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

STATE OF DELAWARE,	)	
	)	
	)	
v.	)	**Crim. ID. No. 1312012959**
	)	
	)	
ISHMAEL N. KWALALON	)	

Submitted: December 12, 2014
Decided: February 13, 2015

OPINION AND ORDER

Upon Defendant Ishmael Kwalalon's Motion to Suppress,
DENIED.

Eric H. Zubrow, Esquire, Deputy Attorney General, Department of Justice, Wilmington, Delaware, for the State of Delaware.

Ross C. Karsnitz, Esquire (argued), Assistant Public Defender, Office of the Public Defender, John A. Barber, Law Office of John A. Barber, Wilmington, Delaware, for Defendant Ishmael Kwalalon.

WALLACE, J.

I. INTRODUCTION

Defendant Ishmael Kwalalon ("Kwalalon") was arrested for two firearms that were found in his bedroom safe on December 20, 2013. He is, and was then, a person prohibited from possessing firearms due to a prior felony drug conviction.[1] Kwalalon asks this Court to exclude those firearms and some drug paraphernalia as evidence, even though they were obtained by the police during their search of his shared residence under the authority of a wholly valid search warrant. For the reasons set forth below, his motion is **DENIED**.

II. FACTUAL AND PROCEDURAL BACKGROUND

The discovery of the firearms in Kwalalon's safe was the product of a nearly two-year-long investigation. In March of 2012, a confidential informant notified the Dover Police Department that George Shaheen ("Shaheen") was distributing cocaine in Kent and New Castle Counties.[2] The informant told the police that Shaheen had then-recently moved to 2 South Sherman Drive in Bear, Delaware, where he sold and kept cocaine.[3] The informant knew that Shaheen's cousin "Ish" shared the residence with him.[4] A Criminal Justice Information Services ("CJIS")

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1 *See* State's Resp. to Def.'s Mot. to Suppress ¶ 3.

2 Search Warrant Application and Affidavit, Ex. A, State's Resp. to Def.'s Mot. to Suppress ¶ 5.

3 *Id.* ¶ 9.

4 *Id.*

search of residence data revealed that a "Samuel Kwalalon" owned and that Defendant Ishmael Kwalalon was associated with the residence.[5] Kwalalon's cell phone records demonstrated recurrent contact between Kwalalon and Shaheen.[6]

Members of the Dover Police and Drug Enforcement Agency ("DEA") made two controlled purchases from Shaheen at the Bear residence. During both purchases, the drugs were stored in the kitchen.[7] The informant also observed firearms in the residence during a purchase in January 2013, specifically a silver and purple Glock 40 caliber handgun and a chrome 9 millimeter firearm.[8]

In the early morning hours of December 20, 2013, the police conducted a "trash pull" at the residence.[9] In the trash contents, police found wrappers from kilos of drugs, other drug packaging, and mail addressed to Kwalalon.[10] They field tested a white powder found within the trash. It was cocaine.[11]

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5 *Id.* ¶¶ 11, 12.

6 *Id.* ¶ 13.

7 *Id.* ¶¶ 23, 35.

8 *Id.* ¶ 37.

9 *Id.* ¶ 39.

10 *Id.* ¶ 40 (Within the trash bags were: "two(2) rectangular shaped/formed tape packaging material that is consistent with the packaging of kilograms of cocaine; dryer sheets that were covered in what appeared to be motor oil . . . a common concealment method for kilograms of cocaine; a zip lock bag containing a white powdery substance that field tested positive for cocaine; numerous sandwich bags with the corners missing/torn from them, which is indicative of someone involved in the sales of illegal drugs. Also, recovered in the garbage were two

Later that day, the police applied for and were granted a search warrant for the residence. The search warrant, issued by this Court, identified the probable presence of narcotics and firearms there. And the warrant affidavit identified Kwalalon as a resident of the house.[12] The Delaware State Police, Dover Police Department, and DEA immediately executed the warrant.

Because of the potential presence of armed persons, the Special Operations Response Team ("SORT") conducted the initial sweep of the residence.[13] SORT simultaneously spread out through the residence to secure it prior to the actual search. Two South Sherman Drive is a three-story single-family home with an entrance through a glass slider at ground level and its main entrance on the second floor.[14] There is no obvious sub-uniting of the house, no separation of living spaces, just standard interior household doors between ordinary household rooms.[15] Nor are there any markers (e.g., name plates, numbering, or individual

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pieces of mail addressed to for [sic] William KWALALON and one piece of mail addressed to Ishmael KWALALON").

11 *Id.*

12 *Id.* ¶ 9.

13 Suppression Hr'g Tr., Dec. 12, 2014, at 12.

14 *Id.* at 13-14, 23-25.

15 *Id.* at 25.

mailboxes) to indicate independent living units.[16] SORT forcibly entered each area and each room of the house – including Kwalalon's bedroom, which was locked with a standard internal bedroom door lock – to ensure a safe search environment for the officers who would be conducting the actual search for evidence.

That ensuing search revealed evidence of illegal activity in multiple rooms. On the first floor, determined to be Shaheen's bedroom, the authorities found powder cocaine, crack cocaine, and a firearm. In the kitchen, the police found drug paraphernalia associated with drug dealing. And in Kwalalon's bedroom they found the two firearms, ammunition and drug paraphernalia. Kwalalon was subsequently arrested and indicted on six counts: three counts of possession of a firearm by a person prohibited; one count of possession of a weapon with a removed, obliterated or altered serial number; one count of possession of drug paraphernalia; and one count of possession of ammunition by a person prohibited.[17]

III. DISCUSSION

Given the arguments Kwalalon raised in his brief and at the suppression hearings, the Court must decide two issues: (1) was the search warrant itself valid; and (2) was the warrant's execution reasonable.

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16 *Id.* at 13, 24-25.

17 DEL. CODE ANN. tit. 11, § 1448 (2013); *id.* at § 1459; *id.* at tit. 16, § 4771(a).

A. Kwalalon Makes No Discernable State Constitutional Claim

As a threshold matter, the Court must determine the law applicable to Kwalalon's claims. He suggests the search of his bedroom violated his rights under the United States Constitution's Fourth Amendment *and* Article I, § 6 of the Delaware Constitution. But, in his opening brief, Kwalalon merely mentions that there is no "good faith exception" to the Delaware's search-and-seizure provision[18] and makes passing reference to Article I, § 6 in his introductory paragraph.[19] Thus, Kwalalon seems to say that if the Court were to find the warrant invalid it must grant the remedy of suppression.[20] But that is all he says.

Kwalalon presents no discussion or analysis of the "textual language, legislative history, preexisting state law, structural differences, matters of particular state interest or local concern, state traditions, and public attitudes"[21] informing a reading of Article I, § 6 that implicates the actual validity of this warrant or its execution differently than its federal analogue. Simply alluding that a right under the Delaware Constitution was violated, without more, is a

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[18] *See* Def.'s Mot. to Suppress, at ¶ 12 ("Because the Delaware Constitution affords greater protections than the Federal Constitution, Delaware does not recognize the good faith exception to the exclusionary rule.").

[19] *See id.* at 2.

[20] *See generally Dorsey v. State*, 761 A.2d 807 (Del. 2000).

[21] *Ortiz v. State*, 869 A.2d 285, 291 n.4 (Del. 2008) (providing a framework for addressing Delaware Constitutional arguments); *Jones v. State*, 745 A.2d 856, 864-65 (Del. 1999).

conclusory assertion that the Court cannot recognize as a reasoned argument for application of a different standard under our state constitution.[22] Accordingly, the Court analyzes and resolves Kwalalon's arguments under the Fourth Amendment of the United States Constitution only.[23]

B. The Fourth Amendment and the Community-Living Situation

The Fourth Amendment to the United States Constitution allows the issuance of search warrants only upon a showing of probable cause.[24] An affidavit in support of a search warrant must, within the four-corners of the affidavit, set forth facts adequate for a judicial officer to form a reasonable belief that an offense has been committed and that evidence of that offense will be found in a particular place.[25]

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[22] *See Stafford v. State*, 59 A.3d 1223, 1231-32 (Del. 2012); *Wallace v. State*, 956 A.2d 630, 637-38 (Del. 2008) (finding conclusory statement that sentence violates the Delaware Constitution waived claim in both in this Court and the Supreme Court).

[23] *See Stafford*, 59 A.3d at 1231-32.

[24] U.S. CONST. amend. IV; *Sisson v. State*, 903 A.2d 288, 296 (Del. 2006) (citing *Fink v. State*, 817 A.2d 781, 786 (Del.2003).

[25] *State v. Holden*, 60 A.3d 1110, 1114 (Del. 2013).

The description of the place to be searched as set forth in the warrant here was:

> **SPECIFIC DESCRIPTION OF PREMISES AND/OR PLACES . . . TO BE SEARCHED:** The residence is located at 2 South Sherman Drive, Bear, Delaware. The residence is constructed on the west side of South Sherman Drive and the south side of Carvel Drive. The residence is a three story end of the row townhome and is constructed with light gray siding and dark gray shudders. The front door is dark gray. The home has a single car attached garage with a white garage door. Any and all outbuildings and/or motor vehicles located on the aforementioned property at the time of the execution of the search warrant.[26]

Notwithstanding a warrant expressly issued for the entire house, and without limitation, Kwalalon argues that he had a protection in his specific quarters that excepted his bedroom from the search thereunder.

The law does not recognize the artificial barriers Kwalalon seeks to erect so as to separate his bedroom from the rest of the Bear residence. Though carrying various labels – the "multiple occupancy dwelling," "community-living situation," and "community occupation situation" – this particular residential circumstance has been oft-addressed; and, the Fourth Amendment law surrounding this type of

[26] Search Warrant, Ex. A to State's Response to Defendant's Motion to Dismiss (police were commanded by the warrant "to search the . . . house" for drugs and guns).

multiple occupancy situation is sensible and well-settled.[27] A community-living situation exists where "several persons or families occupy the premises in common rather than individually, as where they share common living quarters but have separate bedrooms."[28]

In community-living situations, courts have determined that a single warrant covering the entire structure permits a search of the whole premises.[29] Because it is assumed that residents in a community-living situation can generally access each other's bedrooms, occupants "who share living quarters . . . have a shared expectation of privacy in the premises."[30] A lock on a bedroom door does not automatically make a bedroom a separate living unit.[31] Similarly, where each

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[27] *See, e.g., State v. Shaheen*, 542 A.2d 1265, 1269 (N.J. Super. 1987); *See also* 2 Wayne R. LaFave, *Search and Seizure: A Treatise on the Fourth Amendment*, § 4.5(b) at 741 (5th ed. 2012).

[28] *Sheehan*, 524 A.2d at 1269 (quoting *State v. Alexander*, 704 P.2d 618, 620 (Wash. Ct. App. 1985).

[29] *See id.* (citations omitted).

[30] *See People v. Siegwarth*, 674 N.E.2d 508, 511 (Ill. App. Ct. 1996) (stating that where occupants share living quarters in single-family structures, they have a shared expectation of privacy); *Sheehan*, 524 A.2d at 1270 ("The multiple-occupancy rule is predicated upon the thesis that occupants of a single living unit, whether related or not, generally have at least some access to each other's bedrooms. Each resident's reasonable expectation of privacy is thereby diminished."). *See also* LaFave, *Search and Seizure* at 741 ("[W]here a significant portion of the premises is used in common and other portions, while ordinarily used by but one person or family, are an integral part of the described premises and are not secured against access by the other occupants, then the showing of probable cause extends to the entire premises.").

[31] *See State v. Anderson*, 935 P.2d 1007, 1014 (Haw. 1997); *State v. Hymer*, 400 So. 2d 637, 639 (La. 1981).

resident has access to the entire house, even though each may separately lock his or her bedroom, and one such resident is suspected of criminal activity, courts have found probable cause exists to search the entire home.[32] It would be unreasonable to require the police to obtain and execute separate search warrants to search individual bedrooms, especially when evidence could then be moved or destroyed.[33]

If there were evidence-indicators supporting the barriers Kwalalon attempts to construct here, the Court would be faced with a very different Fourth Amendment case that might present the recognized need for a separate warrant, i.e., the true multi-unit structure. Some courts have found warrants invalid in rental situations,[34] or where the defendant, a renter with no familial relationship to

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[32] *See United States v. Dobson*, 1990 WL 108993, at *3 (D.D.C. July 20, 1990) (permitting search of individual bedrooms when narcotics purchase made by informant in the kitchen); *Anderson*, 935 P.2d at 1019-20 (police had probable cause to search entire dwelling because of suspected illegal activity of two occupants); *State v. McKewen*, 710 So. 2d 638, 639 (Fla. Ct. App. 1998) (finding search of defendant's bedroom in single home appropriate when it was usually locked and defendant lived with person under investigation); *Hymer*, 400 So. 2d at 639 (finding probable cause to search defendant's room when a marijuana purchase was made on the property); *State v. Coatney*, 604 P.2d 1269, 1272 (Or. Ct. App. 1980) (concluding search warrant for home considered one unit covered search of defendant's bedroom).

[33] *See United States v. Ayers*, 924 F.2d 1468, 1480 (9th Cir. 1991) (noting that search of entire home is appropriate because suspected drug dealers would be most likely to hide evidence of illegal activity outside of their own bedrooms because that is the most obvious hiding spot); *Dobson*, 1990 WL 108993, at *4, (finding search of bedroom valid because drug evidence could have been destroyed); *Siegwarth*, 674 N.E.2d at 512 (stating it would be "unreasonable to require the police to abandon" a search to obtain another warrant).

[34] *See, e.g.*, *State v. Fleming*, 790 N.W.2d 560 (Iowa 2010). In *Fleming*, the Court noted that "cases from other jurisdictions support the proposition that renters do enjoy exclusive use of their rooms." *Id.* at 565. *Fleming* rejected the rationale behind the community-living exception

the subject of the search warrant, placed a "Do Not Enter" sign on his door.[35] But, the factors that partition the places searched there simply are not here. There was no obvious cordoning off of any area in the house, no evidence that Kwalalon was renting his bedroom, and no fixed indication that entry to his room was prohibited. Rather, the officers knew Kwalalon and Shaheen were family and that they, from all appearances, shared the entire residence.

C. Search Warrant's Validity under Fourth Amendment and Community-Living Situation

Kwalalon's argument as to whether the warrant was valid wavers;[36] the Court's finding it was valid does not. The validity of a warrant is "assessed on the

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as it applied to the specific facts before it: single, unrelated individuals renting a house together. *Id.* at 567. The Court noted that there the individually rented private bedrooms could engender a reasonable expectation of privacy. *Id.* There is no evidence of those factors here.

[35] *See United States v. Greathouse*, 297 F. Supp. 2d 1264, 1274-75 (D. Or. 2003) (finding officers should have stopped search of defendant's bedroom where: (1) officers were immediately advised defendant rented back bedroom on first floor; (2) there was no familial relation among or between any of the several residents; and (3) a "do not enter" sign was posted on the defendant's door).

[36] In his suppression motion, Kwalalon argues that probable cause did not exist within the four corners of the warrant "for a person of reasonable caution to believe that evidence of a crime was located within [Kwalalon's] bedroom," thus challenging its validity. *See* Def.'s Mot. to Suppress ¶ 5. At the suppression hearing, Kwalalon admitted that the warrant was valid as a facial matter, but claimed it was so only as to Shaheen. And during the continuation of the suppression hearing, Kwalalon's counsel challenged its validity as to Kwalalon specifically:

> The Court: In this case was there or was there not a neutral detached magistrate – or actually a judge of this court – who said, police, you may search that entire home for drugs and guns, without limitation?

basis of the information that the officers disclosed, or had a duty to discover and to disclose, to the issuing Magistrate."[37] And even the discovery of facts that would actually demonstrate that a valid warrant was unnecessarily broad (of which there are none here) does not retroactively invalidate the warrant.[38]

This warrant was "valid when it issued"[39] – the police rightly believed this to be a single family home with multiple occupants. The warrant language describes the residence as a "three story end of the row townhome" and makes no mention of separate sub-units.[40] The supporting affidavit states that the occupants

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> Counsel: There was, there was. And I think as it relates, I would submit that as it relates to Mr. Kwalalon, the search of that bedroom was unlawful and in violation of the Fourth Amendment and the Delaware Constitution. . .

Suppression Hr'g. Tr., at 43–44.

[37] *Maryland v. Garrison*, 480 U.S. 79, 85 (1987).

[38] *Id.*

[39] *Id.* at 86 (finding warrant "insofar as it authorized a search that turned out to be ambiguous in scope, was valid when it issued").

[40] *See id.* at 89 n.13. In *Garrison*, the Court distinguished the scenario where "the police know there are two apartments on a certain floor of a building, and have probable cause to believe that drugs are being sold out of that floor, but do not know in which of the two apartments the illegal transactions are taking place." *Id.* The Court found that a "search pursuant to a warrant authorizing a search of the entire floor under those circumstances would present quite different issues from the ones before us in this case." *Id.*

– Shaheen and Kwalalon – shared their residence. Thus, the warrant properly issued in this community-living situation.[41]

The warrant here was issued for the entire residence under the circumstances known to the police at the time. The police knew that Kwalalon lived at 2 South Sherman Place with his cousin, who was openly dealing drugs therein. A person with his last name, Kwalalon, owned the residence. Drug dealing was occurring from the shared kitchen. And evidence of possession of kilos of cocaine was discovered in the communal trash. There was constant phone contact between Kwalalon and Shaheen. Given the totality of these circumstances, which was known to the police and was set forth in the warrant application, issuance of a warrant for the entire residence was fitting. Aside from the generally recognized propriety of a warrant for the entirety of a shared single residence like this, there was sufficient evidence of probable cause that Kwalalon was, if not directly participating in, aware of, facilitating and permitting his cousin's drug dealing from their shared residence. And so the warrant and its scope were well-grounded on facts adequate for a judicial officer to form a reasonable belief that drug crimes had been committed and that evidence of those crimes would be found in a

[41] *See State v. Sheehan*, 524 A.2d 1265, 1269 (N.J. Super. 1987) (quoting *Alexander*, 704 P.2d 618, 620 (Wash. Ct. App. 1985))("several persons or families occupy the premises in common rather than individually, as where they share common living quarters but have separate bedrooms.").

particular place – the entirety of 2 South Sherman Place.[42] The Court finds, therefore, that the warrant permitting a search of the entire premises is valid.

D. Search Warrant's Reasonable Execution under Fourth Amendment and Community-Living Situation

Kwalalon also challenges the reasonableness of the warrant's execution. If there were, *in fact*, separate living units or separate premises, the police may arguably have been obligated to limit their search to the communal areas and Shaheen's quarters. But, that was not what the police found at Kwalalon and Sheheen's house. Having found the warrant was validly issued, the Court finds that the police were entitled accordingly to search the entire premises. There was no reason for the police to believe the townhome presented anything other than a community-living situation. Indeed, that is what they encountered once they entered. The SORT did break an ordinary interior door lock to Kwalalon's bedroom, when securing the area for the search team. That door did not create some separate "place" outside the warrant's scope and its reasonable execution.[43] And Kwalalon does not suggest this breaking was unreasonable, given that

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[42] *See State v. Holden*, 60 A.3d 1110, 1114 (Del. 2013); *Sisson*, 903 A.2d 288, 296 (Del. 2006) (showing must be that "there is a fair probability that . . . evidence of a crime will be found in a particular place") (internal quotation omitted).

[43] *See State v. Anderson*, 935 P.2d 1007, 1014 (Haw. 1997) ("[A] locked bedroom door does not, by itself, automatically elevate [a] bedroom to the status of a separate residential unit."); *State v. Hymer*, 400 So. 2d 637, 639 (La. 1981) (stating search of defendant's locked bedroom was valid because probable cause existed to search entire house).

weapons were known to be in the residence.[44] Kwalalon instead tries to posit that there is some other ill-defined delimiting factor that should have been recognized and that precluded the police search of his room. But there is none supported by either the evidence or the law. The search of Kwalalon's bedroom was reasonable given the community-living situation that the warrant and supporting affidavit described and that the police actually encountered.

E. Good Faith Exception Analysis Unnecessary

Kwalalon raises the potential argument that under the Delaware Constitution the good faith exception might not be applied as it would under Federal constitutional law. [45] Because the Court has found the warrant valid, it need not address the good faith exception here.

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[44] *See* Suppression Hr'g. Tr. at 33.

[45] *See* Def.'s Mot. to Suppress, at ¶ 12 (citing *Dorsey v. State*, 761 A.2d 807, 821 (Del. 2000)).

IV. CONCLUSION

Kwalalon's bedroom was searched under the authority of a valid and reasonably executed warrant. Given the community-living situation described in the warrant and encountered by the police, Kwalalon does not have some room-specific supervailing expectation of privacy in the single-family home he shared with a family member. Kwalalon's motion to suppress evidence seized during the search of his bedroom must be **DENIED.**

IT IS SO ORDERED.

/s/ Paul R. Wallace
Paul R. Wallace, Judge

Original to Prothonotary
cc: Eric Zubrow, Esquire
John A. Barber, Esquire