

**COURT OF APPEALS
DECISION
DATED AND FILED**

August 20, 2003

Cornelia G. Clark
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. 02-3217-CR

Cir. Ct. No. 02-CT-388

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

SCOTT A. DEFERE,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Manitowoc County: DARRYL W. DEETS, Judge. *Affirmed.*

¶1 BROWN, J.¹ Scott A. Defere appeals from a judgment of conviction for operating a motor vehicle while intoxicated (OWI), third offense, contrary to WIS. STAT. § 346.63(1)(a). The issue is whether officers were justified in entering

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(c) (2001-02). All references to the Wisconsin Statutes are to the 2001-02 version unless otherwise noted.

his home without a warrant due to emergency circumstances. The trial court found that the officers were motivated by a perceived need to render immediate aid or assistance to him. That finding is not clearly erroneous. Correlatively, we hold that, from an objective standpoint, a reasonable person under the circumstances would have thought an emergency existed. Therefore, from a subjective and objective viewpoint, police entry into the home was justified by emergency circumstances and we affirm the judgment of conviction.

¶2 At a hearing on Defere's pretrial motion to suppress, a patrol officer testified that at 1:05 a.m. on June 3, 2002, he received a report of a possible hit-and-run accident involving an unattended vehicle.² The officer told how he spoke with a witness to the accident who informed him that the offending vehicle was a black Chevy S10 truck and described the driver of the vehicle as a larger male with a shaved or bald head. Following his conversation with the witness, the officer continued to circulate the area of the accident, at which point he made contact with two more witnesses who informed him that they had heard a loud crash outside of their residence and had gotten into their car and followed a vehicle to another residence located in the area. The witnesses told him that the vehicle they followed was a black Chevy S10 truck with heavy front-end damage and that upon arriving at the residence, a larger male exited the vehicle and stumbled into the home.

¶3 The officer testified that he and three other officers, one of them a sergeant with the department, then converged upon the house. The officer stated

² The officer testified that he later learned that there were two or more vehicles that were involved.

that he observed the Chevy S10 truck parked near the residence the driver purportedly entered. He testified that he noticed severe front-end damage to the truck and the engine was smoking. He also observed that the driver's side of the windshield was cracked, the rearview mirror was knocked off and lying on the passenger side floor and the vehicle was improperly parked. He testified that the crack in the windshield looked like a spider web and in his experience this type of crack occurs as a result of a head hitting the windshield. He also observed "little chunks of hair" in the cracked windshield. Based on these observations and his past experience responding to accidents, the officer testified that he believed that a head had hit the windshield and was concerned that the driver of the vehicle had possibly sustained injuries.

¶4 The other officers also testified and confirmed the arresting officer's description of the vehicle, noting in addition that the steering column had been damaged. Given their own training and experience with motor vehicle accidents, these officers also shared the concern that the driver of the vehicle might have been hurt.

¶5 The arresting officer testified that he and the other officers then proceeded to look inside the residence. The arresting officer testified that two of the officers informed him that while looking through a window, they had observed a larger male with blood seeping out of his head who appeared to be stumbling around inside of the residence. According to the arresting officer, the officers then proceeded to knock on the door several times, but failed to elicit a response. The officer testified that after a few minutes of knocking on the door and waiting, no lights came on and no additional movement was observed inside the residence.

¶6 The sergeant testified that at that point, based on his own observations of the vehicle and the information provided to him by the other officers, he gave the officers the go ahead to enter the residence in order to check on the welfare of the driver of the vehicle. The officers then entered the residence and, after further investigation, arrested Defere.

¶7 After hearing the testimony of the responding officers, the trial court denied Defere's motion to suppress, concluding that the emergency exception to the warrant requirement applied to the facts of this case. Defere subsequently entered a no contest plea.

¶8 On appeal, Defere argues that the facts do not support an emergency rule exception to the Fourth Amendment search warrant requirement and therefore his motion to suppress was improperly denied. The Fourth Amendment to the United States Constitution prohibits unreasonable searches and seizures. *State v. Horngren*, 2000 WI App 177, ¶8, 238 Wis. 2d 347, 617 N.W.2d 508. Warrantless searches are per se unreasonable under the Fourth Amendment with certain exceptions, one of which is the emergency rule. *State v. Rome*, 2000 WI App 243, ¶¶10-11, 239 Wis. 2d 491, 620 N.W.2d 225. The State bears the burden of proving that the emergency rule exception applies. *See id.*, ¶11. The emergency rule exception to the warrant requirement is based on the concept that "the preservation of human life is paramount to the right of privacy protected by the fourth amendment." *State v. Boggess*, 115 Wis. 2d 443, 450, 340 N.W.2d 516 (1983).

¶9 In order for the emergency rule to apply, the facts must satisfy a two-part standard: first, the searching officer must actually be motivated by a perceived need to render aid or assistance; and second, the facts known to the

officer must be such that a reasonable person in those circumstances would think an emergency existed. *Id.* at 450-51. In other words, the officer must subjectively observe a need to provide immediate assistance and intend to do so, and the facts viewed objectively must support the conclusion that the officer had probable cause to believe there was an emergency and immediate action was necessary. *Rome*, 239 Wis. 2d 491, ¶13.

¶10 When analyzing the objective component, the inquiry is whether specific facts known to the officer, taken together with the rational inferences from those facts, reasonably warrant the intrusion into an area in which a person has a reasonable expectation of privacy. *Id.*, ¶16. This inquiry is to be made in light of “the circumstances then confronting the officer, including his or her need for a prompt evaluation of possibly ambiguous information concerning potentially serious consequences.” *Id.*

¶11 When reviewing a trial court’s order on a suppression motion, the findings of fact will be sustained unless they are clearly erroneous. *See* WIS. STAT. § 805.17(2); *see also State v. Secrist*, 224 Wis. 2d 201, 207, 589 N.W.2d 387 (1999). However, we will independently examine the circumstances of the case to determine whether the facts meet the constitutional requirement of reasonableness. *Rome*, 239 Wis. 2d 491, ¶14.

¶12 The officers’ perceptions that Defere might require aid or assistance was supported by their own testimony. The three officers who testified believed that the driver of the vehicle had been injured and entered the residence out of concern for his welfare. It is evident from the record that the trial court accepted their testimony as credible.

¶13 Furthermore, the reasonableness of the police officers' perceptions of an emergency is supported by the facts as they knew them at the time they entered Defere's home and the rational inferences that can be drawn from those facts. Prior to entering the residence, the officers had observed a severely damaged vehicle with chunks of hair and a spider web shaped crack in the windshield, suggesting to the officers that the driver of the vehicle had hit his head on the windshield, causing injury. Additionally, the officers observed a man inside the home stumbling around and bleeding from his forehead and when the officers knocked on the front door, they failed to elicit any response. As Defere observes, in order for the emergency exception to apply, there must be clear facts demonstrating that someone in the home needs immediate assistance; however, the situation need not necessarily involve a life-or-death circumstance in order to constitute an emergency within the emergency rule. *See id.*, ¶¶13, 19. Based on the observations of the police, a reasonable person could believe that the individual inside the residence had sustained serious injuries as a result of the accident and was in need of immediate medical attention.

¶14 Defere contends that since the citizen witnesses did not inform the officers that they observed injuries to Defere, it was speculative for the officers to assume injury. We disagree. Based upon the experience of the officers, they could reasonably infer that the driver had hit his head on the windshield and that the impact was enough to cause the windshield to crack. Further, the officers had a report that the man had stumbled his way into the house. This is consistent with a head injury. Moreover, Defere was observed through a window of his home to be bleeding from his head and to be stumbling around the house. These facts, taken together, raise more than mere speculation; they raise a reasonable inference that Defere was injured and needed assistance.

¶15 Defere also argues that the emergency exception was used as a pretext to barge into his home without a warrant and arrest him. He reasons that, upon entering, the officers' actions were consistent with arrest, not aid. Defere contends that the officers threw him to the floor, put a double set of handcuffs on him and took him out of the house. He contends that they did not call for an ambulance. Once at the station, the officers used seven people to hold him down while blood was being extracted. Defere argues that the postentry conduct of the officers belies their stated intent to render aid.

¶16 The record tells a different story. Upon entry, the officers found Defere standing up in a bedroom of the residence. The officers explained to him why they were there, but Defere was uncooperative from the start. He was asked if he wanted medical attention, but he did not respond. Instead, he told the officers that they had no right to be there. When asked by the prosecutor whether Defere was coherent or incoherent, the officer replied, "somewhere in between." The officer then testified that there was evidently some heightened tension from Defere. In response, the officer told Defere that they would like to see him get medical attention and they were going to get an ambulance on the scene. Defere continued to be uncooperative and the officers then put Defere in custody. Further, contrary to Defere's contention in his brief, a rescue squad was ordered to the scene. When it arrived, Defere was taken from the squad car to the rescue squad, but Defere was uncooperative with rescue personnel. Yet, he was transported to the hospital via rescue squad, not a police squad. At the hospital, Defere's blood sample was not obtained until medical clearance was given, "a good hour to two hours" later. Even after the draw, where Defere was uncooperative, he was not immediately taken to the police station. Rather, the

doctor was still concerned about his medical condition and the officers waited until clearance to leave was obtained.

¶17 The above facts show that the postentry conduct of the police was entirely consistent with their perceived need to render aid. Any forcible police action in putting Defere in custody was rendered necessary by Defere's obstreperous conduct and is not probative to show a pretext for entering the house in order to arrest Defere for OWI. Defere's argument is rejected.

¶18 We, therefore, conclude that the trial court correctly ruled that the police intrusion into Defere's home was justified under the emergency doctrine. We hold the trial court properly denied Defere's motion to suppress.

By the Court.—Judgment affirmed.

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

