

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE

v.

KHYON E. CHURCH,
Defendant.

)
)
)
)
)
)
)
)

I.D. No. 0104008667

Submitted: October 21, 2002
Decided: December 18, 2002

UPON DEFENDANT'S CONSOLIDATED MOTION
TO SUPPRESS EVIDENCE
DENIED.

ORDER

Joelle M. Wright, Esquire, Deputy Attorney General, New Castle County, State of Delaware, Attorney for the State of Delaware.

Joseph A. Hurley, Esquire, Attorney for Defendant.

ABLEMAN, JUDGE

This is the Court’s decision on a Consolidated Motion to Suppress Evidence seized during a search of Khyon E. Church’s (“Defendant”) residence located at 6 S. Gray Avenue, Wilmington, Delaware. Following the search, which was incident to a warrant, Defendant was charged by a Grand Jury indictment with numerous drug and weapons offenses including Trafficking in Cocaine and Possession of a Firearm During the Commission of a Felony.¹ Defendant submits that the evidence should be suppressed because the affidavit in support of the search warrant lacked probable cause to support a search of the 6 S. Gray Avenue premises. Specifically, Defendant claims that the affidavit failed to establish a nexus between the items sought and the Defendant’s residence, thereby violating his rights under the Fourth Amendment to the United States Constitution and Article 1, § 6 of the Delaware Constitution. As will be discussed more fully hereafter, since the four corners of the affidavit meet the probable cause standard for the issuance of a search warrant, the Consolidated Motion to Suppress is denied.

¹ On May 15, 2001, Defendant was indicted on the following offenses: Trafficking in Marijuana in violation of Title 16, § 4753(a)(1)(a) of the Delaware Code; Trafficking in Cocaine in violation of Title 16, § 4753A(a)(2)(a) of the Delaware Code; Possession With Intent to Deliver a Non-Narcotic Schedule I Controlled Substance in violation of Title 16, § 4752 of the Delaware Code; Possession with Intent to Deliver a Narcotic Schedule II Controlled Substance in violation of Title 16, § 4751 of the Delaware Code; Possession of a Firearm during the Commission of a Felony in violation of Title 11, § 1447A of the Delaware Code; Use of a Dwelling for Keeping Controlled Substances (1725 W. 2nd Street) in violation of Title 16, § 4755(a)(5) of the Delaware Code; Use of a Dwelling for Keeping Controlled Substances (6 S. Gray Avenue) in violation of Title 16, § 4755(a)(5) of the Delaware Code; Use of a Vehicle for Keeping Controlled Substances in violation of Title 16, § 4755(a)(5) of the Delaware Code;

Statement of Facts

During the first week of March 2001, Officers Vincent Jordan and Hector Cuadrado of the City of Wilmington Police Department were contacted by a past proven reliable informant who advised them that a black male, known only as “Ky,” was selling large amounts of marijuana from his dwelling at 1725 W. 2nd Street in the City of Wilmington. The officers then contacted the security division of Conectiv Power and learned that the utilities for 1725 W. 2nd Street were registered in the name of Khyon E. Church. Checks for driver’s license, social security number, and Department of Motor Vehicles photographic identification confirmed these connections. Although the Department of Motor Vehicles identified Defendant’s registered address as 2 Commonwealth Boulevard, New Castle, Delaware, the social security number associated with the driver’s license matched the social security number in the records of Conectiv Power. Thus, the identification investigation results all positively matched the Defendant with the premises located at 1725 W. 2nd Street.

Based on the foregoing information, the officers commenced surveillance of 1725 W. 2nd Street during the fourth week of March 2001. While conducting surveillance, the officers observed a black male whom they believed to be the Defendant leave the premises with another unknown male who was carrying a

Possession of Drug Paraphernalia in violation of Title 16, § 4771 of the Delaware Code; Possession of a Controlled Substance Within 300 Feet of a Park or Recreation Area in violation of Title 16, § 4768 of the Delaware Code.

backpack. Both males entered a dark colored 1994 Lexus and proceeded to 6 S. Gray Avenue. The police officers' experience led them to be suspicious since drug traffickers transport large quantities of marijuana in duffle bags, backpacks, trash bags, and cardboard boxes.² The officers responded to 6 S. Gray Avenue and observed Defendant walk to the front door, check his mailbox, and use a key to open the front door and enter the premises. The officers conducted a registration check on the Lexus and learned that the vehicle was registered to William R. Church of 2 Commonwealth Boulevard, New Castle, Delaware, the same address listed on Defendant's driver's license.

The officers continued the surveillance, observing the Defendant leave 6 S. Gray Avenue and return to the Lexus still occupied by the unknown male passenger. Defendant and his passenger proceeded in the Lexus to Up the Creek Restaurant. At this juncture, undercover Detective Henry Cannon of the Wilmington City Police continued the surveillance. Detective Cannon entered the restaurant and observed the Defendant and his passenger seated at a table conversing with a white male whom Detective Cannon believed was an employee of the restaurant. At one point, Defendant and the unidentified white male left the table, entered the restroom, and returned shortly thereafter. Since the two remained in the restroom for such a short span of time, it was Detective Cannon's

² Suppression Hearing Transcript, dated October 15, 2001, at 7 (hereinafter, Suppression Hr'g Tr. at ____.'").

belief that a drug transaction had occurred in the restroom. Not long after, Defendant and his passenger drove away in the Lexus. The officers followed the Lexus into the center of Wilmington but lost sight of the vehicle. Later that evening, the officers again conducted surveillance at 6 S. Gray Avenue and observed Defendant's parked Lexus. From all these circumstances, the officers reasonably believed that Defendant was residing at 6 S. Gray Avenue.

During the same week in March 2001, the officers conducted further surveillance at 6 S. Gray Avenue and observed a black Nissan pickup truck parked in the rear driveway of the premises. The officers performed an identification check on the license plate number of the truck and found it was registered to a William R. Church and Erna Church of 2 Commonwealth Boulevard, New Castle, Delaware. This is the same address noted on Defendant's driver's license. The officers continued surveillance of 6 S. Gray Avenue on a daily basis throughout the remainder of March of 2001 and observed both the Lexus and the pickup truck parked at the premises.

Surveillance continued into April. The officers again observed Defendant leave 6 S. Gray Avenue, enter the pickup truck, and drive to a dwelling at 1725 W. 2nd Street, which he entered. On April 12, 2001, officers viewed Defendant arrive at 6 S. Gray Avenue in the pickup truck and unload a motorcycle from the bed of the pickup truck. Shortly thereafter, Defendant drove from 6 S. Gray Avenue in

the pickup truck to the area of Second and Scott Streets. Defendant parked the vehicle and carried two large black duffel bags into 1725 W. 2nd Street. The officers could tell that the bags were empty since they were lying flat on Defendant's shoulder. Approximately fifteen minutes later, Defendant was observed leaving the premises with the bags, which now appeared filled and heavy. Defendant placed the bags in the back of the pickup truck. The officers, accompanied by Detective Thomas Dempsey, were in an unmarked car and not in uniform.

According to his testimony, Detective Vincent Jordan parked his unmarked vehicle in a space directly behind Defendant's pickup truck, in such a manner that it did not obstruct Defendant's vehicle from leaving.³ Detective Jordan observed a minivan parked in front of Defendant's vehicle, but there was sufficient room between the front of Defendant's vehicle and the rear of the minivan for Defendant to maneuver his vehicle out of its parking space.

Detective Jordan approached Defendant's pickup truck, knocked on the window and identified himself as a police officer. At the time, Detective Jordan was wearing his Wilmington Police identification badge around his neck. Detective Dempsey was also dressed in plain clothes, and neither he nor Detective Jordan were displaying their weapons. At the moment Detective Jordan identified

³ Suppression Hr'g Tr. at 16.

himself, it appeared that Defendant pressed the speed dial button on his cellular phone and then placed the phone on the floor of the vehicle. Detective Jordan believed that Defendant was attempting to warn someone on the line that he was being approached. Detective Jordan requested that Defendant step down from the vehicle at which point the Detective reached into the vehicle, picked up the phone, and could hear another male's voice on the phone asking what was going on.⁴ The Detective closed the flip top phone and asked the names of Defendant and the owner of the vehicle. Defendant responded that his name was Khyon Church and that the pickup truck belonged to his father. When questioned as to his destination, Defendant responded that he was "going on a trip."⁵ When asked about the contents of the duffel bags, Defendant replied that they "contained clothing for his trip."⁶

After questioning Defendant a second and third time about the contents of the duffel bags, Defendant stated that the bags contained drugs, specifically marijuana.⁷ Defendant was detained and handcuffed. Defendant's vehicle, and the bags which were still in it, were transported to the Wilmington central police station. Detective Sutton of the K-9 Unit performed a canine search of the bags. The dog was alerted to the scent of marijuana. Once opened, the bags were found

⁴ Suppression Hr'g Tr. at 18.

⁵ *Id.*

⁶ Suppression Hr'g Tr. at 19.

⁷ *Id.*

to contain a combined quantity of approximately 24.99 pounds of marijuana. Defendant was read his Miranda rights and arrested.

Upon Defendant's arrest, the officers applied for a search warrant for both 1725 W. 2nd Street and 6 S. Gray Avenue, believing there to be more marijuana plants, drugs, drug monies, paraphernalia and other contraband at these premises. At the time the search warrant was issued, the police officers had reason to believe that the Defendant was actually living at 6 S. Gray Avenue and that he was probably using 1725 W. 2nd Street as a stash house for his drugs and for the proceeds from the sale of drugs. After executing the search warrant at 1725 W. 2nd Street, the officers uncovered approximately 30 pounds of marijuana and two handguns. The search warrant completed at 6 S. Gray Avenue produced approximately 24 grams of powdered cocaine and another handgun.

A hearing on Defendant's Motion to Suppress was conducted on October 7, 2002.⁸ At the conclusion of the hearing, the Court denied Defendant's motion with respect to all claims, but reserved decision on the issue of the evidence found at 6 S. Gray Avenue. On October 22, 2002, the State filed its response in opposition to the suppression of the evidence recovered from the 6 S. Gray Avenue residence.

⁸ Defendant initially filed his Motion to Suppress on June 20, 2001 and then filed an Amended Motion to Suppress on September 25, 2001. At the suppression hearing originally held on October 15, 2001, the Court denied Defendant's Motion to Suppress based solely on the statement of facts and law contained in the initial Motion to Suppress. As the Court and the State were not made aware of Defendant's Amended Motion to Suppress at the time of the suppression hearing, the Court was unable to address all of the pending issues. Accordingly, the Court vacated the order denying the Motion to Suppress entered on October 15, 2001. Defendant subsequently filed the

Defense Contentions

Defendant contends that the search of 6 S. Gray Avenue violated his Federal and State constitutional rights insofar as the information obtained from his primary detention was tainted. Therefore, Defendant argues, all references to information gathered because of that illegal action represents “fruit of the poisonous tree.” Additionally, Defendant maintains that the affidavit in support of the search warrant lacked the necessary probable cause to support a reasonable belief that evidence would be found at the 6 S. Gray Avenue premises.

Standard Of Review

On motions to suppress evidence presented to this Court, the defendant bears the burden of establishing that the challenged search or seizure violated his Fourth Amendment rights.⁹ Further, it is the defendant who must prove by a preponderance of the evidence that he is entitled to relief.¹⁰

Discussion

The protections afforded in the Fourth Amendment safeguard the public against unreasonable searches and seizures and require that a search warrant may be issued only upon a showing of probable cause supported by oath or

instant motion on December 6, 2001 and submitted a memorandum of law in support of motion to suppress evidence on May 7, 2002.

⁹ *Rakas v. Illinois*, 439 U.S. 128, 130 n. 1 (1978); *State v. Bien-Aime*, Del. Super., Cr. A. No. IK92-08-0326, Toliver, J. (Mar. 17, 1993) (Mem. Op.).

¹⁰ *Bien-Aime* at 3 (citing *United States v. Casteneda*, 951 F.2d 44, 48 (5th Cir. 1992)).

affirmation.¹¹ The Delaware Constitution ensures the same fundamental right and security for its citizenry by requiring a showing of probable cause before issuance of a search warrant affidavit upon oath or affirmation.¹² The probable cause provision was integrated into the present Delaware Constitution and Declaration of Rights in 1792 and has never been altered.¹³ The addition of the probable cause provision in 1792 by the framers of Delaware's Declaration of Rights was more than an integral adjunct to the oath requirement for search warrants. It proved to be an invaluable enhancement of the right against illegal searches and seizures rights set forth in Delaware's 1776 Constitution and Declaration of Rights.¹⁴

In furtherance of the guarantee of protection from unreasonable searches and seizures, our General Assembly has set forth in § 2306 and § 2307 of the Delaware Code the statutory requirements that are necessary for a constitutionally adequate showing of probable cause. The language of § 2306 of Title 11 provides that the affidavit in support of a search warrant:

¹¹ The Fourteenth Amendment to the United States Constitution states:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized. U.S. CONST. amend. XIV.

¹² Article 1, § 6 of the Delaware Constitution provides:

Section 6. The people shall be secure in their persons, houses, papers and possessions, from unreasonable searches and seizures; and no warrant to search any place, or to seize any person or thing, shall issue without describing them as particularly as may be; nor then, unless there be probable cause supported by oath or affirmation. DEL. CONST. art. 1, § 6.

¹³ *Dorsey v. State*, 761 A.2d 807, 817 (Del. 2000); *see also Jones v. State*, 745 A.2d 856 (Del. 1999) In *Jones*, the Delaware Supreme Court concluded that the history of the search and seizure provisions in the Delaware Constitution imparted *different* and *broader* protections than those afforded by the Fourth Amendment. *Id.* at 865-66.

¹⁴ *Dorsey*, 761 A.2d at 817.

[S]hall designate the house, place, conveyance or person to be searched and the owner or occupant thereof (if any), and shall describe the things or persons sought as particularly as may be, and shall substantially allege the cause for which the search is made or the offense committed by or in relation to the persons or things searched for, and shall state that the complainant suspects that such persons or things are concealed in the house, place, conveyance or person designated and shall recite the facts upon which such suspicion is founded.¹⁵

Delaware courts have interpreted the probable cause standard of § 2306 to require that the underlying affidavit in support of the search warrant must establish sufficient cause for the warrant’s issuance.¹⁶ The Delaware Supreme Court “has eschewed a hypertechnical approach to the evaluation of the search warrant affidavit in favor of a *common-sense interpretation*.”¹⁷ More importantly, “the affidavit supporting the search warrant must be ‘considered as a whole and not on the basis of separate allegations.’”¹⁸

In issuing a search warrant, a judicial officer must comply with the procedural and substantive requirement of § 2307 as follows:

¹⁵ 11 *Del. C.* § 2306.

¹⁶ *Wilson v. State*, 314 A.2d 905, 906-907 (Del. 1973) (citing *Carroll v. United States*, 267 U.S. 132 (1925)).

¹⁷ *United States v. Ventresca*, 380 U.S. 102, 109 (1965); *see also Gardner v. State*, 567 A.2d 404, 409 (Del. 1989); *Jensen v. State*, 482 A.2d 105, 111 (Del. 1984); *Pierson v. State*, 338 A.2d 571, 573-74 (Del. 1975); *Edwards v. State*, 320 A.2d 701, 703 (Del. 1974); *Wilson v. State*, 314 A.2d 905, 906-907 (Del. 1973); (emphasis added).

¹⁸ *Gardner*, 567 A.2d at 409 (quoting *Jensen v. State*, 482 A.2d at 111) (emphasis added). *Accord Dorsey*, 761 A.2d at 811-812 (upholding the four corners test for probable cause required by 11 *Del. C.* § 2306 in that the four corners of the affidavit must comport with § 2306’s requirement that the complaint ‘recite the facts’ regarding why the items sought would be found at the place to be searched); *Dunfee v. State*, 346 A.2d 173, 175 (Del. 1975) (stating that the factual sufficiency of an affidavit is tested by considering it as a whole and not in terms of its isolated component allegations); *Edwards*, 320 A.2d at 703 (noting that when testing for requirements, the affidavit must be considered as a whole, and not in an isolated seriatim fashion); *Rossitto v. State*, 234 A.2d 438, 439-40 (Del. 1967) (holding that allegations of an affidavit filed in support of an application for a search warrant may not be isolated each from the other. The affidavit must be considered as a whole); *Mezzatesta v. State*, 166 A.2d 433, 437

If the judge, justice of the peace or other magistrate finds that the facts recited in the complaint constitute probable cause for the search, that person may direct a warrant to any proper officer or to any other person by name for service. The warrant shall designate the house, place, conveyance or person to be searched, and shall describe the things or persons sought as particularly as possible ...¹⁹

This Court has held that the foregoing two statutory sections establish a four corners test for probable cause.²⁰ There must exist adequate facts on the face of the affidavit so that a reviewing court can verify that probable cause existed for issuance of the warrant.²¹ It is the duty of a reviewing court to give ‘great deference’ to the magistrate’s or judge’s determination that a warrant is supported by probable cause.²² Additionally, there is the requirement that all facts relied upon by the magistrate be in the written affidavit to insure that the reviewing Court may determine whether the constitutional requirements have been met without reliance upon faded and often confused memories.²³

It is firmly established that the reviewing court must determine whether a search warrant affidavit contained sufficient factual information when issued by a neutral and detached magistrate or judicial officer to form a reasonable belief that an offense has been committed and that seizable property would be found in a

(Del. 1960) (articulating that the affidavit must be considered as a whole in determining if the allegations justify the issuing of a search warrant).

¹⁹ 11 *Del. C.* § 2307.

²⁰ *Pierson v. State*, 338 A.2d 571, 573 (Del. 1975).

²¹ *Id.*

²² *United States v. Leon*, 468 U.S. 897, 914 (1984) (quoting *Spinelli v. United States*, 393 U.S. 410, 419 (1969)).

particular place or on a particular person.²⁴ In other words, “[t]he critical element in a reasonable search is not that the owner of the property is suspected of a 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.”²⁵ A warrant will not be overturned if this probable cause is apparent.²⁶ Moreover, this Court has consistently held that “it is axiomatic that there be a nexus between the items which are sought and the place in which the police wish to search for them.”²⁷

Defendant concedes in his motion “that putting aside other alleged constitutional infirmities, there was probable cause to arrest and search. That fact does not, however, justify a search of the Gray Avenue residence.” In support of this contention, Defendant relies on the holding in *State v. Jones*.²⁸ In *Jones*, this Court held that the affidavit, which supported the search warrant of the defendants’ residence, lacked the requisite showing of probable cause. As a result, the evidence seized at the defendants’ residence was suppressed.²⁹ But *Jones* can be distinguished from the case at bar because the objects to be sought, as specified in the affidavit in *Jones*, included employee payrolls, paperwork relating to

²³ *Dorsey v. State*, 761 A.2d 807, 811 (Del. 2000) (quoting *Pierson v. State*, 338 A.2d 571, 574 (Del. 1975)); *Henry v. State*, 373 A.2d 575, 577 (Del. 1977).

²⁴ *Dorsey*, 761 A.2d at 811; see also *Carter v. State*, 418 A.2d 989, 992 (Del. 1980); *Edwards*, 320 A.2d at 703; *Wilson*, 314 A.2d at 906-907.

²⁵ *Zurcher v. Stanford Daily*, 436 U.S. 547, 556 (1978) (citing *Carroll v. United States*, 267 U.S. 132 (1925)).

²⁶ *Hooks v. State*, 416 A.2d 189, 203 (Del. 1980) (citing *Brinegar v. United States*, 338 U.S. 160, 175 (1949)).

²⁷ *State v. Jones*, 2000 WL 33114361 (Del. Super.) (citing *Dorsey*, 761 A.2d at 811); *Hooks*, 416 A.2d at 203; *Pierson*, 338 A.2d at 573.

²⁸ *State v. Jones*, 1997 WL 528274 (Del. Super.).

²⁹ *Id.* at *4.

defendants' employees, and business records located at the defendants' place of business and residence. A search of defendants' residence instead produced cocaine and handguns. There was no direct evidence on the face of the affidavit that the police had probable cause to believe that cocaine and handguns would be found at defendants' residence. In contrast, based on the information in the affidavit provided by Detectives Jordan, Cuadrado and Janvier, there was ample probable cause for the police to believe drugs, contraband, and associated drug trafficking paraphernalia would be found at 6 S. Gray Avenue. Thus, there was a logical connection between the items sought and the premises searched.

Defendant similarly relies upon *State v. Ada*, which he purports factually bears the greatest similarity to his case.³⁰ In *Ada*, the defendant maintained two separate residences, Apartment C-4, 3501 Lancaster Avenue and 2724 West 4th Street. Although police surveillance, a controlled drug buy, and exigent circumstances substantiated a warrantless search of the Apartment C-4 residence, the Court held that there were insufficient facts set forth in the affidavit of probable cause to form a nexus between the items sought and the West 4th Street residence.³¹ The defendant was observed coming and going from the West 4th Street residence and using a key to enter and lock the front door. Yet, the police observed no illegal

³⁰ *State v. Ada*, 2001 WL 660227 (Del. Super.).

³¹ *Id.* at *5.

or suspicious activity occurring at the residence.³² No other objective evidence existed to link the defendant to this residence.³³

The objective evidence linking the Defendant to 6 S. Gray Avenue in this case was far more substantial than in *Jones* and *Ada*. During the last week of March 2001, police surveillance revealed Defendant leaving this residence with an unknown black male and traveling to a restaurant to conduct what appeared to be a drug transaction. Additionally, police had observed Defendant's Lexus and a pickup truck on several occasions parked at 6 S. Gray Avenue as well as at 1725 W. 2nd Street. Police monitored Defendant traveling at different times in both vehicles to and from these two residences. The police could reasonably have concluded based on information provided in the affidavit, that Defendant was living at 6 S. Gray Avenue and storing his drugs at 1725 W. 2nd Street. Based upon the trips to and from the residences observed by police, the likelihood was great that drugs and associated paraphernalia would be uncovered at both addresses. In *Ada*, the contested search warrant was executed at West 4th Street, believed to be the defendant's stash house, not his residence. Here, the search performed at 6 S. Gray was the Defendant's residence. The information contained in the four corners of the *Ada* affidavit pertaining to the officers' experience with regard to drugs being kept in the home was not applicable to the West 4th Street stash house.

³² *Id.*

³³ *Id.* at *4.

The facts set forth in the search warrant affidavit in this case were specific with respect to the items sought at 6 S. Gray Avenue. Also, the tip in *Ada* originated from a concerned citizen, rather than from a past proven and reliable informant as in this instance.³⁴

Adopting the common sense interpretation laid down by the Delaware Supreme Court, the Court has reviewed the four corners of the search warrant affidavit in this case and finds that the factual circumstances and information contained therein were sufficient to warrant the police officers to believe that drugs, drug paraphernalia, and contraband would be found at 6 S. Gray Avenue. Upon examination of the factual adequacy of the affidavit as a whole, and not in terms of its isolated component allegations, sufficient probable cause exists to establish a nexus between the items that were sought and Defendant's residence due to the following factors: 1) a past proven and reliable informant contacted police that a black male known as "Ky" was selling large amounts of marijuana from 1725 W. 2nd Street; 2) Defendant and an unidentified male were observed leaving 1725 W. 2nd Street, traveling to 6 S. Gray Avenue, whereupon Defendant checked his mail, entered, then exited the residence and drove to Up The Creek Restaurant to conduct a probable drug sale; 3) Defendant's Lexus and pickup truck were observed parked at 1725 W. 2nd Street and 6 S. Gray Avenue on a daily

³⁴ *Id.* at *1.

basis; 4) Defendant was observed traveling from 6 S. Gray Avenue to 1725 W. 2nd leading police to believe that he was using 6 S. Gray Avenue as a residence and 1725 W. 2nd as a stash house for his drugs; 5) Defendant was observed leaving 6 S. Gray Avenue, traveling to and entering 1725 W. 2nd Street with empty duffel bags, and exiting with full bags; 6) the affiants' statement that, based on their training, experience, and participation in other drug investigations, it is common for drug traffickers to secrete contraband, proceeds of drug sales and records of drug transactions in secure locations within their residence and/or businesses for their ready access and to conceal the same from law enforcement officers; and 7) the affiants' statement that drug traffickers only transport enough drugs that they will need for a sale and generally maintain the rest of their drugs at a secured location, including, but not limited to, their residence.

Within the parameters of the Fourth Amendment and Article 1, § 6 of the Delaware Constitution, there is a fundamental distinction between probable cause to arrest and probable cause to search. Probable cause to arrest concerns a "person" and whether a criminal act has been committed or is being committed by a person to be arrested. Probable cause to search involves a "place" and whether evidence or illegal instrumentalities will be discovered in a particular location. In *United States v. Whitner*, the Third Circuit upheld the contention embedded in the Fourth Amendment that "probable cause to arrest does not automatically provide

probable cause to search the arrestee's home."³⁵ In *United States v. Jones*, the Third Circuit stated, however, "although probable cause to arrest does not automatically provide probable cause to search the defendant's home, the fact that probable cause to arrest has been established increases the probability that the defendant is storing evidence of that crime in the defendant's residence."³⁶ By Defendant's own admission in his motion, there was probable cause to arrest. Based on the outcome of police surveillance efforts in the months of March and April, 2001, and the evidence obtained upon Defendant's arrest detailed in the affidavit, law enforcement officials could reasonably believe that drugs were being stored at 6 S. Gray Avenue.

In consideration of the information supplied by the past proven and reliable informant as to drug dealing from 1725 W. 2nd Street, the affiants' personal observations of the Defendant, and the experience of the police officers fully enumerated in the affidavit, the Court finds that the issuing judicial officer possessed sufficient grounds to reasonably believe that the items listed in the search warrant would be found at 6 S. Gray Avenue. In *State v. Jones*, this Court affirmed that, "[D]irect evidence that items will be present at the premises to be

³⁵ *United States v. Whitner*, 219 F.3d 289, 297 (3rd Cir. 2000) (quoting *United States v. Jones*, 994 F.2d 1051, 1055 (3rd Cir. 1993); *Dorsey*, 761 A.2d at 812.

³⁶ *United States v. Jones*, 994 F.2d at 1055-56.

searched pursuant to the warrant is not always required in a search warrant.”³⁷ The lack of “direct evidence,” e.g., a controlled drug purchase made from 6 S. Gray Avenue and/or an informant’s tip that the Defendant maintained or sold drugs from 6 S. Gray Avenue, within the four corners of the search warrant, to suggest that drugs or contraband could be seized at 6 S. Gray Avenue, does not negate the adequacy of a finding of probable cause. Defendant’s conduct leading up to his arrest and possession of large quantities of marijuana upon his arrest provided police with more than mere fodder or suspicion that the Defendant stored contraband or drugs in his residence at 6 S. Gray Avenue.

In *State v. Jones*, the defendant similarly argued that the four corners of the search warrant lacked probable cause to support a belief that marijuana would be found at his residence, and that it was mere speculation that the police thought that defendant kept contraband or drugs in his residence.³⁸ In support of his allegation, defendant stressed the fact there were no controlled buys from the residence, no surveillance of the residence, and no informant who told police that defendant kept drugs in his residence.³⁹ The *Jones* Court found probable cause existed *even* in the absence of the above three elements.⁴⁰ In the case at bar, while there were no controlled buys or information provided by an informant, information obtained

³⁷ *Jones*, 1997 WL 528274, at *4 (quoting *Hooks*, 416 A.2d at 203); *United States v. Maestas*, 546 F.2d 1177, 1180 (5th Cir. 1977).

³⁸ *State v. Jones*, 2000 WL 33114361, at *2 (Del. Super.).

³⁹ *Id.*

through law enforcement surveillance efforts, coupled with other specific facts provided in the affidavit, established the requisite nexus between the items sought and the Defendant's residence.

Moreover, in *Jones*, this Court held that “a police officer’s training and experience may be taken into consideration in determining probable cause *when combined with other factors*.”⁴¹ In addition to the factual items previously discussed, the affidavit contained significant information attesting to the affiants’ experience and training in drug investigations, further substantiating the Court’s finding of sufficient probable cause.

The recent Fourth Circuit case of *United States v. Hargis*, significantly mirrors the circumstances surrounding Defendant’s claim of insufficient probable cause.⁴² In *Hargis*, the defendant asserted that the warrant was facially invalid because it lacked the necessary probable cause, having omitted any evidence of a nexus between defendant’s drug trafficking and his residence.⁴³ Despite his assertion, the Court held that the affidavit did provide strong support for probable cause to search Defendant’s residence.⁴⁴ The affidavit contained reliable information that: 1) the defendant brought drugs to the location of his drug dealing in his car from another location; 2) the defendant was observed on several

⁴⁰ *Id.* at *4 (emphasis added).

⁴¹ *Id.* (emphasis added).

⁴² *United States v. Hargis*, 2002 WL 1336658 (4th Cir. (Md.)).

⁴³ *Id.* at *1.

occasions going back and forth between his residence and the location of his drug dealing; and 3) the police officer stated that, based on his training and experience, street-level dealers frequently store drugs in their homes.⁴⁵ In this case, the same factual elements, and perhaps more, were present to implicate 6 S. Gray Avenue in Defendant's drug trafficking enterprise.

Conclusion

Based on the foregoing facts and statements contained within the four corners of the affidavit in support of the search warrant and the fact that probable cause existed to arrest Defendant, this Court finds sufficient probable cause was established to execute a valid search of 6 S. Gray Avenue. Accordingly, there are sufficient specific facts set forth in the affidavit to form a nexus between the items that were sought and Defendant's residence.

Defendant has failed to demonstrate by a preponderance of the evidence that the challenged search and seizure violated his Fourth Amendment rights. For all

⁴⁴ *Id.*

⁴⁵ *Id.*

the foregoing reasons, Defendant's Consolidated Motion to Suppress is hereby
DENIED.

IT IS SO ORDERED.

Peggy L. Ableman, Judge

cc: Joseph A. Hurley, Esquire
Joelle M. Wright, Esquire
Presentence
Prothonotary