

STATE OF LOUISIANA

NO. 21-K-58

VERSUS

FIFTH CIRCUIT

CARLSHANE DENNIS

COURT OF APPEAL

STATE OF LOUISIANA

March 04, 2021

Susan Buchholz

First Deputy Clerk

IN RE STATE OF LOUISIANA

**APPLYING FOR SUPERVISORY WRIT FROM THE FORTIETH JUDICIAL DISTRICT COURT,
PARISH OF ST JOHN THE BAPTIST, STATE OF LOUISIANA, DIRECTED TO THE HONORABLE
MADELINE JASMINE, DIVISION "A", NUMBER 2020-CR-26**

Panel composed of Judges Susan M. Chehardy,
Marc E. Johnson, and John J. Molaison, Jr.

WRIT GRANTED; REMANDED

In this pre-trial criminal matter, the State seeks review of the district court's grant of the defendant's motion to suppress identification without a contradictory hearing, and its subsequent denial of its motion for rehearing. The instant application contains conflicting evidence of whether or not a hearing was held, and on February 9, 2021, this Court ordered the district court to review the record and issue a *per curiam* to resolve the discrepancy. On February 12, 2021, the district court certified that a hearing on the defendant's motion to suppress was not held prior to judgment being rendered.

The defense has the burden of asserting the basis for its motion to suppress in order to provide the State with adequate notice so that it may prepare evidence addressing the defendant's claims. *State v. Ball*, 10-847 (La. App. 5 Cir. 6/14/11), 71 So.3d 364, 366, *writ denied*, 11-1597 (La. 4/27/12), 86 So.3d 614. La. C.Cr.P. art. 703 provides in relevant part:

D. On the trial of a motion to suppress filed under the provisions of this Article, the burden of proof is on the defendant to prove the ground of his motion, except that the state shall have the burden of proving the admissibility of a purported confession or statement by the defendant or of any evidence seized without a warrant.

E. (1) An evidentiary hearing on a motion to suppress shall be held only when the defendant alleges facts that would require the granting of relief. The state may file an answer to the motion. The defendant may testify in support of a motion to

suppress without being subject to examination on other matters. The defendant's testimony cannot be used by the state except for the purpose of attacking the credibility of the defendant's testimony at the trial on the merits.

In granting the defendant's motion on December 30, 2020, the trial court was obviously convinced the defendant had alleged certain facts that justified relief. Therefore, under the plain language of La. C.Cr.P. art. 703(E)(1), we find that an evidentiary hearing was required and should have been held prior to judgment. We also find, for this same reason, that the court's subsequent denial of the State's motion to reconsider its ruling was an error. Accordingly, the State's writ is granted, the trial court's judgments of December 30, 2020, and January 12, 2021 are vacated, and the matter is remanded for further proceedings consistent with this disposition.

Gretna, Louisiana, this 4th day of March, 2021.

JJM
SMC
MEJ

SUSAN M. CHEHARDY
CHIEF JUDGE

FREDERICKA H. WICKER
JUDE G. GRAVOIS
MARC E. JOHNSON
ROBERT A. CHAISSON
STEPHEN J. WINDHORST
HANS J. LILJEBERG
JOHN J. MOLAISSON, JR.

JUDGES



FIFTH CIRCUIT
101 DERBIGNY STREET (70053)
POST OFFICE BOX 489
GRETNA, LOUISIANA 70054
www.fifthcircuit.org

CURTIS B. PURSELL
CLERK OF COURT
NANCY F. VEGA
CHIEF DEPUTY CLERK

SUSAN BUCHHOLZ
FIRST DEPUTY CLERK

MELISSA C. LEDET
DIRECTOR OF CENTRAL STAFF

(504) 376-1400
(504) 376-1498 FAX

NOTICE OF DISPOSITION CERTIFICATE OF DELIVERY

I CERTIFY THAT A COPY OF THE DISPOSITION IN THE FOREGOING MATTER HAS BEEN TRANSMITTED IN ACCORDANCE WITH **UNIFORM RULES - COURT OF APPEAL, RULE 4-6** THIS DAY **03/04/2021** TO THE TRIAL JUDGE, THE TRIAL COURT CLERK OF COURT, AND AT LEAST ONE OF THE COUNSEL OF RECORD FOR EACH PARTY, AND TO EACH PARTY NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

CURTIS B. PURSELL
CLERK OF COURT

21-K-58

E-NOTIFIED

40th District Court (Clerk)
Honorable Madeline Jasmine (DISTRICT JUDGE)
Honorable Vercell Fiffie (DISTRICT JUDGE)
Joe Connelly (Respondent)

Honorable Bridget A. Dinvaut (Relator)
Justin B. LaCour (Relator)
Deborah Love (Respondent)

MAILED