

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

September 19, 1996

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

NOTICE

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

No. 95-2314-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

ROBERT HOVICK,

Defendant-Appellant.

APPEAL from a judgment of the circuit court for Wood County:
JAMES J. MASON, Judge. *Affirmed.*

Before Eich, C.J., Dykman, P.J., and Robert D. Sundby, Reserve
Judge.

PER CURIAM. Robert Hovick appeals from a judgment convicting him of manufacturing marijuana. Hovick pled no contest to the charge after the trial court denied his motion to suppress the evidence of his crime. The sole issue is whether the trial court properly denied the suppression motion, and we affirm on that issue.

A taxicab driver took a call from an elderly woman to pick her up in two hours at 504 Cherry Street in Marshfield. The driver was not aware of a North Cherry Street and asked her if she meant South Cherry Street. She answered yes. When the driver arrived at the specified time, the premises appeared to be a residence, with the front door slightly ajar. No one responded to his honking or answered the door when he knocked and called out. He investigated further and saw a light behind a door when he peered through a window at the back. After a few minutes he called the police to report that an elderly lady might need assistance at that address.

When two police officers arrived, he told one of them that the woman had appeared confused to him when he spoke to her, that no one had responded to his knocking, that he had seen a light in what he believed to be a bathroom and that the woman had possibly fallen and injured herself. Based on this information, the police announced themselves and entered the unlocked premises. After passing through several rooms that did not appear residential in nature, they discovered a marijuana plant. A subsequent search under warrant discovered additional drug paraphernalia in what turned out to be Hovick's business premises. A search of his home under warrant produced additional incriminating evidence. The cab driver eventually learned that there was a 504 North Cherry Street, and that was where the woman lived who had requested the pick up.

Hovick moved to suppress the evidence seized both from the business premises and his home on the grounds that all of it derived from the original warrantless entry and search of his business. The trial court denied the motion on the grounds that the police entry was justified under the emergency exception to the Fourth Amendment warrant requirement.

Neither the Fourth Amendment nor the Wisconsin Constitution bars police from making warrantless entries into buildings if they reasonably believe that a person within needs assistance. *La Fornier v. State*, 91 Wis.2d 61, 67, 280 N.W.2d 746, 749 (1979). A search made subsequent to a purported emergency entry is valid only if the searching officer is actually motivated by a perceived need to render aid, and the officer's perception that an emergency exists is that of a reasonable person under the circumstances. *State v. Dunn*, 158 Wis.2d 138, 144, 462 N.W.2d 538, 540-41 (Ct. App. 1990). In reviewing a denial of a suppression motion, we will affirm the trial court's findings of historical fact

unless they are against the great weight and clear preponderance of the evidence. *State v. Jackson*, 147 Wis.2d 824, 829, 434 N.W.2d 386, 388 (1989). Whether, given those findings, the search satisfied the constitutional requirement of reasonableness is a question of law. *Id.*

The trial court found that the officers' sole motive in entering the premises was to aid a person they believed was elderly and confused and not answering the door. That finding is not clearly erroneous. There is no evidence that suggested any other motive for entering and searching the premises, and Hovick concedes the point.

However, Hovick contends that a reasonable person in the position of the officers would not have entered the premises without additional information. Furthermore, upon entry into the premises, a reasonable person would have stopped searching before the marijuana plant was discovered because they would have realized that the building contained a business and not an elderly woman's residence.

We disagree with those contentions. The officers had no reason to doubt the reliability of the information the cab driver provided to the dispatcher and to one of them directly, even though he was mistaken. A reasonable person would have considered a search to be an appropriate response to the driver's plausible report of a person in jeopardy.

Additionally, the officers reasonably continued the search even though the premises obviously contained a business. They did not know, without further search, whether the premises also contained the woman's residence. Nor did they know if the woman had called for pick up at her residence. All they had was a plausible report that an elderly woman called for a ride from this address, but did not respond to their and the driver's calls and knockings at the specified time. A reasonable person would have continued the search, once inside, to all parts of the premises.

By the Court.—Judgment affirmed.

This opinion will not be published. See RULE 809.23(1)(b)5, STATS.