SUPERIOR COURT
OF THE
STATE OF DELAWARE

FRED S. SILVERMAN
JUDGE

NEW CASTLE COUNTY COURTHOUSE
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October 5, 2015

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RE: *State v. Ronald Jarrett*
ID # 1501009183

Upon Defendant's Motion to Suppress Evidence – DENIED.

Dear Counsel:

Under two search warrants, the police searched Defendant's house, a row home, and a car parked on the street in front of it. Relying, alternatively, on consent and the warrant's reference to "all the curtilage therein," the police also unlocked and searched a disabled sedan sitting on a pad in the tiny area amounting to the house's front yard. Defendant challenges the related searches of the house and the sedan, which yielded drug contraband.

As to the warrant for the house, Defendant contends the affidavit of probable cause supporting the warrant was insufficient because it asked the issuing

magistrate to draw unreasonable inferences about the likelihood that drugs would be found in the house. As to the sedan, Defendant argues the sedan's position was too remote to be characterized as curtilage. Thus, the search was a warrantless invasion of Defendant's privacy. As discussed below, both contested searches were conducted pursuant to a valid search warrant, and they were reasonable.

I.

The search of the car parked on the street was unfruitful, so Defendant does not challenge it. And, without conceding its invalidity, the State waives its alternative argument that the sedan's search was with the co-owner, Defendant's girlfriend's, consent. Defendant knocked down that argument by submitting the girlfriend's affidavit. Rather than relying on a conclusory, self-serving motion, defense counsel proved, as to consent, the State had a fight on its hands.

Otherwise, through correspondence, we agree that an evidentiary hearing was unnecessary. For present purposes, therefore, the court is relying on the search warrant's affidavit of probable cause and, to address the curtilage argument, stipulated photographs depicting the sedan and its location.

II.

The affidavit of probable cause speaks for itself. In summary, police officers watched Defendant participate in two, "controlled buys" within two weeks before the search. Basically, under police supervision, an informant called Defendant's cell phone to arrange a drug deal. Shortly after the deal was arranged, the police saw Defendant leave his house, the place that was ultimately searched pursuant to the warrant, and drive directly to the agreed upon rendezvous. There, the police saw Defendant do a drug deal, with the informant purchasing heroin from Defendant. As mentioned, this happened twice.

Based on the things the informant told the police that were corroborated by their surveillance and basic, record searches, the police obtained warrants for the house and the car Defendant drove to and from the drug deals. As mentioned, no contraband was found in the car, but incriminating evidence, including contraband, was seized when the house was searched.

As also mentioned, the search warrant, as is typically the case, authorized the search of the house's curtilage. Just as the affidavit of probable cause speaks for itself, the photographs showing the sedan and its location speak for themselves.

Summarizing in prose, the house is a small, two-story row home facing the street. The house appears to be approximately 25 feet wide, and 20 feet from the street. The house's front area is roughly divided in half, with one side being a two-car parking pad. One side of the parking pad is an overgrown hedge and the other side doubles as the house's front walkway. The other part of the front area is a small patch of grass. In the middle of the parking pad, sits the dark red sedan. It appears to have a cracked windshield and two flat tires. The car's front almost extends to the sidewalk in front of the house. Behind the car is a typical, residential trash container. The sedan's tail is less than five feet in front of the house. Apparently, the sedan is registered to Defendant and his girlfriend, but it is expired.

III.

Defendant's first, specific argument is: "no logical nexus existed to authorize a search of Mr. Jarrett's residence." Defendant's argument begins with analysis of other cases discussing the nexus requirement.[1] Defendant then argues that "the police observed no suspicious or illegal activity at [the house]." Defendant then highlights that the informant was not called "past, proven, and reliable." Defendant

[1] *See State v. Ada*, 2001 WL 660227 at *5 (Del. Super. June 8, 2001); *State v. Cannon*, I.D. No. 0701003821, 2007 WL 1849022 at *3-6 (Del. Super. June 27, 2007).

further argues "the police failed to conduct a controlled buy from the home and never witnessed any drug activity at the residence." Moreover, Defendant "was not seen carrying a bag or anything else that would suggest that he was carrying drugs into or out of his home[,]" nor was there other suspicious activity at the house. Finally, Defendant mentions that the police failed to follow Defendant after the drug transactions in order to see whether he returned to the house.

Defendant's argument notwithstanding, the police saw Defendant twice leave the house right after setting-up a drug deal and drive directly to where he did a drug deal. While other explanations are possible, Defendant most likely stored drugs in the house or in the car he drove to the drug deals. Furthermore, the facts surrounding the controlled buys support a reasonable inference that Defendant ran his illegal business out of the house.

Whether the informant was past-proven or not, the informant's reliability was established when he set-up and carried out two controlled buys in front of the police's eyes. The things Defendant argues the affidavit was lacking do not negate the criminal behavior contained in the affidavit and the inferences that could be drawn from them. For example, it is unavailing that the police neither saw Defendant put anything in nor take anything out of the sedan. They were not sitting on the house 24/7.

IV.

Typically, a search warrant for a house will specifically authorize a search of the house's curtilage, as the search warrant in this case did. Accordingly, the challenge to the search of the sedan turns on whether it fell within the house's curtilage. The State tacitly concedes that the out-of-commission sedan does not come under the vehicle exception to the search warrant requirement. The facts and the reasoning for that concession, however, are a springboard for the State's curtilage argument.

It is undisputed that the sedan was an immobile object. Before it could have been driven, its flat tires would have to have been inflated. Moreover, driving it at that point would have been illegal because of its cracked windshield and the fact it was unregistered. Accordingly, the court views the sedan as a junker, akin to a storage shed, located within five feet of the house and less than ten feet from the front door. While the sedan was not enclosed by walls on all four-sides, it was enclosed on two-sides and immediately adjacent to the house and the house's front door. Not that it would be dispositive if it were otherwise, no part of the car extended beyond the house's apparent property line. There is no reason to hold that separate privacy rights were associated with the sedan apart from the house's. Based on the sedan's condition and its location, as revealed in the stipulated photographs, the court is satisfied that it was part of the house's curtilage.[2]

Looking at the curtilage question from another direction, the touchstone for the Fourth Amendment is reasonableness. Considering that the police obtained a warrant for the house and further considering the affidavit of probable cause, requiring the police to obtain a separate warrant for the sedan would be silly.[3] Instead

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[2] *See State v. McLamb*, 321 S.E.2d 225 (N.C. Ct. App. 1984) (holding a junked vehicle near the residence was within curtilage and therefore within the search warrant's scope); *United States v. Hibbs*, 905 F.Supp.2d 862, 872 (C.D. Ill. 2012) ("[I]f the officers had known with certainty that the car was inoperable and the automobile exception does not apply, the search would probably still be permissible. There is a diminished expectation of privacy in 'junker' automobiles . . . .") (citing *United States v. Ramapuram*, 632 F.2d 1149 (4th Cir. 1980) (holding no legitimate expectation of privacy in a junked automobile, which had expired license places, unlocked doors, trunk lock removed, and was on father's farm)).

[3] *See United States v. Perez*, No. 11–256, 2011 WL 3438094, at *3 (E.D. Pa. 2011) (holding that although the Third Circuit has not addressed the issue yet, a number of other courts have held that "a valid warrant for a 'premises' generally permits the search of any vehicles owned by the resident that are located on the property"); *e.g., United States v. Griffin*, 827 F.2d 1108 (7th Cir. 1987); *United States v. Reivich*, 793 F.2d 957, 963 (8th Cir. 1986); *United States v. Singer*, 970 F.2d 1414, 1418 (5th Cir. 1992); *United States v. Patterson*, 278 F.3d 315, 318 (4th Cir. 2002); *Walls v. Maryland*, 944 A.2d 1222 (Md. 2008).

of vindicating the freedom from an unreasonable search, obtaining a separate warrant under the circumstances here would have been an unreasonable use of the police's time in preparing it, and reviewing it would have been an unreasonable imposition on the issuing magistrate's time. The reasoning behind the search warrant here was the reasonable notion that Defendant had to keep his inventory somewhere and, under the circumstances of the controlled buys, that somewhere probably would have been in or around Defendant's house. The sedan was undeniably there.

V.

For the foregoing reasons, Defendant's Motion to Suppress the evidence seized under the search warrant for Defendant's house, including the sedan located within the house's curtilage, is **DENIED**.

IT IS SO ORDERED.

Very truly yours,

/s/ Fred S. Silverman

FSS:mes
oc: Prothonotary (Criminal)