

**COURT OF APPEALS
THIRD APPELLATE DISTRICT
SENECA COUNTY**

STATE OF OHIO

PLAINTIFF-APPELLEE

CASE NUMBER 13-02-19

v.

JOHNNI F. CARTER, JR.

OPINION

DEFENDANT-APPELLANT

CHARACTER OF PROCEEDINGS: Criminal Appeal from Common Pleas Court.

JUDGMENT: Judgment affirmed.

DATE OF JUDGMENT ENTRY: August 28, 2002.

ATTORNEYS:

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For Appellee.**

Bryant, J.

{¶1} This appeal is brought by Johnni F. Carter, Jr. from the judgment of the Court of Common Pleas, Seneca County, denying his Motion to Suppress evidence. For the reasons stated below, we affirm the trial court's decision.

{¶2} The record presents the following pertinent facts. On August 10, 2000, Detective Aaron Russell of the Tiffin Police Department filed an affidavit with the Seneca County Court of Common Pleas stating that he had good cause to believe that stolen property would be found at the residence of Mike Carter. According to the affidavit, a confidential informant told police that Carter, two of his brothers, and another man were breaking into cars and garages in Tiffin, Ohio and stealing the contents therein. Based on this information, the court issued a search warrant for, "[t]he residence of Mike Carter, Barb Carter and Kenny Schaade, 15 Frost Parkway, Tiffin, Seneca County Ohio, a white two story duplex, 15 Frost Parkway being on the ground floor ***."

{¶3} Thereafter, the Tiffin Police proceeded to conduct a search of 15 Frost Parkway. During the search, police came upon a bedroom secured by a padlock later determined to belong to Appellant Johnni Carter. Kenny Schaade, the owner of the home and Appellant's stepfather, opened the door utilizing a key in his possession. Upon entering the room, the police discovered and seized numerous items suspected to be stolen property.

{¶4} On August 9, 2002 the Seneca County Grand Jury indicted Appellant on two counts of breaking and entering, a violation of R.C. 2911.13(A) and one count of complicity to breaking and entering in violation of R.C. 2923.03(A)(2) and R.C. 2911.13(A). On October 11, 2001 the Appellant filed a motion to suppress all evidence retrieved from his bedroom on 15 Frost Parkway during the August 2000 search. Appellant argued that the search warrant obtained by police did not permit a search of his locked bedroom for which he paid rent. The trial court denied the motion. Thereafter, Appellant entered a plea of no contest and was sentenced to sixty days incarceration and three years of community control. The trial court stayed Appellant's sentence pending appeal of the motion to suppress which we now consider.

{¶5} Appellant raises the following assignment of error:

{¶6} In a violation of Criminal Rule 41(C), and in a violation of the Fourth Amendment's requirement of a valid search warrant, the trial court reversibly erred by denying the defendant-appellant's Motion to Suppress, for reason that the search warrant fails to apply to the locked bedroom of the rent-paying appellant, whose name is not on the search warrant, not on the affidavit for same when the affidavit and the warrant state with finite particularity the names of the person's who's residences are to be searched.

{¶7} In support of his sole assignment of error, Appellant states that the police conducted an illegal warrantless search of his bedroom for which he had a reasonable expectation of privacy. Appellant's argument centers around the language contained in the warrant describing the scope of the search. Particularly, Appellant states that because the warrant describes the property to be searched as the residence of Mike Carter, Barb Carter and Kenny Schaade, 15 Frost Parkway, Tiffin, Seneca County Ohio, the warrant does not encompass his separate residence, that being his bedroom. According to Appellant, in order for his separate living space to be included within the province of the search warrant, the warrant would had to have stated *just* 15 Frost Parkway without the specific residents' identities, or otherwise include his own name. We do not find Appellant's argument well taken.

{¶8} The Fourth Amendment to the United States Constitution and Section 14, Article 1 of the Ohio Constitution require police to obtain a warrant based upon probable cause prior to conducting a search. Where a structure is divided into more than one unit, probable cause must exist for each unit. *United States v. Gonzalez* (1983), 697 F.2d 155, 156. Accordingly, the Fourth Amendment and Ohio Crim.R.41(C) require search warrants to particularly describe the place or person to be searched and to limit the search to the description contained on the face of the warrant. See *United States v. Blakeney*

(1991), 942 F.2d 1001, 1026; Crim.R.41(C). Once an executing officer discovers that a structure contains two separate units, the search of the unit not included in the warrant must cease until a warrant is obtained. *Maryland v. Garrison* (1987), 480 U.S. 79, 84, 107 S.Ct. 1013. A search that exceeds the scope of the warrant will be deemed a warrantless search. The standard of review for determining whether a search remained within the scope of a warrant is de novo. *United States v. King* (2000), 227 F.3d 732, 750; citing *United States v. Gahagan* (1989), 865 F.2d 1490, 1496.

{¶9} The case at bar presents the issue of whether or not Appellant's private bedroom, for which he allegedly pays rent to his step-father and mother, was a separate unit necessitating a separate search warrant. We note that Appellant's expectation of privacy in his bedroom is not at issue, only whether the executing officers flagrantly disregarded the limitations of the warrant by entering a separate unit, that being Appellant's private room. *See Brindley v. Best* (1999), 192 F.3d 525, 531. The test for making such a determination is whether the officer's actions were reasonable. *Id.*

{¶10} We find the officers' actions in the current case to be reasonable. The properly executed search warrant described the property to be searched as 15 Frost Parkway. Appellant's bedroom was located in the residence at 15 Frost Parkway. There was no indication that the room was a separate unit. The room

did not have a separate address nor did it have a separate outside access. Appellant argues that the padlock should have put the police on notice that the room was a separate unit. On the contrary, locking a door does not make the room behind it a separate unit. The lock merely demonstrated Appellant's expectation of privacy in the room. A lawful search of a fixed location generally extends to the entire area in which the object of the search may be found and is not limited by the possibility that separate acts of entry or opening may be required to complete the search. *United States v. Ross* (1982), 456 U.S. 798, 820-821, 102 S.Ct. 2157. Therefore, the search warrant describing the residence 15 Frost Parkway extended to locked rooms within that residence.

{¶11} Appellant's argument that the search warrant did not extend to his room because his name was not on the warrant, and because his brother, mother and step-father's were, is unsupported by law. Appellant cites to no authority stating that when property is described as the residence of a particular person or persons, the search warrant does not extend to an unnamed person's bedroom. The law the Appellant does cite does not apply or is misconstrued altogether.

{¶12} In conclusion, we reject Appellant's argument and agree with the Sixth District Court of Appeals' decision in *State v. Scott* (Sept. 1, 1989), Lucas App. No. L- 88-323 in which that court stated that where individuals have separate bedrooms but share common living areas of a single family dwelling, such a

Case No. 13-2002-19

situation does not create separate living units, multi-unit rules do not govern and the entire premises may be searched. Appellant's sole assignment of error is overruled.

{¶13} For the reasons stated it is the order of this Court that the judgment of the Seneca County Court of Common Pleas is **AFFIRMED**.

Judgment affirmed.

HADLEY and WALTERS, JJ., concur.