

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**July 6, 2005**

Cornelia G. Clark  
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. 2004AP2439-CR**

**Cir. Ct. No. 2002CF1007**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT III**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**RODNEY K. HARRISON,**

**DEFENDANT-APPELLANT.**

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APPEAL from judgments and an order of the circuit court for Brown County: PETER J. NAZE, Judge. *Affirmed.*

Before Cane, C.J., Hoover, P.J., and Peterson, J.

¶1 PER CURIAM. Rodney Harrison appeals judgments convicting him of three drug-related charges and an obstruction charge, namely violations of

WIS. STAT. §§ 961.41(1)(cm)1., 961.41(1m)(cm)3., 961.48(3), 961.573(1) and 946.41(1).<sup>1</sup> He also appeals an order denying his motion to suppress evidence. Harrison argues the evidence seized from his hotel room should have been suppressed because the warrantless search was not supported by either probable cause or exigent circumstances. We disagree and affirm the judgments and order.

### BACKGROUND

¶2 On November 18, 2002, police searched a hotel room in which Harrison was staying, seized an array of drugs and paraphernalia, and arrested Harrison. Harrison had been the subject of an ongoing investigation, in which April Cadena was a confidential informant. Cadena had previously cooperated with police by making a controlled buy of cocaine from Harrison. On the day of Harrison's arrest, Cadena's husband informed the police that Cadena was with Harrison, who was "involved in distribution of crack cocaine." Cadena's husband identified the name and room number of the hotel where Cadena and Harrison were staying, as well as described their vehicles.

¶3 When police arrived at the hotel, they corroborated information Cadena's husband provided. They identified the vehicles he described. Hotel staff informed them the room was registered to Amy Migel, was paid for with cash, that at check-in Migel was accompanied by at least one black male, and that the room's occupants had refused maid service and asked for ashtrays but denied the staff's offer to deliver the ashtrays to the room.

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

¶4 The officers knocked on the hotel room door. When Harrison answered, the officers smelled the odor of “smoking cocaine.” They also saw a large butane lighter and fuel canisters, along with several small tied up garbage bags. Harrison looked agitated and nervous and denied he was Rodney Harrison.

¶5 As Harrison became more agitated, he began to slowly close the door. The officers opened the door and entered and secured the room. Once inside, the officers observed drug paraphernalia, a powdery substance and a mobile fire safe. They then obtained a search warrant, conducted a search and seized the evidence.

¶6 Harrison was eventually charged with delivery of cocaine, possession of cocaine with intent to deliver, maintaining a drug trafficking place, possession of drug paraphernalia and obstruction. He filed a motion to suppress the evidence seized from the hotel room, which the circuit court denied.<sup>2</sup> A jury found him guilty of all but the drug trafficking charge. The circuit court entered judgment accordingly and Harrison was sentenced.

#### STANDARD OF REVIEW

¶7 Whether the search of Harrison’s hotel room was lawful is a question of constitutional fact. *See State v. Pallone*, 2000 WI 77, ¶¶26, 236 Wis.2d 162, 613 N.W.2d 568. We apply a two-step standard of review to questions of constitutional fact. *State v. Martwick*, 2000 WI 5, ¶16, 231 Wis. 2d 801, 604 N.W.2d 552. First, we review the circuit court’s findings of historical

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<sup>2</sup> Harrison also moved to suppress evidence seized from his apartment; the denial of that motion is not at issue in this appeal.

fact and uphold them unless they are clearly erroneous. *Id.*, ¶18. Second, we review the application of historical facts to the constitutional principles independently. *Id.*

## DISCUSSION

¶8 The Fourth Amendment to the United States Constitution and art. I, § 11 of the Wisconsin Constitution provide protection from unreasonable searches and seizures. *Pallone*, 236 Wis. 2d 162, ¶28. Warrantless searches are per se unreasonable unless the search falls into a delineated exception. *Id.*, ¶29. One exception allows a warrantless search if the State can establish the search was supported by both probable cause and exigent circumstances. *State v. Garrett*, 2001 WI App 240, ¶9, 248 Wis. 2d 61, 635 N.W.2d 615. Accordingly, to determine whether the entry of Harrison’s hotel room was lawful, we must determine (1) whether the officers had probable cause to believe the room contained evidence of a crime and (2) whether exigent circumstances existed at the time of entry. *See id.*

¶9 Harrison argues the officers did not have probable cause. Probable cause exists when there is “a fair probability that contraband or evidence of a crime will be found in a particular place.” *State v. Hughes*, 2000 WI 24, ¶21, 233 Wis. 2d 280, 607 N.W.2d 621 (citation omitted). The touchstone of probable cause is whether the officers acted reasonably under the circumstances. *State v. Londo*, 2002 WI App 90, ¶9, 252 Wis. 2d 731, 643 N.W.2d 869.

¶10 At the time Harrison opened the door to the hotel room, the officers possessed the following information. They smelled burning cocaine and saw lighters that, based on their training and experience, they knew to be consistent with drug use. They observed Harrison’s agitated state and suspected that he was

under the influence of a stimulant. They also knew the room's occupants had sought to keep hotel staff from entering the room. Under these circumstances, it was reasonable for the officers to conclude that evidence of illegal drug activity would be found in the room. See *Hughes*, 233 Wis. 2d 280, ¶23.

¶11 Harrison's arguments to the contrary are unpersuasive. He points out several innocent explanations for his conduct. For instance, he suggests that he could have been agitated because police had invaded his privacy, not because he was under the influence of illegal drugs. However, innocent explanations for Harrison's behavior do not undermine the officers' otherwise reasonable conclusion that probable cause existed under the circumstances. *United States v. Sokolow*, 490 U.S. 1, 10 (1989) (In making a determination of probable cause, the relevant inquiry is not whether the particular conduct is "innocent" or "guilty.>"). Harrison also contends there was no evidence that the officers were experts at identifying odors and thus they could not rely on the smell of cocaine smoke in support of probable cause. This contention is refuted by the record, as both officers testified about their experience on the drug task force and one officer testified, "I also observed some odor which is consistent to what I know to be the odor produced by smoking cocaine."

¶12 Harrison also argues there were no exigent circumstances to justify the warrantless search. To determine whether exigent circumstances existed, we apply an objective test: "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." *Hughes*, 233 Wis. 2d 280, ¶24.

¶13 The State contends the officers reasonably believed there was a risk that evidence would be destroyed if they allowed Harrison to close the door while they obtained a warrant. We agree.<sup>3</sup> Harrison's argument that there was no risk of evidence destruction primarily attacks the officers' belief that there were drugs in the hotel room. However, we have already concluded that the officers' beliefs were reasonable. Harrison also argues that if the officers smelled cocaine smoke, the cocaine was already consumed and therefore the evidence was already destroyed. While the smell of cocaine smoke might indicate the drugs have been completely consumed, an officer could reasonably believe the drugs are in the process of being consumed and therefore destroyed. *See id.*, ¶26. The officers' reasonable beliefs that evidence would be destroyed constituted exigent circumstances that justified the warrantless search.

*By the Court.*—Judgments and order affirmed.

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

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<sup>3</sup> Because we conclude the officers reasonably believed there was a risk of evidence destruction, we need not address the State's alternate argument that the officers' reasonable fear for Cadena's safety justified the search. *See Gross v. Hoffman*, 227 Wis. 296, 300, 277 N.W. 663 (1938) (only dispositive issues need be addressed).

