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**DISTRICT I**

May 7, 2024

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Milwaukee County Safety Building  
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Daniel J. O'Brien  
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You are hereby notified that the Court has entered the following opinion and order:

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2022AP1626-CR

State of Wisconsin v. Maurice Lewis Cain (L.C. # 2016CF4809)

Before Donald, P.J., Geenen and Colón, JJ.

**Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).**

Maurice Lewis Cain appeals a judgment convicting him of multiple drug-related crimes. Cain contends that the trial court erred in denying his motion to suppress evidence obtained following law enforcement's warrantless entry of his apartment. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2021-22).<sup>1</sup>

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

In 2019, a jury convicted Cain of possessing more than fifty grams of heroin with the intent to deliver, possessing more than forty grams of cocaine with the intent to deliver, possessing Fentanyl with the intent to deliver, possessing more than two hundred grams of THC with the intent to deliver, and maintaining a drug trafficking place, all as a party to the crime. Prior to trial, Cain filed a motion to suppress evidence police recovered from his apartment, arguing that police obtained the evidence as a result of a warrantless entry. The trial court held a hearing where numerous law enforcement officers testified. The trial court ultimately denied Cain's motion, finding that law enforcement was justified in entering Cain's apartment pursuant to the protective sweep and emergency aid exceptions to the warrant requirement.

As relevant to this appeal, the following facts were established at the suppression hearing. On October 24, 2016, Milwaukee police responded to a 911 call reporting a shooting at a bar. When police arrived, they found a victim lying in a pool of blood, the frantic 911 caller, broken glass, and overturned stools. Lieutenant Kevin Eyre testified that he arrived with three or four other officers, that the scene was "chaotic," and that he was unsure of whether the shooter was still on the premises. Eyre also testified that the officers noticed a trail of blood on the floor of the bar, which lead to a hallway. The door to the hallway appeared to have been kicked in, as police noticed a bloody footprint on the door. The hallway led to a patio, a basement, and an upstairs area with two apartments. Eyre testified that once police reached the hallway, the officers stopped searching the building because the area was too large for the officers to safely secure. Eyre stated that they froze the scene until the Tactical Enforcement Unit (TEU) arrived.

The TEU officers testified that once they arrived, they followed the blood trail and cautiously began to search the remainder of the premises for possible suspects or additional victims. The first unit of TEU officers to arrive cleared the hallway, bathrooms, and basement

before the second unit arrived. They did not find anyone. After the second TEU unit arrived, the officers proceeded up the stairway behind the kicked-in door. Sergeant Daniel Wesolowski testified that officers were unsure of whether additional victims or the shooter were on the second floor. When the TEU reached the second floor, they cleared an open apartment and then encountered a locked apartment. The officers knocked and announced themselves but did not receive a response. Wesolowski testified that the officers then forced entry, stating that they were concerned about the “preservation of life” in case there were additional victims. Wesolowski also said the officers wanted to make sure the location was safe for investigators to carry out their duties. Once inside, the officers discovered drugs and evidence of drug dealing in plain view in a bedroom, the kitchen, and the dining area. Police froze the scene and called in drug investigators who, in turn, obtained a search warrant for the apartment. The search produced additional drugs and evidence of drug dealing, along with documents that linked Cain to the apartment.

The trial court found that police were justified in entering Cain’s apartment under the protective sweep and emergency aid warrant exceptions.<sup>2</sup> Specifically, the trial court found that under the totality of the circumstances, police had a “reasonable justification for sweeping the entire building, including the apartment” because of the shooting that had taken place on the first floor, the trail of blood, the unknown whereabouts of the shooter, and the possibility of

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<sup>2</sup> The trial court also found that the warrantless entry was justified under the community caretaker exception to the warrant requirement. In 2021, however, the United States Supreme Court ruled that the community caretaker exception does not authorize the warrantless search of a residence, *see Caniglia v. Strom*, 593 U.S. 194 (2021). The Court explained in *Caniglia* that the community caretaker exception is limited to the context of automobile searches and cannot justify a warrantless search of a residence. *Id.* at 199. We need not address the community caretaker exception further because we conclude that the warrantless entry was justified pursuant to the protective sweep and emergency aid exceptions.

additional victims. The trial court found that the same circumstances justified the search under the emergency aid exception. This appeal follows.

In our review of a motion to suppress, we apply a two-step standard of review: (1) we first review the trial court’s findings of fact, and will uphold them unless they are clearly erroneous; and (2) we then “review the application of constitutional principles to those facts *de novo*.” *State v. Eason*, 2001 WI 98, ¶9, 245 Wis. 2d 206, 629 N.W.2d 625.

The constitutional principles regarding searches and seizures are set forth in both the Fourth Amendment to the United States Constitution and article I, section 11 of the Wisconsin Constitution. *State v. Secrist*, 224 Wis. 2d 201, 208, 589 N.W.2d 387 (1999). Searches performed without a warrant are presumed to be unconstitutional; however, exceptions have been established and recognized by both the United States Supreme Court and the Wisconsin Supreme Court. *State v. Lee*, 2009 WI App 96, ¶¶6-7, 320 Wis. 2d 536, 771 N.W.2d 373.

One such exception is the “protective sweep,” which is “a brief search of the premises, *ordinarily* occurring during an arrest, to ensure the safety of those on the scene.” *Id.*, ¶11 (citation omitted; emphasis in original).

A protective sweep is justified when the law enforcement officer possesses a reasonable belief based on specific and articulable facts which, taken together with the rational inferences from those facts, reasonably warranted the officer in believing that the area swept harbored an individual posing a danger to the officer or others.

*Id.* (citations and internal quotation marks omitted). Here, Milwaukee police responded to the scene of a shooting and upon arrival encountered a bloodied victim, a frantic 911 caller, and a ransacked bar. One officer described the scene as “chaotic.” The first responding officers

properly performed a quick protective sweep of the bar area for possible suspects or other victims. Police followed a trail of blood from the bar to a kicked-in door with a bloody footprint, which led to the stairway. They then awaited the arrival of the TEU officers to search the upstairs and downstairs. TEU officers testified that they were unsure of whether there were additional victims, whether the suspect was in one of the apartment units, or whether additional perpetrators were on the premises. Officers testified that their priority at that point was searching for additional victims and securing the premises for their own safety. After entering the apartment, officers observed items in plain view, but did not further search the apartment prior to obtaining a warrant. Given the officers' stated concern for additional victims and their own safety, TEU officers reasonably extended the protective sweep into Cain's apartment under the circumstances.

Alternatively, we conclude that the emergency aid exception justifies the officers' warrantless entry into Cain's apartment. The emergency aid exception "states that the Fourth Amendment does not bar a government official from making a warrantless intrusion 'when the official reasonably believes that a person is in need of immediate aid or assistance.'" *State v. Ware*, 2021 WI App 83, ¶20, 400 Wis. 2d 118, 968 N.W.2d 752 (citation omitted). "[O]fficers must have 'an objectively reasonable basis for believing that a person within [the residence] is in need of immediate aid.'" *Id.*, ¶21 (second brackets in *Ware*; citations omitted). However, "[o]fficers do not need ironclad proof of 'a likely serious, life-threatening' injury to invoke the emergency aid exception." *Id.*, ¶22 (brackets in *Ware*; citations omitted).

As stated, multiple officers testified that they were unsure of whether there were additional victims present on the premises; specifically, in the apartment units. We agree with the trial court that "given the homicide that was committed on the floor below the apartment, the

kicked-in door leading to an access point to the apartment, and the blood trail leading to the stairs, the officers' belief that they may need to render aid or assistance to someone in the apartment was reasonable." Accordingly, we affirm the judgment of conviction.

For all the foregoing reasons,

IT IS ORDERED that the judgment is summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FUTHER ORDERED that this summary disposition order will not be published.

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*Samuel A. Christensen*  
*Clerk of Court of Appeals*