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WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688
Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT I/IV

October 2, 2015

To:

Hon. Dennis P. Moroney
Circuit Court Judge
Milwaukee County Courthouse
901 N. 9th St.
Milwaukee, WI 53233

John Barrett
Clerk of Circuit Court
Room 114
821 W. State Street
Milwaukee, WI 53233

Donald V. Latorraca
Assistant Attorney General
P.O. Box 7857
Madison, WI 53707-7857

Karen A. Loebel
Asst. District Attorney
821 W. State St.
Milwaukee, WI 53233

Scott A. Szabrowicz
4227 W. Forest Home Ave.
Milwaukee, WI 53215

You are hereby notified that the Court has entered the following opinion and order:

2013AP1813-CR State of Wisconsin v. Montrell D. Howard (L.C. # 2011CF4981)

Before Kloppenburg, P.J., Lundsten and Higginbotham, JJ.

Montrell Howard appeals a judgment of conviction. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2013-14).¹ We affirm.

Howard argues that physical evidence from a certain address, along with the observations of police officers and his later statements, should have been suppressed because police lacked

¹ All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

probable cause to arrest him when they entered the residence, seized him, and brought him outside. In response, the State does not argue that officers had probable cause to arrest Howard. Instead, the State's argument proceeds in two steps. The first is that the police entry into the residence was proper because they had probable cause to believe it contained *evidence of a crime*, and a warrantless entry was permitted because exigent circumstances were present. The second step is that, once properly inside the residence, police had reasonable suspicion to detain Howard and move him outside, where he was later arrested on an outstanding warrant.

Howard's reply brief does not dispute either step of the State's argument, but instead only reiterates his argument that probable cause was necessary to enter the residence for the purpose of seizing him, and that police did not have it. Howard does not dispute that police could have properly entered in search of the cell phone evidence. Nor does he dispute that, once inside, only reasonable suspicion, not probable cause, was required to detain him and move him outside, and he does not dispute that police had reasonable suspicion at that point. Because Howard does not dispute the State's arguments, we take that as a concession, and affirm on that basis. *See Schlieper v. DNR*, 188 Wis. 2d 318, 322, 525 N.W.2d 99 (Ct. App. 1994) (we may treat as a concession a proposition asserted in a respondent's brief and not disputed in the reply brief).

IT IS ORDERED that the judgment is summarily affirmed under WIS. STAT. RULE 809.21.

Diane M. Fremgen
Clerk of Court of Appeals