COURT OF APPEALS
DECISION
DATED AND FILED

September 4, 2003

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 02-1787-CR **Cir. Ct. No. 01-CF-49**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT-CROSS-APPELLANT,

V.

BRYCE L. PASCOE,

DEFENDANT-APPELLANT-CROSS-RESPONDENT.

APPEAL and CROSS-APPEAL from a judgment of the circuit court for Grant County: GEORGE S. CURRY, Judge. *Affirmed.*

Before Deininger, P.J., Dykman and Vergeront, JJ.

¶1 PER CURIAM. Bryce Pascoe appeals a judgment convicting him on three felony drug counts. The State cross-appeals. We affirm.

APPEAL

¶2 A Grant County deputy sheriff presented a magistrate with information that Pascoe was dealing substantial quantities of illegal drugs, and obtained a warrant to search his home. Two teams of seven officers each executed the warrant. One team approached the upstairs kitchen door to Pascoe's home, and one team approached a downstairs patio door. By prearranged plan, both teams knocked and loudly announced "sheriff's department, search warrant." A few seconds later, an officer detonated a flash-bang grenade outside the house, the purpose of which was to create a loud noise to distract the occupants of the house. Both teams forcibly entered the house shortly after the grenade detonated. The plan called for entry to occur five seconds after the teams knocked and announced themselves. The actual entry occurred between five and ten seconds after the announcement.

¶3 At the time of entry, the police had information that Pascoe possessed three firearms in the house. They also knew that the occupants of the house included Pascoe, his girlfriend, and her daughter. Just before the teams knocked and announced, the lead officer of the first team saw Pascoe on the floor in the kitchen. After he heard the knock, Pascoe got up and approached the kitchen door. He had a pry bar in his hand, which he had apparently been using to remove flooring. The entry occurred, however, before Pascoe reached the door. The first officer to enter testified that seeing Pascoe with a potential weapon in his hand was a factor in the timing of his entry, even though that entry was according to plan and virtually simultaneous with the entry of the second team. A subsequent search of Pascoe's home uncovered large quantities of cocaine and marijuana, and several firearms.

¶4 Based on the facts recounted above, Pascoe moved to suppress the seized evidence as the product of an unlawful forced entry into his home, in violation of the rule of announcement. The trial court discounted Pascoe's approach to the door as a factor in the entry, and found instead that the forced entry was the result of the pre-execution plan. The court also concluded, however, that the manner of entry was reasonable under the circumstances. On appeal, Pascoe challenges that ruling, contending that the police lacked sufficient reason to dispense with the rule of announcement.

¶5 Under the rule of announcement police must do three things before forcibly entering premises to execute a search warrant: (1) announce their identity; (2) announce their purpose; and (3) wait for the occupants to either refuse entry, or give them time to open the door. ***State v. Eason***, 2001 WI 98, ¶17, 245 Wis. 2d 206, 629 N.W.2d 625. Police may dispense with the rule, however, on reasonable suspicion under the particular circumstances that complying with the rule would create danger. ***Id.***, ¶18, quoting ***Richards v. Wisconsin***, 520 U.S. 385, 394 (1997). Reasonable suspicion is a "commonsense nontechnical conception[s] that deals with 'the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act.'" ***Id.***, ¶19, quoting ***Ornelas v. United States***, 517 U.S. 690, 695 (1996). It is a less demanding standard than probable cause. ***Id.*** Dispensing with the rule without the necessary reasonable suspicion is a violation of the Fourth Amendment to the United States Constitution. *See* ***Richards***, 520 U.S. at 394. We review this issue as a question of law, without deference to the trial court. ***State v. Ward***, 2000 WI 3, ¶37, 231 Wis. 2d 723, 604 N.W.2d 517. We do, however, defer to the trial court's findings of historical fact, which we accept unless they are clearly erroneous. ***State v. Henderson***, 2001 WI 97, ¶16, 245 Wis. 2d 345, 629 N.W.2d 613.

¶6 We conclude the accelerated entry into Pascoe's home was a lawful exception to the rule of announcement. This court has held that, when police have information that the subject of a search warrant is present and has weapons on the premises to be searched, the particular circumstances justify a no-knock entry. *See* ***State v. Watkinson***, 161 Wis. 2d 750, 757, 468 N.W.2d 763 (Ct. App. 1991). Here, as in ***Watkinson***, the executing officers had information that Pascoe possessed firearms in his home. They also knew he was dealing substantial quantities of drugs for profit, and they knew another adult lived in the home. Although Pascoe characterizes this information as the sort of "generalized knowledge" that officers may not rely on for a no-knock entry, *see* ***Richards***, 520 U.S. at 394, it was in fact just the opposite. It was information about circumstances particular to Pascoe that, when considered together, created a reasonable suspicion that following the rule of announcement would pose a danger for the executing officers.

CROSS-APPEAL

¶7 Pascoe's three felony counts included possession of more than 100 grams of cocaine with intent to deliver in violation of WIS. STAT. § 961.41(1m)(cm)5,[1] which carries a presumptive minimum prison sentence of ten years. On that count, the trial court imposed a twenty-year sentence, composed of eight years of initial confinement followed by twelve years of extended supervision.

[1] All references to the Wisconsin Statutes are to the 2001-02 version unless otherwise noted.

¶8 In its cross-appeal, the State contends that the presumptive minimum requirement refers to the initial confinement portion of the sentence only. Consequently, in the State's view the trial court erred by imposing eight years of initial confinement without making the findings necessary to justify departure from the statutory minimum. However, in ***State v. Cole***, 2003 WI 59, ¶10, 262 Wis. 2d 167, 663 N.W.2d 700, our supreme court held that the presumptive minimum sentence for a WIS. STAT. ch. 961 crime, under the truth-in-sentencing act, 1997 Wis. Act 283, includes both the initial confinement and the extended supervision portions of the sentence. Accordingly, we conclude Pascoe's sentence exceeded the presumptive minimum.

By the Court.—Judgment affirmed.

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