NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2008 KA 0846

STATE OF LOUISIANA

VERSUS

DAVEDE L. DAVILLIER

Judgment Rendered: February 13, 2009

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Appealed from the
22nd Judicial District Court
In and for the Parish of St. Tammany, Louisiana
Case No. 431203

The Honorable Elaine W. DiMiceli, Judge Presiding

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Walter P. Reed District Attorney Covington, Louisiana	Counsel for Appellee State of Louisiana
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BEFORE: KUHN, GUIDRY, AND GAIDRY, JJ.

Guidry, J. dissents and assigns reasons.

GAIDRY, J.

The defendant, Davede L. Davillier, was charged by bill of information with possession of cocaine (a Schedule II controlled dangerous substance in accordance with La. R.S. 40:964), a violation of La. R.S. 40:967C. The defendant entered a plea of not guilty. The trial court denied the defendant's motion to suppress evidence. The jury found the defendant guilty as charged. The trial court imposed a sentence of five years imprisonment at hard labor. The trial court later adjudicated the defendant a fourth-felony habitual offender. The trial court vacated the original sentence and imposed a sentence of twenty years imprisonment at hard labor without the benefit of probation or suspension of sentence. The defendant now appeals, assigning error as to the trial court's denial of his motion to suppress evidence. For the following reasons, we affirm the conviction, habitual offender adjudication, and sentence.

STATEMENT OF FACTS

Testimony adduced at the hearing on the defendant's motion to suppress established that on or about April 4, 2007, at approximately 5:40 p.m., Parole and Probation Officer Lindy Loustau and Corporal Sean Beavers of the St. Tammany Parish Sheriff's Office arrived at the defendant's residence in Slidell, Louisiana, to conduct a residence check and drug screen. Officer Loustau was the defendant's parole officer at the time of the offense. After entering the defendant's residence, Corporal Beavers conducted a pat-down search of the defendant. Pieces of rock-like substances (suspected crack cocaine) fell to the floor as a wad of paper was uncovered from the defendant's right-front pants pocket. Corporal Beavers

administered the drug screening.[1] A search of the defendant's residence led to the seizure of a digital scale and a razor blade located on the defendant's bedroom dresser. The digital scale and razor blade had a white residue on them.[2] The defendant was arrested and ultimately convicted of possession of cocaine.[3]

ASSIGNMENT OF ERROR

In the sole assignment of error, the defendant argues that the trial court erred in denying the motion to suppress the evidence. The defendant concedes that the entrance into his residence and the drug screen were acceptable. However, the defendant contends that a search of his person was unreasonable, arguing there was no reasonable suspicion that he had been, was, or was about to be engaged in criminal conduct. Thus, defendant concludes that, since the pat-down search was unconstitutional, the arrest was illegal, and the evidence and statements should have been suppressed.

A parolee has a reduced expectation of privacy, subjecting him to reasonable warrantless searches of his person and residence by his parole officer. The reduced expectation of privacy is a result of the parolee's conviction and agreement to report to a parole officer and to allow that officer to investigate his activities in order to confirm compliance with the provisions of his parole. A parole officer's powers, however, are not without some restraints. A parole officer may not use his authority as a subterfuge to

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[1] The results of the screening were not introduced.

[2] According to the St. Tammany Parish Sheriff's Office Crime Laboratory Scientific Analysis Report, the rock-like substance and residue from the digital scale and razor blade contained cocaine.

[3] Trial testimony presented by Officer Loustau and Corporal Beavers was consistent with the testimony presented at the motion to suppress hearing. However, the defendant testified at the trial and denied being in possession of drugs, the digital scale, and the razor blade. The defendant also denied making inculpatory statements at the time of the residence check.

help another police agency that desires to conduct a search but lacks the necessary probable cause. The parole 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 parolee 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. *State v. Hamilton*, 2002-1344, pp. 3-4 (La. App. 1st Cir. 2/14/03), 845 So.2d 383, 387, writ denied, 2003-1095 (La. 4/30/04), 872 So.2d 480. See also *Samson v. California*, 547 U.S. 843, 857, 126 S.Ct. 2193, 2202, 165 L.Ed.2d 250 (2006) (the Supreme Court concluded that the Fourth Amendment does not prohibit a police officer from conducting a suspicionless search of a parolee).

It is an appropriate function of a parole officer to conduct unannounced, random checks on parolees. A parolee agrees to submit to such unannounced visits from his parole officer as a condition of parole. 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 parole officer to conduct the warrantless search. The jurisprudence allows police officers to accompany parole officers in surprise searches. *Hamilton*, 2002-1344 at pp. 4-6, 845 So.2d at 387-88.

Trial courts are vested with great discretion when ruling on a motion to suppress. Consequently, the ruling of a trial judge on a motion to suppress will not be disturbed absent an abuse of that discretion. *State v. Long*, 2003-2592, p. 5 (La. 9/9/04), 884 So.2d 1176, 1179, cert. denied, 544 U.S. 977, 125 S.Ct. 1860, 161 L.Ed.2d 728 (2005). In determining whether

the ruling on a motion to suppress was correct, the court is not limited to the evidence adduced at the hearing on the motion, but may consider all pertinent evidence given at the trial of the case. *State v. Chopin*, 372 So.2d 1222, 1223 n.2 (La. 1979).

In the instant case, Officer Loustau and Corporal Beavers testified that the pat-down search of the defendant was conducted due to safety and drug-screen integrity concerns. Specifically, it was conducted to ensure that the defendant did not possess any weapons that could be used to attack the officers or any substance that could be used to alter the results of the drug screening. The officers testified that this was part of standard procedure. The defendant held his hands up and against the wall of his living room hallway as Corporal Beavers stood behind him and conducted the search. Officer Loustau was positioned to the left of them. Based on her partially blocked viewpoint, Officer Loustau believed that a wad of paper fell out of the defendant's right-front pants pocket and fell to the floor as Corporal Beavers patted the defendant's pockets. She observed pieces of suspected crack cocaine on the floor. Corporal Beavers specifically testified that he removed a wadded piece of paper from the defendant's right-front pants pocket and the pieces of suspected crack cocaine fell to the floor.

Corporal Beavers further explained during the trial that the defendant's pants pockets were deep and not fully tucked inward. He also testified that the wad of paper may have fallen as he reached in the defendant's pocket to explore the item. He specifically stated, "I do remember it dropping, and the rocks falling." According to the officers, after being advised of his *Miranda* rights, the defendant admitted that the rock-like substance was cocaine, but stated that he was going to give the

drugs to someone who was scheduled to repair his vehicle. The defendant also admitted that he would test positive for drug use.

We find no abuse of discretion in the trial court's denial of the motion to suppress. The justification for conducting the pat-down search of the defendant's person, a limited intrusion, was based on reasonable concerns. Officer Loustau had several years of experience supervising convicted felons as to their conditions of probation or parole, and Corporal Beavers had several years of experience handling narcotics-related violators. The officers were aware of the defendant's criminal background.[4] The officers were reasonable in attempting to perform the drug screen in a safe and reliable manner. The pat-down search of the defendant produced rock-like substances. The defendant admitted it was cocaine. This information supplied the officers with more than reasonable suspicion to conduct the warrantless search of the defendant's home. Because the pat-down search of the defendant was reasonable, the officers had the right and duty to further investigate the parole violation and criminal activity by defendant. There is no evidence that the officers exceeded the scope of their authority in their search. This assignment of error lacks merit.

DECREE

We affirm the defendant's conviction, habitual offender adjudication, and sentence.

CONVICTION, HABITUAL OFFENDER ADJUDICATION, AND SENTENCE AFFIRMED.

[4] The defendant testified that he had prior convictions for burglaries, a sex offense, and an offense involving a firearm. As noted, the defendant was ultimately adjudicated a fourth-felony habitual offender.

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DAVEDE L. DAVILLIER

Guidry, J., dissents and assigns reasons.

Guidry, J., dissenting.

I respectfully disagree with the majority's determination that the state presented evidence establishing that the search of defendant's person upon arriving at the defendant's residence for a routine residence check and drug screen was reasonable.

In order for the search of defendant's person to be reasonable under these circumstances, the officers needed to have justification for initiating the search, i.e. reasonable suspicion. See State v. Hamilton, 02-1344, pp. 4-6 (La. App. 1st Cir. 2/14/03), 845 So. 2d 383, 387-388, writ denied, 03-1095 (La. 4/30/04), 872 So. 2d 480. The officers in this case went to defendant's home solely to conduct a routine residence check and drug screen. They did not go to the house pursuant to a tip that defendant was engaged in criminal conduct, nor did the officers testify that upon their arrival at the house, they had a reasonable suspicion that defendant had been, was, or was about to be engaged in criminal activity. See State v. Malone, 403 So. 2d 1234 (La. 1981) (wherein the supreme court upheld a warrantless search of a wooded area next to defendant's home, finding that a probation officer had reasonable suspicion to search the wooded area based on his knowledge that marijuana was being cultivated in the general area, and based on the fact that upon

arriving at the defendant's home pursuant to a routine residence check of defendant, who was on probation for a drug offense, he noticed a garden hose running from a faucet on defendant's house to the wooded area); Hamilton, 02-1344 at pp. 3-7, 845 So. 2d at 386-389 (wherein this court upheld a warrantless search of defendant's premises, finding that the officers in that case had a reasonable suspicion to search defendant's home after receiving an anonymous tip concerning drug activity of the defendant, who was on parole for a drug offense). Rather, the only evidence presented by the state was that the officers searched defendant's person solely based on the officers' standard procedure and their knowledge of defendant's criminal history. Such evidence does not amount to the reasonable suspicion necessary to establish that the search of defendant's person was reasonable.

Further, the state cites State v. Dumas, 00-0862 (La. 5/4/01), 786 So. 2d 80, for additional support that the search, or "pat down" as the state refers to it, was reasonable. However, Dumas involved a pat down pursuant to an investigatory stop. A pat down pursuant to an investigatory stop occurs when an officer reasonably suspects that he is in danger or reasonably suspects the individual possesses a weapon, and occurs *after* the officer has stopped an individual in a public place based on reasonable suspicion that the individual is committing, has committed, or is about to commit an offense. See La. C. Cr. P. art. 215.1. However, in the instant case, the search of defendant's person was pursuant to a routine residence check and drug screen of a parolee, not pursuant to an investigatory stop. Further, as previously stated, there is no evidence that the officers had reasonable suspicion that the defendant had been, was, or was about to be engaged in criminal conduct.

Accordingly, because the state failed to present any evidence establishing that the officers had a reasonable suspicion to search defendant's person upon

arriving at the defendant's residence for a routine residence check and drug screen, I find that the trial court abused its discretion in denying defendant's motion to suppress the evidence.