

State of New York Court of Appeals

MEMORANDUM

This memorandum is uncorrected and subject to revision before publication in the New York Reports.

No. 53
The People &c.,
Respondent,
v.
Dominic F. Spirito,
Appellant.

John A. Cirando, for appellant.
Cheryl Mancini, for respondent.

MEMORANDUM:

The order of the Appellate Division should be affirmed.

As a condition of his parole, defendant agreed not to “own, possess, or purchase” any firearm without permission from his parole officer. Defendant was given “the most severe” mental health designation from the Department of Corrections and Community

Supervision, OMH Level 1-S, indicating there were “serious” concerns regarding his mental health. Shortly after defendant’s release to parole, his parole officer received information from his supervisor that defendant’s mother contacted the parole office to inform them that she saw a photograph of defendant with a firearm, and gave the parole officers permission to search the residence that she shared with defendant.¹ Acting on this information, defendant’s parole officer, with the assistance of other officers, conducted a search of defendant’s home and recovered an AR-15 style rifle and two thirty-round extended magazines with extra gun parts from defendant’s bedroom.

Based on the foregoing, there is record support for the lower courts’ conclusion (*see* 216 AD3d 1208 [3d Dept 2023]) that the search of defendant’s residence by defendant’s parole officer was “rationally and reasonably related to the performance of the parole officer’s duty” and so defendant’s motion to suppress this evidence was properly denied (*People v Huntley*, 43 NY2d 175, 181 [1977]). The *Aguilar-Spinelli* test (*see Aguilar v State of Texas*, 378 US 108 [1964]; *Spinelli v United States*, 393 US 410 [1969]) for evaluating whether a tip provides police with probable cause for a search or seizure does not apply in these circumstances (*see generally Huntley*, 43 NY2d at 181).

Order affirmed, in a memorandum. Chief Judge Wilson and Judges Rivera, Garcia, Singas, Cannataro, Troutman and Halligan concur.

Decided May 21, 2024

¹ The People do not rely on the mother’s permission for the search of defendant’s residence.