

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2011 KA 0300

STATE OF LOUISIANA

VERSUS

TIMMY ANTHONY BRADLEY, SR.

Judgment Rendered: SEP 14 2011

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APPEALED FROM THE THIRTY-SECOND JUDICIAL DISTRICT COURT
IN AND FOR THE PARISH OF TERREBONNE PARISH
STATE OF LOUISIANA
DOCKET NUMBER 546,356

THE HONORABLE GEORGE J. LARKE, JUDGE

* * * * *

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BEFORE: GAIDRY, McDONALD, AND HUGHES, JJ.

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McDONALD, J.

The defendant, Timmy Anthony Bradley, was charged by amended grand jury indictment with one count of possession with intent to distribute marijuana (count I), a violation of La. R.S. 40:966(A)(1); one count of possession with intent to distribute cocaine (count II), a violation of La. R.S. 40:967(A)(1); one count of possession with intent to distribute codeine (count III), a violation of La. R.S. 40:970(A)(1); one count of possession of a firearm by a convicted felon (count IV), a violation of La. R.S. 14:95.1; and one count of illegal carrying of a weapon (count V), a violation of La. R.S. 14:95(E). He initially pled not guilty and, alleging an unlawful search, filed a motion to suppress all items seized from his home. Following a hearing, the motion to suppress was denied. Thereafter, pursuant to a plea agreement, he pled guilty to counts I, II, and IV, reserving his right to seek review of the court's ruling on the motion to suppress; the State dismissed counts III and V;¹ and the State agreed not to file habitual offender proceedings against him.² See State v. Crosby, 338 So.2d 584 (La. 1976). On count I, he was sentenced to twenty-five years at hard labor. On count II, he was sentenced to twenty-five years at hard labor, with the first two years without benefit of probation, parole, or suspension of sentence. On count IV, he was sentenced to fifteen years at hard labor, without benefit of probation, parole, or suspension of sentence, and was fined \$1,000. The trial court ordered that the sentences imposed on counts I, II, and IV would run concurrently with each other and with any other sentence the defendant was "backing up." The defendant now appeals, contending the trial court erred in denying the motion to suppress. For the following reasons, we affirm the convictions and sentences on counts I, II, and IV.

¹ The State also agreed to dismiss three counts of possession of stolen goods, under a different docket number, against the defendant.

² The defendant had four prior felony convictions.

FACTS

Louisiana State Trooper Craig Rhodes testified at the hearing on the motion to suppress. On May 11, 2009, a confidential informant (CI) advised him that the defendant was selling illegal narcotics from his residence in Terrebonne Parish. Trooper Rhodes did not open an investigation on the defendant but, in "checking" his name, discovered that the defendant was on supervised parole with the Louisiana Department of Corrections. Trooper Rhodes advised the defendant's parole officer, Rodney Sanderford, of the information he had received from the CI.

On May 14, 2009, Agent Sanderford informed Trooper Rhodes that a parole check would be conducted on the defendant the next day, and requested that Louisiana State Police Troopers accompany the probation and parole officers because of the defendant's background and for safety reasons. Trooper Rhodes indicated the request was not unusual and that the Louisiana Office of Probation and Parole had a small office and would call State Police periodically to assist with extra manpower. He indicated Probation and Parole would carry out the search, and State Police was present "just as a safety factor." He testified, if Probation and Parole had not searched the defendant's residence, State Police would not have been present.

On May 15, 2009, prior to the search of the defendant's residence, Agent Sanderford advised State Police that Probation and Parole would confront the defendant and determine whether he was in violation of his parole, and requested that State Police stay on the peripheral of the property to make sure no unauthorized persons entered the property so that the agents could safely do their jobs.

While Trooper Rhodes and Probation and Parole Agent Corey Acosta waited at the front of the defendant's residence, Agents Sanderford and John Reeves went inside. Thereafter, Trooper Rhodes and Agent Acosta heard Agents Sanderford

and Reeves shouting, "Drop the knife. Drop the knife." Trooper Rhodes and Agent Acosta rushed into the defendant's residence to assist the agents. Three firearms were openly visible to the right of the defendant's bed. Probation and Parole Agents also recovered drugs and cash from the residence. Subsequently, due to the large quantity of evidence, Agent Acosta requested the assistance of State Police and its crime laboratory to process the evidence. Thereafter, State Police opened an investigation into the matter.

Agent Sanderford also testified at the hearing on the motion to suppress. He was assigned to supervise the defendant after he was paroled. He identified State Exhibit #1 as the general conditions of parole supervision; identified the defendant's signature thereon; and indicated, as a condition of release, every parolee or probationer had to agree to comply with the conditions. He indicated once he received information from State Police Narcotic Agent Rhodes that a CI had alleged that the defendant was selling illegal narcotics from his residence, it was his duty to investigate, and if the allegations were verified, the defendant's parole would be subject to revocation. He indicated it was not unusual to get information about one of his parolees from the State Police. Probation and Parole would usually respond to information about a possible parole violation by conducting a search of the parolee's home. He indicated it was also usual to ask local law enforcement agencies, including State Police, for assistance because there might not be enough Agents on duty on the day of the search.

In regard to the particular search at issue, Agent Sanderford indicated he and Agent Reeves went inside the defendant's residence to search, and Trooper Rhodes stayed outside for security. The door to the residence was open, and the Agents saw the defendant's son at the door. They asked the boy if the defendant was at home, and he answered affirmatively. As the Agents entered the home, a female holding some knives exited a room to their right. The Agents identified

themselves and ordered her to put the knives down. The Agents then entered the defendant's bedroom. The defendant was in bed, and firearms were visible in the room. The Agents searched the residence and found marijuana, other drugs, and a large amount of cash. Probation and Parole took possession of the evidence, and later submitted it to State Police. Agent Sanderford prepared a notice of preliminary hearing concerning the parole violations and served the defendant with the notice. Agent Sanderford did not participate in the subsequent State Police investigation.

State Exhibit #1, in pertinent part, provided:

**STATEMENT OF GENERAL CONDITIONS UNDER WHICH THIS
DIMINUTION OF SENTENCE/PAROLE SUPERVISION IS GRANTED**

This certificate of Parole Supervision shall not become operative until the following conditions are agreed to by the inmate.

. . . .

8. That I will live and remain at liberty and refrain from engaging in any type of criminal conduct.

. . . .

10. I shall not have in my possession or control any firearms or dangerous weapons.

. . . .

14. I understand that I am subject to visits by my Parole Agent at my home ... without prior notice.

. . . .

18. Agree to searches of his person, his property, his place of residence, his vehicle, or his personal effects, or any or all of them, at any time, by the probation officer or his parole officer assigned to him, with or without a warrant of arrest or with or without a search warrant, when the probation officer or the parole officer has reasonable suspicion to believe that the person who is on parole is engaged in or has been engaged in criminal activity since his release on parole.

MOTION TO SUPPRESS EVIDENCE

In his sole assignment of error, the defendant argues the trial court erred in denying the motion to suppress because the probation/parole search was used as a

pretext to assist the Louisiana State Police in searching his home without a warrant.

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 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 (La. App. 1st Cir. 2/14/03), 845 So.2d 383, 387, writ denied, 2003-1095 (La. 4/30/04), 872 So.2d 480.

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 probation officer to conduct the warrantless search. **Id.**

It has been held 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; where the search of the residence was conducted by probation officers only; or where parole officers testified that they often conducted routine visits or checks on parolees and

they called the sheriff's office for back-up only when they encountered suspected criminal activity. **Hamilton**, 845 So.2d at 387-88. The jurisprudence allows police officers to accompany parole officers in surprise searches. **Hamilton**, 845 So.2d at 388.

When reviewing a trial court's ruling on a motion to suppress based upon findings of fact, great weight is placed upon its determination, because the trial court had the opportunity to observe the witnesses and weigh the relative credibility of their testimony. **Hamilton**, 845 So.2d at 389. When a trial court denies a motion to suppress, factual and credibility determinations should not be reversed in the absence of a clear abuse of the trial court's discretion, i.e., unless such ruling is not supported by the evidence. See State v. Green, 94-0887 (La. 5/22/95), 655 So.2d 272, 280-81. However, a trial court's legal findings are subject to a *de novo* standard of review. See State v. Hunt, 2009-1589 (La. 12/1/09), 25 So.3d 746, 751.

In denying the motion to suppress, the court found: there was reasonable suspicion for Agent Sanderford to do what was necessary in his line of duty; the defendant had signed the conditions of parole; a parolee or probationer has a reduced expectation of privacy; the scope of the intrusion was very reasonable, in that Agent Sanderford acted in a reasonable manner and under his authority in visiting the defendant and then searching his home; the manner in which the search was conducted was reasonable; the justification for initiating the search was reasonable, in that a CI had given information to the State Police and they had passed on the information to the parole officer; the fact that Agent Sanderford requested security did not show any sign of subterfuge, but rather it was a reality of today's world that probation and parole officers have to be careful when they go to check on certain people; Agent Sanderford acted reasonably in setting up security and having other officers present at the house who did not enter the house prior to any search; and had

nothing been found, Trooper Rhodes would have had nothing to do, but contraband was found, and so the police were called into the residence.

We find no error or abuse of discretion by the trial court in denying the motion to suppress. The warrantless search of the defendant's residence was reasonable. The search was conducted in the defendant's residence, by Parole and Probation Agents who entered through an open door. The State Police waited outside providing security for the search. While looking for the defendant, the Agents discovered firearms in his bedroom in plain view.³ The defendant's possession of firearms was a direct violation of his parole. In searching the residence for additional parole violations, the Agents discovered illegal drugs and money. The search was justified and supported by reasonable suspicion that criminal activity was occurring in the residence, i.e., by the report of a CI that the defendant was selling illegal narcotics from the residence.

This assignment of error is without merit.

**CONVICTIONS AND SENTENCES ON COUNTS I, II, AND IV
AFFIRMED.**

³ An exception to the search-warrant requirement exists for items in plain view. Two conditions must be satisfied to trigger the applicability of the doctrine: (1) there must be a prior justification for an intrusion into the protected area; and (2) it must be immediately apparent without close inspection that the items are evidence or contraband. "Immediately apparent" requires no more than probable cause to associate the property with criminal activity. *State v. Howard*, 2001-1487 (La. App. 1st Cir. 3/28/02), 814 So.2d 47, 53, writs denied, 2002-1485 (La. 5/16/03), 843 So.2d 1120 & 2006-2125 (La. 6/15/07), 958 So.2d 1180.