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

**October 8, 2013**

**Diane M. Fremgen**
**Clerk of Court of Appeals**



**Appeal No. 2013AP1107-CR** **Cir. Ct. No. 2013CM6**

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

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**JEFFREY G. VANDEN HEUVEL,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment of the circuit court for Florence County: LEON D. STENZ, Judge. *Reversed and cause remanded with directions*.

¶1 STARK, J.[1] Jeffrey Vanden Heuvel appeals a judgment of conviction for operating while intoxicated, third offense. He argues the circuit court erred by denying his suppression motion because he was seized when the officer

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2). All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

knocked on his door. Alternatively, he argues the officer's warrantless entry into his house was unlawful because the officer lacked probable cause and exigent circumstances.

¶2 We conclude Vanden Heuvel was not seized when the officer knocked on Vanden Heuvel's door. However, we agree with Vanden Heuvel that the officer's subsequent entry into his house was unlawful. We therefore reverse the matter and remand to the circuit court for further proceedings.

## BACKGROUND

¶3 On November 25, 2012, at approximately 3:30 a.m., Vanden Heuvel was involved in a single-car rollover accident. Vanden Heuvel contacted his son, Craig, and Craig called police to report that his father had been in an accident and was walking along Highway 70. Sheriff's deputy Edwin Kelley and Long Lake Fire and Rescue member Roger Kelter were dispatched to respond to the accident.

¶4 While en route to the accident, Kelter found Vanden Heuvel walking on Highway 70. Vanden Heuvel confirmed he had been involved in the accident and told Kelter he was okay. Kelter transported Vanden Heuvel back to the accident scene. They were met at the scene by Vanden Heuvel's friend, who arrived to pick up Vanden Heuvel. Kelter told Vanden Heuvel not to leave; however, Vanden Heuvel got out of Kelter's truck, said, "Well, I got to go[,]" and left.

¶5 When officer Kelley arrived at the scene,[2] Kelter told Kelley that he found Vanden Heuvel and transported him back to the accident scene, and that Vanden Heuvel subsequently left with a friend. Kelter also told Kelley that Vanden Heuvel smelled of alcohol and that Vanden Heuvel told him he had a cabin in the area.

¶6 Dispatch informed Kelley that Vanden Heuvel's driving record indicated he had two prior OWI convictions. Kelley also learned Vanden Heuvel's cabin was somewhere on Rocky Road. Kelley proceeded to Rocky Road.

¶7 Kelley observed two cabins on Rocky Road. Kelley went to the first cabin, which he learned was owned by Peter Hennes. Hennes told Kelley that Vanden Heuvel called him saying he was involved in a rollover accident and needed to be picked up. Hennes transported Vanden Heuvel back to his cabin, which was next door.

¶8 Kelley went to Vanden Heuvel's cabin. Vanden Heuvel's cabin was two stories, with sliding patio doors on both the first and second floors. Kelley could see footprints in the snow leading to the bottom patio door. Kelley went to that door, "knocked and announced 'Sheriff Department' and got no response[.]" Kelley then "went to the top door, upper level steps going up to the upper level patio door and knocked on that door and announced 'Sheriff's Department.'"

[2] Kelley testified he was approximately twenty miles away when he received the dispatch and it took him "a while" to drive to the accident scene. Kelley explained he had his first contact with Kelter at 4:00 a.m.

¶9 When Kelley knocked on the upper patio door, Kelley could see somebody standing inside. Kelley "knocked on the door and yelled that I could see him standing there and to come to the door and talk to me." Kelley also told the person that "if he didn't open the door," Kelley would "come back with a search warrant." The person, "at first didn't respond, and then he [peeked] over the door and looked right at me. I advised him I could see him, to come to the door."

¶10 The person came to the patio door, partially opened it, and asked Kelley what he wanted. Kelley asked the person if he was Vanden Heuvel. Vanden Heuvel confirmed his identity, and Kelley asked whether he was injured. Vanden Heuvel told Kelley he was fine and "started sliding the patio door closed."

¶11 Kelley testified he observed that Vanden Heuvel smelled of alcohol, had bloodshot eyes, and had slurred speech. Kelley "blocked [Vanden Heuvel] from closing the door and advised him that there [had been] an accident" and that Kelley needed information for his accident report. Kelley explained he stuck his arm in the door to prevent it from closing, and the door hit him somewhere between his wrist and elbow. Vanden Heuvel told Kelley to "[c]ome back tomorrow" and he would complete the accident report then.

¶12 Kelley insisted he needed to complete the accident report right away and asked Vanden Heuvel to go back to the accident scene with him. Vanden Heuvel told Kelley he was not leaving his cabin. Kelley explained that Vanden Heuvel wanted to close the door again, but "[b]efore he could close the door … this time[,] I advised him that he was under arrest for [operating while intoxicated]."

¶13 Vanden Heuvel testified he was in bed when Kelley began knocking loudly on the patio door. He explained that, when Kelley told him he was going to get a search warrant, Vanden Heuvel walked from the bedroom to the patio door. When Kelley told Vanden Heuvel he could see him and he just needed some information, Vanden Heuvel opened the door. Vanden Heuvel testified he told Kelley, "I will take care of it tomorrow. Go away." At that point, Vanden Heuvel tried to close the door and Kelley "blocked the door from being closed." Vanden Heuvel testified Kelley's arm entered his house to keep the door from closing, and he did not consent to Kelley entering his house.

¶14 Vanden Heuvel's counsel argued Kelley unlawfully seized Vanden Heuvel by "ordering" him to open the door. Counsel asserted that, when Kelley arrived at Vanden Heuvel's house, Kelley did not have probable cause to arrest him for OWI and therefore could not seize him. Alternatively, Vanden Heuvel argued Kelley unlawfully seized him when Kelley subsequently entered Vanden Heuvel's house.

¶15 The circuit court found Vanden Heuvel was not unlawfully seized when Kelley knocked on the door and ordered him to open it. The court noted that Vanden Heuvel "opened the door and told [Kelley] to go away" and concluded this was not a case where Vanden Heuvel felt coerced by Kelley. The circuit court also found that, when Vanden Heuvel attempted to close the door, "the officer did enter the dwelling, it is clear that he put his arm in the door." The court reasoned that, because Kelley entered the residence, Kelley's entry would be illegal unless Kelley had probable cause and exigent circumstances.

¶16 The court found Kelley had probable cause to arrest Vanden Heuvel for OWI. It noted that, at the time Vanden Heuvel tried to close the door, the

officer knew Vanden Heuvel had been involved in an accident, left the scene, smelled of alcohol, had slurred speech, had bloodshot eyes, and had two prior OWI convictions. In regard to exigent circumstances, the court, citing ***Welsh v. Wisconsin***, 466 U.S. 740 (1984), first determined Kelley was permitted to rely on an exigent circumstance because he was investigating a jailable offense. The court reasoned the only possible exigent circumstance would be the destruction of evidence resulting from the dissipation of alcohol in the bloodstream.[3] It concluded that, because "the dissipation of alcohol from the blood would result in destruction of that evidence," Kelley's warrantless entry was justified by an exigent circumstance. The court denied Vanden Heuvel's suppression motion.

¶17 Vanden Heuvel subsequently pleaded no contest to third-offense OWI and the court found him guilty. He appeals.

## DISCUSSION

¶18 We review the denial of a suppression motion under a two-part standard of review. ***State v. Hampton***, 2010 WI App 169, ¶23, 330 Wis. 2d 531, 793 N.W.2d 901. We uphold the circuit court's factual findings unless they are clearly erroneous, but we independently review whether those facts warrant suppression. ***Id.***

[3] The court noted there was no threat to public safety because Vanden Heuvel was at home and "there was no other vehicle for him to go anywhere." It also determined Kelley was not in "hot pursuit" of Vanden Heuvel.

## I. Initial Seizure

¶19 Vanden Heuvel first argues the circuit court erred by denying his suppression motion because "Kelley's order to come to the door combined with a statement of an intent to return with a warrant equated to a seizure in the constitutional sense." (Capitalization and bolding omitted.) In support of his argument, Vanden Heuvel emphasizes a seizure occurs if a reasonable person believes he is not free to leave. He asserts Kelley's actions of knocking on the door, telling him to open it, and advising him he would get a warrant if he did not open the door constituted a seizure because it would cause a reasonable person to believe he needed to comply with Kelley's demands and open the door.

¶20 We disagree and conclude Kelley did not seize Vanden Heuvel when he knocked on the door and told Vanden Heuvel that if he did not open the door he would leave and return with a warrant. It is well established that not every police-citizen contact amounts to a seizure. ***State v. Young***, 2006 WI 98, ¶18, 294 Wis. 2d 1, 717 N.W.2d 729. The Fourth Amendment is not implicated by an officer's entry on private land to knock on a citizen's door for legitimate police purposes. ***State v. Edgeberg***, 188 Wis. 2d 339, 348, 524 N.W.2d 911 (Ct. App. 1994). "The test used to determine if a person is being seized is whether, considering the totality of the circumstances, a reasonable person would have believed he or she was free to leave or otherwise terminate the encounter." ***State v. Luebeck***, 2006 WI App 87, ¶7, 292 Wis. 2d 748, 715 N.W.2d 639. Stated another way, "[a]s long as a reasonable person would have believed he was free to disregard the police presence and go about his business, there is no seizure and the Fourth Amendment does not apply." ***Young***, 294 Wis. 2d 1, ¶18.

¶21 Here, despite Kelley's knocking, Kelley made clear that, if Vanden Heuvel chose not to open the door, Kelley would be forced to wait until he obtained a warrant authorizing his entry into the home. Accordingly, a reasonable person would have believed that he or she was not required to comply with Kelley's request and could continue to go about his or her business until law enforcement produced a warrant. *See* ***id.*** Kelley, therefore, did not seize Vanden Heuvel by knocking on the door and advising Vanden Heuvel that if Vanden Heuvel did not open the door he would have to leave to get a warrant.

¶22 We also observe Vanden Heuvel has not advanced any argument asserting that Kelley's purported door-knocking seizure was unlawful.[4] Therefore, even if we assumed Kelley "seized" Vanden Heuvel by knocking on the door, it does not automatically follow that the seizure was unlawful and the circuit court erred by denying his suppression motion.

**II. Entry into the Home**

¶23 Vanden Heuvel next argues he was unlawfully seized when Kelley subsequently entered his cabin without probable cause and exigent circumstances. The State responds Kelley never entered Vanden Heuvel's home. Alternatively, the State argues the circuit court properly determined Kelley had probable cause to arrest and exigent circumstances to justify his entry into Vanden Heuvel's home.

¶24 Warrantless home entries are presumptively unlawful. ***State v. Ferguson***, 2009 WI 50, ¶17, 317 Wis. 2d 586, 767 N.W.2d 187. "This

[4] In the circuit court, Vanden Heuvel argued the door-knocking seizure was improper because Kelley did not have probable cause to arrest him for operating while intoxicated.

presumption is based on 'the overriding respect for the sanctity of the home that has been embedded in our traditions since the origins of the Republic.'" ***Id.*** (quoting ***Payton v. New York***, 445 U.S. 573, 601 (1980)). "It is axiomatic that the physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed." ***Welsh***, 466 U.S. at 748 (citation omitted).

¶25 We first consider whether Kelley "entered" Vanden Heuvel's cabin when he stuck his arm in the doorway to prevent Vanden Heuvel from closing the door, triggering the Fourth Amendment warrant requirement. The circuit court relied on ***State v. Larson***, 2003 WI App 150, 266 Wis. 2d 236, 668 N.W.2d 338, to determine Kelley entered Vanden Heuvel's house. In that case, an officer went to a residence to investigate a possible OWI offense. ***Id.***, ¶3. When the defendant answered the door, the officer put his foot across the threshold of the doorway so that the door could not be closed. ***Id.*** We observed the "Fourth Amendment has drawn a firm line at the entrance to the house." ***Id.***, ¶10 (quoting ***State v. Johnson***, 177 Wis. 2d 224, 231, 501 N.W.2d 876 (Ct. App. 1993)). We concluded the officer's act of placing his foot in the doorway constituted an entry for Fourth Amendment purposes. ***Id.***, ¶11.

¶26 Here, the State argues Kelley did not enter Vanden Heuvel's home because, in ***Larson***, the officer placed his foot inside the doorway to prevent it from closing and, in this case, "the officer remained outside the home standing on the porch." We reject the State's assertion that the Fourth Amendment warrant requirement is triggered only if the officer crosses the threshold with his foot, as opposed to some other body part. We conclude, as did the circuit court, that, similar to ***Larson***, when Kelley stuck his arm into Vanden Heuvel's home to prevent the sliding patio door from closing, Kelley entered Vanden Heuvel's cabin for purposes of the Fourth Amendment. *See* ***id.***, ¶¶10-11.

¶27 Having established Kelley entered Vanden Heuvel's cabin for purposes of the Fourth Amendment, we next determine whether Kelley was permitted to enter Vanden Heuvel's cabin to arrest him for OWI without a warrant. Although warrantless home entries are presumptively unlawful, the presumption of unlawfulness may be overcome if law enforcement has probable cause to arrest and exigent circumstances are present. ***Ferguson***, 317 Wis. 2d 586, ¶19.

¶28 Vanden Heuvel first asserts Kelley lacked probable cause to arrest him for OWI because Kelley never administered field sobriety tests or a preliminary breath test. Vanden Heuvel acknowledges that field sobriety and preliminary breath tests are not required before an officer makes an arrest for an OWI offense; however, he asserts that "without the tests it is harder to make a probable cause determination." He also argues road conditions at the time of the accident were treacherous,[5] and, therefore, the accident does not show that his ability to operate a motor vehicle was impaired.

¶29 To determine whether probable cause to arrest exists, we look at the totality of the circumstances to determine whether the "arresting officer's knowledge at the time of the arrest would lead a reasonable police officer to believe ... that the defendant was operating a motor vehicle while under the influence of an intoxicant." ***State v. Nordness***, 128 Wis. 2d 15, 35, 381 N.W.2d 300 (1986). Probable cause to arrest does not require "proof beyond a reasonable doubt or even that guilt is more likely than not …." ***State v. Popke***, 2009 WI 37,

[5] Vanden Heuvel's testimony about the accident was that, "It had been snowing and slushy. I came to the curb, got caught in the ruts. I could feel my truck coming around … it came all the way around and slid[] to the ditch and then rolled on top of the cab."

¶14, 317 Wis. 2d 118, 765 N.W.2d 569. Rather, "probable cause requires that 'the information lead a reasonable officer to believe that guilt is more than a possibility.'" ***Id.*** (citation omitted). "In other words, probable cause exists when the officer has 'reasonable grounds to believe that the person is committing or has committed a crime.'" ***Id.*** (citation omitted).

¶30 In this case, at the moment Kelley entered Vanden Heuvel's cabin, Kelley knew Vanden Heuvel had been in a rollover accident at 3:30 a.m. and had twice left the scene, had two prior OWI convictions, smelled of alcohol, and had bloodshot eyes and slurred speech. We conclude that, based on these facts and the totality of the circumstances, a reasonable officer would have reasonable grounds to believe Vanden Heuvel operated his motor vehicle while impaired by alcohol. *See* ***id.***, ¶14. Consequently, we conclude Kelley had probable cause to arrest Vanden Heuvel for OWI.

¶31 Vanden Heuvel next argues that, even if Kelley had probable cause to arrest him for OWI, his arrest was nevertheless unlawful because Kelley lacked exigent circumstances to enter his house. "Exigent circumstances exist when 'it would be unreasonable and contrary to public policy to bar law enforcement officers at the door.'" ***Ferguson***, 317 Wis. 2d 586, ¶19 (citation omitted). There are four well-recognized categories of exigent circumstances: "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.***, ¶20 (citation omitted). Further, when "evaluating whether a warrantless entry is justified by exigent circumstances, [courts] should consider whether the underlying offense is a jailable or nonjailable offense …." ***Id.***, ¶29. "[W]here 'the underlying offense for which there is probable cause to arrest is relatively minor,' courts should be

very hesitant to find exigent circumstances." ***Id.***, ¶25 (quoting ***Welsh***, 466 U.S. at 750.)

¶32 The circuit court determined Kelley had exigent circumstances to enter the house because he knew he was investigating a criminal third-offense OWI and because the dissipation of alcohol in the bloodstream resulted in the destruction of evidence. Vanden Heuvel argues the circuit court's exigency determination is incorrect for two reasons. First, he argues our decision in ***Larson***, 266 Wis. 2d 236, is dispositive because we stated in that case, "as expressed in ***Welsh***, a warrantless home arrest cannot be upheld simply because evidence of Larson's blood alcohol level might have dissipated while the police obtained a warrant." *See* ***Larson***, 266 Wis. 2d 236, ¶22. Second, he contends the circuit court's exigency determination was insufficient because it was made without any supporting evidence.

¶33 Vanden Heuvel's reliance on ***Larson*** is misplaced because he takes our ***Larson*** statement out of context. To put the statement in context, we begin with a discussion of ***Welsh***. In ***Welsh***, officers entered the defendant's home without a warrant to arrest him for OWI. ***Welsh***, 466 U.S. at 743. The defendant challenged his arrest, arguing, in part, the officers lacked exigent circumstances to enter his house. ***Id.*** at 747-48. The ***Welsh*** Court observed "the only potential emergency claimed by the State was the need to ascertain [the defendant's] blood-alcohol level." ***Id.*** at 753.

¶34 However, before determining whether that was an appropriate exigency, the Court held that "an important factor to be considered when determining whether any exigency exists is the gravity of the underlying offense for which the arrest is being made." ***Id.*** It "note[d] that it is difficult to conceive

of a warrantless home arrest that would not be unreasonable under the Fourth Amendment when the underlying offense is extremely minor." ***Id.*** The Court then explained that, because the officers were unaware of the defendant's prior OWI conviction when they entered his house, "[i]t must be assumed, therefore, that at the time of the arrest the police were acting as if they were investigating" a first-offense OWI. ***Id.*** at 746 n.6, 754. The Court concluded,

> even assuming, … the underlying facts would support a finding of exigent circumstance, …[t]he State of Wisconsin has chosen to classify the first offense for driving while intoxicated as a noncriminal, civil forfeiture offense for which no imprisonment is possible. … Given this expression of the State's interest, a warrantless home arrest cannot be upheld simply because evidence of the petitioner's blood-alcohol level might have dissipated while the police obtained a warrant.

***Id.*** at 754.

¶35 ***Larson*** presented the same factual situation as ***Welsh***. The officer entered the defendant's house without any knowledge of the defendant's prior OWI conviction. ***Larson***, 266 Wis. 2d 236, ¶¶15, 19 n.4. Therefore, "we [were] constrained to say that when the officer knocked on Larson's door, he was investigating a nonjailable traffic incident." ***Id.***, ¶19 n.4. We observed that an exigent circumstance may have existed because "without an immediate blood alcohol test, highly reliable and persuasive evidence facilitating the State's proof of Larson's alleged [OWI] violation would be destroyed." ***Id.***, ¶22. However, we concluded, "as expressed in ***Welsh***, a warrantless home arrest cannot be upheld simply because evidence of Larson's blood alcohol level might have dissipated while the police obtained a warrant." ***Larson***, 266 Wis. 2d 236, ¶22. We noted that, had the officer had knowledge of the defendant's prior OWI conviction, "this might be a different case." ***Id.***, ¶19 n.4.

¶36 In this case, unlike ***Welsh*** and ***Larson***, when officer Kelley knocked on Vanden Heuvel's door, he knew from dispatch that Vanden Heuvel had two prior OWI convictions. Therefore, contrary to Vanden Heuvel's assertion, ***Larson*** is not dispositive. Rather, as explained by our supreme court in ***Ferguson***, 317 Wis. 2d 586, ¶25, ***Welsh*** holds that "the extent to which law enforcement is permitted to rely on exigent circumstances for a warrantless entry of a home has a relationship to the seriousness of the offense." The ***Ferguson*** court concluded, "courts, in evaluating whether a warrantless entry is justified by exigent circumstances, should consider whether the underlying offense is a jailable or nonjailable offense[.]" ***Ferguson***, 317 Wis. 2d 586, ¶29.

¶37 Kelley knew he was investigating a jailable OWI offense. However, he never testified he was concerned about the need for an immediate blood draw due to the dissipation of alcohol. Instead, the circuit court independently determined Kelley was permitted to rely on the exigent circumstance of alcohol dissipation causing the destruction of evidence to justify his warrantless entry. We therefore consider whether the dissipation of alcohol in the bloodstream constituted a sufficient exigency in this case.

¶38 Vanden Heuvel argues the exigency is not sufficient because the circuit court's exigency determination was made without any supporting evidence. He asserts nothing shows Kelley was concerned with the dissipation of alcohol when he entered the house. Vanden Heuvel emphasizes that, after entering the house, Kelley continued to insist he needed information for the accident report and that Vanden Heuvel should return to the accident scene with him. Vanden Heuvel also notes that, after he was arrested, Kelley first took him to the jail instead of the hospital for a blood draw.

¶39 However, it is of no consequence that Kelley did not testify he was subjectively motivated by the dissipation of alcohol in the bloodstream or that his post-entry actions do not show he was subjectively concerned with the dissipation of alcohol in the bloodstream. Our exigent circumstance inquiry is an objective one taken from the standpoint of what a reasonable officer would know at the time of entry. ***State v. Robinson***, 2010 WI 80, ¶31, 327 Wis. 2d 302, 786 N.W.2d 463. We must determine "[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 or risk destruction of evidence or greatly enhance the likelihood of the suspect's escape.'" ***State v. Richter***, 2000 WI 58, ¶30, 235 Wis. 2d 524, 612 N.W.2d 29 (modification in original) (*quoting* ***State v. Smith***, 131 Wis. 2d 220, 230, 388 N.W.2d 601 (1986)).

¶40 When we review what officer Kelley objectively knew at the moment of entry, we agree with Vanden Heuvel that the circuit court's exigency determination was made without supporting evidence. "The State bears the burden of proving the existence of exigent circumstances." ***Id.***, ¶29. On appeal, the State does not address Vanden Heuvel's lack of evidence argument. It asserts only that it agrees with the circuit court's determination that the dissipation of alcohol in Vanden Heuvel's bloodstream constituted a sufficient exigency. However, the State has not explained why the dissipation of alcohol in this case constituted a sufficient exigency such that it would justify Kelley's warrantless entry. Although we recognize that alcohol naturally dissipates from the bloodstream, we also observe that test results from blood draws that occur within three hours of any allegedly driving are generally admissible and constitute prima facie evidence of intoxication. *See* WIS. STAT. § 343.305(5)(d) ("[R]esults of a test administered in accordance with this section are admissible on the issue of

whether the person was under the influence of an intoxicant .... Test results shall be given the effect required under s. 885.235."); *see also* WIS. STAT. § 885.235(1g) (Test results are admissible "if ... taken within 3 hours after the event to be proved[;]" the results are prima facie evidence the person was under the influence of an intoxicant.). The State has not pointed to any objective facts that indicate time was of the essence when Kelley entered the house. The record does not reveal how much time it took Kelley to find Vanden Heuvel, how much time it would have taken to obtain a warrant, or how much time it would have taken to travel and obtain a blood draw at the hospital.

¶41 Additionally, there was no evidence that Kelley entered the house because he was concerned for Vanden Heuvel's life or safety. Before Kelley entered the house, Vanden Heuvel confirmed he was in the accident and told Kelley he was not injured. There was also no evidence that Vanden Heuvel was attempting to consume more alcohol in order to destroy evidence of his blood alcohol concentration at the time of driving. Further, any claim of "hot pursuit" would be unconvincing because there was no immediate or continuous pursuit of Vanden Heuvel from the scene of the crime. *See* ***Welsh***, 466 U.S. at 753. Finally, because Vanden Heuvel had already arrived home, and had left his vehicle at the accident scene, there was little threat to public safety. *See* ***id.***

¶42 Based on the lack of objective facts in the record, we cannot conclude Kelley entered Vanden Heuvel's house because he "reasonably believe[d] that delay in procuring a warrant would gravely endanger life or risk destruction of evidence or greatly enhance the likelihood of the suspect's escape." ***Richter***, 235 Wis. 2d 524, ¶30 (quotation omitted). We conclude that Kelley's entry into Vanden Heuvel's house was not justified by an exigent circumstance and, therefore, Kelley's entry into the house was illegal. As a result, the circuit

court erred by denying Vanden Heuvel's suppression motion. We reverse and remand for further proceedings consistent with this opinion.

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

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)4.