

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**July 6, 2011**

A. John Voelker  
Acting Clerk of Court of Appeals

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

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

**Appeal No. 2010AP1264-CR**

**Cir. Ct. No. 2008CF6387**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT I**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**RANDALL RICHARDS, JR.,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment of the circuit court for Milwaukee County: M. JOSEPH DONALD, Judge. *Affirmed.*

Before Curley, P.J., Fine and Kessler, JJ.

¶1 PER CURIAM. Randall Richards, Jr., appeals from a judgment of conviction entered upon his guilty plea to one count of possessing with intent to

deliver more than 2500 grams of marijuana but not more than 10,000 grams of marijuana as a party to a crime. He contends that the circuit court erred by refusing to suppress evidence that police found when they entered his home without a warrant. We disagree and affirm.

## **BACKGROUND**

¶2 Police entered Richards's home at 3008 North 60th Street in Milwaukee, Wisconsin, and discovered approximately twelve pounds of marijuana. Richards moved to suppress the evidence on the ground that the police entered the home unlawfully.

¶3 At the suppression hearing, Milwaukee Police Officer Scott Marlock testified that he and Officer David Lopez approached the front door of 3008 North 60th Street during an investigation of a confidential informant's tip that a black male was selling "large amounts of marijuana out of the residence." A woman, subsequently identified as Kalia Campbell, spoke to the officers through the door but did not allow them inside. Marlock then observed a man parking a green pick-up truck that matched the confidential informant's description of a truck "associated with the residence." Marlock spoke to the man, who identified himself as Richards and confirmed that he lived at 3008 North 60th Street. Richards permitted the officers to search him, and Marlock found a small amount of marijuana in Richards's coat pocket.<sup>1</sup> Marlock and Lopez therefore took Richards into custody. During the arrest, Richards struggled and tried to escape. Backup officers arrived on the scene, and Richards screamed to Campbell:

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<sup>1</sup> On appeal, Richards does not contest the legality of the search of his person.

“they’re coming in to get some drugs or something, the police are coming in, the police are coming in.” Campbell ran into the house, closing the door behind her.

¶4 According to Marlock, he feared that Campbell would destroy evidence so he pursued her into the house. Inside, he found marijuana “throughout the residence.”

¶5 The circuit court denied both Richards’s motion to suppress the evidence found in the house and Richards’s motion to reconsider that decision. Richards then pled guilty to one count of possessing with intent to deliver more than 2500 grams of marijuana but not more than 10,000 grams of marijuana. The circuit court imposed and stayed a six-year sentence and placed Richards on probation. Richards appeals, challenging only the propriety of the police entry into his home.<sup>2</sup>

## DISCUSSION

¶6 We review an order denying a motion to suppress evidence using two standards. *See State v. Hughes*, 2000 WI 24, ¶15, 233 Wis. 2d 280, 607 N.W.2d 621. “We uphold a circuit court’s findings of historical fact unless they are clearly erroneous. We then independently apply the law to those facts *de novo*.” *Id.* (citations omitted).

¶7 A police officer’s warrantless entry into a home is presumptively unconstitutional. *State v. Sanders*, 2007 WI App 174, ¶10, 304 Wis. 2d 159, 737

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<sup>2</sup> We may review the circuit court’s order denying Richards’s suppression motion notwithstanding Richards’s guilty plea. *See* WIS. STAT. § 971.31(10) (2009-10). All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.)

N.W.2d 44. An exception applies, however, if law enforcement officers have probable cause to believe that the home contains evidence of a crime and if the entry is necessitated by exigent circumstances. See *Hughes*, 233 Wis. 2d 280, ¶17. “Whether probable cause and exigent circumstances exist are ... both questions of law subject to independent, *de novo* review.” *State v. Rogers*, 2008 WI App 176, ¶11, 315 Wis. 2d 60, 762 N.W.2d 795 (italics added). Probable cause is established when the State shows a “‘fair probability’ that contraband or evidence of a crime will be found in a particular place.” *Hughes*, 233 Wis. 2d 280, ¶21 (citation omitted). Exigent circumstances are established when, *inter alia*, a risk exists that evidence will be destroyed in the time required for law enforcement to obtain a warrant. *State v. Robinson*, 2010 WI 80, ¶30, 327 Wis. 2d 302, 786 N.W.2d 463.

¶8 In the instant case, the State relied on Marlock’s testimony to prove a justifiable basis for the warrantless entry into Richards’s home. The circuit court determined that Marlock’s testimony was credible. We afford great deference to the circuit court’s credibility determinations in recognition of “‘the superior opportunity of the [circuit] court to observe the demeanor of witnesses and to gauge the persuasiveness of their testimony.’” *Johnson v. Merta*, 95 Wis. 2d 141, 152, 289 N.W.2d 813 (1980) (citation omitted).

¶9 The credible evidence demonstrates probable cause for police entry into Richards’s home. The officers were investigating an allegation of drug trafficking reported by a confidential informant, and they confirmed some preliminary details provided by the informant before entering the home. Specifically, police determined that a man, Richards, lived at the residence that the informant claimed was used by a man selling marijuana, and the police determined that Richards drove a green pick-up truck matching the informant’s description of

a vehicle “associated” with the residence. Additionally, the police discovered that Richards possessed marijuana, the very drug that the informant claimed was sold from the residence. Corroboration of preliminary details supplied by the confidential informant coupled with facts showing that the suspect was involved in illegal drug activity lent reliability to the informant’s allegations. *See Robinson*, 327 Wis. 2d 302, ¶29. Thus, the officers reasonably believed that Richards’s home probably contained evidence of illegal drug activity, and they had probable cause to enter without a warrant. *See id.*

¶10 Probable cause must, however, be accompanied by exigent circumstances to justify the warrantless entry here. *See Hughes*, 233 Wis. 2d 280, ¶17. Richards asserts that the State failed to show exigent circumstances. We disagree.

¶11 We apply an objective test to determine if exigent circumstances exist: “whether a police officer, under the facts as they were known at the time, would reasonably believe that delay in procuring a search warrant would gravely endanger life, risk destruction of evidence, or greatly enhance the likelihood of the suspect’s escape.” *Id.*, ¶24. Here, officers arrested Richards with marijuana in his pocket outside the door of his home while another occupant of the home observed the arrest. Richards struggled to resist arrest while shouting a warning that the police were about to enter the home to look for drugs. In response, the occupant of the home ran inside and closed the door. Under these circumstances, the officers reasonably believed that any delay occasioned by seeking a search warrant for the home would create a risk that evidence would be destroyed by the person who ran inside. *See State v. Phillips*, 2009 WI App 179, ¶¶10-11, 322 Wis. 2d 576, 778 N.W.2d 157 (exigent circumstances demonstrated when resident, upon

seeing police, fled into home where controlled purchase of narcotics recently occurred).

¶12 Richards argues, however, that this case is not controlled by *Phillips* because the amount of marijuana at issue is substantial. In his view, governing Wisconsin authority provides that a large quantity of marijuana cannot be easily or quickly destroyed, and therefore probable cause to believe that a home contains significant amounts of the drug does not justify warrantless entry to preserve the evidence. In support of his position, he cites *State v. Kiekhefer*, 212 Wis. 2d 460, 478, 569 N.W.2d 316 (Ct. App. 1997). Richards misunderstands the *Kiekhefer* rationale.

¶13 In *Kiekhefer*, we held that officers could not rely on the exigent circumstances doctrine to justify warrantless entry into a closed bedroom to confront a person suspected of possessing a large amount of marijuana. *Id.* at 478-79. Richards describes our holding as resting on a conclusion that a large quantity of marijuana “could not be easily or quickly destroyed.” In fact, we explained in *Kiekhefer* that a large quantity of marijuana “could not be easily or quickly destroyed in *Kiekhefer’s* bedroom.” *Id.* at 478 (emphasis added). A bedroom is not likely to have many outlets that permit an occupant to purge a substantial amount of vegetable matter. Here, however, the officers believed that a residence—not just a bedroom—probably contained contraband. Marlock testified that narcotics can be flushed down a toilet and pushed down a drain. Indeed, our supreme court recognizes that, generally, “[d]rugs like marijuana are easily and quickly destroyed.” *Robinson*, 327 Wis. 2d 302, ¶31.

¶14 Under the circumstances here, the officers had probable cause to believe that Richards’s home contained marijuana, and exigent circumstances

justified immediate entry into the home to prevent destruction of the evidence. The circuit court properly denied Richards's motion to suppress.

*By the Court.*—Judgment affirmed.

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

