

**Commonwealth of Kentucky**

**Court of Appeals**

NO. 2018-CA-000070-MR

DERECK A. RICHMOND

APPELLANT

APPEAL FROM JEFFERSON CIRCUIT COURT  
v. HONORABLE JUDITH E. MCDONALD-BURKMAN, JUDGE  
ACTION NO. 16-CR-001772

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: MAZE AND NICKELL, JUDGES; HENRY, SPECIAL JUDGE.<sup>1</sup>

MAZE, JUDGE: Dereck Richmond appeals from a conditional guilty plea to one count each of first-degree trafficking in a controlled substance (more than two grams heroin) while in possession of a firearm, receiving a stolen firearm, and

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<sup>1</sup> Special Judge Michael L. Henry sitting by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580. Special Judge Henry concurred in this opinion prior to the expiration of his appointment on April 24, 2019. Release of the opinion was delayed by administrative handling.

possession of drug paraphernalia while in possession of a firearm. He argues that the trial court erred by denying his motion to suppress evidence obtained during a warrantless entry into an apartment which he occupied with a co-defendant. We conclude that the trial court did not err in finding that the officers' initial entry into the apartment was reasonable under the "emergency aid" exception to the warrant requirement. Hence, we affirm.

The facts surrounding the entry into the apartment were developed at the suppression hearing and are not significantly in dispute. On December 2, 2015, the St. Matthews Police Department received a report of an unconscious male on an exterior stairway landing at the Mallgate Apartments. At the hearing, Officers Barbara Shepard and Eddie Napier testified that they responded to the call. When they arrived, two other St. Matthews Police Officers, Moster and Prechtel, were already at the scene.

The officers found an unconscious and barely-breathing male collapsed on the exterior staircase landing. No identification was found on the person, who was later identified as Richmond. The officers then called EMS due to the severity of Richmond's condition. After EMS arrived, the officers found a key with "#7107 B2" written on the key ring. The number corresponded with an apartment near where Richmond was laying.

Officer Shepard knocked on the door, but there was no response. Officer Moster then tried the door knob and found that the door was unlocked. Officer Moster called out “St. Matthews Police” and entered the apartment. Officer Shepard followed. While walking through the kitchen, the officers saw a rolled-up dollar bill with a white powder around it on the counter. They also saw an open baggie with white powder in it. Finding no one inside, the officers left the apartment. Officer Shepard immediately called Officer Napier, who obtained a search warrant. The search resulted in a seizure of heroin, heroin mixed with fentanyl, drug paraphernalia and guns. The apartment was leased to Latasha White, who was also charged in this matter.

In denying the motion to suppress, the trial court found that the warrantless entry into the apartment was justified under the “emergency aid” exception. After the trial court denied his motion to suppress, Richmond entered a conditional guilty plea to all three charges. In accord with the Commonwealth’s recommendation, the trial court sentenced Richmond to a total of fifteen years’ imprisonment.

On appeal, Richmond argues that the trial court erred in finding that the emergency aid exception applied. RCr<sup>2</sup> 8.27 sets out the procedure for

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<sup>2</sup> Kentucky Rules of Criminal Procedure.

conducting a suppression hearing. When the trial court conducts a hearing, our standard of review is two-fold. “First, the factual findings of the court are conclusive if they are supported by substantial evidence”; and second, this Court conducts “a *de novo* review to determine whether the [trial] court’s decision is correct as a matter of law.” *Stewart v. Commonwealth*, 44 S.W.3d 376, 380 (Ky. App. 2000) (citing *Adcock v. Commonwealth*, 967 S.W.2d 6, 8 (Ky. 1998)).

As a general rule, warrantless searches are unreasonable *per se*, “subject only to a few specifically established and well-delineated exceptions.” *Helphenstine v. Commonwealth*, 423 S.W.3d 708, 714 (Ky. 2014) (quoting *Katz v. United States*, 389 U.S. 347, 88 S. Ct. 507, 19 L. Ed. 2d 576 (1967)). Among these recognized exceptions is when “the exigencies of the situation make the needs of law enforcement so compelling that the warrantless search is objectively reasonable under the Fourth Amendment.” *Mincey v. Arizona*, 437 U.S. 385, 394, 98 S. Ct. 2408, 2414, 57 L. Ed. 2d 290 (1978) (internal quotation omitted). In determining if this exception applies, we do not rely on the subjective intent of the officers; rather we must ask “whether there was ‘an objectively reasonable basis for believing’ that medical assistance was needed, or persons were in danger.” *Pace v. Commonwealth*, 529 S.W.3d 747, 754 (Ky. 2017) (quoting *Michigan v. Fisher*, 558 U.S. 45, 47, 130 S. Ct. 546, 548, 175 L. Ed. 2d 410 (2009)).

The Kentucky Supreme Court found that the emergency aid exception applied under similar circumstances in *Goben v. Commonwealth*, 503 S.W.3d 890 (Ky. 2016). In *Goben*, the police found an individual who had been stabbed in an apartment parking lot. The person was conscious but refused to identify himself or say what happened. The officers followed a trail of blood and debris suggesting an altercation. The trail led to the door of an apartment, which the officers entered and found incriminating evidence. *Id.* at 896-97. The Court found that the circumstances confronting the officers were suggestive enough of a medical emergency to justify their brief warrantless entry into Goben's apartment. *Id.* at 914.

Similarly, in the current case the officers were responding to a severe medical emergency. Richmond was unconscious and suffering from an apparent drug overdose that was nearly fatal. He had no identification on him other than a key to an adjacent apartment. Officer Shepard testified that she had responded to several similar incidents where multiple persons needed emergency assistance due to a drug overdose. Officer Shepard further testified that she wanted to find someone who could identify the unconscious Richmond or could provide information about his condition. We find substantial evidence to support the trial court's conclusion that the emergency aid exception justified the warrantless entry

into the apartment. Therefore, the trial court properly denied the motion to suppress the evidence found in the apartment.

Accordingly, we affirm the judgment of conviction by the Jefferson Circuit Court.

ALL CONCUR.

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