

The Supreme Court of the State of Louisiana

STATE OF LOUISIANA

No.2021-KK-00153

VS.

STEVEN RAY MCCARTHY

IN RE: State of Louisiana - Applicant Plaintiff; Applying For Writ Of Certiorari,
Parish of Livingston, 21st Judicial District Court Number(s) 38998, 1st Circuit Court
of Appeal, Number(s) 2020-KW-1206;

April 20, 2021

Writ application granted. See per curiam.

WJC

JLW

SJC

JBM

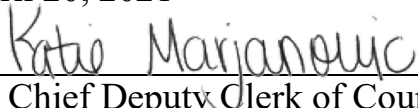
Hughes, J., concurs and assigns reasons.

Genovese, J., dissents and assigns reasons.

Griffin, J., would deny for reasons assigned by Justice Genovese.

Supreme Court of Louisiana

April 20, 2021



Chief Deputy Clerk of Court
For the Court

04/20/21

SUPREME COURT OF LOUISIANA

No. 2021-KK-00153

STATE OF LOUISIANA

VS.

STEVEN RAY MCCARTHY

On Writ of Certiorari to the 1st Circuit Court of Appeal, Parish of Livingston

PER CURIAM

The defendant, while on probation and parole, was arrested after a firearm and drugs were discovered during a search of his residence. The defendant filed a motion to suppress, arguing no reasonable suspicion existed to justify the search. At the suppression hearing, Detective Gray testified he was contacted by the defendant's supervising probation and parole officer, Agent Mire, who said she received a tip that the defendant possibly had weapons. Defense counsel objected to this testimony as hearsay, which the trial court overruled. Detective Gray further testified he accompanied Agent Mire to conduct the search.

The trial court denied the motion to suppress. It found the information received by Agent Mire provided reasonable suspicion, which justified the search pursuant to Louisiana Code of Criminal Procedure article 895(13)(a). The court of appeal reversed, finding the State failed to present articulable facts to establish Agent Mire had reasonable suspicion of criminal activity. *State v. McCarthy*, 2020-1206 (La. App. 1 Cir. 12/30/20), 2020 WL 7869453.

Probationers and parolees have a reduced expectation of privacy, which allows reasonable warrantless searches of their persons and residences by their probation or parole officer, even though less than probable cause may be shown. *State v. Malone*, 403 So.2d 1234, 1238 (La. 1981). The State must establish

reasonable suspicion that criminal activity was occurring. La. Code Crim. P. art. 895(13)(a). In *State v. Hamilton*, 02-1344 (La. App. 1 Cir. 2/14/03), 845 So.2d 383 the court found an anonymous tip concerning drug activity by the parolee amounted to reasonable suspicion to justify a warrantless search. *See also State v. Vailes*, 564 So.2d 778, 780-781 (La. App. 2 Cir. 1990), where the court denied a motion to suppress a search of a probationer's home following a tip from a confidential informant that the probationer was possibly selling drugs and keeping weapons at his home.¹

Det. Grey testified that Agent Mire contacted him and asked him to accompany her to the defendant's residence because she received a tip that defendant was engaged in suspicious behavior and was alleged to have been in possession of a firearm. While Agent Mire did not testify to these events, hearsay is admissible at suppression hearings. *State v. Shirley*, 2008-2106 (La. 5/5/09), 10 So. 3d 224, 228–29.

The trial court is vested with great discretion when ruling on a motion to suppress. *State v. Long*, 2003-2592 (La. 9/9/04), 884 So. 2d 1176. The trial court's findings of fact on a motion to suppress are reviewed under a clearly erroneous standard. Here, the trial court heard the testimony and observed Detective Gray's demeanor. Finding Detective Gray's testimony credible, the trial court found reasonable suspicion for the search. A reviewing court should not substitute its judgment absent manifest error. *Id.* Based on the foregoing, the trial court was not manifestly erroneous in its determination that reasonable suspicion existed to justify the search. The ruling of the court of appeal is reversed and the trial court's denial of the defendant's motion to suppress is reinstated.

¹ In *Griffin v. Wisconsin*, 483 U.S. 868 (1987), the United States Supreme Court, in interpreting Wisconsin's law that required "reasonable grounds" to search a probationer's home, held an unauthenticated tip, with no indication whether its basis was firsthand knowledge, reliable, or corroborated, can still justify the legality of the search under the Fourth Amendment.