

SUPREME COURT OF LOUISIANA

No. 99-KK-2598

STATE OF LOUISIANA

v.

JOSEPH P. STERLING

On Writ of Certiorari to the
4th Circuit Court of Appeal

PER CURIAM:*

We granted the state's application in this case to consider the validity of a search conducted of 3022 Wall Boulevard in New Orleans under a warrant issued for 3024 Wall Boulevard, described in the warrant as a "red brick two story structure with a white front door and trim [with] the municipal [number] 3024 ... visible from the street and ... located on the front door." It was only after the police entered the building that they discovered the premises had two municipal numbers, one for an upstairs apartment (3024 Wall), accessible through the front door and a rear upstairs door, and another number for the lower apartment (3022 Wall), accessible through a lower rear door and occupied by respondent, the target of their investigation. Given the discrepancy in the municipal numbers for the premises, the trial court granted respondent's motion to suppress the cocaine seized from his apartment on grounds that the warrant had failed to described with particularity the place to be search. See State v. Manzella, 392 So.2d 403 (La. 1980) (warrant for 6176 Ponchartrain Boulevard did not authorize search of 6178 Ponchartrain, the other side of a double home). The court of appeal denied the state's application for review. State v. Sterling, 99-1217 (La. App. 4th Cir. 8/2/99), ___ So.2d ____

*Lemmon, J., not on panel. See La. S.Ct. Rule IV, Part II, § 3.

(Byrnes, J., dissenting). Despite the discrepancy in municipal numbers for the targeted premises, we reverse the judgments below because the conduct of the officers in this case appears fully "consistent with a reasonable effort to ascertain and identify the place intended to be searched within the meaning of the Fourth Amendment." Maryland v. Garrison, 480 U.S. 79, 88-89, 107 S.Ct. 1013, 1019, 94 L.Ed.2d 72 (1987).

According to the warrant application, the police received a tip from a confidential informant that "Bam" was selling cocaine from his residence at 3024 Wall Boulevard. In the surveillance which followed, the officers observed respondent, who matched the physical description of Bam provided by the confidential informant, converse briefly with a woman at the back of the two-story building in the 3000 block of Wall Boulevard and accept some currency from her. He then walked around to the front door marked with the municipal number 3024 and stepped inside. Respondent emerged shortly thereafter, met the woman at the side of the building, and handed her a small object. Approximately 15 minutes later, the officers, who had relocated to the back of the building to obtain a better vantage point, observed a different woman approach respondent and hand him some currency. Respondent entered the residence through a lower rear door. He returned shortly and handed the woman a small white object which she pocketed and left. Minutes later, a man approached respondent and spoke to him briefly. Respondent then climbed an outside staircase and entered the building through an upstairs door. When he came back down, the officers observed respondent show the man several small white objects in his hand. The suspected buyer chose one of the objects and left. Respondent then walked back up the staircase to the second floor and entered the building as the officers left to secure their warrant.

When the police executed the warrant, they used the front and rear upstairs door to enter the building. The residents on the second floor told the officers that Bam "stayed downstairs but he frequented upstairs." Two officers remained upstairs

while the rest of the officers went back downstairs, where they entered respondent's apartment and handed him a copy of the search warrant. The officers subsequently seized a large rock of cocaine and associated drug paraphernalia. According to Detective Favaro, an affiant on the warrant, he first learned the correct address of respondent's apartment when, in the course of searching the premises, he found a piece of mail addressed to respondent at 3022 Wall Boulevard. The state subsequently charged respondent with possession of 28 grams or more of cocaine, but less than 200 grams, in violation of La.R.S. 40:967(F)(1)(a).

The particularity requirement in the Warrant Clause of the Fourth Amendment assures that "[b]y limiting the authorization to search to the specific areas and things for which there is probable cause to search . . . the search will be carefully tailored to its justifications, and will not take on the character of the wide-ranging exploratory searches the Framers intended to prohibit." Maryland v. Garrison, 480 U.S. at 84, 107 S.Ct. at 1016. Accordingly, "[a] search warrant for an apartment house or hotel or other multiple-occupancy building will usually be held invalid if it fails to describe the particular subunit to be searched with sufficient definiteness to preclude a search of one or more subunits indiscriminately." 2 Wayne R. LaFave, Search and Seizure, § 4.5(b), p. 526 (3d ed. 1996).

Nevertheless, "[j]ust as the discovery of contraband cannot validate a warrant invalid when issued, so is it equally clear that the discovery of facts demonstrating that a valid warrant was unnecessarily broad does not retroactively invalidate the warrant." Garrison, 480 U.S. at 85, 107 S.Ct. at 1017. Although it may mistakenly characterize a multiple dwelling unit as a single occupancy dwelling, a warrant is not invalid when "the building in question from its outward appearance would be taken to be a single-occupancy structure and neither the affiant nor other investigating officers nor the executing officers knew or had reasons to know of the structure's actual multiple-occupancy

character until execution of the warrant was underway”
LaFave, supra, § 4.5(b) at 529. In these circumstances, the
validity of the search turns on the manner in which the officers
execute the warrant “based on the information available as the
search proceeds recogniz[ing] the need to allow some
latitude for honest mistakes that are made by officers in the
dangerous and difficult process of making arrests and executing
search warrants.” Garrison, 480 U.S. at 87, 107 S.Ct. at 1018
(footnote omitted).

In the present case, there is no question that the warrant
authorized, and was intended to permit, the search of the entire
two-story building described in the application. The scope of
that authority was based on the officers reasonable and good
faith (albeit mistaken) belief that the structure was a single-
unit dwelling, based on their observations of an individual
meeting the informant's description of Bam moving in and out of
the upstairs and downstairs of the building marked with a single
visible municipal number, the same number used by the
confidential informant in his tip. In fact, the officers had
probable cause to search the entire building even after
discovering that it was a duplex. The critical element in a
reasonable search “is not that the owner of the property is
suspected of crime but that there is reasonable cause to believe
that the specific ‘things’ to be searched for and seized are
located on the property to which entry is sought.” Zucher v.
Stanford Daily, 436 U.S. 547, 556, 98 S.Ct. 1970, 1976-77, 56
L.Ed.2d 525 (1978). Respondent's movements upstairs and
downstairs as he conducted his apparent drug transactions
indicated that he had access to the entire structure and that, at
least for purposes of determining the extent of Bam's drug
operation, there was “no real division in fact or in use of the
building into separate halves.” Steele v. United States, 267
U.S. 493, 503, 45 S.Ct. 414, 416, 69 L.Ed. 757 (1925). See also
United States v. Butler, 71 F.3d 243, 249-50 (7th Cir. 1995)(when
police had reasonable belief that the large-scale drug operation

conducted by the defendant from his second floor apartment encompassed all three floors of a triplex, search warrant lawfully authorized search of the entire building); United States v. Johnson, 26 F.3d 669, 694-96 (7th Cir. 1994) (when police had good faith belief duplex was being used as a single unit, drug deals occurring on second floor supported probable cause to search the entire premises).

Nevertheless, although they had a valid warrant and probable cause to search the entire building, the officers immediately refocused their investigation upon learning from the upstairs residents that Bam lived downstairs. The officers then searched only respondent's downstairs apartment. By carefully limiting their search according to its initial justification and preserving the privacy interests of the other tenants in the building, the officers executed the warrant in a manner that fully accorded with the Fourth Amendment's particularity requirement.

The district court therefore erred in granting respondent's motion to suppress. The judgment is vacated and this case is remanded to the district court for further proceedings not inconsistent with the views expressed herein.