Supreme Court of Kentucky

Case No. 2022-SC-0541-DG
Electronically Filed

JAMES JAVONTE CRITE — *Appellant*

v.

On discretionary review from the
Court of Appeals,
No. 21-CA-0663-MR

COMMONWEALTH OF KENTUCKY — *Appellee*

BRIEF FOR THE COMMONWEALTH OF KENTUCKY

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Certificate of Service

I certify that a copy of this brief was served on November 21, 2023, by state messenger mail upon Kathleen K. Schmidt, Assistant Public Advocate, Department of Public Advocacy, 5 Mill Creek Park, Section 100, Frankfort, KY 40601, counsel for James Javonte Crite; by U.S. mail upon Hon. Jay A. Wethington, Circuit Judge, Holbrook Judicial Center, 100 East Second Street, Owensboro, Kentucky 42302; and by email upon Hon. Bruce Kuegel, Commonwealth's Attorney, 117 East Third Street, Second Floor, Owensboro, Kentucky 42303. I further certify that the record on appeal was not checked out.

s/ *Elizabeth Hedges*
Elizabeth Hedges
Assistant Solicitor General

INTRODUCTION

Through his lease, appellant James Crite gave his landlord and its agents the right to enter his apartment without his consent in case of emergency. His landlord's agent did so, accompanied by police officers, after Crite stopped taking his schizophrenia medication, wrecked the apartment, and left it without functioning air conditioning or electricity in midsummer heat. During their walk through the apartment to ensure it was safe for an electrician to fix the damage, the officers found an AR-15 rifle in plain view. Knowing Crite was a felon, the officers seized the rifle.

After the circuit court overruled his suppression motion, Crite entered a conditional guilty plea to being a felon in possession of a firearm. He then appealed, arguing the AR-15 was inadmissible because the officers' search of his apartment was unconstitutional. The Court of Appeals rejected Crite's argument and affirmed the circuit court's order. Because Crite's landlord had common authority over the apartment and consented to the officers' entry, their entry was justified, and this Court should affirm the Court of Appeals' decision.

STATEMENT CONCERNING ORAL ARGUMENT

The Commonwealth looks forward to participating in oral argument pursuant to this Court's order entered April 19, 2023.

COUNTERSTATEMENT OF POINTS AND AUTHORITIES

COUNTERSTATEMENT OF THE CASE[1]

I. Discovery of the AR-15 rifle and arrest of Crite

In the summer of 2019, James Javonte Crite[2] was a tenant of Century Property Management ("Century"), residing in a four-plex—a single building containing four apartments—in Owensboro, Kentucky. TR.53; VR 8/24/20, 13:35. On July 9, Crite's brother William Crite ("William") placed an emergency call to Century using Century's "e-call" system, an emergency notification system by which the caller could leave a message for whomever could first respond to it. VR 8/24/20, 13:33, 13:43, 13:54. William said he was taking Crite to the hospital because Crite suffered from schizophrenia and had not been taking his medication. *Id.* at 13:33. According to William, the apartment had suffered significant damage: wires had been ripped from electrical fixtures; the thermostat had been pulled off the wall; the air conditioning was not working; the apartment's interior was very hot; the electricity was out; and "there were wires everywhere." *Id.* at 13:33, 13:43–45, 13:58–59. The purpose of William's call was to request emergency maintenance to the property: William said "he wanted to get that taken care of in the apartment while [Crite] was in the hospital." *Id.* at

[1] The Commonwealth does not accept Crite's Statement of the Case. RAP 32(B)(3).

[2] Consistent with the Appellant brief, the Commonwealth refers to the defendant as "Crite" rather than by his current legal name, Jayleo Lawrence.

13:33; *see id.* at 13:43, 13:45. William also stated that members of the family would be staying at the apartment over the next few days. *Id.* at 14:43. Based on William's phone message, property manager Beth Robertson perceived an "emergency reason for [Century's agents] to go into the apartment." *Id.* at 13:45.

In addition to receiving the e-call message on July 9, Robertson spoke to William and confirmed details about the damage to the apartment. *Id.* at 13:44, 13:54. Crite's lease required Century to maintain and repair electrical and HVAC systems, and another lease provision permitted Century or its agent to enter the apartment without prior notice in emergencies:

> MAINTENANCE OF PREMISES: Landlord agrees to make repairs and do what is necessary to keep premises in a fit and habitable condition outside of those maintenance obligations Tenant agrees to undertake as set forth above. The Landlord further agrees to maintain in reasonably good and safe working condition, all electrical, gas, plumbing, sanitary, HVAC, smoke detectors . . . and other facilities supplied by him. . . .
>
> RIGHT TO ACCESS: The Tenant shall not unreasonably withhold consent to the Landlord to enter into the dwelling unit in order to inspect the premises; make necessary or agreed repairs . . . ; [or] supply necessary or agreed services . . . . The Landlord or Landlord's agent may enter the dwelling unit without consent of the Tenant in case of emergency.

TR.56. Accordingly, Robertson asked leasing coordinator Lisha Reynolds to go to Crite's apartment and assess the situation on the afternoon of July 9.[3] VR

[3] The proper spelling of Reynolds' first name is not clear from the record. The Commonwealth uses the spelling used by the circuit court.

8/24/20, 13:34, 13:38, 13:45–47, 14:35–36. Because William said he was taking Crite to the hospital, Reynolds knew the apartment was vacant that day. *Id.* at 14:37, 14:43.

When Reynolds entered, the apartment was a mess. It was extremely hot inside, given an outdoor temperature Reynolds recalled as being around 100 degrees. *Id.* at 14:44. The electricity was not functioning; the main breaker was shut off; and an electrical component had been pried out with a screwdriver. *Id.* at 14:40. Wires had also been ripped from the water heater, furnace, and thermostat. *Id.* at 14:40, 14:45. Reynolds photographed the damage, remaining inside for less than five minutes. *Id.* at 14:39–41, 14:44; TR 48–51.

In addition to the damage, Reynolds noticed what she thought was a handgun on the coffee table in the living room. VR 8/24/20, 13:34, 14:41, 14:45. After Reynolds exited the building, she immediately told Robertson about the condition of the apartment. *Id.* at 13:34, 13:47–48, 14:41. Robertson decided to call an electrician because she wanted to make sure the four-plex was safe for the other tenants. *Id.* at 13:35, 13:49–50.

The following day, July 10, Robertson arranged to meet electrician Keith Goodman at Crite's apartment. *Id.* at 13:35, 13:46, 13:48–49. Before driving to the apartment, Robertson called Owensboro Police Department's ("OPD") Central Dispatch line and requested assistance. *Id.* at 13:35–36; TR 73–74. She

explained that there had been electrical damage to Crite's apartment; the electricity was not functioning; wires had been pulled from the HVAC; and she had an electrician coming to make sure the building was "safe for the other tenants." Central Dispatch Call (on disc filed as attachment to TR.101), 0:58–1:19. Robertson stated that Crite "may be a felon"[4] and that, the day before, her coworker had "s[een] a gun" in the apartment. *Id.* at 1:20–40. Robertson also told Central Dispatch that Crite was schizophrenic and, she thought, off his medication, but he had not been admitted to the hospital.[5] *Id.* at 0:45–58, 1:40–48, 2:05–09. As she explained to Central Dispatch, Robertson had "no idea" whether Crite was in the apartment at that time, and she did not "feel safe" going there alone. *Id.* at 1:40–48, 2:00–09.

OPD officers Logan Nevitt and Mike Matthews, each in his own vehicle, were dispatched that same afternoon to help Robertson ensure the safety of Crite's apartment. *Id.* at 13:40, 14:06, 14:11, 14:14–16, 14:20, 14:30. Two officers instead of one were dispatched because "a gun was mentioned." *Id.* at 14:29; *see id.* at 14:15–16. While the officers were en route, Central Dispatch advised them that Crite was "possibly schizophrenic" and "possibly off medication" and was

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[4] At the suppression hearing, Robertson testified that another tenant told her Crite might be a felon. VR 8/24/20, 13:36.

[5] Although the record is not clear how Robertson learned Crite was not in the hospital, it is clear she told Central Dispatch he was not. Central Dispatch Call, 2:05–09.

subject to an active capias warrant. *Id.* at 14:08–09, 14:16–17, 14:32. The CAD report[6] also stated that the complainant (Robertson) had "rec[']d info that subj[.] is a felon." TR.73.

The officers met Goodman and Robertson in the building's parking lot. VR 8/24/20, 13:39, 14:06–07. Robertson knocked on Crite's apartment door, but no one answered. *Id.* at 14:07. The officers also knocked and announced themselves, and still no one answered. *Id.* at 14:07, 14:17. Although the officers told Robertson they had no reason to enter—they were not there to investigate Crite or to execute the capias warrant—she asked them "to go in to check the safety of the apartment." *Id.* at 13:39–40, 14:06–07, 14:13–14, 14:22. Robertson then unlocked and opened the door. *Id.* at 13:39–40, 14:07.

The officers entered the apartment, which was still "a mess." *Id.* at 14:07, 14:17. They could see "what appeared to be a handgun" on the coffee table. *Id.* at 14:07, 14:17. Items were "torn apart." *Id.* at 13:41. "The thermostat was off the wall, with the wires exposed." *Id.*; *id.* at 14:07. An HVAC panel was pulled off, and wires were sticking out. *Id.* at 13:41. The television had been "d[e]constructed." *Id.* at 13:41–42. Wires protruded from the water heater. *Id.* at 13:42.

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[6] "'CAD' stands for 'Computer Aided Dispatch' and generally refers to software systems that support emergency dispatch personnel by, among other things, assisting with the compilation, verification, preservation and retrieval of incident data, including caller and location information." *Hall v. Commonwealth*, 468 S.W.3d 814, 831 n.18 (Ky. 2015).

The fuse box had black soot on it; it looked like someone had tried to pry it off the wall and it had "sparked." *Id.* at 13:42, 13:57–58. The electrical breaker appeared to have tripped, and the electricity was off. *Id.* at 13:42, 13:55.

The officers moved through the rooms to see if anyone was inside. *Id.* at 14:18, 14:22. In one room, they saw the buttstock and magazine of a rifle sticking out of a couch. *Id.* at 14:07–08, 14:18. The officers also saw a magazine and loose ammunition in one of the rooms. *Id.* at 14:24; TR 8. As soon as they completed their walk-through and found no one present, they told Robertson and Goodman it was safe to enter. VR 8/24/20, 14:08–09, 14:18. The officers were in the apartment for a "very short time" because ensuring it was clear was a "very quick" task. *Id.* at 14:24–25.

Robertson and Goodman went inside. *Id.* at 13:40–41. While Robertson took pictures and videos of the damage, Goodman worked on restoring the power. *Id.* at 13:40–41, 13:55. Meanwhile, the officers looked more closely at the firearms. *Id.* at 14:18–19. The handgun on the coffee table was either a BB gun or a pellet gun. *Id.* However, the rifle was an AR-15 with a full magazine and one round in the chamber. *Id.* at 14:10. The officers seized the AR-15 because they "confirmed that [Crite] was a convicted felon," and it was "unlawful for him" to possess it. *Id.* at 14:28.

Shortly after the officers left the apartment, William and Crite arrived in the parking lot. *Id.* at 14:09, 14:25. The officers arrested Crite and cited him for possession of a firearm by a convicted felon. *Id.* at 14:09, 14:25–26; TR.8.

II. Suppression hearing and circuit court's ruling

Crite was indicted on one count of possession of a firearm by a convicted felon, having been previously convicted of the felony of assault under extreme emotional disturbance. TR.9. He filed a motion to suppress on July 13, 2020, seeking to exclude all evidence procured by OPD during the search on July 10, 2019, on the grounds that the officers' entry into the apartment constituted an unreasonable search under the U.S. and Kentucky Constitutions. TR.38–40. The Commonwealth filed its response on July 20, 2020, and the Court held a suppression hearing on August 24. TR.43–47, 114. Robertson, Reynolds, Officer Nevitt, and Officer Matthews testified. *See generally* VR 8/24/20. After the hearing, the parties submitted supporting memoranda. TR.77–85, 102–06.

The circuit court overruled Crite's motion to suppress. TR.114–23. It concluded that the officers' entry into the apartment was reasonable given (1) "the emergency with the electrical system"; (2) Robertson's "reasonable safety concerns given the damage, the presence of a weapon," Crite's "having been off his medication," and Crite's "whereabouts being unknown" on July 10, 2019; and (3) the non-investigative purpose of the officers' entry. TR.122; *see* TR.117–

18, 120–21. And seizing the AR-15 was appropriate because it was in plain view in a place "where the officers had a lawful right to be." TR.122.

Crite entered a conditional guilty plea to possession of a firearm by a convicted felon, reserving the right to appeal the suppression ruling. TR.133, 135–38. He was sentenced to two years' incarceration, forfeiture of the AR-15, and costs. TR.138. On May 3, 2021, Crite was granted shock probation for a term of three years.[7] TR.145.

On August 6, 2021, the Court of Appeals granted Crite's motion for a belated appeal. TR.151–52.

III. The Court of Appeals' decision

The Court of Appeals affirmed the circuit court's ruling on the suppression issue. *Crite v. Commonwealth*, No. 2021-CA-0663-MR, 2022 WL 16842272 (Ky. App. Nov. 10, 2022), *review granted* (Apr. 19, 2023). The panel agreed with the circuit court "that the lease authorized Century's entry." *Id.* at *3. "Accepting Crite's proposed definition" of an "emergency" as "a sudden and serious event or an unforeseen change in circumstances that calls for immediate action to avert, control, or remedy harm," the Court of Appeals found "no credible

[7] According to the Department of Corrections, Crite has been on supervised release since May 5, 2021. Ky. Dep't of Corr., Kentucky Online Offender Lookup, http://kool.corrections.ky.gov/KOOL/Details/121119 (last visited Nov. 20, 2023).

claim that the destruction of the apartment's electrical system was not an unforeseeable event." *Id.* (cleaned up). Additionally, "given the apparent risk of harm to both property and life arising from pulled wires and a damaged fuse box, Century's immediate access to assess and ameliorate the risk was justified." *Id.* The court rejected Crite's argument that "the possible 24-hour delay in retaining an electrician" made the situation less of an emergency. *Id.*

As for the officers' entry, the Court of Appeals noted the circuit court's factual finding that "the officers' actions were not in pursuit of a criminal investigation." *Id.* Recognizing that "Kentucky law has not addressed" the precise situation presented, the court analyzed decisions from other jurisdictions involving landlords' emergency entry into homes. *Id.* After reviewing analogous decisions, the court concluded that "the officers, like the electrician, were merely facilitating Century's legitimate interest in entering Crite's apartment," and therefore the circuit court "did not err in determining, under the totality of the circumstances, their entry into the apartment was reasonable under the Fourth Amendment." *Id.* at *4.

ARGUMENT

When reviewing a ruling on a motion to suppress, this Court reviews "the trial court's findings of fact under a clearly erroneous standard," and those findings "will be conclusive if they are supported by substantial evidence." *Whitlow v. Commonwealth*, 575 S.W.3d 663, 668 (Ky. 2019) (citation omitted). In other

words, the trial court's factual findings "are clearly erroneous only if they are manifestly against the weight of the evidence." *Henderson v. Commonwealth*, 563 S.W.3d 651, 675 (Ky. 2018) (citation omitted). The Court "then conduct[s] a *de novo* review of the trial court's application of the law to the facts to determine whether its decision is correct as a matter of law." *Whitlow*, 575 S.W.3d at 668 (citation omitted).

Once they were lawfully inside the apartment, the officers could legally seize any contraband within plain view, including the AR-15 (which Crite, as a felon, was not allowed to have). *See Boone v. Spurgess*, 385 F.3d 923, 928 (6th Cir. 2004). Crite does not dispute that conclusion. The only issue before this Court is whether the circuit court and Court of Appeals correctly ruled that Officers Nevitt and Matthews were justified in entering Crite's apartment.

The officers' entry was valid because Century's agent had actual and apparent authority to consent to it.

Beth Robertson, as Century's agent, had authority to consent to the officers' entry into the apartment based on the terms of Crite's lease. "An officer with consent needs neither a warrant nor probable cause to conduct a constitutional search." *United States v. Jenkins*, 92 F.3d 430, 436 (6th Cir. 1996).[8] Valid

[8] To the extent Crite bases his arguments on Section 10 of the Kentucky Constitution in addition to the federal Fourth Amendment, *see* Appellant Br. 20, those arguments are analyzed under the same standards. *See, e.g., Commonwealth v. Nourse*, 177 S.W.3d 691, 694–98 (Ky. 2005) (analyzing Kentucky and federal constitutional challenges to warrantless search under same standard and citing state

consent can come from the defendant or from "a third party who possesse[s] common authority over or other sufficient relationship to the premises or effects sought to be inspected." *United States v. Matlock*, 415 U.S. 164, 171 (1974). When a third party consents to a search, the Court asks whether, under an "objective standard," "the facts available to the officer at the moment" would "warrant a man of reasonable caution in the belief that the consenting party had authority over the premises." *Illinois v. Rodriguez*, 497 U.S. 177, 188 (1990) (cleaned up). "If not, then warrantless entry without further inquiry is unlawful unless authority actually exists." *Id.* at 188–89. "But if so"—if the third party has apparent authority—"the search is valid." *Id.* at 189.

Although this Court has not addressed a Fourth Amendment challenge to police entry based on an "emergency" lease provision, the proper interpretation is clear from Crite's lease itself. "[I]t is a fundamental rule that a written agreement generally will be construed 'as a whole, giving effect to all parts and every word in it if possible.'" *LP Louisville E., LLC v. Patton*, 651 S.W.3d 759, 769 (Ky. 2020) (citation omitted), *as modified on denial of reh'g* (Apr. 29, 2021). Here, the lease provided that Century's agents could enter without his permission "in case of emergency." TR.56. Adjacent to that "emergency" provision were provisions

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and federal cases); *Crite*, 2022 WL 16842272, at *2 n.4. In any event, Crite raises no unique arguments under the Kentucky Constitution.

describing Century's "right to access" the apartment to "make necessary or agreed repairs" and Century's general obligation to "make repairs and do what is necessary to keep premises in a fit and habitable condition." TR.56. In addition, the lease required Century "to maintain in reasonably good and safe working condition[] all electrical, gas, plumbing, sanitary, HVAC, [and] smoke detectors." *Id.*

Urgently needed repairs combined with a potentially dangerous tenant constituted an "emergency" under the lease. On July 10—in peak summer weather—the apartment lacked functioning air conditioning or electricity. Electrical fixtures were torn from the walls, and fixing the damage required an electrician. Until the damage was examined and repaired, it risked endangering others in the building. Meanwhile, Crite was not on his medication and was not in the hospital, to the best of Century's knowledge. And he had left a gun in the apartment. Additionally, Crite had violated Kentucky's landlord-tenant laws. *See, e.g.*, KRS 383.605(6) (providing that tenants shall "[n]ot deliberately or negligently destroy, deface, damage, impair or remove any part of the premises or knowingly permit any person to do so"). Viewing this state of affairs as anything other than an "emergency" would not make sense. And if Century's agents had the right to access under the lease, they had the right to consent to the officers' access. *See Matlock*, 415 U.S. at 171.

The Sixth Circuit's interpretation of a similar emergency-access provision is instructive. In *Farinacci v. City of Garfield Heights*, the plaintiff sued the city for allegedly violating the Fourth Amendment when a city employee entered the plaintiff's house and tried to remove her cats. 461 F. App'x 447, 449–50 (6th Cir. 2012). The city took those actions at the request of a security firm engaged by a property-preservation service under contract with the mortgaging bank's servicing agent. *Id.* at 449. The mortgage provided that, if the plaintiff "fail[ed] to perform the covenants and agreements" in the mortgage—including an agreement not to "allow the Property to deteriorate"—the bank was authorized to "do and pay for whatever is necessary to protect the value of the Property and Lender's rights in the Property." *Id.* Although the bank's allowed actions included "entering on the property to make repairs," the plaintiff argued that the bank's and its agents' "rights under property or contract law . . . must be distinguished from the authority to give consent to government officials to enter the premises." *Id.* at 449, 451.

The Sixth Circuit rejected the plaintiff's argument. It held that by signing the mortgage, she "expressly assumed the risk that, if it became necessary to preserve the property, the bank might permit its agents and others to enter the house to effectuate that purpose." *Id.* at 452 (citation omitted). Thus, the security firm "had common authority over the Farinacci home and a sufficient relationship to the premises to give third-party consent to the City employees to

enter the house." *Id.* The same is true here. When Crite signed a lease giving Century and its agents the right to enter his apartment in an emergency, he assumed the risk that Century's agents would enter without his consent to make urgently needed repairs and that they might call on law-enforcement officers to ensure their safety while doing so.

Although Crite (at 25) stresses that Century's agents did not call 9-1-1, the lease contains no indication that the concept of "emergency" was limited to the types of emergencies requiring a 9-1-1 call. Indeed, the lease indicates the contrary. Similar to the *Farinacci* mortgage, Crite's lease obligated Century to "*do what is necessary* to keep premises in a fit and habitable condition." TR.56 (emphasis added). Describing Century's maintenance obligations alongside its right to emergency entry would serve little purpose if Century were not permitted to address critical utilities damage that made the apartment uninhabitable and could permanently impair the property's value.

Notably, the Court of Appeals recently rejected a narrow reading of "emergency" under KRS 383.615(2), a section of Kentucky's Landlord and Tenant Act. That section—functionally identical to the "emergency" provision in Crite's lease—provides that "[a] landlord may enter the dwelling unit without consent of the tenant in case of emergency." In *Gordon v. Gordon*, the court affirmed summary judgment against a claim for violation of the Act based on the landlord's having entered when "there was a foul smell around the house, the

doors were barricaded, and . . . the inside of the house was in disarray." No. 2020-CA-1386-MR, 2021 WL 4228667, at *4 (Ky. App. Sept. 17, 2021) (Clayton, C.J., and Maze and K. Thompson, JJ.) (nonbinding). The court dismissed the tenant's argument that no emergency justified the landlord's entry.[9] *See id.* Consistent with *Gordon*, other jurisdictions have recognized law-enforcement officers' right to enter apartments in comparable circumstances—with or without an express lease provision authorizing the entry. *See, e.g., State v. Huber*, 793 N.W.2d 781, 786 (N.D. 2011) (finding that a strange chemical smell justified officers' entry); *Bos. Hous. Auth. v. Guirola*, 575 N.E.2d 1100, 1105 (Mass. 1991) (holding that, under lease allowing "entry without notice for emergency purposes," officer's entry was valid after exterminators reported seeing "a sawed-off shotgun, ammunition, and a paperfold containing white powder" (quotation marks omitted)); *People v. Plane*, 274 Cal. App. 2d 1, 3 (Cal. App. 1969) (holding that landlord, who knew defendant "le[ft] behind him burning lights, a pet and a reasonable

[9] Below, the parties disputed the applicability of the Landlord and Tenant Act. *See Crite*, 2022 WL 16842272, at *3 n.5. The Commonwealth does not and need not take a position here on the applicability of the Act because the terms of Crite's lease are practically the same as KRS 383.615(2) on the "emergency" point. For the same reason, the Court of Appeals did not separately address KRS 383.615(2) in this case. *See Crite*, 2022 WL 16842272, at *3 n.5. Nonetheless, the *Gordon* court's interpretation of KRS 383.615(2) is persuasive regarding the proper interpretation of the similar provision in Crite's lease.

possibility of an unattended lighted stove, properly entered" with officer "to [e]nsure the building's safety").

Even if there were some question about whether the lease gave Century's agent Robertson actual authority to consent, the officers' entry was still valid because Robertson had apparent authority. *See Rodriguez*, 497 U.S. at 188–89. The question is whether "a reasonable police officer faced with the prevailing facts *reasonably believed* that the consenting party had common authority over the premises to be searched." *Commonwealth v. Nourse*, 177 S.W.3d 691, 696 (Ky. 2005) (emphasis added); *see United States v. Mercer*, 541 F.3d 1070, 1075 (11th Cir. 2008) (holding that "warrantless search of Defendant's motel room [was] justified based on the officer's objectively reasonable, good-faith belief that the motel manager had authority to consent to the search"); *Haines v. Saginaw Police Dep't*, 35 F.3d 565 (Table), 1994 WL 445234, at *5 (6th Cir. 1994) (per curiam) (holding that search was valid because landlady's statements "that she was the owner of the building and that the apartment had been vacated" made it "reasonable for the officers to believe that she had authority over the apartment"). In the context of Crite's lease—which was consistent with Kentucky's statute giving landlords authority to enter apartments in emergencies—the list of safety concerns Robertson communicated would give reasonable officers good reason to believe she had authority to consent to their entry.

Crite's counterarguments lack merit. He argues (at 30) the officers knew they did not have the right to enter because they told Robertson "they had no reason to enter." But the absence of law-enforcement reasons to enter the apartment *supports* the constitutionality of the officers' entry for safety reasons. *See Huber*, 793 N.W.2d at 787–88 (finding no Fourth Amendment violation where "law enforcement did not enter the apartment until they were asked to remove an occupant for safety purposes," and finding "evidence of criminal activity . . . was not the motivating factor"); *Plane*, 274 Cal. App. 2d at 4 (finding no Fourth Amendment violation where purpose of officer's entry was "to enter and secure the apartment and rescue" tenant's cat, "not to make a search of the apartment"). As for Crite's assertion (at 31) that the officers "knew Robertson could not give the legal consent to search," the officers' subjective views on Robertson's authority do not determine the outcome of the objective apparent-authority analysis. *See Rodriguez*, 497 U.S. at 188. Moreover, the officers' actions do not indicate they thought Robertson lacked authority to consent. Instead, they saw no reason to enter on their own authority.

Furthermore, Crite's suggestion (at 35) that the scope of consent did not extend to pulling the AR-15 from the couch ignores that the officers were still walking through and confirming the apartment was empty—the purpose for which Robertson gave consent—when they spotted the rifle in plain view. Once that happened, seizure was appropriate. Crite's own cases say so. *See Hallum v.*

Commonwealth, 219 S.W.3d 216, 223 (Ky. App. 2007) (holding that seizure of "corner bag" by detective did not violate Fourth Amendment because defendant consented to detective's entry into house, and bag was in plain view in kitchen); *Shamaeizadeh v. Cunigan*, 338 F.3d 535, 548, 549 (6th Cir. 2003) (noting that, although consent to initial search for intruder did not extend to later searches for drugs, "the plain view doctrine would likely have justified [officer's] seizure of immediately incriminating drug paraphernalia during the first search"); Appellant Br. 31 (citing *Hallum* and *Shamaeizadeh*).

Next, Crite argues (at 25) that the electrical damage to the apartment did not pose a danger to other residents of the building because the electricity was turned off. But as the circuit court noted, "[e]ven if the breaker box had been shut off, it would be difficult to fully determine the damage" or to what "extent the damage may have affected other units." TR.117. Under those circumstances, "it would be reasonable to think that such a situation would be an emergency that would require engaging an electrician as soon as possible." *Id.* Crite's contrary assertion is effectively an attack on the circuit court's finding of fact that the extent of the damage was undetermined prior to the officers' arrival, but he fails to show that finding of fact was "manifestly against the weight of the evidence." *See Henderson*, 563 S.W.3d at 675 (citation omitted). Thus, this Court should reject Crite's characterization. The same goes for Crite's argument (at 32) that the BB gun Reynolds thought was a handgun did not support concerns

about dangerousness. It plainly did: even apart from his felon status, Crite was not acting as an ordinary, law-abiding gun owner. He had ripped wiring out of walls—in violation of Kentucky law—and was not taking his schizophrenia medication. It was only common sense for Robertson to ask for police assistance.

Crite also states (at 7) that Officer Matthews "could not say when he knew [Crite] was a convicted felon." However, although the officer did not recite exact timing, the circuit court found that "one of the officers had knowledge [Crite] was a convicted felon prior to arrival." TR.115. That finding was supported by substantial evidence: the "Original Dispatch Remarks" in the CAD report stated that Robertson had "rec[']d info that subj[.] is a felon." TR.73; *see Sholar v. Turner*, 664 S.W.3d 719, 724 (Ky. App. 2023) (describing a CAD report as containing "what the [o]fficers would have had available to them as they approached and then assessed the scene"). Also, Officer Nevitt testified that "Officer Matthews had previous knowledge" that Crite was a felon. VR 8/24/20, 14:10. Thus, Crite cannot overcome the "clear error" deference accorded the circuit court's factual finding. *See Whitlow*, 575 S.W.3d at 668. And even apart from Crite's felon status, the other circumstances at the apartment would have justified Robertson's entry and her wish to be accompanied by officers for safety.

Though Crite does not explicitly challenge the circuit court's factual findings—which, again, receive "clear error" deference—his brief contains unexplained departures from the record. For one, Crite argues (at 24) that William

left his message on Century's e-call system "several days before July 10." But both the circuit court and the Court of Appeals found that William called on July 9. TR.114; *Crite*, 2022 WL 16842272, at *1. And although Robertson was initially inexact about dates, she testified that she "became aware of [Crite's] situation on . . . July 9"—the same day she asked Reynolds to check the apartment, and the day before she called officers to assist her and the electrician. VR 8/24/20, 13:45–46, 13:54. Substantial evidence supports the circuit court's finding that William called on July 9. Thus, this Court should uphold it. *See Whitlow*, 575 S.W.3d at 668.

Second, Crite asserts (at 25) that "Robertson waited approximately 24 hours to call an electrician" and "did not call on the afternoon of July 9 nor the morning of July 10." Crite relies on these assertions to support his argument that there was no emergency. But although the electrician did not come to the property until the afternoon of July 10, that timing is consistent with Robertson's having called on the morning of July 10. In fact, she testified that she called OPD "around lunch, or maybe right after lunch" on July 10, and after she called the electrician—indicating she called the electrician the morning after learning of the situation at the apartment. VR 8/24/20, 13:49, 13:54; *see* TR.73 (CAD report showing "Incoming Call" at 14:43:21 on July 10). In any event, for the apparent-authority inquiry, it does not matter exactly when Robertson called the electrician. What matters is the information communicated to Central Dispatch and

to the officers: the apartment had suffered severe damage; the electricity was out; an electrician was coming to make sure the building was safe; Crite was schizophrenic; he was suspected to be off his medication; he was suspected to be a felon; he had a gun in the apartment; and his whereabouts were unknown. Central Dispatch Call, 0:45–2:09; TR.73–74.

The cases Crite cites do not change the result. His reliance (at 23) on *Chapman v. United States* is overbroad: *Chapman* is consistent with case law holding that a third party (such as a landlord) may consent to a search if the third party has common authority over the premises. 365 U.S. 610 (1961); *see Matlock*, 415 U.S. at 171; *Farinacci*, 461 F. App'x at 452. Additionally, the facts are distinguishable. In *Chapman*, officers and the landlord entered because they smelled "whiskey mash" in the house; unlike here, the purpose of entry was to find evidence of criminal activity. 365 U.S. at 611–12, 616. There was no claim of emergency and no lease provision authorizing entry in such circumstances. *See id.* at 616. Although Crite (at 23) characterizes the landlord-tenant statute applicable in *Chapman* as similar to Kentucky's, the opinion discusses only a statute providing "that the unlawful manufacture of distilled liquor on rented premises shall work a forfeiture of the rights of the tenant, at the option of the landlord" and "constitutes a nuisance." 365 U.S. at 617. Neither provision conferred a right to immediate entry. *See id.*

Crite's remaining cases are equally inapplicable. In *Hall v. Commonwealth*, the officers' purpose was investigatory; they were following up an intercepted package that contained marijuana and was addressed to the defendant. 438 S.W.3d 387, 389, 391 (Ky. App. 2014). Noting that the officers seized the marijuana before entering the home, the Court of Appeals found "no emergency" justifying the entry. *Id.* at 391. This case is very different: urgent repair needs, not a criminal investigation, motivated Robertson's and the officers' entry. Although Crite (at 27–28) also relies on *Nourse*, that case supports the Commonwealth's apparent-authority argument. There, this Court held that an officer did not violate the Fourth Amendment by entering the defendant's apartment "[b]ecause it was reasonable for [the officer] to believe that" the defendant's girlfriend, who consented to the search, "was a cotenant." 177 S.W.3d at 696. The Court expressly did not decide "whether or not it was reasonable for the officers to believe that the landlord" also "had authority over the premises." *Id.*

United States v. Williams (cited by Crite at 29–30) contains multiple distinguishing factors. 354 F.3d 497 (6th Cir. 2003). First, the court noted it was addressing only the "'risk of danger' exigency," which justifies "warrantless entries" when officers "reasonably believe that a person within is in need of immediate aid." *Id.* at 503 (citation omitted). The court did not address any question of consent based on a lease. Second, and critically, the government "conceded . . . there was no immediacy involved." *Id.* at 504. Third, the motive for

the search was partially to investigate suspected "drug activity"; the responding officers worked for the Drug Enforcement Agency, and the court questioned the "pur[ity]" of their motives. *Id.* at 504, 507. And fourth, the court found no "risk of danger" to any person other than that created by the officers' entry. *Id.* at 505. By contrast, here, the apartment had sustained electrical damage that could affect other residents of the four-plex or anyone who entered the apartment (including Crite himself or any guests).

Finally, Crite spends several pages (at 35–39) arguing that the "exigent circumstances," "emergency aid," and "community caretaker" exceptions do not apply. The Court need not address those exceptions because the Commonwealth does not rely on them. However, the Commonwealth notes that (as explained above) the lease's authorization for emergency entry extended to urgent repair situations. Therefore, it covered more than the strictly defined concept of "exigency" in law-enforcement situations. *See Williams*, 354 F.3d at 503 (discussing categories of exigency). And Crite does not explain whether he views "emergency aid" as a discrete category or, if so, what its scope is. The Court should decline to address Crite's argument on this point, to the extent he makes one.

Nor does the Court need to address the community-caretaker exception. To the extent it does so, the Commonwealth notes that although *Caniglia v. Strom* held "there is no overarching 'community caretaking'" exception, "it does not

follow that *all* searches and seizures conducted for non-law-enforcement purposes must be analyzed under precisely the same Fourth Amendment rules developed in criminal cases." 141 S. Ct. 1596, 1600 (2021) (Alito, J., concurring) (emphasis added). Thus, in this case about entry for non-law-enforcement purposes authorized by a lease, this Court need not address whether the entry satisfied either a warrant-requirement exception from the criminal-investigation context or the community-caretaker exception. This case is about consent. By contrast, in *Caniglia*, "[t]he decision below assumed that [the officers] lacked . . . consent." *Id.* at 1599. Here, Century's lease-based consent gave the officers the right to check the apartment for safety reasons.

CONCLUSION

Because Crite's lease gave Century the authority to consent to the officers' entry, this Court should affirm.

Respectfully submitted,

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WORD-COUNT CERTIFICATE

This Appellee Brief complies with the word limit of 17,500 under RAP 31(G)(3)(a) because, excluding the parts of the response exempted by RAP 15(D) and 31(G)(5), this document contains 5,909 words.

s/ *Elizabeth Hedges*
Assistant Solicitor General