

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 06-1152

UNITED STATES OF AMERICA

v.

DARNELL GASKINS,

Appellant

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
(D.C. No. 05-cr-00149-1)
District Judge: Honorable Stewart Dalzell

Submitted Under Third Circuit LAR 34.1(a)
October 22, 2007

Before: FISHER, ALDISERT and GREENBERG, *Circuit Judges*.

(Filed: October 25, 2007)

OPINION OF THE COURT

FISHER, *Circuit Judge*.

In September 2005, a jury convicted Darnell Gaskins of five counts of drug-related charges. Gaskins now appeals the District Court's denial of his motion to suppress

evidence recovered during a search with a warrant of his residence. For the reasons set forth below, we will affirm the judgment of the District Court.

I.

Because we write exclusively for the parties who are familiar with the factual context and legal history of this case, we will set forth only those facts necessary to our analysis. In February 2004, police commenced an investigation into a narcotics operation in Philadelphia, Pennsylvania. Police conducted surveillance of multiple individuals suspected of drug trafficking, and had a confidential informant engage in controlled purchases of narcotics from some of the suspects. On several occasions, police observed Gaskins interacting with suspected drug dealers and participating indirectly in what appeared to be drug transactions. Based on these events, the police sought a warrant to search 3122 North Bancroft Street, Gaskins' residence. After a magistrate issued a warrant based on an officer's affidavit, police searched the residence and seized cocaine, two handguns, drug-related paraphernalia, and cash.

Gaskins was subsequently charged with five counts of drug trafficking and weapons possession charges in March 2005. These include one count of conspiracy to distribute 50 grams or more of cocaine base, in violation of 21 U.S.C. §§ 841(b)(1)(A) and 846; two counts of distribution and possession with intent to distribute cocaine base, in violation of 21 U.S.C. § 841(a)(1) and (b)(1)(B); and one count of use of a firearm in furtherance of a drug trafficking offense, in violation of 18 U.S.C. § 924(c).

Before trial, Gaskins moved to suppress the evidence seized from 3122 North Bancroft Street, arguing that the affidavit in support of the search warrant was insufficient to establish probable cause. The District Court denied that motion, and a jury convicted Gaskins of all counts.¹ He now files this timely appeal.

II.

The District Court exercised jurisdiction over this proceeding pursuant to 18 U.S.C. § 3231. We have jurisdiction over this appeal pursuant to 28 U.S.C. § 1291. We review both the District Court's and the magistrate judge's determination that the affidavit was sufficient to establish probable cause in support of the search warrant. *United States v. Whitner*, 219 F.3d 289, 295-96 (3d Cir. 2000). We exercise plenary review over a District Court's review of a magistrate's determination of probable cause where that determination is based only on the facts contained in the affidavit. *Id.* at 296 (citing *United States v. Conley*, 4 F.3d 1200, 1204 (3d Cir. 1993)). In contrast, we perform a deferential review of a magistrate judge's initial determination of probable cause in issuing a search warrant. *Conley*, 4 F.3d at 1205. The magistrate may find probable cause to search when, based on the totality of the circumstances, “there is a fair probability that contraband or evidence of a crime will be found in a particular place.”

¹For the drug offenses, Gaskins was sentenced to 121 months imprisonment, followed by five years of supervised release, a \$2,500 fine, and a special assessment of \$500. For the gun offense, Gaskins was sentenced to 60 months imprisonment to run consecutively to the first sentence.

Id. (quoting *Illinois v. Gates*, 462 U.S. 213, 238 (1983)). Thus, “a reviewing court is to uphold a warrant as long as there is a substantial basis for a fair probability that evidence will be found” at the location identified in the affidavit. *Id.* Doubtful or marginal cases should be resolved in accordance with the Fourth Amendment preference for search warrants. *United States v. Jones*, 994 F.2d 1051, 1055 (3d Cir. 1993) (citing *United States v. Ventresca*, 380 U.S. 102, 109 (1965)).

III.

Gaskins argues that based upon the affidavit, there was not a fair probability that he was involved in drug trafficking and maintained evidence of drug trafficking at his residence. However, we find that the facts set forth in the affidavit were sufficient to establish probable cause to search Gaskins’ residence.

We have held that “direct evidence linking the residence to criminal activity is not required to establish probable cause.” *United States v. Burton*, 288 F.3d 91, 103 (3d Cir. 2002). Instead, “an accumulation of circumstantial evidence” can be sufficient to demonstrate a fair probability that evidence of criminal activity is present at an individual’s residence. *Id.* Factors to be considered in evaluating the circumstantial evidence include: “the type of crime, the nature of the items sought, the suspect’s opportunity for concealment and normal inferences about where a criminal might hide [evidence of criminal activity].” *Id.* (internal quotations and citation omitted).

Additionally, we have determined that it is reasonable to infer that drug dealers store evidence of drug-related criminal activity in their homes. *Id.* at 104. “[A]pplication of this inference is based on evidence supporting three preliminary premises: (1) that the person suspected of drug dealing is actually a drug dealer; (2) that the place to be searched is possessed by, or the domicile of, the dealer; and (3) that the home contains contraband linking it to the dealer’s drug activities.” *Id.*

First, Gaskins argues that the affidavit lacks evidence of his involvement in any drug transactions. However, the affidavit provides information on Gaskins’ numerous interactions with suspected drug dealers and indirect participation in drug deals. Police officers observed the following: (1) on April 15, 2004, Gaskins drove another suspect, Eric Harris, to a drug transaction; (2) on April 19, 2004, Gaskins left 3122 North Bancroft Street, delivered a small object to Harris, and then received cash from Harris a few minutes later; (3) also on April 19, 2004, Gaskins talked with a confidential informant and another suspect, Michael Jones, moments before Jones sold crack to the informant; (4) on April 20, 2004, Gaskins conferred with Jones after Jones deposited small objects in a vehicle and before Jones retrieved a black plastic bag from the same vehicle moments later; and (5) on April 26, 2004, Gaskins left 3122 North Bancroft Street, retrieved a small object from Jones (shortly after Jones engaged in a drug deal), then picked up and dropped off Harris immediately before Harris sold crack to an informant. The accumulation of the circumstantial evidence of Gaskins’ indirect involvement in drug

deals provided a substantial basis for the magistrate's determination that he was a drug dealer.

Second, Gaskins argues that the affidavit lacks direct evidence linking him to the searched location, 3122 North Bancroft Street. However, police regularly observed him entering and departing that location. Additionally, police repeatedly observed him driving a vehicle registered in his name at that address. Therefore, the magistrate had sufficient information to conclude that Gaskins resided at 3122 North Bancroft Street.

Third, Gaskins argues that the affidavit lacks direct evidence linking any drug deal to his residence. Here, the affidavit references Gaskins' involvement in drug transactions, and in particular, it states that he left his residence and gave an item to a person immediately before that person sold drugs to a confidential informant. This accumulated circumstantial evidence is sufficient to demonstrate a fair probability that Gaskins kept evidence of his drug-related activities in his home. Therefore, the magistrate judge properly determined that probable cause existed to search Gaskins' home.²

IV.

For the reasons set forth above, we will affirm the District Court's decision to deny Gaskins' motion to suppress evidence and subsequent judgment of conviction.

²Because we find that the affidavit provided a substantial basis for the magistrate to find a fair probability that a search of Gaskins' home would reveal evidence of drug trafficking, we need not address the issue of the police officers' good faith reliance on a search warrant pursuant to *United States v. Leon*, 468 U.S. 897 (1984).