NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 06-1286

UNITED STATES OF AMERICA

v.

ERIC HARRIS,

Appellant

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
(D.C. No. 05-cr-00149-4)
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 Eric Harris of eight counts of drug-related charges. Harris 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 only for the parties who are familiar with the factual context and procedural history of the case, we 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 four controlled purchases of crack cocaine from Harris.[1] On at least two of these occasions, Harris immediately returned to 3039 North Stillman Street, his residence, following the transactions. As a result, police obtained a warrant to search his residence. After a magistrate issued a warrant based upon an investigating officer's affidavit, police searched the residence and seized 1,385 grams of cocaine powder, marijuana, a scale, and packaging material. Harris was subsequently charged with eight counts of distributing schedule two drugs, in violation of 21 U.S.C. § 841(a) and (b).[2]

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[1]These incidents occurred in 2004 on the dates of February 23, March 3, April 15, and April 26.

[2]Harris' brief contends that he was also charged and convicted of knowingly and intentionally possessing a firearm in the furtherance of drug trafficking crimes, in violation of 21 U.S.C. § 846. However, Harris was not charged or convicted of that offense.

Before trial, Harris moved to suppress the evidence seized from his residence. He argued that police lacked information to establish probable cause that drug-related evidence would be found at his home. The District Court denied the motion, and following a jury trial, Harris was convicted of all eight counts.[3] He now files this timely appeal.[4]

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 judge'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

[3]Because Harris had a predicate offense, the District Court was statutorily required to sentence him to a minimum imprisonment period of 240 months. Consequently, he was sentenced to 240 months imprisonment, followed by twelve years supervised release, a $2,500 fine, and a special assessment of $800.

[4]Although Harris argues that his conviction should be overturned as a result of the District Court's denial of his motion to suppress evidence, the evidence seized from his residence would not affect Counts 1, 2, 3, 8, and 10. Those counts pertained to the drug transactions between Harris and the confidential informant that took place prior to the search of Harris' residence. Thus, the only counts that were based upon evidence seized from the residence (and thus would be affected by the motion to suppress) were Counts 16, 17, and 19.

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.'" *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.

Harris argues that based upon the affidavit, there was not a fair probability that he maintained evidence of drug trafficking at his residence. However, we find that the facts in the affidavit were sufficient to establish probable cause to search Harris' 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.*

Here, the affidavit provided more than enough circumstantial evidence to establish a fair probability that evidence of criminal activity would be present at Harris' home. Evidence existed that Harris was a drug dealer based upon the four instances, detailed in the affidavit, where Harris sold cocaine to a confidential informant. Evidence also demonstrated that 3039 North Stillman Street was Harris' residence, because police (1) observed him leaving that location before he engaged in drug deals and returning thereafter; and (2) determined that Harris' driver's license also listed his address as 3039 North Stillman Street.

Harris contests the existence of the third premise in the present case, arguing that there are insufficient facts in the affidavit to link his residence to any drug-related activity or to indicate that drug-related evidence would be found inside. However, "we generally accept the common sense proposition that drug dealers often keep evidence of their transactions at home, [and] that inference is much stronger when the home is the first place a drug dealer proceeds following such a transaction." *Burton*, 288 F.3d at 104. Thus, upon determining that Harris was a drug dealer and resided at 3039 North Stillman Street, it was reasonable for the magistrate to infer that Harris would maintain evidence of his drug sales there. *See id.* Moreover, the inference here was particularly strong because on at least two occasions, Harris returned to his residence immediately following the drug transaction. This evidence is sufficient to demonstrate a fair probability that Harris kept evidence of his drug-related activities in his home. Therefore, the magistrate judge properly determined that probable cause existed to search Harris' residence.[5]

IV.

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

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