NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2012 KA 0006

STATE OF LOUISIANA

VERSUS

CORNELL D. HOOD, II

Judgment Rendered: JUN - 8 2012

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On Appeal from the Twenty-Second Judicial District Court
In and for the Parish of St. Tammany
State of Louisiana
Docket No. 498088

Honorable Raymond S. Childress, Judge Presiding

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BEFORE: PETTIGREW, McCLENDON, AND WELCH, JJ.

McCLENDON, J.

Defendant, Cornell David Hood, II, was charged by bill of information with one count of possession of a Schedule I controlled dangerous substance (marijuana) with intent to distribute, a violation of LSA-R.S. 40:966(A)(1). He filed a motion to suppress evidence, but the trial court denied this motion after a contradictory hearing. After a trial by jury, defendant was found guilty of attempted possession with intent to distribute marijuana. The state filed a habitual offender bill of information,[1] and the trial court adjudicated defendant a third-felony habitual offender. Defendant was initially sentenced to a term of life imprisonment at hard labor. Defendant then filed a motion to reconsider sentence, and at the hearing on that motion, the state agreed to strike the December 18, 2009 predicate convictions from defendant's habitual offender bill of information in exchange for defendant's agreement not to appeal his new habitual offender adjudication. As a result, the trial court readjudicated defendant a second-felony habitual offender, vacated defendant's previous sentence, and resentenced defendant to a term of twenty-five years at hard labor. Defendant now appeals, alleging one assignment of error. For the following reasons, we affirm defendant's conviction, habitual offender adjudication, and sentence.

FACTS

On September 27, 2010, Agents Dustin Munlin and Brandon Pohlmann, of the Louisiana Department of Public Safety and Corrections, Division of Probation and Parole, visited defendant's residence in Slidell. At the time, defendant was on probation for previous convictions involving distribution of marijuana and possession of marijuana with intent to distribute. Agent Munlin was defendant's probation officer. Several days prior to September 27, 2010, Agent Munlin received a tip from Agent Rodney Houston, another probation officer, that

[1] The predicate convictions alleged in the habitual offender bill of information were a February 22, 2005 conviction in Orleans Parish for possession with intent to distribute marijuana; a December 18, 2009 conviction in Orleans Parish for possession with intent to distribute marijuana; and a December 18, 2009 conviction in Orleans Parish for distribution of marijuana.

defendant might be engaging in illegal activity in his home. It appears from the record that Agent Houston might have received this information from another probationer or parolee who also resided in defendant's home.

Upon arriving at defendant's home, Agent Munlin asked defendant to show Agent Pohlmann around his home, including his bedroom. Agent Munlin waited in the kitchen while defendant complied. Upon entering defendant's bedroom, Agent Pohlmann saw a digital scale with green, leafy substance in plain view on defendant's bed. Agent Pohlmann then opened the top drawer of defendant's dresser and found approximately $1,125.00 in cash and a bag of a substance which later tested positive as marijuana. Agent Pohlmann then retrieved Agent Munlin from the kitchen to confirm his findings, and defendant was placed into custody. After defendant was detained, Agent Munlin called narcotics agents from the St. Tammany Parish Sheriff's Office to assist in a search of defendant's bedroom. Detective Bill Johnson assisted Agent Pohlmann in his further search of defendant's bedroom, which yielded approximately two pounds of marijuana.

ASSIGNMENT OF ERROR

In his sole assignment of error, defendant contends that the trial court erred in denying his motion to suppress. Specifically, defendant alleges that the warrantless "residence check" performed by Agents Munlin and Pohlmann was a subterfuge for investigating criminal activity.

When a motion to suppress is denied, the trial court's factual and credibility determinations will not be reversed on appeal in the absence of a clear abuse of the trial court's discretion, i.e., unless such ruling is not supported by the evidence. **State v. Green**, 94-0887 (La. 5/22/95), 655 So.2d 272, 281. However, a trial court's legal findings are subject to a *de novo* standard of review. See **State v. Hunt**, 09-1589 (La. 12/1/09), 25 So.3d 746, 751. In determining whether the ruling on the motion to suppress was correct, we are not limited to the evidence adduced at the hearing on the motion. We may also

consider all pertinent evidence given at the trial of the case. **State v. Chopin**, 372 So.2d 1222, 1223 n.2 (La. 1979).

The Fourth Amendment to the United States Constitution and Article I, § 5, of the Louisiana Constitution protect people against unreasonable searches and seizures. Subject only to a few well-established exceptions, a search or seizure conducted without a warrant issued upon probable cause is constitutionally prohibited. Once a defendant makes an initial showing that a warrantless search or seizure occurred, the burden of proof shifts to the state to affirmatively show it was justified under one of the narrow exceptions to the rule requiring a search warrant. See LSA-C.Cr.P. art. 703(D); **State v. Lowery**, 04–0802 (La.App. 1 Cir. 12/17/04), 890 So.2d 711, 717, writ denied, 05–0447 (La. 5/13/05), 902 So.2d 1018.

A parolee has a reduced expectation of privacy, subjecting him to reasonable warrantless searches of his person and residence by his parole officer. See **State v. Malone**, 403 So.2d 1234, 1238 (La. 1981). A probationer has essentially the same status as a parolee. **Malone**, 403 So.2d at 1238. The reduced expectation of privacy is a result of the probationer's conviction and agreement to report to a probation officer and to allow that officer to investigate his activities in order to confirm compliance with the provisions of his probation. A probation officer's powers, however, are not without some restraints. A probation officer may not use his authority as a subterfuge to help another police agency that desires to conduct a search but lacks the necessary probable cause. The probation officer must believe that the search is necessary in the performance of his duties and reasonable in light of the total circumstances. In determining the reasonableness of a warrantless search of a probationer and his residence, the court must consider: (1) the scope of the particular intrusion; (2) the manner in which the search was conducted; (3) the justification for initiating the search; and (4) the place it was conducted. See **State v. Hamilton**, 02-1344 (La.App. 1 Cir. 2/14/03), 845 So.2d 383, 387, writ denied, 03-1095 (La.

4/30/04), 872 So.2d 480 (citing **State v. Vailes**, 564 So.2d 778, 781 (La.App. 2 Cir. 1990)).

It is an appropriate function of a probation officer to conduct unannounced, random checks on parolees. A probationer agrees to submit to such unannounced visits from his probation officer as a condition of probation. While the decision to search must be based on something more than a mere hunch, probable cause is not required, and only a reasonable suspicion that criminal activity is occurring is necessary for a probation officer to conduct the warrantless search. **Hamilton**, 845 So.2d at 387.

In **Vailes**, 564 So.2d 778, the probation officer had received information from a narcotics officer and a confidential informant that the defendant was possibly selling drugs out of, and keeping weapons in, his home. A search of the home revealed a shotgun in plain view in a bedroom and other spare weapons parts and ammunition on a table in a garage. Additionally, a rifle was discovered in the closet of the defendant's bedroom. The court concluded that this warrantless search was a reasonable exercise of the probation officer's authority. **Vailes**, 564 So.2d at 781.

In **State v. Shields**, 614 So.2d 1279, 1284 (La.App. 2 Cir.), writ denied, 620 So.2d 874 (La. 1993), the appellate court found that the search for a probation violation was not a subterfuge for a criminal investigation where there was no ongoing investigation of the defendant at the time an informant reported a possible probation violation. It was also noted that the search of the residence was conducted by probation officers only. Likewise, in **State v. Wesley**, 28,941 (La.App. 2 Cir. 12/13/96), 685 So.2d 1169, 1175, writ denied, 97-0279 (La. 10/10/97), 703 So.2d 603, the court concluded that the search of the parolee's residence was not a subterfuge for a police investigation when the parole officers testified that they often conducted routine visits or checks on parolees and that they called the sheriff's office for back-up only when they encountered suspected criminal activity.

In the instant case, Agent Munlin served as defendant's probation officer and was aware of defendant's prior convictions for distributing marijuana and possessing marijuana with intent to distribute. Prior to the residence check, Agent Munlin received a tip from Agent Houston that defendant might be engaging in similar criminal activity inside his home. From the record, it appears that Agent Houston himself received this tip from another probationer who also lived in defendant's home.

In **Hamilton**, 845 So.2d at 389, this court found a warrantless residence check of a parolee's home to be reasonable under circumstances similar to those in the instant case. There, we found that the knowledge of Hamilton's parole officer of his prior offenses, combined with a tip from Hamilton's sister-in-law that he was selling illegal narcotics, "certainly aroused a reasonable suspicion that the parolee might be in violation of his parole." **Hamilton**, 845 So.2d at 389. Thus, presented with similar facts, we conclude in the instant case that Agent Munlin had reasonable suspicion to believe that defendant might be in violation of the terms of his probation based on his knowledge of defendant's prior offenses and the tip from an occupant of defendant's residence that defendant was engaged in illegal activity.

Applying the factors from **Vailes**, 564 So.2d at 781, the scope of the search conducted by the agents, with eventual assistance from a narcotics detective, was not unreasonable under the circumstances. When Agents Munlin and Pohlmann went to defendant's home, they did so intending to conduct a residence check and to have defendant sign some paperwork regarding a change in the way his supervision fee was to be paid. Agent Munlin asked defendant to show Agent Pohlmann around his home, and Agent Pohlmann immediately saw drug paraphernalia and suspected drug residue in plain view when he entered defendant's bedroom. At that point, Agent Pohlmann opened defendant's dresser drawer and observed a large amount of cash and a bag containing what he suspected to be marijuana. After Agent Munlin confirmed Agent Pohlmann's findings, defendant was placed in custody, and Agent Pohlmann further searched

defendant's bedroom with the eventual assistance of Detective Johnson. Especially notable in this case are the facts that Agent Pohlmann limited his search of the residence to defendant's bedroom only and that the tip relied upon by Agents Munlin and Pohlmann apparently originated from another occupant of the residence.

Finally, we find the search not to be a subterfuge for a police investigation. According to Agent Munlin, the residence check was performed, and drugs were discovered, before he made any contact with the narcotics detectives. Further, despite a reference in the defense brief to a possible prior investigation into defendant's activities by the St. Tammany Parish Sheriff's Office, there is no indication in the record that there was any ongoing police investigation of defendant at the time the residence check was conducted. We also note that the eventual presence of narcotics detectives at defendant's residence served only to assist the probation officers in their search of defendant's bedroom, after they had encountered suspected criminal activity.

We find no error or abuse of discretion in the trial court's denial of defendant's motion to suppress. The warrantless residence check was supported by reasonable suspicion, was properly limited in its scope, and was not a subterfuge for a police investigation. This assignment of error lacks merit.

CONCLUSION

For the foregoing reasons, defendant's conviction, habitual offender adjudication, and sentence are affirmed.

CONVICTION, HABITUAL OFFENDER ADJUDICATION, AND SENTENCE AFFIRMED.