**COURT OF APPEALS**
**DECISION**
**DATED AND FILED**

**May 11, 2006**

**Cornelia G. Clark**
**Clerk of Court of Appeals**



**Appeal No. 2005AP2337-CR** **Cir. Ct. No. 2001CF5931**

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

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**WILLIE COOPER,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment of the circuit court for Milwaukee County: MARY M. KUHNMUENCH, Judge. *Reversed and cause remanded.*

Before Dykman, Vergeront and Higginbotham, JJ.

¶1 VERGERONT, J. Willie Cooper appeals the judgment of conviction for possession with intent to deliver cocaine, second offense, in

violation of WIS. STAT. §§ 961.16(2)(b)(1), 961.41(1m)(cm)2 and 961.48(1).[1] The issue on appeal is whether the warrantless nonconsensual police entry into his apartment was justified by an emergency or exigent circumstances under Fourth Amendment case law. The circuit court concluded it was and therefore denied Cooper's motion to suppress the evidence found in his apartment. We conclude the entry into Cooper's apartment was not justified by a reasonable belief that someone in the apartment was in need of immediate assistance. We also conclude that there was not probable cause to search Cooper's apartment for evidence that he had injured someone who was then in his apartment and, therefore, the exception for exigent circumstances because of the risk of destruction of evidence does not apply. We therefore reverse.

## BACKGROUND

¶2 Cooper was charged with one count of substantial battery in violation of WIS. STAT. § 940.19(2) and one count of possession with intent to deliver cocaine. The battery charge was based on the statements of Angelia Newell that Cooper had battered her. The cocaine charge was based on cocaine and money the police officers found in Cooper's apartment when they went to question him about Newell's statements.

¶3 Cooper moved to suppress the evidence of the cocaine and money on the ground that the police officers' search of his apartment violated the Fourth Amendment to the United States Constitution and article I, section 11 of the Wisconsin Constitution because he did not consent, the officers did not have a

[1] All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

warrant, and none of the exceptions to the prohibition against nonconsensual warrantless entries applied. The State's position was that the exception for exigent circumstances and community caretaker applied.

¶4 At the hearing on the motion, Officer Kevin Eade and Sergeant Richard Durica of the West Milwaukee Police Department testified for the State, and Cooper testified in support of his motion.

¶5 According to Officer Eade, he was called to Sinai Samaritan Hospital to talk to the victim of a battery, Newell. It was 11:00 p.m. in the evening. Newell had a deep laceration on her face, a swollen black and blue left eye, and cuts on her lips. She was distraught. She told Officer Eade that Cooper had battered her and gave them information about where he resided, which was where the incident had occurred. She told Officer Eade that she and Cooper were in his apartment alone, and she did not mention that he hit her with any objects other than his hands or that he used any weapons. She said she had had a couple beers that evening, but did not say there was drug use.

¶6 About one hour later, Officer Eade arrived at the location Newell had described, which was a rooming house, and obtained Cooper's apartment number. Officer Eade met Sergeant Durica there, whom he had telephoned, and another West Milwaukee police officer, Officer Randolph. The three officers went to the door of the apartment identified as Cooper's. The officers heard music coming from the apartment, and Officer Eade and Sergeant Durica knocked on the door and announced they were West Milwaukee Police. They knocked twice and in about ten to fifteen seconds heard what they thought was a female voice saying, "who is it." Officer Eade thought it was a female's voice because it had a higher pitch. Sergeant Durica said "West Milwaukee Police" again and there was no

response, so they knocked again. They then heard what they thought was a male voice saying "who is it." This voice was significantly lower pitched than the first voice they heard. One of the officers said "West Milwaukee Police" again and a man in his underwear answered the door. In response to the officers' question, the man said he was Willie Cooper. He complied with the request to step out into the hallway, where he was handcuffed.

¶7 The officers did not see any blood on Cooper and he was not sweating or panting heavily. Cooper's apartment was a one-room efficiency with a bathroom. From the doorway the officers could not see the bathroom, under the bed, or in the closet. One of the officers asked Cooper if anyone else was in his apartment and he said no. Sergeant Durica yelled into the apartment, asking if anyone else was there; there was no answer.

¶8 On cross-examination Officer Eade testified he was positive the female voice they heard came from Cooper's apartment, not from another apartment, because his was "the only apartment in that specific area." The officer acknowledged there was no indication that any female was in danger, but on redirect he said he did not know if anyone was in danger in the apartment.

¶9 Sergeant Durica's account of events from the time the three officers arrived until Cooper stepped into the hall was essentially the same as Officer Eade's, and he provided additional detail as follows. Cooper's apartment had a window on one side and a door in the hallway to the outside. After the initial knock on the apartment door, he knocked on the window. He could not see through the window into the apartment because drapes were pulled, but it appeared that lights were on.

¶10 After Cooper stepped out into the hall, Sergeant Durica called at least twice into the apartment, identifying himself as a police officer and asking anyone there to come to the door. He could see there was a light on in the bathroom, but from the hallway he could not see the entire inside of the bathroom, between the wall and the bed, under the bed, or inside the closet, which had a closed door.

¶11 Because they were investigating a substantial battery, Sergeant Durica was concerned that there might be another victim or someone hurt, a female, inside the apartment. He walked into the apartment. He did not first obtain a warrant because he thought if there were a victim in there who was hurt, there was not time.

¶12 As he walked into the apartment, he saw what he believed to be blood on one wall near the bed; then he saw the same on another wall near the bed. He walked straight to the bathroom, saw the light on, and saw that no one was there. He then looked around the bed to see if someone was hiding under the bed or between the wall and the bed. Between the wall and the bed on the floor, he saw a plastic baggy with a white-yellowish substance that, from his past experience, he believed to be cocaine; he also saw money around the baggy. There was no one in the apartment. He ordered Officer Eade to seize the cocaine and the money. He did not further search the apartment.

¶13 Sergeant Durica agreed with Officer Eade that the first voice he heard, which he thought was an adult female voice because of the higher pitch, did not sound panicked or fearful or like a cry for help. He acknowledged that no one seemed in "apparent danger" at the time, there was no likelihood Cooper could flee, and he had no indication there were weapons or drugs in the apartment.

Sergeant Durica testified that Cooper was agitated once he was placed in custody; on recross the sergeant agreed that Cooper did not become agitated until the sergeant went into Cooper's apartment after Cooper said no one was there. Upon questioning by the court, Sergeant Durica repeated that, when he heard the first voice, he clearly thought there was a woman in the apartment.

¶14 Cooper testified as follows. After he dropped Newell, his girlfriend, off, he went back to his apartment. He drank some beer, lay down, and fell asleep. He had music on, but it was low. He woke up to hear knocking. He did not hear anyone at the door say anything. He answered the door in his underwear because he thought it was a friend from upstairs. He was alone in the apartment.

¶15 The police asked if anyone was in the apartment and he said no; he did not give the police consent to enter, and "he got real loud" when an officer went in anyway. It was not possible to see the drugs from the doorway. There was enough room for someone to hide between the wall and the bed. Cooper disagreed that the closet door was closed; it was wide open, he testified.

¶16 In its factual findings, the circuit court credited the officers' account of what occurred. The court found that there was music coming from Cooper's apartment, the officers were definite and consistent in their belief they heard a female voice, and no one came to the door in response to the initial knocks and announcements of the officers. The court found that when a male—Cooper—came to the door and said no one else was in the apartment, the officers thought he was concealing the fact that a female was in the apartment. Given their understanding that Cooper had battered Newell earlier that night in his apartment, they were concerned that there was another female in the apartment who was injured. Because they could not see all areas of the apartment from the doorway,

they could not tell if Cooper was concealing the presence of another female without entering the apartment.

¶17 The court concluded that Sergeant Durica's entry into Cooper's apartment to allay the officers' fears that someone in the apartment was injured was good law enforcement and justified the entries under the exceptions to the warrant requirement relied on by the State.[2] Therefore, the court denied Cooper's motion to suppress the evidence of the cocaine and money found in his apartment.

¶18 After this ruling, Cooper entered a plea of guilty to both the substantial battery count and the cocaine count. The court accepted the plea and entered a judgment of conviction on each count. The court sentenced Cooper to two years' confinement with two years' extended supervision on the substantial battery count, and four years of confinement with four years of extended supervision on the cocaine charge, consecutive to each other, and to a five-year prison sentence imposed after revocation of probation. Cooper challenges only the cocaine conviction on this appeal.

## ANALYSIS

¶19 Cooper contends the circuit court erred in denying his motion to suppress because the nonconsensual warrantless entry of his apartment violated his

[2] The court found that Sergeant Durica's conduct inside the apartment was consistent with the motive of looking for a person who might be injured, and not with looking for guns or drugs. However, the court stated, this finding of what the officer did after the entry was not part of its ruling that there was justification for the entry.

rights under the Fourth Amendment and the identical State constitutional provision.[3]

¶20 When we review a circuit court's ruling on whether a warrantless entry is valid under the Fourth Amendment, we accept the circuit court's findings of historical fact unless they are clearly erroneous. ***State v. Richter***, 2000 WI 58, ¶26, 235 Wis. 2d 524, 612 N.W.2d 29. We independently determine whether those historical facts meet the constitutional standard. ***Id.***

¶21 The Fourth Amendment protects against unreasonable searches and seizures. ***Id.***, ¶27. A warrantless search of a person's home, without the person's consent, is presumptively unreasonable under the Fourth Amendment. ***Id.***, ¶28. However, there are certain exceptions to this general rule. ***Id.*** The exceptions are "jealously and carefully drawn" and "the burden rests with those seeking exemption to prove that the exigencies made that course imperative." ***State v. Boggess***, 115 Wis. 2d 443, 449, 340 N.W.2d 516 (1983) (citations omitted).

¶22 On appeal the parties treat the circuit court's opinion as having relied on three exceptions to the warrant requirement: (1) the emergency rule; (2) probable cause to believe evidence of a crime will be found in the apartment plus exigent circumstances; and (3) the community caretaker doctrine. The parties appear to agree that these are distinct exceptions. Cooper argues that none of the three doctrines are applicable. The State agrees that the community caretaker

[3] Because both parties refer only to the Fourth Amendment in their discussion of the case law, and neither argues that a different standard applies under the Wisconsin Constitution, we refer in our discussion to the Fourth Amendment only and assume the same standard applies under the Wisconsin Constitution. *See* ***State v. Richter***, 2000 WI 58, ¶27, 235 Wis. 2d 524, 612 N.W.2d 29 (the supreme court interprets the Wisconsin constitutional provision consistently with the Fourth Amendment).

doctrine is not applicable, but contends the other two are. Because of the State's concession, we do not further discuss the community caretaker doctrine.[4]

¶23 Turning first to the emergency exception, the parties rely on the formulation of this exception in ***Boggess***, 115 Wis. 2d at 452. There the court reviewed the reason for this exception and clarified the standard for applying it:

> This exception to the warrant requirement is grounded on the notion that the preservation of human life is paramount to the right of privacy protected by the fourth amendment. ***State v. Prober***, 98 Wis. 2d 345, 363-64, 297 N.W.2d 1 (1980).
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> In ***Prober***, we established a two-step analysis for determining the validity of a warrantless search under the emergency rule: "First, the search is invalid unless the searching officer is actually motivated by a perceived need to render aid or assistance. Second, ... until it can be found that a reasonable person under the circumstances would have thought an emergency existed, the search is invalid." 98 Wis. 2d at 365, 297 N.W.2d 1. The first test is a subjective test, and the second is an objective test. Both tests must be satisfied before a warrantless entry will be justified under the emergency rule exception.
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> ….
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> The objective test of the emergency rule requires that the officer be able to point to specific facts that, taken with the rational inferences from those facts, reasonably warranted the intrusion into an area in which a person has a reasonable expectation of privacy. The requirement of reasonable grounds to believe that an emergency existed must, however, "... be applied by reference to the

[4] Under the community caretaker doctrine, the court first determines whether the police conduct was truly a "bona fide community caretaker activity," which requires that the activity be "totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute." ***State v. Horngren***, 2000 WI App 177, ¶9, 238 Wis. 2d 347, 617 N.W.2d 508 (citations omitted). The court then weighs the public good involved against the intrusion on the individual. ***Id.*** The State agrees with Cooper that the police conduct here was not "totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute." ***Id.***

> circumstances then confronting the officer, including the need for a prompt assessment of sometimes ambiguous information concerning potentially serious consequences." (citations omitted).
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> ….
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> We hold that the objective test of the emergency rule is satisfied when, under the totality of circumstances, a reasonable person would have believed that: (1) there was an immediate need to provide aid or assistance to a person due to actual or threatened physical injury; and (2) that immediate entry into an area in which a person has a reasonable expectation of privacy was necessary in order to provide that aid or assistance.

***Boggess***, 115 Wis. 2d at 450-452.

¶24 Cooper argues that the circuit court's finding that Sergeant Durica entered "to allay [the officers'] own concerns and their own fears" does not satisfy the subjective requirement that he be "motivated solely by a perceived need to render immediate aid or assistance." ***Boggess***, 115 Wis. 2d at 450. More central to Cooper's argument is that the second, objective requirement is not met because the facts and reasonable inferences from the facts do not provide a reasonable basis for believing that there was an immediate need to provide aid or assistance to a person due to actual or threatened physical injury. The State disagrees, contending that the facts, as found by the circuit court, fulfill both the subjective and the objective component of the ***Boggess*** test.

¶25 This court has recently discussed the ***Boggess*** formulation of the emergency exception in ***State v. Leutenegger***, 2004 WI App 127, 275 Wis. 2d 512, 685 N.W.2d 536, which neither party mentions.[5] In ***Leutenegger***, we

[5] We decided ***State v. Leutenegger***, 2004 WI App 127, 275 Wis. 2d 512, 685 N.W.2d 536, after the circuit court's decision in this case, but before the parties filed their briefs on appeal.

concluded that we should not apply the two-part subjective/objective test of ***Boggess*** because the more recent supreme court decision of ***Richter***, 235 Wis. 2d 524, applied a one-part objective test in deciding whether the need to aid a person believed to be in danger justified a warrantless nonconsensual entry into a home. ***Leutenegger***, 275 Wis. 2d 512, ¶10. The test we applied in ***Leutenegger***, from ***Richter***, was:

> The test is "[w]hether a police officer under the circumstances known to the officer at the time [of entry] reasonably believes that delay in procuring a warrant would gravely endanger life...."

***Leutenegger***, 275 Wis. 2d 512, ¶19, citing ***Richter***, 235 Wis. 2d 524, ¶30.

¶26 In addition, we explained in ***Leutenegger*** that the subjective beliefs of the officers were not necessarily irrelevant, but could be considered by the court "only insofar as such evidence assists the court in determining objective reasonableness." 275 Wis. 2d 512, ¶19.

¶27 We see no reason why we are not bound by ***Leutenegger*** to apply the objective ***Richter*** test here. However, because both parties rely on the ***Boggess*** subjective/objective test, we will first assume the ***Boggess*** test applies and inquire whether the subjective part of that test is met. We conclude it is. The circuit court found that Sergeant Durica was motivated by the need that he perceived to render aid or assistance to the female he believed to be in a part of the apartment he could not see from the door and who he believed might be injured. The court's use of the phrase "allay their own concerns and their own fears," when read in context, does not signify use of a different standard, but is simply another way of stating the same standard. The court's finding on Sergeant Durica's

motivation is supported by the testimony of both Officer Eade and Sergeant Durica.

¶28 We now apply the objective ***Richter*** test we applied in ***Leutenegger***: whether Sergeant Durica "under the circumstances known to [him] at the time [of entry] reasonably believe[d] that delay in procuring a warrant would gravely endanger life…." *See* ***Leutenegger***, 275 Wis. 2d 512, ¶19. We observe that in ***Leutenegger*** we concluded this standard was met by a reasonable belief that a person was experiencing an intoxication-related health problem, ***id.*** at ¶¶28, 30, and in ***Richter***, the court concluded this standard was met by a reasonable belief that an intruder the officer was pursuing posed a threat of safety to the occupants of a residence. ***Richter***, 235 Wis. 2d 524, ¶¶40-41. We therefore see no significant difference in the "delay … [that] would gravely endanger life" formulation of ***Richter*** and the formulation of the objective part of the ***Boggess*** test: "an immediate need to provide aid or assistance to a person due to actual or threatened physical injury." ***Boggess***, 115 Wis. 2d at 452.

¶29 The circumstances known to Sergeant Durica and Officer Eade, as found by the circuit court, included that Newell had been battered by Cooper in his apartment earlier that evening; that Cooper had since been in his apartment; and that, though Cooper said he was alone, they had heard the voice of a female coming from his apartment. Because the court found the officers heard a voice that sounded like a female's voice, we accept that they did reasonably believe there was a female in the apartment, even though that turned out not to be the case. The critical issue is whether, based on the circumstances known to them, it was reasonable to believe the woman was "in immediate need of aid or assistance," ***Boggess***, 115 Wis. 2d at 452, due to injuries she had received from Cooper, or, in the phrasing from ***Richter***, "delay in procuring a warrant would gravely endanger

[her] life." ***Leutenegger***, 275 Wis. 2d 512, ¶19, citing ***Richter***, 235 Wis. 2d 524, ¶30. Accepting the facts as found by the circuit court, we conclude such a belief was not reasonable.

¶30 Newell did not provide the officers with information that Cooper was with anyone in his apartment, had any weapon, or was continuing to engage in behavior that was harming or might be harming someone else. Newell, of course, was safe from Cooper in the hospital. The officers' testimony was that the female voice they thought they heard did not sound in distress; and the voice did not ask for help, but simply asked "who is it." Besides the voice, the officers heard only music from the room; they heard no sounds that indicated a disturbance or that someone in the apartment was in distress. When Cooper came to the door, the officers did not observe anything that indicated he had been involved in a physical altercation.

¶31 We agree with the State that it was reasonable for the officers to infer, from the voice they believed to be a female's voice and from Cooper's denial that anyone was in his apartment, that there was a female in the apartment and Cooper did not want the officers to know that. However, it is not reasonable to make the further inference, based on the circumstances known to the officers, that the female needed immediate attention because of injuries she had received from Cooper.

¶32 The circuit court and the State are apparently of the view that, because Cooper had earlier that evening battered his girlfriend in his apartment, it was reasonable to believe that he had battered another female in his apartment. We cannot agree. In the absence of any information from Newell on what Cooper was doing in his apartment after she left, and in the absence of any sounds or

observations at his apartment indicating that battery of another female had occurred or was occurring, there was not an objectively reasonable basis for believing that there was a woman in Cooper's apartment needing immediate assistance.

¶33 We also conclude that the subjective beliefs of the officers do not, in this case, assist in determining objective reasonableness. While, as noted above, we accept the circuit court's finding on the officers' motivation, their explanation for their concern that a female was in the apartment and had been injured by Cooper does not add circumstances that might provide a reasonable basis for that belief. This is not like ***Leutenegger***, where the officer's concern for the defendant's safety was based on her experience of normal human activity in the same circumstances and her observation that the defendant was not acting consistently with that norm. 275 Wis. 2d 512, ¶30. We viewed that officer's subjective belief as based on "a common-sense assumption regarding normal human activity" and stated that "this circumstance, combined with other information, suggested a current intoxication-related health problem." ***Id.*** In this case, the officers' testimony provided no basis in their experience, and no common sense basis, for believing that Cooper would have injured another woman in his apartment later the same evening he battered Newell. And we have already concluded the circumstances known to them did not otherwise provide a reasonable basis for that belief.

¶34 The State argues that, based on a "similar fact situation" in ***State v. Rome***, 2000 WI App 243, 239 Wis. 2d 491, 620 N.W.2d 225, we concluded there was an emergency. We disagree that the facts in ***Rome*** are similar.

¶35 In ***Rome*** a police officer found a young woman crying and walking along the street late on a cold December night carrying a baby; neither were dressed appropriately. 239 Wis. 2d 491, ¶17. She told the officer she had had an argument with her intoxicated husband about their children and he had threatened her and grabbed her hair; she had left the house ten to fifteen minutes earlier. ***Id.***, ¶¶3, 17. Her two-year-old, she said, was home and asleep. ***Id.***, ¶17. Although she did not want police involvement, she admitted she was concerned about her two-year-old's welfare because of her husband's intoxication; and she asked the officer to go to her house to check on the child, but did not give permission to enter the house. ***Id.***, ¶3. When the officers arrived at the house, there was no response to their knocks or doorbell rings, and the phone had been disconnected. ***Id.***, ¶18. They shouted the husband's name for over fifteen minutes with no response. ***Id.*** They entered the house, found the husband asleep in one of the bedrooms, and saw a light flickering in a closet. ***Id.*** Thinking the child might have hidden in the closet out of fright over her parents' fighting, they entered the closet and found a marijuana plant—the evidence sought to be suppressed. ***Id.***, ¶6. We concluded that a reasonable person could believe that the two-year-old child could be in danger while in her father's care at that time. ***Id.***, ¶18.

¶36 In ***Rome*** the officers knew that the defendant had been intoxicated and violent just ten to fifteen minutes before one of them spoke to the woman. Thus, it was reasonable to infer he was still in that condition. They also knew that a two-year-old was in the house, and it was reasonable to infer either that the father's violence might turn on the child or the father's intoxication would prevent him from caring for the child. In contrast, in this case the officers did not have a reasonable basis for believing that Cooper's conduct earlier in the evening with Newell would be continuing or repeating itself with another victim.

¶37 We also do not agree with the State that ***State v. Mielke***, 2002 WI App 251, 257 Wis. 2d 876, 653 N.W.2d 316, supports its position.[6] In ***Mielke*** the police officers responded to a report that the defendant had struck a woman in the stomach at their home and the woman was spitting blood. 257 Wis. 2d 876, ¶¶2, 10. When they arrived at the home, the woman came onto the front porch and said there was nothing wrong; she did not appear to have any injuries, but she was crying, shaking, and cowering on the front porch. ***Id.***, ¶¶3, 10. We concluded that the report, the woman's demeanor, and the experience of one of the officers with domestic violence victims provided a reasonable basis in believing that the woman's safety was being threatened. ***Id.***, ¶10. In contrast, in this case there is no evidence making it reasonable to infer that the female who the officers believed was in Cooper's apartment had been injured, and, with Cooper in custody, there was no chance he could inflict any injury.

¶38 Having concluded there was not a reasonable basis for believing that the female in Cooper's apartment needed immediate assistance, we turn to the second exception the parties discuss—probable cause plus exigent circumstances. Both parties rely on ***State v. Hughes***, 2000 WI 24, 233 Wis. 2d 280, 607 N.W.2d 621, for the legal standard for this exception. In ***Hughes***, the court, in considering the validity of a warrantless nonconsensual entry into a home, first determined there was probable cause to search because there was a "fair probability" that contraband or evidence of a crime would be found in the home. ***Id.***, ¶¶21-23. The court then stated:

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[6] The State discusses ***State v. Mielke***, 2002 WI App 251, 257 Wis. 2d 876, 653 N.W.2d 316, in its discussion of exigent circumstances. However, as we explain below in ¶41, the emergency exception and the exigent circumstances exception are the same exception where the exigency is based on the threat to the safety of the suspect or others.

> Once probable cause to search has been established, the state must also demonstrate exigent circumstances to justify the warrantless entry into the apartment. The objective test for determining whether exigent circumstances exist is 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. [***State v. Smith***, 131 Wis. 2d 220, 230, 388 N.W.2d 601.]
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> In ***Smith***, we recognized four circumstances which, when measured against the time needed to obtain a warrant, constitute the exigent circumstances required for a warrantless entry. ***Id.*** at 229. Those circumstances are (1) an arrest made in "hot pursuit," (2) a threat to safety of a suspect or others, (3) a risk that evidence will be destroyed, and (4) a likelihood that the suspect will flee. ***Id***.

***Hughes***, 233 Wis. 2d 280, ¶¶24-25.

¶39 The State argues here that there was a fair probability that the officers would find evidence in the apartment that Cooper had injured another woman—the one whose voice they thought they heard—and that the second and third categories of the four listed in the preceding paragraph apply.

¶40 The State's argument that the second category applies is essentially the same as that for the emergency exception. As for the third category, the State argues that there was a risk that evidence of the injuries of the woman who the officers believed to be in the apartment would disappear because the injuries would heal; thus, the officers needed to document and photograph the injuries to preserve the evidence.

¶41 The parties' arguments assume that, where the exigent circumstance is the threat to the safety of the suspect or others, there must also be probable cause to search the home. Although the language in ***Hughes*** might suggest this, the only exigent circumstances the ***Hughes*** court addressed was the risk that

evidence would be destroyed. ***Id.***, ¶¶26-27. In that situation there must be, first of all, probable cause to believe that evidence would be in the home. ***Id.***, ¶¶20-21, 24. However, in ***Richter***, in its analysis of the "hot pursuit" and "threat to safety" categories, the court described the same "four well-recognized categories of exigent circumstances" as it did in ***Hughes***, without referring to an additional requirement of probable cause for a search, and without applying such a requirement. ***Richter***, 235 Wis. 2d 524, ¶¶28-43. In ***Leutenegger***, we read ***Richter***, ***Boggess***, and prior case law as equating the "emergency doctrine" with the "exigent circumstance rule" insofar as the exigent circumstance was the threat to the safety of the suspect or others. ***Leutenegger***, 275 Wis. 2d 512, ¶¶6-10. Following ***Leutenegger*** and ***Richter***, we conclude that in that category of exigent circumstance there is no additional requirement of probable cause to search. We further conclude that there is no difference between the emergency exception and the exigent circumstance exception where the exigency is based on the threat to the safety of the suspect or others.

¶42 However, as ***Hughes*** makes clear, when the exigent circumstance is the risk that evidence will be destroyed in the home, there must first be probable cause to search the home. ***Hughes***, 233 Wis. 2d 280, ¶¶20-21. For the reasons we have discussed above in ¶¶29-33, we conclude there was not a fair probability the officers would find evidence of another crime in Cooper's apartment: there was no reasonable basis for believing that Cooper had injured another woman. Thus, we do not further discuss the third category of exigent circumstances.

## CONCLUSION

¶43 We conclude the entry into Cooper's apartment was not justified by a reasonable belief that someone in the apartment was in need of immediate

assistance. We also conclude that there was not probable cause to search Cooper's apartment for evidence that he had injured someone who was then in his apartment and, therefore, the exception for exigent circumstances because of the risk of destruction of evidence does not apply. Because the State has presented no other exception to the warrant requirement where consent is lacking, we reverse the circuit court's order suppressing the evidence discovered in Cooper's apartment and remand for further proceedings.

*By the Court.*—Judgment reversed and cause remanded.

Not recommended for publication in the official reports.