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COURT OF APPEALS
STATE OF NEW YORK

THE PEOPLE OF NEW YORK,

Respondent

-against-

DOMINIC SPIRITO,

Appellant.

NO. 53

20 Eagle Street
Albany, New York
April 17, 2024

Before:

CHIEF JUDGE ROWAN D. WILSON
ASSOCIATE JUDGE CAITLIN J. HALLIGAN
ASSOCIATE JUDGE ANTHONY CANNATARO
ASSOCIATE JUDGE JENNY RIVERA
ASSOCIATE JUDGE MICHAEL J. GARCIA
ASSOCIATE JUDGE MADELINE SINGAS
ASSOCIATE JUDGE SHIRLEY TROUTMAN

Appearances:

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Official Court Transcriber



1 CHIEF JUDGE WILSON: The People v. Spirito.

2 MR. CIRANDO: Good afternoon. Excuse me. Good
3 afternoon, John Cirando, Syracuse, on behalf of the
4 appellant. I would request three minutes for rebuttal,
5 Your Honor.

6 CHIEF JUDGE WILSON: Yes, sir.

7 MR. CIRANDO: This is an appeal from a memorandum
8 and order of the Third Department affirming the conviction
9 for the crime of criminal possession of a weapon in the
10 third-degree, illegal magazines, following a guilty plea
11 which followed a suppression hearing, which followed a
12 search by parole officers. In this case, it's our position
13 that quite simply, the mother's call and the supervisor's
14 call were unsubstantiated hearsay under the Lika decision.
15 And therefore, once the burden - - - once the suppression
16 motion is made and there's a hearing, the burden is on the
17 prosecution to prove the sender's information.

18 In this case - - -

19 JUDGE GARCIA: By what standard, Counsel? What
20 standard do they have to vet the information? Is it
21 Aguilar-Spinelli?

22 MR. CIRANDO: They have to vet the information to
23 show the court that there was reasonable suspicion to do
24 what they did.

25 JUDGE GARCIA: But isn't the Huntley test, these

1 are parole officers. They're searching a parolee's house.
2 They have information from his mother, the person calling,
3 claiming to be his mother. They know the mother lives in
4 the residence, claiming to have seen a photo with the
5 parolee with a gun. And we look at Huntley and we say,
6 okay, parole officers, there's a standard clearly
7 articulated in Huntley that it's related to their
8 enforcement of the parole conditions. Why isn't that it?
9 Why do we have to get into - - -

10 MR. CIRANDO: Because it's - - -

11 JUDGE GARCIA: - - - anything else?

12 MR. CIRANDO: It's not a reasonable search under
13 Huntley because Huntley indicated that the parole officers,
14 and Judge Jones indicated that the parole officers in
15 Huntley were not searching for contraband or evidence to
16 prosecute the individual for criminal activity. So I think
17 that's why you need to show that nobody saw the picture
18 that supposedly started the whole ball rolling. When you
19 look at the - - - I think the one case, we found the Miller
20 case, a federal case where similar fact pattern where the
21 mother called and said, I think my son is selling drugs out
22 of my house. The mother provided the tip. The parole
23 officer who got the tip searched, and they both testified
24 at the hearing to justify the action. In this case, there
25 was no evidence to justify the action.

1 JUDGE TROUTMAN: But here - - -

2 JUDGE SINGAS: But Aguilar-Spinelli, it seems
3 like it would be enough. I mean, you have a person known,
4 the mother, saying, I have information based on a
5 photograph, which is evidence, that my mentally ill son has
6 a gun and I'm concerned. Like, what would you have the
7 parole officers do at that point? I - - -

8 MR. CIRANDO: No, it's not - - - it's not the
9 parole officer that I'm complaining about. It's the
10 people. The people didn't present any evidence at the
11 hearing to show - - - how do we know that that was actually
12 the defendant's mother that called? How do we know what
13 the picture portrayed? Could it have been a picture of a
14 toy gun? Could it have been a picture of a real gun? That
15 - - - it was a failure of their proof at the hearing that
16 should result in any - - -

17 JUDGE RIVERA: Do you think there are any
18 reasonable inferences that can be drawn favorable to the
19 people's argument here? Anything that can be drawn?

20 MR. CIRANDO: From their evidence?

21 JUDGE RIVERA: Yes.

22 MR. CIRANDO: No. The Third Department went to
23 great lengths - - -

24 JUDGE RIVERA: How about the mother knows what
25 her son looks like, so probably knows that the photo is of

1 her son.

2 MR. CIRANDO: How do we know it was the mother?

3 JUDGE RIVERA: She gave consent to come in and
4 she's there when they come in.

5 MR. CIRANDO: But the guy that came in didn't
6 talk to the mother. We don't know it's the mother. We
7 don't know what the pic - - -

8 JUDGE RIVERA: So what were they supposed to do?
9 You don't think there's an inference that the supervisor
10 knew the voice?

11 MR. CIRANDO: They should have presented the
12 mother, the picture, and the supervisor.

13 JUDGE RIVERA: If she didn't have the picture
14 anymore?

15 MR. CIRANDO: Well, then she could explain what
16 the picture was. But there is no evidence of what the
17 picture was.

18 JUDGE RIVERA: Well, she described what she saw
19 to the supervisor. Yeah?

20 MR. CIRANDO: She said - - - no, we don't know.

21 JUDGE RIVERA: A picture of my son holding a gun.

22 MR. CIRANDO: A picture of my son with a gun.

23 JUDGE RIVERA: Okay.

24 MR. CIRANDO: Let me - - -

25 JUDGE RIVERA: With a gun. Okay.



1 MR. CIRANDO: But - - -

2 JUDGE RIVERA: That's fair.

3 MR. CIRANDO: She should have testified - - - I
4 think it - - - the problem you have is what happened in
5 county court and what happened in Third - - -

6 JUDGE RIVERA: Well, the parole officer could
7 have gone at any time to the house. Do you agree to that?
8 Without a phone call, could the supervisor or the parole
9 officer that morning had said, you know what, I'm going to
10 stop by?

11 MR. CIRANDO: You can always stop by.

12 JUDGE RIVERA: Yes. Okay.

13 MR. CIRANDO: However - - -

14 JUDGE RIVERA: So now they have a reason to do it
15 in this moment.

16 MR. CIRANDO: However, in this case, they were
17 not - - - there was no warrant. He was a model parolee.

18 JUDGE RIVERA: I understand, but you already said
19 that they could have gone anyway. They could - - - even
20 without a phone call, they could have gone to the house.

21 MR. CIRANDO: Except in this case, they went
22 there to look for evidence of a separate crime or a
23 separate - - - specific violation. That - - - that's the
24 difference. That's where the reasonable suspicion come in.

25 JUDGE TROUTMAN: Do they have a responsibility to

1 - - -

2 JUDGE RIVERA: But they're always visiting to
3 look for violations.

4 MR. CIRANDO: Pardon me?

5 JUDGE RIVERA: But they're always visiting to
6 look for violations. Aren't they always visiting to
7 confirm that a defendant is in compliance with their parole
8 conditions?

9 MR. CIRANDO: Yes.

10 JUDGE RIVERA: Isn't that the point of the visit?

11 MR. CIRANDO: Yes.

12 JUDGE TROUTMAN: And did they have a
13 responsibility based upon the phone call, knowing he lived
14 with his mother to go to that residence?

15 MR. CIRANDO: I think we're talking about two
16 different things, Your Honor. We're talking about what
17 happened before we get to county court and what happened
18 after we were - - -

19 JUDGE TROUTMAN: So your complaint is the proof.

20 MR. CIRANDO: The proof.

21 JUDGE TROUTMAN: Okay.

22 MR. CIRANDO: There was no proof. That's the
23 problem.

24 JUDGE CANNATARO: So - - - and since it's the
25 mother's phone call that got this whole thing rolling,

1 you're saying that the people had the obligation at
2 suppression to somehow establish that the call that came in
3 was, in fact, from the mother?

4 MR. CIRANDO: Yes.

5 JUDGE CANNATARO: And not some random person
6 saying that they were the mother?

7 MR. CIRANDO: Yes.

8 JUDGE CANNATARO: And what's the - - - I think
9 you might have been asked this question before - - - where
10 does that requirement come from?

11 MR. CIRANDO: It comes - - - when you look at the
12 Lipka case, it says that the bulletin or the information is
13 unsubstantiated hearsay, and once - - - which the police
14 are allowed to act on. That was the bulletin from
15 Pennsylvania, I believe, that came up from - - -

16 JUDGE RIVERA: But these are parole officers who
17 can go at any time. They didn't need the phone call. They
18 could have gone anyway.

19 MR. CIRANDO: But the record that the people
20 relied on was the call from the mother; the picture that
21 the mother said she saw, nobody else has seen; the
22 supervisor who said, I talked to the - - - who told
23 somebody, he talked to the mother. He didn't come in the
24 court to tell us anything either. I think you have to look
25 at it in terms of the way they presented their case. The

1 way they presented their case, I submit - - -

2 JUDGE RIVERA: So to be - - -if I'm understanding
3 you in terms of what should have happened, put aside the
4 hearing, the - - - when the supervisor gets the call, they
5 should have done something at that point to confirm it's
6 the mother and to get a sense of what photos she's talking
7 about, is that - - - at that moment, is that your position?
8 That's what - - - the supervisor had some burden to do
9 that?

10 MR. CIRANDO: We don't know what they said. I -
11 - - it's - - - the Lipka case, says you can act on the
12 unsubstantiated hearsay, which is proper for the
13 authorities to do. Then the question becomes, when you go
14 into court, you've got to prove that the sender's
15 information was correct for your reasonable suspicion - - -

16 CHIEF JUDGE WILSON: Is that a parole case?

17 MR. CIRANDO: And - - -

18 CHIEF JUDGE WILSON: Is that a parole case?

19 MR. CIRANDO: No.

20 CHIEF JUDGE WILSON: Yeah. And this has made the
21 difference here, right?

22 MR. CIRANDO: I don't think it's different
23 because - - -

24 CHIEF JUDGE WILSON: That's true of Miller, also.
25 Miller is not a parole case, right?

1 MR. CIRANDO: Miller, the federal case? Yes.

2 CHIEF JUDGE WILSON: No, not the federal case.

3 The state - - - no, the state Miller case.

4 MR. CIRANDO: The State Miller.

5 CHIEF JUDGE WILSON: Anonymous tip, guy in a red

6 - - - what is it, a red - - - gray jacket and a red hat

7 with a gun. That's the anonymous tip?

8 MR. CIRANDO: No, the Miller I'm talking about

9 was - - - is a parole case where the two people at - - -

10 the same facts pattern - - - the two people testified.

11 JUDGE HALLIGAN: So the fact that he's a parolee,

12 in your view, has no bearing on the analysis?

13 MR. CIRANDO: When you get in the court.

14 JUDGE HALLIGAN: I'm not sure what that means.

15 So you have no - - - you have no quarrel with what happened

16 at the scene? Your objection is simply - - -

17 MR. CIRANDO: Well, what you have - - -

18 JUDGE HALLIGAN: Well, maybe just do you have any

19 objection to what happened at the scene?

20 MR. CIRANDO: They went there. The way it was

21 proven in court was that they didn't have reasonable

22 suspicion to search. Okay. What - - - there's two - - -

23 there's two analogies when they're acting - - - when

24 whoever law enforcement is, is acting on a police - - - a

25 bulletin that they received, information that they

1 received. And that bulletin is hearsay. And it's
2 unsubstantiated. But when you get into court, you've got
3 to substantiate your information.

4 That's what we're saying, that you have to
5 substantiate your information, especially in the case where
6 they were searching for contraband or evidence to prosecute
7 for criminal activity, which they weren't doing in Huntley.
8 In Huntley, they had a warrant, McMillan had a warrant.
9 This gentleman did not have a warrant out for him. And I
10 think that you have to look at it as what they did in the
11 court. And I see my red light is on. So I don't want to
12 give you probable cause to do anything, so - - -

13 CHIEF JUDGE WILSON: Thank you.

14 MR. CIRANDO: - - - I will sit down.

15 MS. MANCINI: Good afternoon. May it please the
16 court, Your Honors. I'm Cheryl Mancini for DA Kirk Martin
17 from Tioga County. And - - -

18 JUDGE TROUTMAN: With respect to the complaint
19 that I believe I heard from the defense, is that arguably
20 what happened before you went - - - before everybody went
21 to court, the parole officer was acting and performing
22 duties. But then when you went to the hearing, you were
23 supposed to present more than you did.

24 MS. MANCINI: I think that my opponent's argument
25 would be stronger if the defendant did not live with his

1 mother. So the mother wasn't required to testify at the
2 suppression hearing. Hearsay is allowable at a suppression
3 hearing. And officer - - - Parole Officer Bolden, who was
4 the defendant's own parole officer, who was the subject of
5 this whole case, he was the one who testified.

6 And he actually said it best on page 81 of the
7 record. He said, being any time that a parolee, that there
8 is information may have a gun, it is taken very seriously,
9 so we try to get there as quickly as possible. And based
10 upon the defendant's mental health designation, he had the
11 highest mental health designation. It rose the level to
12 even higher. And that sums up this whole case. I mean, he
13 signed - - - the defendant, signed his conditions of
14 parole. He gave parole unrestricted access to search his
15 house. And - - -

16 CHIEF JUDGE WILSON: Well, we've said that the
17 conditions don't really extend beyond what can be done
18 constitutionally.

19 MS. MANCINI: That's correct. But the question,
20 according to Huntley, in this case, actually, he - - - my
21 opponent talks about, I think it was Lika. This case is
22 really textbook McMillan. I mean, in McMillan, it's the
23 girlfriend who's calling about her son in the car with the
24 defendant, and she's frantic. Here we have the mother
25 calling because she sees her son with a gun and she's

1 extremely worried.

2 JUDGE GARCIA: And even McMillan, I think, was a
3 police officer, right?

4 MS. MANCINI: Right. And here - - - I mean, he's
5 on parole. It's the defendant's own parole officer who
6 goes. He's been to his house six times before. You know,
7 it's an approved residence. He knows he lives there with
8 his mother and step-father.

9 JUDGE GARCIA: So what's the standard you would
10 say applies here?

11 MS. MANCINI: That it's a question of mixed - - -
12 it's a mixed question of law in fact. It's very fact
13 specific here. And that they have - - -

14 JUDGE GARCIA: But what do they have to show?

15 MS. MANCINI: Reasonable suspicion that the
16 search was reasonable based upon their individualized
17 suspicion because they had a call from a known person.

18 JUDGE GARCIA: And where do you find a reasonable
19 suspicion standard? Because I don't see it in Huntley for
20 a parole officer.

21 MS. MANCINI: That - - - the - - - oh that it's
22 rationally and reasonably related to their duties as - - -
23 you know, the parole officers have a dual function.
24 They're protecting society and they're protecting the
25 defendant, you know, helping him reintegrate into society.

1 JUDGE CANNATARO: So does the dual function
2 create dual standards? Because my understanding is the
3 actions of a parole officer under Huntley have to be
4 reasonably related to their parole function.

5 JUDGE GARCIA: Not reasonably, based on some
6 suspicion from outside sources. And then I think there's a
7 second part to Huntley, which says the conduct must also
8 have been substantially related to the performance. So
9 rationally and reasonably related to the performance - - -

10 MS. MANCINI: Right.

11 JUDGE GARCIA: - - - and then the particular
12 conduct substantially related. Where is there a reasonable
13 suspicion in there? I haven't found it.

14 MS. MANCINI: Well, it's more the rationally and
15 reasonably related, which it is here, and then that the
16 actions of the parole officer were substantially related to
17 his duties, which they were. So that's really the
18 standard.

19 JUDGE RIVERA: So does it even matter - - - I'm
20 over here. Does it even matters - - - a little bit of the
21 kind of questioning he was asking you, I'm sorry. Does it
22 even matter that the mother called? Can't they just go at
23 any time?

24 MS. MANCINI: Absolutely. And I think the
25 opponent talked about earlier, Aguilar-Spinelli, which we

1 would say doesn't even apply here. She - - - it was the
2 mother, you know, they knew that the defendant lived with
3 the mother.

4 JUDGE HALLIGAN: Okay. So you described the
5 mother as a known person. And I take it that that your
6 adversary is arguing that there was no way to know whether
7 the person who called was, in fact, the mother and cites
8 cases about anonymous tips. Is there anything in the
9 record that shows that they, in fact, knew the caller to be
10 the mother or are you asking us to infer that? What's your
11 response to that?

12 MS. MANCINI: It's sort of by inference because
13 they knew that the defendant lived with his mother. They
14 had been to the house. They had been to the defendant's
15 bedroom. They knew it was the mother and stepfather who
16 lived there. Is it in the record how many times the
17 defendant ate with his mother or interacted with his
18 mother? No. But when you look at the totality of the
19 circumstances and the - - -

20 JUDGE CANNATARO: But that's not really the
21 issue. Your adversary is not arguing that the mother
22 didn't know who her son was. Your adversary is arguing
23 that whoever at parole picked up the phone didn't know who
24 was on the other end of the phone.

25 MS. MANCINI: Actually, at the suppression

1 hearing, the officer testified Senior Parole Officer
2 Kunzman got a call from the defendant's mother.

3 JUDGE CANNATARO: Did Senior Officer Kunzman know
4 that it was the defendant's mother? Did he know her voice?

5 MS. MANCINI: There was nothing in the record to
6 establish.

7 JUDGE CANNATARO: And that - - - I think that's
8 really what he's arguing. They got a call, but they're not
9 verifying who the caller was. And my question, I think a
10 lot of our questions, is do they need - - - is there
11 something in the law that requires them to make some sort
12 of verification or are the responsibilities of a parole
13 officer related to Huntley such that they can say, yeah,
14 well, that's a concern because this guy is on parole, so we
15 can go to the house and take a look?

16 MS. MANCINI: Exactly. It's the latter.

17 JUDGE CANNATARO: It's the second.

18 MS. MANCINI: It's the second. Yeah, exactly.
19 And it's also the fact that the mother didn't call 911.
20 She didn't call the police. She called parole. She knew
21 her son was on parole. So all the inferences point towards
22 that it's actually the mother who made the call.

23 JUDGE RIVERA: So to be clear, in response to me
24 before you, I think you took the position that they didn't
25 need the phone call. But if they need the phone call, or

1 once they got the phone call, it would not be measured by
2 the same standards that one would measure an anonymous tip
3 anyway given that parole officers could go at any time?

4 MS. MANCINI: Exactly, exactly. And they'd been
5 there six times before to his house. So - - - and I think
6 my opponent also had an issue that maybe they didn't know
7 when the picture was taken, or was it a text message or a
8 Facebook picture. I don't think any of that is really
9 important when you have someone who has the highest mental
10 health designation, according to the Department of
11 Corrections.

12 JUDGE RIVERA: If that wasn't the case, would it
13 then matter?

14 MS. MANCINI: No, I don't even think it matters
15 anyways. They have reasonable suspicion that they have a
16 parolee who has access to a gun. And they wanted to follow
17 up on it.

18 CHIEF JUDGE WILSON: And what if it had been not
19 the mother, but just somebody calling in and saying, hi, I
20 don't want to tell you who I am, but I just saw this guy on
21 the street with a gun?

22 MS. MANCINI: I think if parole didn't go and he
23 had the highest mental health designation - - -

24 CHIEF JUDGE WILSON: Suppose he didn't have that.
25 Suppose he's just a regular parolee.

1 MS. MANCINI: In this day and age, they'd be
2 remiss if they didn't go. They signed the conditions of
3 parole.

4 CHIEF JUDGE WILSON: Well, it's not a question
5 about whether they could go or not. It's a question about
6 whether you have to prove anything at the hearing. Is it
7 sufficient to just say well, you know, we didn't have to
8 have a reason, but it turned out that some anonymous person
9 called and so we went to check it out?

10 MS. MANCINI: Well, then it boils down to was it
11 substantially - - - the second part of Huntley, was it
12 substantially related to their duties. And I would argue,
13 yes, it is.

14 CHIEF JUDGE WILSON: Well, if the report is a gun
15 and I assume he's got to know a firearm - - - right?

16 MS. MANCINI: Yeah. Exactly. So if there's no
17 further questions. Thank you.

18 MR. CIRANDO: Just briefly. Obviously, our
19 position, they have to present more than they did. And
20 everybody keeps talking about the mental health condition.
21 But nobody indicated how that specifically related to this
22 complaint or this information. And I think when you look
23 at the Appellate Division decision, they went to great
24 length, the majority, to bootstrap the mother's information
25 on information that is not contained in the record.

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And the mother wasn't spoken to, I think, according to page 89 of the record, until after the search was conducted and anything like that. So - - - when they were at the house. So there was no corroboration that that this lady even called. So we submit that there was not reasonable suspicion to do what they did, even though the defendant was a parolee. And the matter should be reversed.

And some of the things that she - - - she al - - - my opponent was getting into the - - - almost the inevitable discovery area, which under for 470.15, I think is not available in this case. So we would ask that the decision be reversed. Thank you.

CHIEF JUDGE WILSON: Thank you.
(Court is adjourned)

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C E R T I F I C A T I O N

I, Klancie Garrel, certify that the foregoing transcript of proceedings in the Court of Appeals of The People of New York v. Dominic Spirito, No. 53 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.



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