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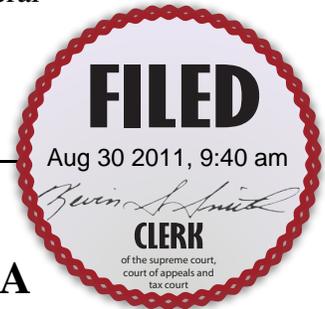
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**IN THE  
COURT OF APPEALS OF INDIANA**

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JENNIFER FULTON, )  
 )  
Appellant-Defendant, )  
 )  
vs. )  
 )  
STATE OF INDIANA, )  
 )  
Appellee-Plaintiff. )

No. 27A02-1101-CR-132

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APPEAL FROM THE GRANT CIRCUIT COURT  
The Honorable Mark Spitzer, Judge  
Cause No. 27C01-0901-FD-24

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**August 30, 2011**

**MEMORANDUM DECISION – NOT FOR PUBLICATION**

**RILEY, Judge**

## STATEMENT OF THE CASE

Appellant-Defendant, Jennifer Fulton (Fulton), appeals her convictions for Count I, possession of cocaine, Ind. Code § 35-48-4-6(a), a Class D felony; Count II, battery, I.C. § 35-42-2-1(a)(1)(B), a Class A misdemeanor; and Count III, resisting law enforcement, I.C. § 35-44-3-3(a)(1), a Class A misdemeanor.

We affirm.

## ISSUE

Fulton raises one issue for our review, which we restate as the following: Whether the trial court abused its discretion by admitting evidence obtained pursuant to a warrantless entry.

## FACTS AND PROCEDURAL HISTORY

On January 8, 2009, Officer Ross Allen (Officer Allen) of the Marion Police Department took part in a controlled drug buy from Tristen Williams (Williams) using a confidential informant. Based on information gained at this drug buy, police officers executed a search warrant of Williams' home, at which Williams was not present. Later that night, Officer Allen received a call from the confidential informant, informing him that Williams was currently located at Apartment #208 of the Dan Mer Apartments in Marion, Indiana. Detective Mark Stefanatos (Detective Stefanatos) also received an anonymous tip around the same time, informing him that Williams was in Apartment #208 along with others who were smoking cocaine inside the apartment. Based on these two tips and the fact that

Apartment #208 was known to the Officers as a “crack house,” both Officers went to see if Williams was there.

When the officers arrived at the door of the apartment, they smelled what was thought to be “cigarette smoke.” (Transcript p. 44). Officer Allen knocked on the door and announced that they were police. Immediately after knocking, the Officers heard a large amount of commotion, scurrying around, and movement inside the apartment. Also, they heard someone say, “Flush that shit.” (Tr. p. 45). Officer Allen, believing evidence was being destroyed, hit the door heavily once in an attempt to enter just as a resident opened the door from the inside.

The Officers entered to see Fulton running out of the bathroom. Officer Allen entered the bathroom in time to see a plastic baggy disappearing down the flushing toilet. Fulton then quickly sat down on the floor, and Detective Stefanatos saw Fulton, who was very nervous, move her arm under a nearby blanket as if trying to hide something. He looked under the blanket and found three crack pipes and a wadded-up piece of tissue paper containing a small rock of cocaine.

Officer Allen demanded that Fulton stand up, and when he attempted to handcuff her, she began violently swinging her elbows back and forth to prevent him from doing so. Fulton also kicked Officer Allen in the groin. Officer Allen fell to the ground on top of Fulton, breaking her arm.

On January 22, 2009, the State filed an Information charging Fulton with Count I, possession of cocaine, Ind. Code § 35-48-4-6(a), a Class D felony; Count II, battery, I.C. §

35-42-2-1(a)(1)(B), a Class A misdemeanor; and Count III, resisting law enforcement, I.C. § 35-44-3-3(a)(1), a Class A misdemeanor. On September 29, 2010, a bench trial was conducted where Fulton was tried *in absentia*. Fulton objected at trial to the admission of the evidence found within the apartment on the ground that exigent circumstances were not present to justify the warrantless entry. On October 22, 2010, the trial court ruled the entry was valid due to the Officers' reasonable belief that drugs were being destroyed inside and found Fulton guilty on all three Counts. On December 17, 2010, the trial court imposed concurrent sentences of two years for the possession of cocaine conviction and one year each on the battery and resisting law enforcement convictions.

Fulton now appeals. Additional facts will be provided as necessary.

#### DISCUSSION AND DECISION

Fulton contends that the trial court abused its discretion by admitting the evidence found inside the apartment. Specifically, she claims that no exigent circumstances were present to justify the Officers' warrantless entry. A trial court has broad discretion when ruling on the admissibility of evidence, and we will only overturn its ruling when it is shown the trial court has abused its discretion. *Ware v. State*, 782 N.E.2d 478, 481 (Ind. Ct. App. 2003). We review a trial court's decision to admit or exclude evidence for an abuse of discretion. *Payne v. State*, 854 N.E.2d 7, 13 (Ind. Ct. App. 2006). An abuse of discretion occurs if a trial court's decision is clearly against the logic and effect of the facts and circumstances before the court. *Id.*

The Fourth Amendment to the United States Constitution reads in part: “the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated.” U.S. Const. amend. IV. The purpose of this provision is to protect citizens from State intrusion into their homes. *Ware*, 782 N.E.2d at 481. Searches and seizures inside the home without prior approval by a judge or magistrate are *per se* unreasonable under the Fourth Amendment, subject only to a few specifically established and well-delineated exceptions. *Id.* One well-established exception is when exigent circumstances exist. *Id.* One exigent circumstance that permits the State to enter a home is when a government agent believes evidence may be removed or destroyed before a warrant can be obtained. *Id.* This exigent circumstance calls for the police officer to have an objective and reasonable fear that evidence is about to be destroyed. *Id.* However, the fact that narcotics are involved does not, standing alone, amount to exigent circumstances justifying a warrantless search. *Id.* The burden is on the State to demonstrate exigent circumstances to overcome the presumption of unreasonableness that accompanies all warrantless home entries. *Id.*

Fulton relies on *Ware* to make her claim that the circumstances which confronted Officer Allen and Detective Stefanatos did not rise to the level of exigent circumstances previously recognized by this court. We disagree.

In *Ware*, an officer smelled marijuana on his way to the door of the apartment in question. *Id.* at 480. The officer then knocked on the door, and the defendant answered. *Id.* When asked for identification, the defendant shut the door and took three minutes to return.

*Id.* During those three minutes, the officer said he heard the defendant casually walking around the house. *Id.* After the defendant handed the officer his identification card, the officer proceeded to enter the house without a warrant or consent to “secure” the evidence of the marijuana he had smelled. *Id.* We held that these circumstances did not create an objective and reasonable fear of the marijuana being destroyed, and the warrantless entry was not justified by that exigent circumstance. *Id.* at 481.

Unlike *Ware*, the surrounding circumstances of this case did create an objective and reasonable belief that destruction of evidence was imminent. The Officers had received information from two separate sources that Williams, a known drug dealer, was inside a particular apartment smoking cocaine. The Officers knew that Williams was not at his own residence, because they had just executed a search warrant there. Apartment #208 was known to Officers of the Marion Police Department as a “crack house,” where people frequently gathered to smoke cocaine, and the Officers smelled smoke outside the door when they arrived. When the Officers arrived, knocked on the door, and lawfully announced their presence, they heard the commotion, scurrying around, and movement inside the apartment pick up considerably. Along with the increased commotion, the Officers heard someone yell “Flush that shit.” (Tr. p. 45). The combined circumstances of the status of the apartment as a known crack house, the smell of smoke, the greatly increased commotion, and someone yelling to “Flush that shit” gave the officers an objective and reasonable belief that illegal materials were present and that they were about to be destroyed.

However, Fulton states that allowing entries based on exigent circumstances after police officers knock and announce their presence would lead to “fishing expeditions” for evidence procurement by law enforcement. While we recognize this as a potential concern, the United States Supreme Court has set out a test for when police officers’ actions create the exigency they rely on. The exigent circumstances rule applies when law enforcement has not violated or threatened to violate the Fourth Amendment prior to the exigency arising. *Kentucky v. King*, 131 S. Ct. 1849, 1862 (2011). Specifically, in *King*, the Supreme Court determined that simply showing up and knocking on a door is not a violation or a threat of a violation of the Fourth Amendment because at this point the occupant still has the right to decide not to open the door and whether to speak to whoever is at their door. *Id.* By simply showing up at the doorstep of Apartment #208, the officers were seeking a lawful, consent-based encounter with anyone who might know the whereabouts of Williams, and there is no evidence showing that they violated or threatened to violate the Fourth Amendment in this case. Officer Allen simply knocked and announced himself as a police officer, and *then* the exigencies arose. Therefore, all of the actions taken by both Officer Allen and Detective Stefanatos to enter the residence and obtain evidence were reasonable because they had not

violated or threatened to violate the Fourth Amendment prior to the exigencies arising.

CONCLUSION

Based on the foregoing, we conclude that the trial court did not abuse its discretion by admitting the evidence obtained after the Officers' warrantless entry.

Affirmed.

NAJAM, J., and, MAY, J., concur.