FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D21-2178

MARK ALVIN TYSON,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

On appeal from the Circuit Court for Escambia County.
Jan Shackelford, Judge.

November 23, 2022

PER CURIAM.

Appellant pleaded no contest to possession with the intent to distribute methamphetamine. He challenges the trial court's denial of his motion to suppress the methamphetamine, which he reserved the right to appeal as a dispositive issue. We affirm the trial court's ruling.

I.

The Escambia County Sheriff's Office facilitated four controlled drug purchases at 2216 West Gonzalez Street in Pensacola. The structure at that address is, at least by all outward appearances, a single-story, single-family residence. The residence

has one house number and mailbox, and property records reflect that it is a single-family home.

In each controlled transaction, the subject of the investigation (Larry Wilson) would exit the home's side door to sell drugs to a buyer. After each sale, Wilson would walk through the yard and re-enter the residence through the home's front door. Based on these controlled transactions, officers obtained a warrant to search 2216 West Gonzalez Street for evidence of illegal drug activity. Officers executed the warrant on August 25, 2020. Prior to the search, officers did not know that any person other than Wilson resided at the home.

When officers entered the house to execute the warrant, they found there was a wall constructed within the residence that partitioned one bedroom and bathroom from the rest of the home's interior. The bedroom and bathroom were accessible via the home's side door. The officers included the bedroom and bathroom in their search of the residence because they previously observed Wilson coming and going from the home's side door during the controlled drug sales. Among other items, the search uncovered methamphetamine belonging to Appellant.

Appellant moved to suppress the methamphetamine. He argued that 2216 West Gonzalez Street was really a multi-unit dwelling that required officers to obtain a second warrant before searching the partitioned bedroom and bathroom. At the hearing on Appellant's motion, Appellant's Counsel acknowledged that from the outside, the house does not appear to be a multi-unit dwelling. Nevertheless, he maintained that during their search of the interior, officers should have recognized that the house was a multi-unit dwelling which required a second search warrant.

The trial court denied Appellant's motion. Appellant pleaded no contest while reserving the right to appeal the trial court's suppression ruling as a dispositive order.

II.

An appellate court uses a "mixed standard" to review a trial court's ruling on a motion to suppress. *Porter v. State*, 298 So. 3d

140, 143 (Fla. 1st DCA 2020). The trial court's factual findings are reviewed for competent, substantial evidence, but its legal conclusions are reviewed de novo. *Id.*

Here, the parties do not dispute the basic facts or whether there was probable cause to support the issuance of *one* search warrant for 2216 West Gonzalez Street.* Instead, the questions presented in this appeal are (1) whether the bedroom and bathroom at issue were part of 2216 West Gonzalez Street such that a warrant authorizing a search of that property necessarily included the bedroom and bathroom and (2) whether, even if the bedroom and bathroom were a distinct residence, the officers' search was still valid under these circumstances.

A.

When executing a warrant, law enforcement officers may not "search a separate dwelling unit that exists on the premises but is not separately identified in the warrant." *Rodgers v. State*, 264 So. 3d 1119, 1122 (Fla. 2d DCA 2019). Thus, when officers know or should know "that the premises described in the warrant actually constitute two separate dwellings," they should only search "the dwelling of the person being investigated pursuant to the warrant." *State v. McKewen*, 710 So. 2d 638, 639 (Fla. 5th DCA 1998) (citing *Maryland v. Garrison*, 480 U.S. 79 (1987)). In

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* Among its other arguments, the State contends that Appellant cannot prevail in this appeal because the search warrant itself does not appear in the record. The State cites no cases for this proposition. Instead, it relies on cases standing only for the general proposition that an appellant must produce a record sufficient to demonstrate reversible error. However, there is no dispute here about the existence of a search warrant or its material terms. Thus, the record—which includes the signed warrant affidavit—is sufficient to facilitate this Court's review of whether officers needed a second warrant to search the partitioned bedroom and bathroom of 2216 West Gonzalez Street. Additionally, there is no indication that the trial court reviewed the actual search warrant when it denied Appellant's motion to suppress.

Garrison, the U.S. Supreme Court explained the obligations that officers have when searching a structure comprised of distinct residential units:

> We have no difficulty concluding that the officers' entry into the third-floor common area was legal; they carried a warrant for those premises, and they were accompanied by McWebb, who provided the key that they used to open the door giving access to the third-floor common area. If the officers had known, or should have known, that the third floor contained two apartments before they entered the living quarters on the third floor, and thus had been aware of the error in the warrant, they would have been obligated to limit their search to McWebb's apartment. Moreover, as the officers recognized, they were required to discontinue the search of respondent's apartment as soon as they discovered that there were two separate units on the third floor and therefore were put on notice of the risk that they might be in a unit erroneously included within the terms of the warrant.

Garrison, 480 U.S. at 86–87.

Thus, the first question here is whether 2216 West Gonzalez Street is—as Appellant contends—comprised of two distinct residential units. It does not appear that any Florida court has crafted a test for distinguishing a multi-unit dwelling from a single-unit dwelling. Various federal courts have tackled the issue. *See United States v. McLellan*, 792 F.3d 200, 212 (1st Cir. 2015) ("Whether a dwelling constitutes a single- or multi-unit residence is a fact-intensive and situation-specific determination, and thus there are no hard-and-fast rules as to what category any particular dwelling falls into."); *United States v. Ferreras*, 192 F.3d 5, 10–11 (1st Cir. 1999) (holding that a particular floor was not distinct from the rest of the house when it was "not equipped for independent living"); *United States v. Kyles*, 40 F.3d 519, 524 (2d. Cir. 1994) ("Factors that indicate a separate residence include separate access from the outside, separate doorbells, and separate mailboxes."); *United States v. Hoston*, 2016 WL 4147642 at *8 (E.D.N.C. July 11, 2016) ("[T]o qualify as a multi-unit dwelling, there must be some indicia that the residence is divided into

separate and substantially independent living units. . . . [I]ndicia of a multi-unit dwelling that should alert law enforcement to the need to limit their search or obtain an additional warrant include: multiple doorbells; separate utilities; multiple mailboxes; separate kitchens and bathrooms for each unit; designations on the entry to each unit indicating that it is recognized, at least by the occupants, as being a separate dwelling; and physical separation between units that restrict access by others. This standard does not lend itself to a bright line test, and must be assessed in each case based upon the totality of the circumstances."), *adopted without modification as to this point in* 2016 WL 4148308; *United States v. Ramirez*, 2014 WL 835702 at *9 (S.D. Fla. March 4, 2014) ("Factors to consider in determining whether a unit is a single-family or multi-unit home include whether the unit is equipped for independent living, has separate access to the outside of the home, separate doorbells, separate mailboxes, and accessibility to the entire home.") (citing *Kyles* and *Ferreras*).

We are mindful of the imperfections of judicial tests that focus on the "totality of circumstances." *See United States v. Mead Corp.*, 533 U.S. 218, 241 (2001) (Scalia, J., dissenting) (positing that such tests are "most feared by litigants who want to know what to expect"). We also recognize that given the multitude of possible scenarios for searches of housing units, it is difficult to identify an exact, bright-line standard that is capable of uniform application. *See Commonwealth v. Turpin*, 216 A.3d 1055, 1065 n.7 (Pa. 2019) (cautioning that "the mere existence of a padlock, or separate mailboxes, doorbells, room numbers, or entrances" will not always indicate that a residence has been "divided into separate and independent residential units," and that "the mere absence of the aforementioned items" will not always indicate that a structure is a single-family residence, but nevertheless recognizing that "these are factors relevant to the determination.") (citing *Kyles*, 40 F.3d at 524); *see also Missouri v. McNeely*, 569 U.S. 141, 158 (2013) ("[A] case-by-case approach is hardly unique within our Fourth Amendment jurisprudence. Numerous police actions are judged based on fact-intensive, totality of the circumstances analyses rather than according to categorical rules, including in situations that are more likely to require police officers to make difficult split-second judgments.").

With these limitations in mind, we believe the "equipped for independent living" analysis identified in *Ferreras*, *Hoston*, and *Ramirez* is best suited for distinguishing a multi-unit dwelling from a single-family residence. Under this framework, a property is a "multi-unit dwelling" for search warrant purposes if it is comprised of more than one residence, each of which bears the hallmarks of being truly distinct and independent from the others. As the authorities cited above observed, such indicators of independence include separate street numbers, doorbells, mailboxes, utilities, exterior entrances, kitchens, and bathrooms. The greater the number of distinct identifying features, the more likely it is that two units are equipped for independent living such that officers would need separate warrants to search them.

Here, while Appellant's bedroom and bathroom were walled-off from the remainder of the home's interior, the record tilts in favor of a finding that 2216 West Gonzalez Street was a single-family residence. The house had a single address and a lone mailbox. Property records indicated that the house was a single-family residence. No exterior signage suggested that the house contained multiple living units. Appellant's driver's license listed his address as 2216 West Gonzalez Street. The house had only one kitchen, and there is no indication that Appellant's bedroom and bathroom had a separate doorbell or utility meter. On these facts, Appellant's bedroom and bathroom were not a substantially independent living unit that was distinct from the rest of the house. *See Ferreras*, 192 F.3d at 10–11; *Kyles*, 40 F.3d at 524; *Hoston*, 2016 WL 4147642 at *8; *Ramirez*, 2014 WL 835702 at *9; *see also Conrad v. State*, 730 S.E.2d 7 (Ga. Ct. App. 2012) (holding that officers did not need multiple warrants to search a "single-family ranch-style house" that had "inner partitioning of the residential structure" when the house had only one street number, mailbox, driveway, water meter, and garbage receptacle). Accordingly, a warrant authorizing a search of 2216 West Gonzalez Street necessarily included Appellant's bedroom and bathroom—meaning, officers did not need to obtain a second search warrant.

B.

Even if 2216 West Gonzalez Street comprises two distinct residential units, the trial court was still correct in denying Appellant's suppression motion. It is true that "[i]n a multiple-unit building, a warrant should describe the particular section to be searched." *State v. Leveque*, 530 So. 2d 512, 513 (Fla. 4th DCA 1988). "However, this general rule does not apply in those cases where the suspects control the entire premises or where the premises extending beyond a single unit are also suspect and are covered by the warrant." *Id.*; *see also Fletcher v. State*, 670 S.E.2d 411, 413–14 (Ga. 2008) (a warrant to search a multi-unit structure is valid when "the targets of the investigation have access to the entire structure.") (quoting *United States v. Perez*, 484 F.3d 735, 741 (5th Cir. 2007)).

In our case, Wilson completed each of his controlled drug transactions by using the side door of 2216 West Gonzalez Street—i.e., the door that opens to Appellant's bedroom and bathroom. Thus, the officers had probable cause to believe that part of the house was an instrument of illegal drug activity. *See Leveque*, 530 So. 2d at 513 ("[T]here was probable cause revealing that criminal activity was in fact taking place on the other side of that door, regardless of whether the 'area' turned out to be a part of Hector's unit, a hallway, a closet, or a room in a separate unit."). The officers also observed Wilson freely coming and going out of both doors of the residence, which led them to reasonably conclude that he had dominion over the entire house. *See McKewen*, 710 So. 2d at 639 (in reversing the granting of a motion to suppress, favorably quoting from *State v. Woolsey*, 802 P.2d 478, 479 (Haw. 1990): "in multiple occupancy dwellings in which several persons or families share common living areas but have separate bedrooms, a single warrant authorizing a search of the entire premises is valid and reasonable."). Given these facts, even if 2216 West Gonzalez Street was a multi-unit dwelling, *Garrison* did not require the officers to obtain a second warrant before proceeding with their search. *See Leveque*, 530 So. 2d at 513.

III.

For these reasons, the trial court rightly denied Appellant's motion to suppress.

AFFIRMED.

KELSEY, JAY, and M.K. THOMAS, JJ., concur.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

Jessica J. Yeary, Public Defender, and Lori A. Willner, Assistant Public Defender, Tallahassee, for Appellant.

Ashley Moody, Attorney General, and Zachary Lawton, Assistant Attorney General, Tallahassee, for Appellee.