COURT OF APPEALS
DECISION
DATED AND FILED

June 29, 2000

Cornelia G. Clark
Clerk, Court of Appeals
of Wisconsin

No. 99-1555-CR

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

HARRY MOORE,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Milwaukee County: DENNIS P. MORONEY, Judge. *Affirmed.*

Before Eich, Roggensack and Deininger, JJ.

¶1 PER CURIAM. Harry Moore appeals a judgment of conviction for a controlled substance felony. The issue is whether the trial court erred in denying his motion to suppress evidence. We conclude the court did not err, and we affirm.

¶2 The facts of the search do not appear to be significantly in dispute on appeal. Police went with probation and parole officers to a Milwaukee residence to execute a warrant for an alleged parole violator named Kevin Simms. Police had been informed that Simms might be found at that address. The residence had two apartment units and an attic, all accessible from a common hallway. Police officers were let into the building by an occupant of the downstairs apartment. Once inside, the officers proceeded up the stairs toward the upper unit. While ascending the stairs, the first officer spotted two men above, one of whom generally matched the description of Simms. Upon seeing the officer, the men fled upwards. The officer told them to stop.

¶3 Upon arriving at the door to the upstairs apartment, the lead officer broke the door down and entered the apartment. Inside they found appellant Moore, who was not the man resembling Simms. After a further search of the apartment for the other man proved unsuccessful, a different officer went from the hallway up to the attic, where he took custody of the man who resembled, but was not, Simms. That officer testified that after apprehending the man, he continued the search of the attic for the safety of himself and other officers. While doing so, he found bags of cocaine and a revolver in a space where "the floor joist meets the outer wall." The officer described this location as being in "plain view." Moore moved to suppress this evidence, and other evidence developed from its discovery.

¶4 Moore first argues that the police entry into the upper apartment was unlawful because the officers did not have a search warrant and no exigent circumstances were present that would justify a warrantless entry. The parties appear to agree that the applicable law regarding exigent circumstances is stated in ***State v. Kiper***, 193 Wis. 2d 69, 89-90, 532 N.W.2d 698 (1995). That decision lists

several circumstances which would be considered exigent, and one of them is an arrest made in "hot pursuit." *See* ***id.*** at 90.

¶5 The State argues that once the men fled from the officers in the stairwell, the officers were in hot pursuit of a man they reasonably believed was the person for whom they had an arrest warrant. We agree. Moore's briefs contain only one sentence on this point, in which he argues that the exception does not apply because officers entered the common hallway without consent in the first place. Although there was testimony that might call into question whether the initial entry into the building was consensual, the circuit court expressly rejected that testimony and found that the police were allowed in. Moore provides no basis for us to conclude that this finding was erroneous. Accordingly, we see no reason to reject the State's hot pursuit argument.

¶6 Moore also argues that even if the entry into the apartment was legal, the subsequent search of the attic was not. Again, we disagree. Because the officers had still not located the man they believed might be Simms, they were still in hot pursuit when they entered the attic. Once in the attic, they found evidence in plain view. Moore does not argue, as a factual matter, that the evidence was not in plain view. Therefore, we conclude the evidence need not be suppressed.

By the Court.—Judgment affirmed.

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