police executed a search warrant for Ross's residence. Detective Jeffrey Nohelty testified that on arrival at Ross's residence, police officers exited their vehicles with guns drawn and ordered Ross, who was outside mowing his lawn, to the ground.

¶3 Police then knocked on Ross's front door, identified themselves, and announced that they had a search warrant. No one responded, but the officers heard dogs barking inside the residence. The police knocked and announced their presence a second time, and then tried the door but found it locked. Detective Nohelty asked Ross if anyone was inside and Ross replied that nobody was in the house. Police then used a battering ram to open the door. In Ross's house, the officers found four or five pit bulls and approximately 25 grams of marijuana.

¶4 Following his arrest, Ross moved to suppress the evidence recovered in the search of his home. After a hearing, the circuit court denied the motion.

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[2] All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

[3] A defendant may appeal from an order denying a motion to suppress evidence even though the judgment of conviction rests on a guilty plea. WIS. STAT. § 971.31(10).

II. ANALYSIS

¶5 The Fourth Amendment of the United States Constitution protects "[t]he rights of the people … against unreasonable searches and seizures." U.S. CONST. amend. IV. This guarantee prohibits "unreasonable" state-initiated searches. ***Illinois v. Rodriguez***, 497 U.S. 177, 183 (1990). In reviewing a denial of a motion to suppress, this court will uphold the trial court's findings of fact unless they are clearly erroneous. *See* ***State v. Knight***, 234 Wis. 2d 177, 612 N.W.2d 733 (2000). "Whether those facts satisfy the constitutional requirement of reasonableness is a question of law, which [this court] review[s] de novo." ***State v. Young***, 212 Wis. 2d 417, 424, 569 N.W.2d 84 (1997).

¶6 The reasonableness of an officer's actions depends on the totality of the circumstances at the time of the incident. *See* ***State v. Richardson***, 156 Wis. 2d 128, 137-38, 456 N.W.2d 830 (1990). "The determination of reasonableness is made by reference to the particular circumstances of each individual case, and balances the nature and quality of the intrusion against the importance of the governmental interests alleged to justify the intrusion." ***State v. Henderson***, 2001 WI 97, ¶18, 245 Wis. 2d 345, 629 N.W.2d 613 (citations omitted). Accordingly, constitutional reasonableness relates not only to the grounds for a search or seizure but also to the circumstances surrounding the search or seizure's execution. ***Id.***

¶7 Relying on ***Wilson v. Arkansas***, 514 U.S. 927 (1995), and ***Richards v. Wisconsin***, 520 U.S. 615 (1997), Ross contends that "police must give the residents of a dwelling a reasonable opportunity to open the door [to their residence] before the police can break in to execute a search warrant." He argues that the holdings in ***Wilson*** and ***Richards***, which reaffirmed the importance of the rule of announcement, support his claim. This court disagrees.

¶8 In ***Wilson***, the Court held that the common-law "principle of announcement" is "an element of the reasonableness inquiry under the Fourth Amendment." ***Wilson*****,** 514 U.S. at 934. The Court also recognized, however, that the "flexible requirement of reasonableness should not be read to mandate a rigid rule of announcement that ignores the countervailing law enforcement interests." ***Id.*** at 934. The Court concluded, therefore, that an unannounced entry might be reasonable "under circumstances presenting a threat of physical violence," or "where police officers have reason to believe that evidence would likely be destroyed if advance notice were given." ***Id.*** at 936.

¶9 In ***Richards***, the Court, re-examining the rule of announcement, clarified the circumstances that constitute exceptions to the rule. ***Richards***, 520 U.S. at 387. The Court concluded that Wisconsin's blanket exception to the rule of announcement for felony drug cases was not constitutionally permissible. ***Id.*** at 395. The Court held, however, that police may dispense with announcement when they have "a reasonable suspicion that knocking and announcing their presence, under the particular circumstances, would be dangerous or futile, or [when they believe] that [knocking and announcing their presence] would inhibit the effective investigation of the crime by, for example, allowing the destruction of evidence." ***Id.*** at 394.

¶10 Ross argues that ***Wilson*** and ***Richards*** support his claim that the officers' actions were unreasonable. The State counters by noting that ***Wilson*** and ***Richards*** are distinguishable because they involved *unannounced* entries whereas the instant case involves and *announced* entry. This court concludes that, clearly, under the circumstances presented to the officers at the time they executed the warrant, their entry was reasonable.

¶11 Detective Nohelty testified that the officers knocked and announced their presence two times before trying to enter the residence, thereby putting any occupant on notice of their presence and intent. By knocking and announcing twice and waiting a reasonable time before entering, police gave any occupants the opportunity to open the door. At the time of entry, police only had Ross's word that the house was unoccupied. The dogs were barking, thus making it difficult to discern whether anyone was in the house or to determine what the police might face on entry.

¶12 Ross contends that the police officers should have asked for his keys rather than entering by force. He fails, however, to present any legal authority to support his contention. *See* ***State v. Pettit***, 171 Wis. 2d 627, 646, 492 N.W.2d 633, 642 (Ct. App. 1992) (this court will need not address arguments unsupported by legal authority). Moreover, as the State notes, "There is no indication in the record that [Ross] had been removed from the immediate vicinity nor is there any indication that Ross made any attempt to assist the police by indicating he had the keys to open the door…." Further, Detective Nohelty clarified that asking Ross for his keys would have delayed the entry, thus increasing the potential for destruction of evidence. And finally, Detective Nohelty added, forcibly entering the residence, while leaving Ross on the ground outside, prevented Ross from commanding the dogs to attack.

¶13 In light of these circumstances, this court concludes that the officers' actions were constitutionally permissible. Accordingly, this court affirms the trial court's denial of Ross's motion to suppress.

By the Court.—Judgment affirmed.

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