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DISTRICT I

October 29, 2024

To:

Hon. J. D. Watts
Circuit Court Judge
Electronic Notice

Angela Conrad Kachelski
Electronic Notice

Anna Hodges
Clerk of Circuit Court
Milwaukee County Safety Building
Electronic Notice

Christine A. Remington
Electronic Notice

You are hereby notified that the Court has entered the following opinion and order:

2023AP469-CR	State of Wisconsin v. Michael Anthony Tate, Jr. (L.C. # 2018CF2357)
2023AP470-CR	State of Wisconsin v. Michael Anthony Tate, Jr. (L.C. # 2018CF4475)

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).

Michael Anthony Tate, Jr., appeals from judgments, entered upon his guilty pleas, convicting him of three felonies. Tate contends that his pretrial suppression motion should have been granted because an unlawful protective sweep of his home tainted a subsequently obtained search warrant. Based upon our review of the briefs and records, we conclude at conference that

these cases are appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2021-22).¹
The judgments are summarily affirmed.

In May 2018, the Milwaukee Police Department’s Special Investigations Division received information from a confidential informant that Tate was in possession of a large quantity of heroin as well as a firearm. Officer Jose Ramirez began compiling information to apply for a search warrant. A warrant check revealed that Tate had an outstanding armed robbery “warrant.”² Because Tate was suspected of armed robbery and out of custody, a tactical enforcement unit would have been needed as a safety precaution to execute a search warrant, but a full tactical unit was not available for executing a search warrant at that time. Thus, Ramirez’s team was instead instructed to take Tate into custody for the armed robbery.

Police set up surveillance of Tate’s home, a duplex. When Tate exited his home, he was arrested without serious incident around 3:45 p.m. Once Tate was in custody, Ramirez entered the building through an open door, walked upstairs to Tate’s unit, and knocked on the unit’s back door. Tate’s girlfriend answered. Ramirez informed her that Tate had been arrested and requested permission to search the home; she declined. Police nevertheless entered the residence and conducted a “protective sweep” to freeze the scene while they applied for a search warrant. During the sweep, a drum-style gun magazine was observed in plain view on the living room

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

² The “warrant” was actually a Milwaukee Police Department “suspect alert,” something used internally to alert officers to the existence of probable cause to make an arrest. Tate’s arrest, however, is not an issue on appeal.

floor. When Ramirez prepared the search warrant application, he mentioned the gun magazine, and the search warrant was approved by a judge at 6:35 p.m.³

In executing the warrant, police discovered ammunition; a bag with suspected drugs and \$4,790 in cash; a digital scale; off-white powder; a phone; and a semi-automatic weapon. Testing determined that the bag held over 119 grams of cocaine and over 67 grams of heroin. Tate was charged with: (1) possession with intent to deliver more than fifty grams of heroin with use of a dangerous weapon; (2) possession with intent to deliver more than forty grams of cocaine with use of a dangerous weapon; and (3) possession of a firearm by a felon. A few months later, Tate was charged in another case with four offenses stemming from an investigation that had been conducted between December 2015 and March 2016: (1) conspiracy to commit manufacture or delivery of between ten and fifty grams of heroin; (2) conspiracy to commit possession with intent to deliver more than fifty grams of heroin as a second or subsequent offense; (3) possession of a firearm by a felon as party to a crime; and (4) conspiracy to commit possession with intent to deliver between ten and fifty grams of heroin as a second or subsequent offense.

Tate moved to suppress the evidence in the first case, arguing that police had illegally entered his home and that the protective sweep was an illegal search that tainted the search warrant. After an evidentiary hearing and briefing, the circuit court denied suppression,⁴ and the cases were joined on the State's motion. Tate eventually resolved both cases through guilty

³ The Honorable Joseph A. Wall authorized the search warrant.

⁴ The Honorable Lindsey C. Grady denied the suppression motion and will be referred to as the circuit court herein.

pleas to a reduced number of charges.⁵ The circuit court imposed concurrent sentences totaling eight years of initial confinement and eight years of extended supervision.⁶

On appeal, the only issue Tate raises is whether the circuit court properly denied the suppression motion. He contends, as he did in the circuit court, that the police entry and protective sweep were illegal; thus, the warrant obtained after the sweep, which was based in part on evidence from the sweep, was tainted and all evidence collected under the warrant should be suppressed.

“[T]he Fourth Amendment to the United States Constitution forbids law enforcement from conducting ‘unreasonable searches and seizures.’” *State v. Sobczak*, 2013 WI 52, ¶11, 347 Wis. 2d 724, 833 N.W.2d 59. Whether police have violated this protection is a question of constitutional fact. *State v. St. Martin*, 2011 WI 44, ¶16, 334 Wis. 2d 290, 800 N.W.2d 858. We uphold the circuit court’s findings of evidentiary and historical fact unless clearly erroneous, but we independently evaluate those facts against the constitutional standard. *See id.*; *see also State v. Sveum*, 2010 WI 92, ¶16, 328 Wis. 2d 369, 787 N.W.2d 317. The same two-part standard applies to our review of the denial of a motion to suppress. *See State v. Popp*, 2014 WI App 100, ¶13, 357 Wis. 2d 696, 855 N.W.2d 471.

The greatest constitutional protections surround the home, and “police may not venture across the threshold without a warrant except under limited circumstances, on pain of

⁵ Tate pled guilty to possession with intent to deliver more than fifty grams of heroin, without the dangerous weapon enhancer, in the first case, as well as conspiracy to commit possession with intent to deliver more than fifty grams of heroin, without the second or subsequent offense modifier, and possession of a firearm by a felon as party to a crime in the second case.

⁶ The Honorable J.D. Watts accepted Tate’s pleas and imposed sentence.

suppression.” *Sobczak*, 347 Wis. 2d 724, ¶11. One such exception is the protective sweep, “a quick and limited search of premises, incident to an arrest and conducted to protect the safety of police officers or others.” *State v. Sanders*, 2008 WI 85, ¶32, 311 Wis. 2d 257, 752 N.W.2d 713 (citation omitted).

Here, Tate first argued that the protective sweep was not justified, because he had been arrested outside his home and police had no reason to believe there was anyone else inside. He also argued that police exceeded the scope of a protective sweep when, according to Tate’s girlfriend, they began searching kitchen drawers and cabinets. The circuit court disagreed, concluding that the “initial freezing of the scene was within the scope of an officer’s duty.”

However, it is not necessary for us to resolve whether the protective sweep was legally justified here; in fact, we will assume that it was not. When a search warrant is based on both tainted and untainted evidence, the reviewing court may independently review whether the untainted evidence is sufficient to establish probable cause. *See St. Martin*, 334 Wis. 2d 290, ¶17; *see also State v. Hillary*, 2017 WI App 67, ¶7, 378 Wis. 2d 267, 903 N.W.2d 311; *Popp*, 357 Wis. 2d 696, ¶¶26-27. In deciding the suppression motion, the circuit court did just that: it determined that it would be “absolutely proper for the [c]ourt to do an analysis of the warrant removing the part that refers to what was found that day.”

In the thirty-eight paragraphs of the supporting affidavit, only one refers to evidence obtained during the protective sweep. The remaining information was either known to Ramirez, or was information obtained from the confidential informant, prior to Tate’s arrest. While Tate argued that “the contents of the affidavit other than what was discovered that day is not enough to reach probable cause,” the circuit court disagreed. It explained that the warrant application

identifies the name, it identifies a booking photo that was then shown to that informant that did identify Mr. Tate. It does discuss what the informant believes or what he saw and what he also has reason to believe was present. He had first-hand knowledge of that contraband, and the affiant in the nexus section explains why that information not only could be relied upon but why it would be indicative of further criminal activity. That's enough for probable cause.

We agree with the circuit court's analysis. When information obtained from the protective sweep is excised from the warrant application, the remaining information is still sufficient to support issuance of the warrant. The evidence obtained pursuant to the search warrant did not need to be suppressed, and the circuit court did not err in denying the motion.

Therefore,

IT IS ORDERED that the judgments are summarily affirmed. *See* WIS. STAT. RULE 809.21.

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

Samuel A. Christensen
Clerk of Court of Appeals