COURT OF APPEALS
DECISION
DATED AND FILED

June 25, 2014

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2013AP1711-CR **Cir. Ct. No. 2012CF957**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

RONALD A. SALLMANN,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Waukesha County: KATHRYN W. FOSTER, Judge. *Affirmed*.

Before Brown, C.J., Neubauer, P.J., and Reilly, J.

¶1 PER CURIAM. Ronald Sallmann appeals a judgment convicting him of second-degree recklessly endangering safety and aggravated battery/intent

to cause bodily harm. He contends that his arrest should have been quashed and evidence suppressed because the arrest and search were carried out without a warrant. As exigent circumstances justified the warrantless arrest, we affirm.

¶2 The facts are taken from testimony at the suppression hearing. Police responded to the Sallmann residence and the hospital to assess a reported domestic violence situation. Upon learning that Sallmann had barricaded himself in the house with weapons, the SWAT team replaced the responding police officers. Police at the hospital and on the scene shared information as they learned it to piece together what had occurred. Sallmann's wife returned from work to find him "not in his right state of mind" due to a likely mix of alcohol and prescription drugs. As she tried to leave, he attacked her and cut her face with a knife. They learned that Sallmann had a history of alcoholism and depression, that he had had an emergency WIS. STAT. ch. 51 (2011-12)[1] detention the year before, that he had access to many weapons in the house, and that she had "serious concern that he would continue to be volatile or violent." This information was passed to the command post on the scene and to the SWAT team officers.

¶3 Police tried multiple tactics to get Sallmann to come out of the house: they called him on the phone, spoke through loudspeakers, told him he was under arrest, opened the door from the garage to the house so that he could better hear their orders, used powerful lights and a noise-flash diversionary device, and broke windows with baton rounds. Sallmann continued to defy the officers' demands and went into the inner rooms of the house where he was not visible to them. When finally, and apparently unarmed, Sallmann came into view, police

[1] All references to the Wisconsin Statutes are to the 2011-12 version unless noted.

decided to act. They first dispatched a canine unit, then entered the house themselves. Sallmann physically resisted the officers and the dog and had to be "Tased" twice to be subdued. Sallmann was arrested and the residence was searched. No warrant had been obtained during the six-hour standoff.

¶4 Sallmann moved to quash the arrest and suppress the evidence found during the search, claiming there were no exigent circumstances to permit the warrantless arrest and search. The court denied the motion after a hearing. Sallmann pled no contest to second-degree recklessly endangering safety and aggravated battery/intent to cause bodily harm. He now appeals.

¶5 Both the federal and Wisconsin constitutions protect citizens from unreasonable searches. *See* U.S. CONST., amend. IV.; WIS. CONST., art. I, § 11. When we review a circuit court's ruling on a motion to quash arrest and suppress evidence, we uphold the circuit court's findings of fact unless they are clearly erroneous. *See* ***State v. Smiter***, 2011 WI App 15, ¶9, 331 Wis. 2d 431, 793 N.W.2d 920. The application of those facts to the constitutional issues at hand is a question of law and subject to de novo review. *See* ***State v. Hughes***, 2000 WI 24, ¶15, 233 Wis. 2d 280, 607 N.W.2d 621. The ultimate standard is reasonableness. *See* ***State v. Pinkard***, 2010 WI 81, ¶13, 327 Wis. 2d 346, 785 N.W.2d 592.

¶6 It is reasonable for police to enter a home and make an arrest without a warrant if there is both probable cause and an exception to the warrant requirement, such as exigent circumstances or consent. ***State v. Tomlinson***, 2002 WI 91, ¶20, 254 Wis. 2d 502, 648 N.W.2d 367. Police have probable cause to arrest if they have information that would lead a reasonable police officer to believe that the defendant probably committed a crime. ***State v. Felix***, 2012 WI 36, ¶28, 339 Wis. 2d 670, 811 N.W.2d 775. This domestic violence event

supported a reasonable belief that Sallmann probably had committed a crime and, therefore, gave police probable cause to arrest. *See also* WIS. STAT. § 968.075(2) (arrest mandatory if police reasonably believe person committed domestic abuse and there is evidence of physical injury to victim).

¶7 The circuit court found that the consent to enter given by Sallmann's hospitalized wife served as the exception necessary to justify the warrantless entry. The State concedes, however, and we agree, that on these facts the wife's consent was insufficient. "[A] 'physically present inhabitant's express refusal of consent to a police search is dispositive as to him [or her], regardless of the consent of a fellow occupant.'" ***State v. St. Martin***, 2011 WI 44, ¶19, 334 Wis. 2d 290, 800 N.W.2d 858 (citation omitted).

¶8 Without consent, exigent circumstances allow for a warrantless entry into a residence. ***State v. Richter***, 2000 WI 58, ¶¶28-29, 235 Wis. 2d 524, 612 N.W.2d 29. "[W]e weigh the urgency of the officer[s'] need to enter against the time needed to obtain a warrant." ***Id.***, ¶28. One of the four established categories of exigent circumstances is a threat to the safety of a suspect or others. ***State v. Robinson***, 2010 WI 80, ¶30, 327 Wis. 2d 302, 786 N.W.2d 463. The operative question is whether the police, under the circumstances known to them at the time, reasonably believed that the delay in procuring a warrant would gravely endanger Sallmann's, his neighbors', or their own lives. *See* ***Richter***, 235 Wis. 2d 524, ¶30. We agree with the circuit court that the answer in this case is yes.

¶9 The circuit court found that "the person who [knew] the defendant the best[,] … his wife of 40 years," believed Sallmann was displaying "serious mental health issues" and "unusual behavior" that led to an escalating physical confrontation, such that, when she tried to escape, he chased her with a knife,

inflicting a "massive cut" that was not on "the low end" of "the continuum of domestic violence events." The court found that while the change in the scene at the Sallmann residence from crisis to tactical intervention was "for the sole purpose of effectuating [the] arrest of the defendant without resulting in harm to … himself or to the many officers on the scene," it also could serve to "put pressure on" one in Sallmann's "altered state." It found that he was aware that he had seriously injured his wife and that he was under arrest, yet he "intentionally secreted himself in the house" with access to numerous weapons, creating a "dangerous situation" for the officers and for any neighbors who had ignored evacuation orders and made "[t]he possibility of … taking his own life … anything but remote." The record supports these findings.

¶10 Sallmann contends that the police who entered did not know all of these facts when they entered his house. The record clearly shows, however, and the circuit court also found, that police on-site and at the hospital had been in frequent communication with one another. If the arresting officer acts in good faith, he or she may rely on the collective knowledge of the officer's entire unit. *See* ***State v. Mabra***, 61 Wis. 2d 613, 625-26, 213 N.W.2d 545 (1974).

¶11 We conclude the officers' warrantless entry was justified by exigent circumstances. Probable cause to arrest existed from the outset. Sallmann slashed his wife's face down to her jawbone, then barricaded himself with access to numerous weapons. "[T]he gravity of the underlying offense is 'an important factor to be considered when determining whether any exigency exists.'" ***State v. Ferguson***, 2009 WI 50, ¶27, 317 Wis. 2d 586, 767 N.W.2d 187 (citation omitted). Under the circumstances known at the time, a reasonable police officer could believe that Sallmann—depressed, intoxicated, defiant, potentially armed, and demonstrably violent—posed an unpredictable, yet very real, danger to himself

and/or others. As the circuit court noted, maintaining contact with Sallmann and maintaining the perimeter in this tense situation were "in the fore"; procuring a warrant was not. That Sallmann's belligerence caused the holdout to last six hours does not diminish the exigency of the circumstances.

¶12 Finally, Sallmann does not address in his brief-in-chief why the search still would be illegal if, as has come to pass, the entry and arrest were held to be legal. In his reply brief, he says only that he "argues both the arrest and the search and seizure are illegal—which still does not explain what makes the search and seizure illegal if the entry and arrest were not. The State cannot possibly defend against such an undeveloped argument, *see* ***State v. Freer***, 2010 WI App 9, ¶26 n.5, 323 Wis. 2d 29, 779 N.W.2d 12 (2009), and this court need not address inadequately briefed issues, *see* ***Roehl v. American Family Mut. Ins. Co.***, 222 Wis. 2d 136, 149, 585 N.W.2d 893 (Ct. App. 1998).

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.