

**COURT OF APPEALS
DECISION
DATED AND FILED**

July 3, 2012

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2012AP223-CR

Cir. Ct. No. 2010CM1610

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

GREGORY J. HOLUB,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Washington County: JAMES K. MUEHLBAUER, Judge. *Affirmed.*

¶1 GUNDRUM, J.¹ Gregory J. Holub appeals from a judgment of conviction for possession of drug paraphernalia, WIS. STAT. § 961.573(1).

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f) (2009-10). All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

Gregory² contends the deputy who found the paraphernalia, along with marijuana, exceeded the scope of the search warrant he executed when he searched the utility room where the contraband was found, a room he accessed from a bathroom attached to the bedroom specified in the warrant. We conclude that the warrant authorized the search of the utility room and therefore affirm.

¶2 The following facts were testified to by the only witness at the suppression hearing in this case, Washington County Deputy Sheriff Eric Essinger. Essinger responded to the residence at 1766 County Highway A, in the town of Farmington, for a “family trouble complaint” from Becky Holub. Becky told Essinger that she was in an argument with her daughter-in-law, Charveilla Holub. Becky owned the home, and her son Gregory and his wife Charveilla had recently moved in with their three children. Essinger and Becky went to the basement bedroom on the west side of the house to discuss her complaint. Becky showed Essinger an electric heater that she was concerned was in an unsafe place, at which point Essinger realized that he “was most likely not in Becky’s bedroom.” Essinger asked if they were in Charveilla’s bedroom, and when Becky said they were, Essinger left the bedroom and continued the conversation with Becky in Becky’s bedroom across the hall. While in Charveilla’s bedroom, Essinger smelled marijuana, observed what appeared to be three burned ends of marijuana cigarettes, and noticed a door to another room.

¶3 Essinger subsequently talked to Charveilla about the circumstances surrounding Becky’s complaint, as well as the odor of marijuana he had noticed in

² Because we reference Gregory Holub, Charveilla Holub, and Becky Holub throughout this decision, we will distinguish them by use of their first names.

her bedroom. Charveilla denied a request from Essinger for a consensual search of her bedroom that she shared with Gregory.

¶4 Essinger obtained a search warrant, which he executed at the residence. When he searched Charveilla and Gregory's bedroom, Essinger seized the burned marijuana cigarettes, a digital scale and rolling papers from within the bedroom itself. He also detected an odor of marijuana, which became stronger as he neared the open door he had noticed on his earlier visit. The door led to a bathroom, which Essinger entered. While in the bathroom, he observed another door which was open and led to a walk-in utility closet. The marijuana odor became stronger as he neared and entered the closet. There was only one doorway into the bathroom, which was from Gregory and Charveilla's bedroom, and one doorway into the utility closet, which was from the bathroom. Thus, the only way to access the bathroom and utility closet was through Gregory and Charveilla's bedroom. Essinger found marijuana and drug paraphernalia in the utility closet.

¶5 The State charged both Charveilla and Gregory with possession of marijuana and drug paraphernalia. Both moved to suppress the evidence seized from the utility closet on the grounds that Essinger exceeded the scope of the warrant in his execution of it. The circuit court held a combined hearing on the motions.

¶6 Relying on *State v. O'Brien*, 214 Wis. 2d 328, 572 N.W.2d 870 (Ct. App. 1997), *aff'd*, 223 Wis. 2d 303, 588 N.W.2d 8 (1999), the circuit court ruled

that the search warrant authorized the search of not only the bedroom but also the utility closet. Gregory challenges this ruling on appeal.³

¶7 On review, we uphold the circuit court’s findings of fact unless they are clearly erroneous. *Id.* at 335-36. Whether a search and seizure satisfies constitutional standards is a question of law we review de novo. *Id.* at 336. The search warrant in the present case reads as follows:

WHEREAS, Eric Essinger has this day complained to the said court upon oath and by affidavit that ... in and upon *certain premises* in the Town of Farmingham ... occupied by Charveilla Holub, *commonly described as 1766 County Highway A, and more particularly described as follows: the west side basement bedroom of 1766 Highway A*—a bi-level single-family residence on the north side of Highway A, with brown vertical wood siding, with dark brown trim, and the number “1766” affixed to a metal stake at the entrance to the driveway at 1766 Highway A, Town of Farmington, Washington County, Wisconsin, with small wooden deck located on the Southwest corner of the 2nd floor of the residence, and a sliding glass patio door located on the south wall of the lower level west bedroom, there are now located and concealed certain things, to-wit: tetrahydrocannabinols (“THC”), drug paraphernalia, contraband which are fruits of a crime, which were used in the commission of a crime and/or which may constitute evidence of a crime ... and prays that a search warrant be issued to search *said bedroom of said premises for said property*, including any locked boxes such as safes.

NOW, THEREFORE, in the name of the State of Wisconsin you are commanded to within 5 days *search the said premises for said things*, and if the same or any portion thereof are found, to safely keep the same, and return this warrant ... along with an inventory of any property taken (Emphasis added.)

¶8 The parties discuss *O’Brien* and other cases. We need not address those because we find the language of the warrant to be straightforward and in

³ Gregory does not challenge the validity of the warrant itself.

need of little analysis. The search actually *authorized* by the warrant, as identified in its second paragraph, was not limited to the “said bedroom of said premises.” Rather, the warrant more broadly authorized the search of “the said premises for said things,” namely marijuana and drug paraphernalia. The search authorization did not limit the deputy’s search authority to just the bedroom, since “the said bedroom of said premises” identifies the bedroom as an area within the broader premises, here the premises located at 1766 County Highway A. The references to the “west side basement bedroom of 1766 Highway A” and “the said bedroom of said premises” in the warrant do act to more specifically identify the areas Essinger sought to search; however, the actual search authorization granted broader authority to search “the said premises,” not just the bedroom. The court could have limited the search authorization in the second paragraph to “said bedroom of said premises,” but it did not. No one disputes, nor could anyone reasonably do so, that the utility closet searched by Essinger was part of “said premises” at 1766 County Highway A. Thus, Essinger’s search of the utility closet was within the scope of the warrant.

By the Court.—Judgment affirmed.

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