

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES

CRIMINAL ACTION

v.

BRIHIEN CHINA

NO. 18-563

DuBois, J.

August 5, 2019

MEMORANDUM

I. INTRODUCTION

Defendant, Brihien China, is charged in a one-count indictment with possession of a firearm by a convicted felon in violation of 18 U.S.C. § 922(g)(1). Presently before the Court are Defendant's Motion to Suppress Physical Evidence and Post-Arrest Statements and Defendant Brihien China's Supplement to his Motion to Suppress Physical Evidence and Post-Arrest Statements seeking to suppress any and all physical evidence seized by the police on July 28, 2018, in connection with a search of 5521 Pine Street, Philadelphia, Pennsylvania, and all post-arrest statements made by defendant. For the reasons that follow, defendant's Motions are denied.

II. BACKGROUND¹

Marlana Brinkerhoff reported her firearm stolen during an interview with detective Frederick Straub on Saturday, July 28, 2018. Ex. G-1. According to Brinkerhoff's signed statement, she had been staying with Dejuan White at 5521 Pine Street for about two weeks in his "second floor front bedroom." *Id.* On the morning of July 26, 2018, after leaving White's residence, she noticed her firearm missing from her purse. *Id.* She had last seen her firearm the night before in her purse on the floor next to the door of White's bedroom. *Id.* Brinkerhoff

¹ The factual background is taken from the evidence presented at the March 23, 2019, and August 1, 2019, Hearings.

reported that she and White were alone in the house on the night the gun went missing. *Id.* After unsuccessfully attempting to contact White, she reported the firearm missing two days later. *Id.*

Although not included in her signed written statement, at the March 29, 2019, hearing, Brinkerhoff testified that she reported to Straub that White rented a room in the house, there were other tenants in separate rooms, and that each tenant kept her door locked. Mar. 23, 2019, Suppression Hr'g Tr. ("3/23/19 Tr.") at 86:8-15. Straub testified that he had no recollection of Brinkerhoff telling him that there were three bedrooms upstairs or that "there was another person that was in that home that rented a back room." 3/23/19 Tr. 45:1-7, 64:2-7.

After taking Brinkerhoff's report, detective Straub researched 5521 Pine Street. 3/23/19 Tr. 11:20-12:1. He first consulted a law enforcement database, "CLEAR," which showed that White listed the Pine Street address as his home. *Id.* at 12:3-13:6. He also checked a real estate database which identified the owner of the property, a realty company, Brothers Realty LLC. The database did not disclose that the property was subdivided for multiple occupancy use. *Id.* at 13:25-15:5; Ex. G-2. In Straub's experience using the real estate database, the database specified when a property was subdivided for use as multiple apartments. 3/23/19 Tr. 15:6-11. Straub did not contact the listed owner because he determined he was unlikely to receive a timely response from the company on a Saturday and he was concerned that White might be alerted to the planned search of his residence. *Id.* at 18:8-16.

Later on July 28, 2018, Straub obtained a search warrant to search a "2 story masonry construction" at 5521 Pine Street for "any and all firearms, ammunition, red gun locks, proof of residence." Ex. G-4. The warrant was issued and executed that same day at around 3:45 p.m. by Straub and six other officers, three of whom were uniformed. *Id.*; 3/23/19 Tr. 20:23-21:1. The other officers did not review the warrant, but were told that the search was related to a stolen gun

investigation and that they were searching for firearms inside the residence, as well as ammunition and proof of residence. 3/23/19 Tr. 21:2–9. Straub also showed a photograph of White to the other officers. *Id.* at 21:15–17.

5521 Pine Street is a rooming house with three bedrooms on the second floor, but there are no outward signs of multiple occupancy, such as multiple mailboxes, doorbells, or signs advertising rooms for rent. 3/23/19 Tr. 28:7–20. When the officers knocked on the door to the residence, defendant, who rented a room at 5521 Pine Street, looked out the first-floor window adjacent to the door, ignored requests to open the door, and retreated upstairs. *Id.* at 22:18–22; 25:9–26:2.

After forced entry, the officers began securing the residence. *Id.* at 26:16–27:11. Detective Straub testified that there was nothing on the first floor of the residence that would suggest to him that the residence was an apartment building or rooming house. *Id.* at 28:2–6.

Upon reaching the second floor, the officers saw defendant open the door to the rear second floor bedroom and secured him. *Id.* at 73:15–25. None of the bedroom doors were marked with room numbers, individual names, or internal mailboxes. *Id.* at 29:19–30:3. Each bedroom door was equipped with a lock. *Id.* at 103:13–15.

The officers searched the upstairs rooms, including defendant’s second floor rear bedroom. *Id.* at 74:1–9. The officers recovered a handgun, narcotics, mail addressed to defendant, over \$27,000 cash and drug scales from defendant’s bedroom. *Id.* at 74:10–76:4. After conferring with detective Straub and confirming that it was not the firearm they were looking for, the officers continued the search. *Id.* at 15–25.

During the search of defendant’s bedroom, an officer noticed a window screen askew. August 1, 2019, Hr’g Tr. (“8/1/19 Tr.”) 8:15–9:2. Outside, on the ground in the backyard—a

common area for residents of the building—were a backpack and gym bag which contained mail addressed to defendant, a receipt with defendant’s name written on it, three handguns, loose pistol ammunition, narcotics, and a sweatshirt. *Id.* at 10:1–11, 22:9–14.

After the search, defendant was taken into custody, was read his *Miranda* rights, voluntarily waived those rights and gave a videotaped statement. Def.’s Mot. To Suppress Physical Evidence & Post-Arrest Statements (“Def.’s Mot.”) 8; Gov’t’s Am. Resp. Opp’n Def.’s Pretrial Mot. To Suppress Physical Evidence & Post-Arrest Statements (“Govt’s Am. Resp.”) 3–4.

On December 6, 2018, a Grand Jury returned an Indictment charging defendant with one count of possession of a firearm by a convicted felon, in violation of 18 U.S.C. § 922(g)(1). On March 8, 2019, defendant filed a Motion to Suppress Physical Evidence and Post-Arrest Statements. The government responded on March 13, 2019. On March 21, 2019, and March 22, 2019, defendant and the government refiled their respective motions to attach the exhibits referenced in their submissions. The Court held a Hearing on the Motion to Suppress on March 29, 2019.

By Order dated April 17, 2019 (Document No. 33), the Court granted defense counsel’s Motion for Leave to Withdraw and appointed new counsel to represent defendant. On June 21, 2019, defendant submitted a supplement to the original Motion to Suppress. The supplement clarified that defendant sought to suppress all physical evidence seized by police in connection with the July 28, 2018, search of 5521 Pine Street, including the recovery of the backpack and gym bag found in the backyard. The government responded on July 11, 2019. The Court held a second Hearing on the suppression motion, as supplemented, on August 1, 2019. The Motions are now ripe for decision.

III. LEGAL STANDARD

As a general rule, the burden of proof is on a defendant who seeks to suppress evidence. *United States v. Johnson*, 63 F.3d 242, 245 (3d Cir. 1995). However, once the defendant has established a basis for his motion, such as establishing that the search or seizure was conducted without a warrant, “the government bears the burden of showing that each individual act constituting a search or seizure under the Fourth Amendment was reasonable.” *United States v. Ritter*, 416 F.3d 256, 261 (3d Cir. 2002). The applicable burden of proof is by a preponderance of the evidence. *United States v. Matlock*, 415 U.S. 164, 178 n.14 (1974).

IV. DISCUSSION

Defendant contends that all physical evidence and post-arrest statements should be suppressed because the search warrant was invalid and, upon executing the warrant, the officers should have realized the warrant was overbroad and limited their search to White’s bedroom. According to defendant, the physical evidence found in defendant’s bedroom and the backyard and his post-arrest statement should be excluded as the fruits of an illegal search.

The Court disagrees. For the reasons that follow, the record evidence shows that (1) the warrant was validly issued based on reasonable good faith representations, and (2) the officers did not know, nor reasonably should have known, that the 5521 Pine Street residence was used as a multi-unit rooming house during the execution of the search warrant. Thus, the Court concludes suppression is not warranted and defendant’s motion is denied.

a. Validity of Search Warrant

Defendant argues that the search warrant was invalid for lack of particularity. “Consonant with the fourth amendment’s dictate that warrants particularly describe the place to be searched, a search warrant directed against an apartment house will usually be held invalid if

it fails to describe the particular apartment to be searched with sufficient definiteness to preclude a search of other units located in the building and occupied by innocent persons.” *United States v. Bedford*, 519 F.2d 650, 653–55 (3d Cir. 1975); *Maryland v. Garrison*, 480 U.S. 79, 85 (1987) (“Plainly, if the officers had known, or even if they should have known, that there were two separate dwelling units on the third floor of 2036 Park Avenue, they would have been obligated to exclude respondent’s apartment from the scope of the requested warrant.”).

It is undisputed that “probable cause to search one apartment within a multi-unit dwelling does not permit police to obtain a search warrant to search the entire building.” *See* Govt’s Am. Resp. 5. In this case, each rented bedroom in the rooming house constituted a separate dwelling unit and the warrant to search 5521 Pine Street for Brinkerhoff’s firearm should not have included defendant’s bedroom.

However, the Court “must judge the constitutionality of the [officers’] conduct in light of the information available to them at the time they acted. . . . The validity of the warrant must be assessed on the basis of the information that the officers disclosed, or had a duty to discover and to disclose, to the issuing Magistrate.” *Garrison*, 480 U.S. at 85; *see also United States v. Heilman*, 377 F. App’x 157, 185 (3d Cir. 2010) (“[T]he Supreme Court held that the exclusionary rule should not be applied to bar the use of evidence obtained pursuant to an invalid warrant if the officers had an objective, reasonable belief that the warrant was valid.”).

Defendant contends that the officers “knew, or with reasonable investigation could have discovered, that 5521 Pine Street contained multiple residences.” Def.’s Mot. 7. In support, defendant relies on Brinkerhoff’s March 29, 2019 testimony that she reported to Straub that “[White] rented a room, but I didn’t know who he shared it with or – but his door was always locked and . . . they always lived in separate rooms and locked their doors.” 3/23/19 Tr. at 86:8–

15. He also argues that Brinkerhoff's signed statement that she had been staying in "the front second floor bedroom" should have put Straub on notice that the residence was a rooming house and that a "simple search of City of Philadelphia records reveals that 5521 Pine Street is not a single occupancy residence." Def.'s Mot. 7–8.

The government responds that the police had no reason to believe that 5521 Pine Street was used as a rooming house. Govt's Am. Resp. 5. The Court agrees with the government.

The Court finds credible the testimony of detective Straub detailing the careful investigative steps taken to research the 5521 Pine Street residence prior to applying for a warrant and his interview of Brinkerhoff. He has no recollection of Brinkerhoff telling him "about the fact that this place that she was staying in, there was another person that had a - that had a room that was in the rear of the property and that the upstairs was three bedrooms," or that "there was another person that was in that home that rented a back room." 3/23/19 Tr. 45:1–7, 64:2–7. The Court does not find credible Brinkerhoff's testimony that she told Straub this information during her interview with Straub—information that does not appear in her signed statement. *See Ex. G–1.*

Straub's review of (1) the CLEAR law enforcement database corroborating that White resided at 5521 Pine Street as recently as April 2018 and (2) a real estate database providing property ownership and zoning information demonstrates that he undertook reasonable due diligence in researching the property prior to seeking a warrant. Straub's decision not to contact the owner of the residence, Brothers Realty LLC, was reasonable in light of his assessment that he would be unlikely to receive a response from the company on a weekend and his concern that White might be alerted to a possible search of his residence. 3/23/19 Tr. 18:8–16.

The Court finds that detective Straub acted reasonably and in good faith in obtaining and executing the search warrant based on the information available to him. Accordingly, the Court concludes that the search warrant was valid.²

b. Physical Evidence Found in Defendant's Bedroom

Defendant contends that the physical evidence found in his bedroom should be suppressed. “[A] warrant for a single-unit residence authorizes the search of that entire dwelling regardless of who the area being searched belongs to, so long as the items delineated in the warrant could reasonably be found in the searched area.” *United States v. McLellan*, 792 F.3d 200, 212 (1st Cir. 2015). However, officers are required to discontinue the search of an apartment as soon as they discover that there are separate units and therefore are put on notice of the risk that they might be in a unit erroneously included within the terms of the warrant.

Maryland v. Garrison, 480 U.S. 79, 87 (1987).

“[E]xclusion is appropriate only where law enforcement conduct is both ‘sufficiently deliberate’ that deterrence is effective and ‘sufficiently culpable’ that deterrence outweighs the costs of suppression. *United States v. Katzin*, 769 F.3d 163, 171 (3d Cir. 2014). “[D]etermining whether the good faith exception applies requires courts to answer the “objectively ascertainable question whether a reasonably well trained officer would have known that the search was illegal in light of all of the circumstances.” *Id.* “While the purposes justifying a police search strictly limit the permissible extent of the search, the Court has also recognized the need to allow some latitude for honest mistakes that are made by officers in the dangerous and difficult process of making arrests and executing search warrants.” *Maryland*, 480 U.S. at 87.

² Because the Court finds that Straub acted reasonably and in good faith in obtaining the search warrant, the Court need not further address defendant's contention that Straub intentionally or recklessly omitted material details from the Application for Search Warrant. *See* Def. Brihien China's Supp. to Mot. Suppress Physical Evidence & Post-Arrest Statements (“Def.’s Supp. Mot.”) 3.

Defendant argues that even if the warrant was not void and the police officers were unaware that the building was a multiple occupancy unit prior to entry, the lack of furnishings and the fact that each bedroom door could be locked with a key provided reasonable notice that it was a rooming house. Def.'s Mot. 8. Defendant also notes that the officers who searched defendant's room had not read the warrant. Def.'s Supp. Mot. 5 (citing 3/24/19 Tr. 21:2–17).

The government responds that “many homes have locking bedroom doors and sparse furnishings” and “[t]here was nothing immediately apparent to suggest that they were in a rooming house.” Govt's Am. Resp. 9. According to the government, the officers executed the search in objectively reasonable reliance on a search warrant issued by a detached and neutral magistrate. *Id.* at 10.

Upon review of the record, the Court agrees with the government that a reasonably well-trained officer would not have known that 5521 Pine Street was a rooming house. The officers executed the search in reasonable good faith reliance on the search warrant.

“Factors that indicate a separate residence include separate access from the outside, separate doorbells, and separate mailboxes.” *United States v. Kyles*, 40 F.3d 519, 524 (2d Cir. 1994). 5521 Pine Street has one mailbox, one doorbell, and no signs advertising rooms for rent. 3/23/19 Tr. 28:7–20. The first floor was sparsely furnished, but the area contained no signs that would have put a reasonable officer on notice that it was a common area of a rooming house. *See Exs. D–26, D–28, D–29, D–30 & D–31.* Similarly, there were no obvious signs on the second floor that the residence was used as a rooming house. The mere fact that bedroom doors could be locked would not put a reasonable officer on notice that the residence was a rooming house.

Finding that a reasonable officer would not have been on notice that the residence was a rooming house is further warranted by the specific context in which the officers conducted the search. As detective Straub testified, the officers were in “a heightened state of alert” due to “the fact that . . . [they] believed there was a firearm inside the residence [and weren’t] sure if someone inside there was planning to use it against [them].” 3/23/19 Tr. 30:4–13. In such a context, applying the good-faith exception to the exclusionary rule is consistent with “allow[ing] some latitude for honest mistakes that are made by officers in the dangerous and difficult process of making arrests and executing search warrants.” *Maryland*, 480 U.S. at 87.

Thus, the Court concludes that the search was executed in good faith pursuant to a valid warrant and exclusion of the physical evidence found in defendant’s bedroom is not warranted.

c. Physical Evidence Found in Backyard

Defendant argues that the backpack and gym bag found in the backyard should be suppressed as fruit of an illegal search because “[i]f the detective had not conducted the illegal search of Mr. China’s room, or any part of 5521 Pine Street other than Dejuan White’s room, he would not have seen the screen askew nor touched it, nor saw it fall, nor discovered the bags on the ground below.” Def.’s Supp. Mot. 5.

The Court is not persuaded by defendant’s argument. Defendant’s argument is premised on the assumption, rejected above, that the officers should have realized during the search that the residence was a rooming house. Because the Court determines that the search of defendant’s bedroom was valid pursuant to the good faith exception, defendant’s argument for suppression of items discovered as fruits of that search necessarily fails.³

³ Moreover, defendant lacks standing to challenge the recovery of the evidence from the backyard. “Standing to challenge a search requires that the individual challenging the search have a reasonable expectation of privacy in the property searched . . . and that he manifest a subjective expectation of privacy in the property searched.” *United States v. Baker*, 221 F.3d 438, 441 (3d Cir. 2000) (internal citations omitted). A resident of multi-unit apartment

d. Post-Arrest Statements

Defendant further argues that “any statement by Mr. China at the police station occurred directly after the illegal search of his residence and arrest” and should therefore be suppressed as the fruit of a poisonous tree. Def.’s Mot. 9.

“[P]robable cause to arrest exists when the facts and circumstances within the arresting officer’s knowledge are sufficient in themselves to warrant a reasonable person to believe that an offense has been or is being committed by the person to be arrested.” *United States v. Jones*, 503 F. App’x 155, 157 (3d Cir. 2012).

For the reasons stated above, the Court concludes that the search of defendant’s residence was pursuant to a valid warrant and was reasonable in light of the information available to the officers. The government had probable cause to arrest defendant and seize the firearm and narcotics found in his bedroom and the three firearms and narcotics in two bags containing documents with defendant’s name on them from the backyard of the premises. The Court thus concludes that suppression of defendant’s post-arrest statements is not warranted.

V. CONCLUSION

For the reasons stated above, defendant’s motions are denied. An appropriate Order follows.

building lacks an objectively reasonable expectation of privacy in a building’s common areas. *United States v. Correa*, 653 F.3d 187, 188 (3d Cir. 2011) (citing *United States v. Acosta*, 965 F.2d 1248, 1252 (3d Cir.1992)). Because the backyard was a common area shared by the multiple renters in the rooming house, defendant does not have a reasonable expectation of privacy in items recovered in the backyard and lacks standing to challenge their seizure.

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ORDER

AND NOW, this 5th day of August, 2019, upon consideration of Defendant's Motion to Suppress Physical Evidence and Post-Arrest Statements (Document No. 24, filed March 8, 2019), Government's Response to Defendant's Pretrial Motion To Suppress Physical Evidence and Post-Arrest Statements (Document No. 25, filed March 13, 2019), Defendant's Motion to Suppress Physical Evidence and Post-Arrest Statements (Document No. 26, filed March 21, 2019), Government's Amended Response in Opposition to Defendant's Pretrial Motion to Suppress Physical Evidence and Post-Arrest Statements (Document No. 27, filed March 22, 2019), Defendant Brihien China's Supplement to his Motion to Suppress Physical Evidence and Post-Arrest Statements (Document No. 44, filed June 21, 2019), and Government's Response in Opposition to Defendant's Supplement to his Motion to Suppress Physical Evidence and Post-Arrest Statements (Document No. 49, filed July 11, 2019), following a Hearing and oral argument in open court on March 29, 2019, and August 1, 2019, for the reasons stated in the accompanying Memorandum dated August 5, 2019, **IT IS ORDERED** that Defendant's Motion to Suppress Physical Evidence and Post-Arrest Statements (Document Nos. 24 & 26) and Defendant Brihien China's Supplement to his Motion to Suppress Physical Evidence and Post-Arrest Statements (Document No. 44) are **DENIED**.

BY THE COURT:
/s/ Hon. Jan E. DuBois

DuBOIS, JAN E., J.