

**COURT OF APPEALS
DECISION
DATED AND FILED**

February 5, 2002

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. 01-1207-CR
STATE OF WISCONSIN**

Cir. Ct. No. 00-CF-523

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

JON W. MILLER,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Brown County:
WILLIAM C. GRIESBACH, Judge. *Affirmed.*

Before Cane, C.J., Hoover, P.J., and Peterson, J.

¶1 PER CURIAM. Jon Miller appeals a judgment convicting him of possession of cocaine and possession of a firearm by a felon, both as a repeat offender. He argues that the trial court should have suppressed the evidence seized at his home pursuant to a search warrant because: (1) the affidavit in support of the search warrant relied on information the police acquired by an

earlier unauthorized search of his home; and (2) the warrant application misrepresented and omitted pertinent facts. We reject these arguments and affirm the judgment.

¶2 A police officer initially arrived at Miller's duplex at 7:45 a.m., December 18, 1999, in response to an anonymous caller's request to check on the welfare of a dog. The officer found the dog outside in zero degree weather, its water dish frozen and, the officer believed, hungry. Although no one answered the door, she observed two newspapers delivered that day or the day before lying near the front door. Two vehicles were parked in the driveway. She gave the dog water and returned three or four times throughout the course of her shift to speak with the owner. Each time she knocked on the door and rang the doorbell, but found no one at home. At 3:15 p.m., she asked the animal shelter to impound the dog.

¶3 The next morning, she returned to Miller's home to tell him she had taken his dog. Again she found no one home. She then asked the officer in charge if he could locate any of Miller's relatives. The officer in charge contacted Miller's mother who lives twenty miles away. The mother did not know where her son was. However, she told the officer that her son and the dog were "inseparable" and she could not believe he left the dog without proper care. She did not know why the dog would be outside and stated "if the dog was neglected, something may have happened to him [Miller] as well." Police also talked to Miller's neighbor who had seen no indication that anyone was home for two days. The police attempted to contact Miller's landlord without success. The officers then entered Miller's home through unlocked doors to check on his welfare. While in his home, the officers observed drugs and firearms in plain view. They then left the premises and secured a search warrant.

¶4 The search warrant affidavit, in addition to reciting the discovery of drugs, drug paraphernalia and firearms in Miller’s home, also described the circumstances of the officers’ entry into the home. The affidavit in support of the search warrant recites that Miller’s mother told the officer on the telephone that “she was worried for his well being.” The application does not recite that Miller was eventually located at his brother’s home and that the officer in charge had been informed that Miller had been located. The record does not indicate when the police were first informed that Miller had been found.

¶5 The emergency doctrine involves a subjective and an objective analysis, that is, the officer must be motivated by a perceived need to render aid or assistance and, under the circumstances, a reasonable person would have thought an emergency existed. *See 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 de novo review. *See State v. York*, 159 Wis. 2d 215, 220-22, 464 N.W.2d 36 (Ct. App. 1990).

¶6 The trial court correctly ruled that the initial police intrusion into Miller’s home was justified under the emergency doctrine.¹ The officers’ perception that Miller may require aid or assistance was supported by their testimony. The reasonableness of their perception of an emergency is supported by the facts as they knew them at the time they entered his home. His failure to answer the door and the absence of any activity around his home suggested that no

¹ The State also persuasively argues that the warrantless entry was justified on community caretaker grounds. However, because we uphold the intrusion under the emergency doctrine, we need not address that issue.

one was home. His failure to care for his dog, combined with his mother's statement that if the dog was neglected, "something may have happened to him as well" strongly suggests the possibility of illness, injury or death. From the fact that his cars were in the driveway and the doors were not locked, probable cause existed to believe that Miller was home and was too incapacitated to pick up his newspapers, answer the door or care for his dog. After making reasonable efforts to contact relatives, neighbors and his landlord, the police appropriately entered Miller's residence to check on his welfare.

¶7 Miller's arguments that the affidavit in support of the search warrant contained false information and omitted pertinent information fails for two reasons. First, it is factually incorrect. Second, the allegedly false and omitted information was not pertinent to the warrant application.

¶8 The allegedly false statement that Miller's mother was "worried for his well being" is a reasonable synopsis of her statement that if the dog was neglected, something may have happened to Miller as well. The affidavit does not purport to quote Miller's mother. The alleged omission, that Miller was eventually located at his brother's home, would only be relevant if the officers were informed that Miller was found before they entered his home. The record does not establish that any police officer was informed that Miller had been located before the initial intrusion.

¶9 More significantly, the background information regarding the circumstances under which the officers first entered Miller's home was not pertinent to the application for the search warrant. The purpose of the search warrant was not to search for Miller, but for drugs and weapons. Information regarding Miller's well being and the fact that he was later located only provides

background information and was not pertinent to the issue before the magistrate, whether probable cause existed that evidence of a crime would be found in Miller's home. Miller has not identified any false or omitted pertinent information.

By the Court.—Judgment affirmed.

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

