

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**July 26, 2005**

Cornelia G. Clark  
Clerk of Court of Appeals

**NOTICE**

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**Appeal No. 04AP1080-CR**

**Cir. Ct. No. 2003CF301**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT 1**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**TYRONE RIMMER,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment of the circuit court for Milwaukee County: ELSA C. LAMELAS, Judge. *Affirmed.*

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

¶1 KESSLER, J. Tyrone Rimmer appeals from a judgment of conviction for possession with intent to deliver a controlled substance (cocaine). Rimmer argues: (1) the cocaine evidence should have been suppressed; and

(2) there was insufficient evidence to convict him. We reject his arguments and affirm the judgment.

### **BACKGROUND**

¶2 This case involves a “knock and talk” operation of the Milwaukee Police Department, pursuant to which approximately five officers responded to reports of drug dealing at a home in Milwaukee. According to Officer Roosevelt Jenkins, four officers approached the home, knocked on the door and sought permission from a resident to enter the home. Jenkins later testified that a resident gave the officers permission to enter the home to talk about drug dealing complaints. At the time the officers entered, at least five people were in the home.

¶3 According to officer Brian Shull, he asked a man seated in a room watching television if he had identification. The man, later identified as Rimmer, provided it. Shull, using his hand-held radio, communicated with the console operator and learned that Rimmer had an outstanding warrant for his arrest. Shull placed Rimmer under arrest and conducted a pat-down search incident to arrest. Shull found individual corner cuts of cocaine in a clear plastic bag in Rimmer’s pocket as well as approximately forty-five dollars in cash.

¶4 Rimmer was charged with possession with intent to deliver a controlled substance (more than five grams but less than fifteen grams of cocaine). Rimmer filed a motion to suppress the cocaine on grounds that the police did not have valid consent to enter the residence to conduct a warrantless search, arguing that the evidence seized from his person was derivative evidence of the illegal entry. After a motion hearing at which two officers, Rimmer and three citizens testified, the trial court denied the motion.

¶5 The case proceeded to a jury trial, at which both Rimmer and another woman in the home, Monica Taylor, were tried. The jury found both Rimmer and his co-defendant guilty.<sup>1</sup> Rimmer was sentenced to four years of initial confinement and six years of extended supervision. This appeal followed.

## DISCUSSION

¶6 Rimmer challenges the trial court's decision to deny Rimmer's motion to suppress the evidence, and the sufficiency of the evidence used to convict him. We begin with Rimmer's motion to suppress.

### A. Motion to suppress

¶7 In his motion to suppress, Rimmer argued that the police did not have valid consent to enter the home, and that their subsequent arrest and search of his person were therefore illegal.<sup>2</sup> Warrantless searches are presumptively unreasonable under the Fourth Amendment, subject only to a few specifically established and well-delineated exceptions. *Katz v. United States*, 389 U.S. 347, 357 (1967). Consent is one of the recognized exceptions. *Id.* at 358 n.22. The State has the burden to prove by clear and convincing evidence that the defendant voluntarily consented. *State v. Phillips*, 218 Wis. 2d 180, 197, 577 N.W.2d 794 (1998). "Whether consent was given and the scope of the consent are questions of

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<sup>1</sup> Taylor, who the police said threw down a different bag of cocaine, was convicted of possession as well. Her conviction is not at issue in this appeal

<sup>2</sup> Rimmer argued at the trial court and on appeal that the initial entry of the home was illegal. The State notes that the actual search of Rimmer's person can be justified either as a search incident to arrest, *see State v. Pallone*, 2000 WI 77, ¶30, 236 Wis. 2d 162, 613 N.W.2d 568, or as a search on probable cause with exigent circumstances justifying the absence of a warrant, *see State v. Richter*, 2000 WI 58, ¶¶28-29, 235 Wis. 2d 524, 612 N.W.2d 29. Rimmer does not contest this. Thus, the sole issue is whether there was consent to enter the home.

fact that we will not overturn unless clearly erroneous.” *State v. Garcia*, 195 Wis. 2d 68, 75, 535 N.W.2d 124 (Ct. App. 1995). The legality of a search, including whether a person’s consent for a warrantless search was voluntary, are matters of law that we review *de novo*. *Phillips*, 218 Wis. 2d at 191-95.

¶8 Jenkins and an officer named Johnny Santiago testified at the motion hearing, where the issue was whether a resident of the home, Ruffus Manual, had given consent for the officers to enter. Jenkins testified that at the time he approached the home, he was wearing a long-sleeved shirt and tie with a jacket. He said he does not recall if he was wearing his Milwaukee police hat, but said that he was not wearing a civilian hat. Jenkins said he knocked on the back door to the home, which leads into the kitchen. A woman, who was later identified as Sharon Smith, answered the door. Jenkins identified himself and asked Smith if she lived at that address. Smith indicated that she did not, and pointed to a man who was in the kitchen area, at the bottom of a flight of stairs leading to a second floor. This man was later identified as Manual.

¶9 Talking to Manual from the doorway, Jenkins explained that the police had received complaints of drug dealing and asked Manual if they could enter the home to discuss the matter. Jenkins testified that Manual said, “Yes, you can come in” and that the officers then entered the residence. Jenkins said he then informed Manual “in detail” about the drug-dealing complaints and asked Manual if he had any knowledge of drug dealing. Manual said he was not aware of anyone selling drugs in his residence. Jenkins then wrote a note in his memo book and asked Manual to sign the book. The text of the note indicated that Manual had given consent for the officers to enter the residence at 8:48 p.m.

¶10 Santiago testified that he accompanied Jenkins when Jenkins knocked on the door. Santiago testified that he heard Jenkins ask the woman who answered the door if she lived there. Santiago said the woman said no, and indicated who did. Santiago then observed Jenkins have a conversation, from the doorway, with an elderly man who was standing on the other side of the kitchen. Santiago said he heard Jenkins tell the man why the police were there, the man tell Jenkins he had not given anyone permission to sell drugs, and the man give Jenkins permission to enter the house. Santiago also testified that at no time did either officer have his gun drawn. Finally, Santiago said that after they entered the home, Jenkins asked Manual for permission to search the home, and received it.

¶11 Smith provided testimony that contradicted that of the two officers. She testified that she was in the kitchen playing cards with a man named Tommy Miles when she heard a knock at the door. She said:

I looked out the door to see who it was. And I noticed a guy in a coat and a hat. I said, Who is it? He said, T.... [W]e had [] a friend by the name of T. So he sort of favored him, so I opened up the door. And when I opened up the door, it was two guns pointed at me and for me to be told not to say anything so I didn't say anything.

Smith said that the man she thought was "T" was wearing a civilian hat that she said resembled "a Gilligan's Island hat" and had on a green winter jacket that was not a police jacket.

¶12 Smith said that several police officers entered the residence without permission and proceeded to search the home. Smith testified that Manual was upstairs at the time the police arrived and never gave the officers consent to enter.

¶13 Miles, the man who was in the kitchen with Smith when the police knocked on the door, testified that he saw Smith open the door and then back into

the room as a police officer entered with his gun drawn. Miles said Smith never gave permission for the officers to enter, and that Manual was upstairs when the police arrived. Miles also testified that Jenkins was wearing a “civilian” hat and coat.

¶14 Manual also testified, over two days.<sup>3</sup> He said that he lives in the home with Rimmer, to whom he is related. Manual said that on the night Rimmer was arrested, Manual was upstairs in his room sorting clothes when the police came up to his room on the second floor. He denied being in the kitchen when the police knocked on the door and denied giving them permission to enter the home. He said he only signed the officer’s notebook when the officer returned, after Rimmer was arrested, and told Manual to sign it. Manual said the officer told him “I could either sign it or I could be charged for operating an illegal [drug] house[.]” Manual admitted that he signed the paper, but said he did not read it because he did not have his glasses on.

¶15 Rimmer also testified. He said that Manual was upstairs when the police were present, which he knew because “at the time [the officers] was searching me and handcuffing me they was asking me who was that walking upstairs.”

¶16 The State argued that the officers’ testimony was more credible than that of the citizen witnesses, and that it established that Manual had given the officers consent to enter the home. Rimmer argued that Manual signed the

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<sup>3</sup> Manual was actually the first to testify, on an earlier date than the other witnesses, because he was available and the State’s witnesses were not. We note this because at the conclusion of Manual’s testimony, the trial court made a point of commenting on Manual’s poor credibility so that it could memorialize its thoughts on the testimony.

officer's notebook giving consent long after the officers entered the home, and only after being told that Manual would go to jail if he did not sign it. Rimmer also suggested that the officers' testimony was not credible because they would not have waited at the door of a suspected drug house, without guns drawn, and have a conversation about consent. Counsel explained: "I think what they did is bust in with their guns drawn to protect themselves."

¶17 Counsel for Taylor argued that Santiago and Jenkins testified differently, and were therefore not credible. For instance, Jenkins testified that Manual gave the officers permission to enter the home, while Santiago said that Manual also gave them consent to search the home. Counsel for Taylor also argued that to the extent there were differences in the testimony of the four citizen witnesses, it could be attributed to stress caused by having guns pointed at them.

¶18 The trial court denied the motion to suppress. It explained:

I cannot find the defense witnesses credible.... The consistencies in their testimony are that Mr. Manual was upstairs, and that consent was given afterwards. On that point I think all of the defense witnesses ... [are] not inconsistent with each other.

...

[T]hey generally say that the police were in the house for a long period of time, about an hour to an hour and a half. But when I get away from those three big points that are obviously very important to the defense, I see no consistency at all.... I see wild inconsistencies.

For example, the trial court noted that Rimmer testified that he saw ten officers who were wearing "the kind of gear that officers use when they're going to execute a search warrant at a very dangerous place." The trial court noted that only Rimmer testified about guns and flashlights being pointed, and infrared beams.

¶19 The trial court also commented on the demeanor of the defense witnesses, noting that at times, they gave answers that involved “very long pauses before questions that seemed at least on their face relatively simple as if the wheels were turning as to how the question should be answered.” The trial court specifically noted that it doubted the credibility of Manual and Miles. The trial court also observed that the defense witnesses had great incentive to lie to protect the defendants, who were their relatives and friends.

¶20 The trial court found that the officers had offered credible testimony. It observed that although there was some inconsistency in the two officers’ testimony, “[t]hat is the kind of inconsistency that I think is natural and does not undermine credibility.” The trial court found that the officers entered and searched the house with Manual’s permission. The trial court explained:

It appears to me from their testimony that the four officers came to the door, knocked on the door, spoke with Ms. Smith, she indicated she did not live there, identified Mr. Manual as living there ... [the officer] had a brief conversation with Mr. Manual, and obtained his signed consent.

The trial court added that it did not believe that Manual was threatened into giving consent.

¶21 Credibility determinations are solely for the trial court to determine because it can observe the witnesses’ demeanor as they testify. *See State v. Hughes*, 2000 WI 24, ¶2 n.1, 233 Wis. 2d 280, 607 N.W.2d 621. We must affirm the trial court’s finding that Manual gave the officers permission to enter the home unless it is clearly erroneous. *See Garcia*, 195 Wis. 2d at 75. The trial court found that the officers’ testimony was the most credible, and accepted the officers’ version of events that Manual: (1) was in the kitchen at the time the police

knocked on the door and gave verbal and written permission for the officers to enter; and (2) had not been coerced into signing the note indicating he gave consent. We conclude that the trial court's factual findings, based on its evaluation of the witnesses' credibility and the evidence presented, are not clearly erroneous.

¶22 Based on these factual findings, we agree with the trial court that the entry of the home was legal, because Manual gave his voluntary consent to the officers. There was no constitutional violation that warrants suppression of the cocaine found on Rimmer's person.

### **B. Sufficiency of the evidence**

¶23 Rimmer challenges the sufficiency of the evidence used to convict him. Four officers testified at trial; Rimmer elected not to testify. Rimmer argues that the officers' testimony was not credible and was inconsistent with one another. His brief explains: "Mr. Rimmer maintains that the drugs were not on his person and they should not have been seized. He maintains that the drugs were planted on him by the police." We conclude that there was sufficient evidence to convict Rimmer.

¶24 When reviewing the sufficiency of the evidence to sustain a verdict, we view the evidence in the light most favorable to the verdict. *See* WIS. STAT. § 805.14(1) (2003-04); *State v. Johannes*, 229 Wis. 2d 215, 221-22, 598 N.W.2d 299 (Ct. App. 1999). We will sustain a verdict that is supported by any credible evidence, even if we might consider contradictory evidence to be more persuasive, leaving the credibility of the witnesses and drawing of inferences to the jury. *State v. Poellinger*, 153 Wis. 2d 493, 503-04, 451 N.W.2d 752 (1990).

¶25 Here, Officer Shull testified that when he placed Rimmer under arrest for the outstanding warrant, he searched Rimmer and found a clear plastic bag containing numerous individual corner cuts of cocaine. The jury was free to determine that Shull’s testimony was credible and find, consistent with that testimony, that Rimmer had the cocaine in his pocket. Because the verdict is supported by credible evidence, it must be sustained.<sup>4</sup> *See id.*

*By the Court.*—Judgment affirmed.

Not recommended for publication in the official reports.

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<sup>4</sup> Rimmer challenges the factual finding that he “possessed” the drugs. He does not challenge the fact that the bag contained cocaine, that he knew it was cocaine, that he intended to deliver the cocaine, or that it weighed more than five grams—all additional elements the State needed to prove. However, we note that there is credible evidence in the record to support each of those findings.

