

**COURT OF APPEALS
DECISION
DATED AND FILED**

March 2, 2010

David R. Schanker
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2009AP496-CR

Cir. Ct. No. 2007CF4892

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

TERRELL L. DANIELS,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Milwaukee County: KEVIN E. MARTENS, Judge. *Affirmed.*

Before Curley, P.J., Fine and Kessler, JJ.

¶1 PER CURIAM. Terrell L. Daniels appeals a judgment convicting him of possession of cocaine with intent to deliver. He argues that the circuit court should have suppressed evidence against him because the search warrant was invalid. We affirm.

¶2 Daniels contends that the search warrant was invalid because it failed to specify which unit in the multi-unit building was subject to search. The warrant allowed the police to search the building at “3574-76 North Teutonia Avenue,” which is a three-unit flat encompassing address numbers 3574, 3574a and 3576. Daniels does not challenge the search of two of the units, 3574a and 3576, but contends that the search of unit 3574, where he lived with the target of the warrant and where the evidence against him was found, was invalid because the warrant had not properly specified that unit. He also argues that there was no probable cause to search the entire building.¹

¶3 “The Fourth Amendment to the United States Constitution mandates that warrants particularly describe the place to be searched, and the persons or things to be seized.” *State v. Schaefer*, 2003 WI App 164, ¶23, 266 Wis. 2d 719, 668 N.W.2d 760 (internal quotation marks omitted). “The particularity requirement serves three purposes by preventing general searches, the issuance of warrants on less than probable cause, and the seizure of items different from those described in the warrant.” *Id.* To satisfy the particularity requirement where, as here, the location to be searched is a multi-unit building, the warrant must specify which unit in the building is subject to search. *State v. Jackson*, 2008 WI App 109, ¶9, 313 Wis. 2d 162, 756 N.W.2d 623.

¹ The police did not know that the building contained a third unit, 3574a, when they applied for the warrant. According to the offer of proof made during the suppression motion, the property was listed as a duplex in city records, but had been split to include a third residence. We do not address the third unit in analyzing the constitutionality of the warrant because it was unknown to the police. See *Maryland v. Garrison*, 480 U.S. 79, 85 (1987) (courts “must judge the constitutionality of [the police officers’] conduct in light of the information available to them at the time they acted”).

¶4 The State contends that the warrant was valid even though it did not specify which unit should be searched because the target of the warrant had access to and control of the whole building, thus providing probable cause to search the whole building. In the alternative, the State argues that there was probable cause to search unit 3574 in particular and that the valid portion of the warrant should be severed from the invalid portion.

¶5 Assuming for the sake of argument that the warrant failed to properly specify which unit or units in the building were subject to search and that there was no probable cause to search the whole building, we conclude that the search of unit 3574 was nevertheless valid because it was supported by probable cause and can be severed from the rest of the warrant. Where a search warrant is partially but not wholly defective, those items seized pursuant to the valid parts of the warrant should be admitted and those items seized under the invalid portion should be suppressed. *See State v. Noll*, 116 Wis. 2d 443, 454, 343 N.W.2d 391 (1984). There was probable cause to search unit 3574 because the target of the warrant listed the address of 3574 Teutonia Avenue as his home address when he was arrested by police in the months prior to the warrant application and the police officer stated in the affidavit for the warrant that he had personal knowledge, and knowledge from the confidential informant, that: (1) the target was in possession of a weapon “in a residence he lives in and controls at the location of 3574/76 N. Teutonia Ave.,” which the confidential informant had observed in the target’s possession within seventy-two hours of the application for the warrant; and (2) the target “controls and has access to the entire residence as a drug house for the storage of narcotics used for distribution in the area.” Coupled with the police officer’s verification that 3574 was the home address of the target based on his arrest record, the information provided by the officer and confidential informant

provided probable cause for the search of unit 3574. In fact, during the suppression hearing, Daniels' attorney seems to have conceded that there was probable cause to search unit 3574. Since the warrant was valid as to unit 3574, the circuit court properly denied the motion to suppress.

By the Court.—Judgment affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5. (2007-08).

