

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**June 15, 2004**

Cornelia G. Clark  
Clerk of Court of Appeals

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**Appeal No. 03-2396-CR  
STATE OF WISCONSIN**

Cir. Ct. No. 02CF001245

**IN COURT OF APPEALS  
DISTRICT I**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**v.**

**CHRISTOPHER L. LOGAN,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment of the circuit court for Milwaukee County: RUSSELL W. STAMPER, Reserve Judge. *Affirmed.*

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

¶1 PER CURIAM. Christopher L. Logan appeals from a judgment entered on jury verdicts finding him guilty of possession and delivery of five grams or fewer of cocaine, and keeping a drug house, all as a party to a crime,

second or subsequent offense. *See* WIS. STAT. §§ 961.41(1m)(cm)1, 961.41(1)(cm)1, 961.42(1), 939.05, 961.48 (2001–02).<sup>1</sup> He claims that the trial court erred when it denied his motion to suppress evidence discovered in his mother’s house because the police entered the house without a warrant. We affirm.

## I.

¶2 Christopher L. Logan was charged with the possession and delivery of cocaine, and keeping a drug house after the police discovered cocaine, marijuana, and two firearms in his mother’s house. He pled not guilty and moved to suppress the evidence. At a hearing on the motion, Detective Joe Groce testified that on February 26, 2002, he and several police officers discovered the evidence in a duplex at 2848 North 29th Street in the City of Milwaukee during an undercover drug investigation. Loretta Logan, Christopher Logan’s mother, and Alice Logan, Christopher Logan’s sister, lived in the second level of the duplex.

¶3 According to Groce, Willie Huerta, an undercover police officer, went to the duplex twice on February 26 to buy crack cocaine. The first time, Huerta met Derek Watkins on the street and asked Watkins where he could buy some cocaine. Watkins took Huerta to the duplex on 29th Street and sold cocaine to Huerta. After Watkins and Huerta left the duplex, the police arrested Watkins. Groce told the court that Huerta then returned to the duplex to buy more crack cocaine. While Huerta walked up to the duplex, Groce and four others, two detectives and two uniformed officers, waited at the back of the house. Huerta

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2001–02 version unless otherwise noted.

went into the duplex and entered a common hallway. Groce testified that approximately five minutes later “we could hear people running around in that hallway; and immediately after that Officer Huerta came running out of the door.” According to Groce, Huerta told them that their “suspect,” later identified as Christopher Logan, was running up the stairs.

¶4 Groce testified that he and the other police went into the common hallway of the duplex and yelled “police.” According to Groce, as the police climbed the stairs to the second level, someone closed the door. Groce knocked on the door and Loretta Logan answered. Groce testified that he told Loretta Logan that they were investigating drug dealing and she gave them permission to search the house. Groce also told the court that while he was talking to Loretta Logan, he heard people run toward the front of the house.

¶5 The police searched the second level of the duplex and found eighty-two “corner cuts” of cocaine base, thirty-nine baggies of marijuana, a sawed-off shotgun, and the prerecorded money that Huerta had used to buy the cocaine from Watkins. They also searched the attic and found fifty-eight “corner cuts” of cocaine base and a loaded .22 caliber pistol. When asked on cross-examination why the police did not get a warrant to search the duplex, Groce testified that he believed there were exigent circumstances because “people [were] running in the hallway, running away from where Officer Huerta was – the person whom we – the person was wanted for delivery.” He also pointed out that a suspect could easily destroy drugs by flushing them down the toilet, swallowing them, or throwing them out a window.

¶6 Huerta testified that on February 26, 2002, he bought crack cocaine from Watkins at a duplex on 2848 North 29th Street. Approximately thirty to

forty-five minutes later, he went back to make another purchase. Huerta told the court that a “Mr. Burris” let him into the common hallway of the duplex. Huerta then saw Christopher Logan and asked if he could get some “P,” or crack cocaine. Huerta testified that he was approximately three steps from the top of the landing when Elijah Brock came down from the upper level with a telephone to his ear and told Christopher Logan that the police were outside. Christopher Logan told Huerta to stay where he was and went downstairs.

¶7 Huerta testified that he tried to leave, but Brock told him “you’re not going anywhere until [the police] leave ... you’re going to get your ‘P’ [and] you’re going to take a hit of that ‘P.’” According to Huerta, when the men left him alone for a moment, he ran down the stairs and out the back door. Huerta told the court that, as he was opening the outside door, he saw Christopher Logan go up the stairs. He then told the police waiting outside that his “suspect” was running up the stairs. Huerta identified Christopher Logan as his “suspect” after the police went into the second level.

¶8 As we have seen, the trial court denied Christopher Logan’s motion to suppress. It concluded that exigent circumstances justified the warrantless entry of Loretta Logan’s house:

While the police had the capacity to search the perimeter of the house to prevent escape ... they had good cause to believe that crack-cocaine was stashed on the premises and in sufficient quantities to handle a commercial sale.

Cocaine is a substance that can be disposed of very quickly by flushing it down a toilet or washing it down the sink.

And faced with the confrontation by the police ... the likelihood of destruction of the evidence was obvious.

The trial court also concluded that Christopher Logan did not have standing to challenge the search because he did not live in Loretta Logan's house.<sup>2</sup>

## II.

¶9 A trial court's ruling on a motion to suppress evidence presents a mixed question of fact and law. We will uphold the trial court's findings of fact unless they are clearly erroneous. *State v. Wilson*, 229 Wis.2d 256, 262, 600 N.W.2d 14, 17 (Ct. App. 1999). The application of the facts to the constitutional principles is a question of law that we review *de novo*. *Id.*, 229 Wis. 2d at 262–263, 600 N.W.2d at 17–18.

¶10 “A warrantless search of a home is presumptively unreasonable under the Fourth Amendment.” *State v. Richter*, 2000 WI 58, ¶28, 235 Wis. 2d 524, 612 N.W.2d 29. An exception to the warrant requirement arises when the State can demonstrate “both probable cause and exigent circumstances that overcome the individual's right to be free from government interference.” *State v. Hughes*, 2000 WI 24, ¶17, 233 Wis. 2d 280, 607 N.W.2d 621. Thus,

[t]o determine whether the entry was lawful, we must answer two questions: first, did the officers have probable cause to believe that [Loretta Logan's house] contained evidence of a crime, and second, did exigent circumstances exist at the time of the entry to establish an exception to the warrant requirement?

*Id.*, ¶18. We discuss each issue in turn.

¶11 “The quantum of evidence required to establish probable cause to search is a ‘fair probability’ that contraband or evidence of a crime will be found

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<sup>2</sup> The trial court also concluded that Loretta Logan did not give the police her consent to enter and search the house. Neither party disputes this ruling on appeal.

in a particular place.” *Id.*, ¶21 (quoting *Illinois v. Gates*, 462 U.S. 213, 238 (1983)). In this case, the police were faced with the following facts or reasonable inferences: (1) Huerta had purchased crack cocaine during his first visit to the house; (2) Christopher Logan was willing to sell more cocaine to Huerta approximately forty-five minutes later; and (3) upon learning that the police were outside, Christopher Logan ultimately fled to the second level of the duplex. Under these circumstances it was reasonable for the police to conclude that evidence of illegal drug activity would be found in the second level of the duplex. Thus, there was probable cause for the police to enter and search the second level of the duplex. We thus turn to the issue of exigent circumstances.

¶12 In determining whether exigent circumstances existed we apply an objective test to decide what a reasonable police officer would reasonably believe under the circumstances. *See Richter*, 235 Wis. 2d 524, ¶30.

There are four well-recognized categories of exigent circumstances that have been held to authorize a law enforcement officer’s warrantless entry into a home: 1) hot pursuit of a suspect, 2) a threat to the safety of a suspect or others, 3) a risk that evidence will be destroyed, and 4) a likelihood that the suspect will flee.

*Id.*, ¶29. In this case, the trial court found that the third factor, the risk of destruction of evidence, was implicated. We agree. The following facts support the inference that there was a substantial risk that the drugs would be destroyed: (1) there were drugs in the duplex; (2) Huerta heard Brock tell Christopher Logan that the police were outside; (3) Groce heard people “running around” in the duplex; (4) Huerta told the officers outside that their suspect was running up the stairs; and (5) as the police were entering the duplex someone closed the door to the second level. Under these circumstances, it was reasonable for the police to believe that they had been identified as police officers and that the occupants of

the duplex would destroy the drugs. *See Hughes*, 233 Wis. 2d 280, ¶26 (“[D]rugs are highly destructible.... It is not unreasonable to assume that a drug possessor who knows the police are outside waiting for a warrant would use the delay to get rid of the evidence.”); *see also State v. Garrett*, 2001 WI App 240, ¶18, 248 Wis. 2d 61, 635 N.W.2d 615 (information on drug transaction combined with suspect’s actions of opening apartment door holding a bag of cocaine, slamming door shut upon seeing police, and failing to answer door sufficient to establish exigent circumstances).

¶13 Christopher Logan argues, however, that the police “created” the exigent circumstances to avoid the warrant requirement. *See State v. Smith*, 131 Wis. 2d 220, 234, 388 N.W.2d 601, 607 (1986) (“police cannot themselves create the exigency” to avoid the warrant requirement). He claims that the police should have obtained a warrant after the first drug purchase and that they “created the exigency by conducting their surveillance in a manner which allowed them to be spotted by a co-actor Elijah Brock.” We disagree.

¶14 The fact that the police could have obtained a search warrant after the first drug purchase does not invalidate the search. Police involved in an investigation may continue investigating to ferret out other individuals involved, other offenses being committed, or additional evidence. *See United States v. Hultgren*, 713 F.2d 79, 87 (5th Cir. 1983). In fact, a delay in securing a warrant is more likely to be reasonable when it is part of an ongoing investigation into criminal activity rather than a routine or planned search or arrest. *See id.*

¶15 In this case, Watkins did not conduct the first drug sale alone. At trial, Huerta testified that when he and Watkins went to the duplex, Loretta Logan opened the door. After Huerta told Loretta Logan that he wanted to buy some

cocaine, she yelled “hey, Chris, come on down.” Huerta told the jury that he saw Watkins give his (Huerta’s) money to Christopher Logan and close the door. About one minute later, Watkins opened the door and gave Huerta two ziplock baggies. Under these circumstances, it was reasonable for the police to continue their investigation after Watkins was arrested to determine if anyone else was involved in making illegal drug sales from the duplex. *See State v. Truax*, 151 Wis. 2d 354, 360, 444 N.W.2d 432, 435 (Ct. App. 1989) (in reviewing a motion to suppress, we may take into account evidence presented at trial as well as the suppression hearing).

¶16 “Moreover, the created-exigency cases have typically required some showing of deliberate conduct on the part of the police evincing an effort intentionally to evade the warrant requirement.” *Ewolski v. City of Brunswick*, 287 F.3d 492, 504 (6th Cir. 2002). Here, there is no evidence that the police deliberately “created” the exigency. Brock told Christopher Logan that the police were outside while Brock had a telephone to his ear. Presumably, someone from outside the apartment saw the police and called Brock to warn him. There is no evidence that Brock saw the police himself or that the police knew that someone would see them outside the duplex and warn its residents, causing their flight and the potential destruction of evidence. Accordingly, because the police could lawfully enter Loretta Logan’s house without a warrant under the exigent-circumstances exception, the trial court properly denied Christopher Logan’s motion to suppress.<sup>3</sup>

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<sup>3</sup> The parties also address the trial court’s ruling that Christopher Logan did not have standing to challenge the warrantless entry of Loretta Logan’s house. Regardless of whether Loretta or Christopher Logan had challenged the entry and search of the house, the result would have been the same—the police properly entered and searched the Logan house under the

(continued)



*By the Court.*—Judgment affirmed.

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exigent-circumstances exception. Thus, we do not address the standing issue. See **Gross v. Hoffman**, 227 Wis. 296, 300, 277 N.W. 663, 665 (1938) (only dispositive issue need be addressed); **Skrupky v. Elbert**, 189 Wis. 2d 31, 47, 526 N.W.2d 264, 270 (Ct. App. 1994) (if a decision on another point disposes of the appeal, we need not decide the other issues raised).

