COURT OF COMMON PLEAS
FOR THE STATE OF DELAWARE

WILMINGTON, DELAWARE 19801

John K. Welch
Judge

October 13, 2009

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Re: ***State of Delaware v. Michael Ciccarelli***
Case No.: 0812018008

Date Submitted: October 3, 2009
Date Decided: October 13, 2009

MEMORANDUM OPINION

Dear Counsel:

On August 3, 2009 a hearing was held in the Court of Common Pleas, New Castle County, State of Delaware on Michael Ciccarelli's ("defendant") Motion to Suppress (the "Motion") filed pursuant to Court of Common Pleas Criminal Rule 12.

Defendant alleged in his Motion *inter alia*, that the Newark Police Department exceeded the scope of the search warrant when it broke into the locked door of the defendant's "fraternity house" bedroom at 28 Annabelle Street, Newark DE ("28 Annabelle") and seized evidence on November 8, 2008. Defendant asserts in his Motion that 28 Annabelle should be treated as a multi-unit residence, given that each of the occupants had their own rooms and paid rent accordingly.

The defendant argues further in his Motion that the forcible entry and search of a single locked unit within this multi-unit residence occupied by five (5) named individuals,

none of whom were the defendant, exceeded the scope of the search warrant because it resulted in the search of a location not delineated in the warrant. As such, the defendant requests that any items seized from the defendant's room, as a result of a search conducted and any and all fruits derived from the search be suppressed.

By information filed with the Criminal Clerk, the defendant was charged with one Count of Underage Possession/Consumption of Alcohol, 4 *Del. C.* § 904(f), on November 8, 2008.

This is the Court's Final Decision and Order on Defendant's Motion to Suppress. For the following reasons that will be outlined below, the Court finds that the Motion should be denied.

I. **The Facts.**

Detective Andrew Rubin ("Detective Rubin"), a law enforcement officer employed by the Newark Police Department for the past twelve (12) years testified at the Suppression Hearing. Detective Rubin was so employed on November 8th in 2008 when a search of the property located at 28 Annabelle St., Newark DE was conducted pursuant to a search warrant issued on November 8, 2008 by a Justice of the Peace.[1]

Detective Rubin testified that the purpose of the warrant was to search for evidence of a party and alcohol consumption at 28 Annabelle that the authorities had reason to believe related to the death of a college student who had attended the party. Detective Rubin further testified that during the course of the search, the police forced their way into a locked bedroom, later identified as being that of the defendant. The defendant was not present at the time and the police seized a can of beer, an empty bottle of vodka and a cup of beer from the defendant's room.

[1] Defendant's Exhibit No. 1 was received into evidence and includes a copy of the application for a search warrant and the supporting affidavit of Detective Rubin.

The lease agreement for 28 Annabelle was signed by four tenants (none of whom is the defendant).[2] Detective Rubin testified that the applicable Newark Zoning ordinance restricts the number of unrelated residents of 28 Annabelle to four (4).

II. The Law.

The Fourth Amendment requires that a warrant be supported by probable cause and describe with "particular[ity] ... the place to be searched and the persons or things to be seized."[3] The Delaware Constitution echoes this language and contains a similar particularity requirement.[4] The constitutional requirements for search warrants are codified in § 2306 of Title 11 of the Delaware Code. § 2306 provides that an application for a search warrant "shall 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 ..."[5]

The controlling test for analyzing the particularity issue is found in *Steele v. United States*:

> "It is enough if the description is such that the officer with a search warrant can, with reasonable effort ascertain and identify the place intended."[6] As the Superior Court stated in *State v. Townsend*, the search warrant must "include enough description so that an officer executing the search can reasonably ascertain and identify the target of the search with no reasonable probability of searching another premises in error."[7] The Court in *Townsend* went on to say that examining the sufficiency of the description of a premises is "fact intensive" and "usually requires a common sense, practical [] approach."[8]

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[2] State's Exhibit No. 1 was received into evidence and includes a copy of the signed lease agreement. The agreement lists as "Tenants" Justin Sweeney, Dan Fox, Matt D'Amour and Mike Bassett. The agreement also lists as "Landlord" Alan E. Schweizer, Jr. Item 31 of the lease agreement titled SPECIAL CLAUSES indicates that "The third floor cannot be used for a bedroom or any sleeping purpose."
[3] U.S. CONST, amend. IV.
[4] *See* Del. Const. of 1897, art. I, § 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.").
[5] *See* DEL.CODE ANN. tit. 11, 2306 (2001).
[6] *Steele v. United States,* 267 U.S. 498, 503, 45 S.Ct. 414, 416, 69 L.Ed. 757 (1925).
[7] *State v. Townsend*, 1996 WL 453437, *5 (Del. Super.) (citing *United States v. Valentine,* 8th Cir., 984 F.2d 906, 909 (1993)); See also *Steele v. United States,* 267 U.S. 498, 503 (1925).
[8] *Id.*

III. Discussion and Findings of Fact.

In the case at bar, applying the practical approach set forth in *Townsend*, it is clear that the warrant at issue called for the gathering of evidence from 28 Annabelle, a single dwelling unit in its entirety. The warrant instructed the executing officers to search, "28 Annabelle St. Newark, DE – A single family residence with green siding, a front porch with brick, a white front door and the number '28' to the right of the front door." The warrant also identified in particular the items to be searched for and seized from the residence:

> Alcohol containers, including but not limited to, alcohol bottles, cans, kegs and bottles of liquor; receipts indicating the purchase of alcohol, including, but not limited to, beer funnels and shot glasses; paraphernalia indicating drinking games, including but not limited to, ping pong balls used to play "Beer Pong" and paperwork indicating the playing of drinking games.

It is undisputed that Detective Rubin and his fellow officers searched the correct address. The question before the Court is whether the warrant's failure to include the defendant's name precluded the search of his bedroom. As Detective Rubin testified, and as set forth in the search warrant, 28 Annabelle is a single family residence. As per the lease agreement, four occupants are defined as "tenants" and are charged with paying a specified monthly rental sum. The Court finds that these tenants are jointly liable for the total rent of the entire residence. Although the residence was utilized by additional individuals who also paid rent and used the dwelling as an informal fraternity house, such use does not immunize such areas from being searched.

Det. Rubin testified that in conducting their search, he and his fellow officers were looking for evidence of alcohol consumption all through the house so as to provide information as to what may have transpired leading to the decedent's death. During his investigation of the matter, Det. Rubin received the names of five occupants, none of which were the defendant. Det. Rubin testified, and as set forth in the search warrant, 28 Annabelle is a single-family dwelling shared by multiple residents.

The Delaware Code requires only that the warrant describe the things or persons sought "as particularly as possible."[9] The Court accepts this testimony as both credible and reasonable and concludes that the location described as "28 Annabelle St. Newark, DE – A single family residence with green siding, a front porch with brick, a white front door and the number '28' to the right of the front door" could not be reasonably considered a multi-unit dwelling and was in fact a single structure. Ciccarelli's argument-that the search exceeded the scope set forth in the warrant and places not delineated in the warrant were searched is not meritorious. The warrants description of the location and items to be searched for and seized sufficiently meets the statutory requirements.

IV. Opinion.

For these reasons, this Court finds as a matter of law that the Motion to Suppress should be Denied. Each party shall bear their own costs. The Criminal clerk is directed to set this matter for a jury trial at the Court's earliest convenience with notice to counsel of record.

IT IS SO ORDERED this 13th day of October, 2009.

John K. Welch
Judge

/jb

cc: Ms. Juanette West, Scheduling Manager
CCP, Criminal Division

[9] 11 *Del. C.* § 2307.