

**COURT OF APPEALS
DECISION
DATED AND FILED**

September 23, 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. 03-0643-CR

Cir. Ct. No. 02CT0270

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

BRIAN J. MAAS,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Outagamie County: JAMES T. BAYORGEON, Judge. *Affirmed.*

¶1 PETERSON, J.¹ Brian Maas appeals a judgment of conviction of operating a motor vehicle while intoxicated, second offense. He argues that because the police entered his home without a warrant, all evidence obtained as a result should be suppressed. We disagree and affirm the judgment.

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

BACKGROUND

¶2 On February 9, 2002, Maas drove his pickup truck onto a lawn, hitting a residence's cement porch. The collision detached the porch from the house and pushed it several feet onto the lawn. Maas backed up and drove home. He parked in the driveway, locked the truck and went into his residence.

¶3 Officer John Schira and sergeant Todd Peters were dispatched to the scene of the accident. An eyewitness gave them the license plate number from the truck and a description of the accident. The officers obtained Maas' address from the vehicle registration.

¶4 Schira and Peters went to Maas' residence. They found the truck in the driveway and observed that airbags had been deployed. No glass was cracked and nothing inside was broken or dented. There was also no blood. The officers saw empty beer cans inside the truck, and the front end of the truck was caved in. Schira described the damage as "massive." At trial, the officers testified they had viewed many similar accidents and that usually someone is injured.

¶5 The officers went to the front door, knocked, and announced their presence with no response. Peters shined his flashlight into windows to see if anyone inside was injured but saw no one. The officers then went around the back and found the back door unlocked. Schira called to get permission from a supervisor to enter the house to see if anyone inside was injured. At no time did the officers call for an ambulance.

¶6 The officers entered and announced themselves. They found Maas asleep in bed and woke him up. Schira asked Maas if he was all right, and Maas said he was. The officers then proceeded to ask Maas questions about the

accident. Maas failed field sobriety tests and was arrested for operating a motor vehicle while intoxicated and hit-and-run.

¶7 Maas filed a motion to suppress the evidence, claiming it was the result of a warrantless entry in violation of his Fourth Amendment rights. The State argued the entry was justified by the emergency doctrine. The trial court agreed with the State and denied the motion. Maas pled guilty and was convicted for operating a motor vehicle while intoxicated, second offense. Maas now appeals.

DISCUSSION

¶8 The Fourth Amendment to the United States Constitution protects against unreasonable searches and seizures. U.S. CONST. amend. IV. The Wisconsin Constitution is essentially the same. *See* WIS. CONST. art. I, § 11. Warrantless searches “are per se unreasonable under the Fourth Amendment, subject to a few carefully delineated exceptions” that are “jealously and carefully drawn” *State v. Boggess*, 115 Wis. 2d 443, 448-49, 340 N.W.2d 516 (1983) (citations omitted).

¶9 In *State v. Pires*, 55 Wis. 2d 597, 201 N.W.2d 153 (1972), the supreme court approved the emergency rule as an exception to the warrant requirement, recognizing that the Fourth Amendment does not bar a government official from making a warrantless intrusion when the official reasonably believes a person is in need of immediate aid or assistance. *Boggess*, 115 Wis. 2d at 449-50. This emergency exception is based upon the idea that “the preservation of human life is paramount to the right of privacy protected by the fourth amendment.” *Id.*

¶10 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. Rome*, 2000 WI App 243, ¶13, 239 Wis. 2d 491, 620 N.W.2d 225. The police motivation is reviewed as a finding of fact subject to the clearly erroneous standard, while the objective reasonableness of this motivation is subject to independent review. *State v. York*, 159 Wis. 2d 215, 220-22, 464 N.W.2d 36 (Ct. App. 1990).

¶11 Maas focuses most of his brief on the subjective test. He argues that the officers' original intent in going to his home was to investigate criminal activity. Therefore, any concern for Maas' safety was mere pretext. Further, he claims that “the only evidence supporting any subjective belief that an emergency existed is the officer's statement” that he was concerned that Maas might be injured. Maas points to the fact that the officers never called an ambulance as an indication that the officers' primary motivation was not Maas' safety.

¶12 However, the court, as finder of fact, determines the credibility of the officers' testimony. *See Plesko v. Figgie Int'l*, 190 Wis. 2d 764, 775, 528 N.W.2d 446 (Ct. App. 1994). The court explained clearly its reasoning for finding the officers credible:

He testified, and I see no reason to dispute that testimony, that he realizes that there's been a deployment of the air bag. This vehicle is damaged. He seen [sic] the damage at the house. His gears shift. Now, do they completely go out of law enforcement? Probably not. He still knows that there's a good chance that a crime has been committed. But at this point I'm satisfied that, as he testified, his motivation, his primary motivation was to see if someone was injured. Could have been a life-threatening injury. He

had no way of knowing one way or the other what it was at that time.

Further, the court did not see the officers' failure to call an ambulance as significant. Instead, the court was "satisfied that [the] primary motive for the entry was based on a concern for someone's life and safety" We conclude this determination was not clearly erroneous.

¶13 We therefore proceed to the objective prong. Maas points out there was no blood in the truck, and there was no interior damage. Additionally, he claims that someone who was seriously injured would not have been capable of driving the truck home from the scene of the accident, as Maas did. Maas therefore argues that no reasonable person would conclude that anyone had been injured as a result of the accident.

¶14 However, the mere fact that there was no blood and no interior damage to the truck does not inherently prove that no one was injured. Peters testified that he had viewed training tapes demonstrating how airbags can cause serious injuries. Peters also stated that injuries can occur absent any bloodshed. Further, when the officers knocked on Maas' door, no one answered. They also heard the phone ring without answer. Given the type of collision that occurred, with extensive damage to the porch and to the front of Maas' truck, it was a reasonable assumption that someone could be inside the house injured, and that was why no one answered the door or the phone.

¶15 Because both the subjective and objective tests are satisfied, the emergency doctrine applies. Consequently, the officers' warrantless entry into Maas' house did not violate Maas' Fourth Amendment rights.

By the Court.—Judgment affirmed.

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