COURT OF APPEALS
DECISION
DATED AND FILED

October 14, 1997

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

No. 96-2909-CR

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

AHMAD ABDULLAH,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Milwaukee County: JEFFREY A. KREMERS, Judge. *Affirmed.*

Before Wedemeyer, P.J., Fine and Schudson, JJ.

PER CURIAM. Ahmad Abdullah appeals from a judgment convicting him of one count of possession of a controlled substance-THC with intent to deliver. *See* §§ 161.14(4)(t) and 161.41(1m)(h)(1), STATS. Abdullah challenges the warrantless search of his home. We affirm.

On the night of January 2, 1996, Milwaukee County police officers were dispatched to the scene of a shooting. When Officer Jason Smith arrived, Abdullah was in an ambulance, a victim of the shooting. Officer Smith was advised by other officers on the scene that Abdullah initially told them that he had been shot in the rear hallway of the lower unit of his duplex but that when questioned about other victims or suspects in the house, Abdullah indicated that he had been shot out in the street. Abdullah apparently changed his story again, stating that he was shot down the street. Because of Abdullah's conflicting statements, Officer Smith and some other officers forced the door open to the lower unit to check for other victims and suspects. Going from room to room, the officers observed marijuana, scales, packaging material and money in plain view.

At the hospital, Abdullah was taken to the emergency room where a nurse removed his clothing. The nurse gave the clothing to Officer John Graber who, according to standard procedure, collected the clothing and inventoried its contents. The officer discovered a bag containing marijuana and ninety-eight Ziploc™ bags.

At a pretrial motion hearing, Abdullah argued that the evidence taken from his home and from his clothing at the hospital should be suppressed because it was seized in violation of the Fourth Amendment prohibition against unreasonable searches and seizures. The trial court denied the motion to suppress, concluding that the search of Abdullah's house was reasonable under the emergency exception to the need for a search warrant, and that the search of his clothing was a routine inventory search.

On review of a denial of a suppression motion, the trial court's findings of fact will be upheld unless they are clearly erroneous. Section

805.17(2), STATS. Whether those facts satisfy the constitutional requirement of reasonableness, however, presents a question of law subject to independent review. ***State v. Jackson***, 147 Wis.2d 824, 829, 434 N.W.2d 386, 388 (1989).

The Fourth Amendment to the United States Constitution and article I, section 11 of the Wisconsin Constitution guarantee the right of the people to be secure against unreasonable searches of their persons, houses, papers and effects. U.S. CONST. amend. IV; WI CONST. art. I, § 11. These provisions have been interpreted by the Wisconsin Supreme Court to be coterminous. ***State v. Fry***, 131 Wis.2d 153, 170–174, 388 N.W.2d 565, 573–574 (1986), *cert. denied*, 479 U.S. 989. The Fourth Amendment does not, however, bar "warrantless entries and searches when [officers] reasonably believe that a person within is in need of immediate aid…." ***Mincey v. Arizona***, 437 U.S. 385, 392 (1978). The police "may make a prompt warrantless search of the area to see if there are other victims or if [the perpetrator] is still on the premises." ***Id.*** "The need to protect or preserve life or avoid serious injury is justification for what would be otherwise illegal absent an exigency or emergency." ***Id.*** The police "may also seize any evidence that is in plain view during the course of their legitimate emergency activities. ***Id.***, 437 U.S. at 393.

A two-prong test must be satisfied to validate a search under the "emergency doctrine": (1) the subjective test—the searching officer is actually motivated by a perceived need to render aid or assistance; and (2) the objective test—a reasonable person under the circumstances would have thought an emergency existed. ***State v. Prober***, 98 Wis.2d 345, 365, 297 N.W.2d 1, 12 (1980).

With respect to the first prong of the ***Prober*** test, the trial court found that the officers entered Abdullah's home with the intention of looking for other victims and perpetrators. The trial court's finding that the officers involved were actually motivated by a perceived need to render aid or assistance during their entry into the Abdullah home is a finding of fact, to be reviewed under the clearly erroneous standard. ***State v. Kraimer***, 99 Wis.2d 306, 317–319, 298 N.W.2d 568, 573–574 (1980).

When the police officers arrived at Abdullah's house, they were informed that he had been shot. More than one person is usually involved in a shooting. Further, Abdullah gave conflicting statements about where he was shot. Officer Smith testified that his motivation for entering Abdullah's house was to check on other victims and suspects. Other officers corroborated this motivation by testifying that they had asked Abdullah whether anyone else was in the house. We find the facts going to the first prong of the emergency exception undisputed. Abdullah contends that the officers could not have possibly believed that there were victims or perpetrators in the house because he told them that there was nobody else home and that the perpetrators had fled. We disagree.

> [T]he business of policeman and firemen is to act, not to speculate or meditate on whether the report is correct. People could well die in emergencies if police tried to act with the calm deliberation associated with the judicial process.

Wayne v. United States, 318 F.2d 205, 221 (D.C. Cir. 1963).

With respect to the second prong of the ***Prober*** test, we review the trial court's legal conclusion that a reasonable person under the circumstances would have thought an emergency existed under the *de novo* standard. ***Jackson***, 147 Wis.2d at 829, 434 N.W.2d at 388. We conclude that the facts viewed

objectively support the conclusion that a reasonable person would have thought an emergency existed. Abdullah had been shot and had given inconsistent stories about where the shooting occurred and whether there was anybody in his home. No grounds exist to suppress the evidence.

Abdullah also challenges the warrantless search of his clothing at the hospital. The United States Supreme Court has approved the practice of securing and inventorying the contents of automobiles in police custody and control, holding that it is not violative of the Fourth Amendment's prohibition of unreasonable searches and seizures. ***South Dakota v. Opperman***, 428 U.S. 364, 369 (1976). The United States Supreme Court has stated that these inventory searches developed in response to three distinct needs: (1) the protection of the owner's property while it remains in police custody; (2) the protection of the police against claims or disputes over lost or stolen property; and (3) the protection of the police from potential danger. ***Id.*** We find the reasoning and policies of this case to be fully applicable to a case such as the one before us.

Abdullah was stabbed by an unknown assailant. The wound was substantial. While he was in the emergency room of a hospital being treated, the police officer who accompanied Abdullah to the hospital impounded his bloody clothes as evidence of a crime. Upon making an inventory search thereof, the officer found the contraband and the Ziploc™ bags, which then became part of the basis of the charge imposed. The action of the officer was properly regarded by the trial court to have been in the course of a valid procedure in the investigation of a crime, for the preservation of material evidence, justifying the inventory search of the clothing evidence without a warrant. *See* ***Harris v. United States***, 390 U.S. 234, 236 (1968).

By the Court.—Judgment affirmed.

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