

## **Nuts & Bolts of the Last Two Years of Louisiana Search & Seizure**

Jean and Harmon Drew \* Nuts & Bolts XX \* Presented June 10, 2011

**KEY:** SITA = Search Incident to Arrest; PC = Probable Cause; LEO = Law Enforcement Officer; LASC = Louisiana Supreme Court. These cases are listed chronologically, from most recent to oldest. All but three of these 28 "bulleted" opinions are from the LASC.

- **STATE v. RAINEY**, 2011-KK-0569 (LA 05.06.11) -  
As LEOs approached a car during a traffic stop, Rainey exhibited an abrupt arm movement from the driver to the passenger side of the car. This action, plus the unusual location of the firearm beneath the driver's right thigh, provided PC to arrest him for possession of a firearm.  
HELD: Shared possession can suffice to establish dominion and control.
- **STATE v. WELCH**, 2011-KK-0274 (LA 04.29.11) -  
LEOs were justified in apprehending Welch's husband, then searching him, turning up methamphetamine. Facts: LEOs knew the husband's extensive criminal history and his prior pseudoephedrine purchases. He tried to flee from the LEOs, but was subdued.  
He immediately finked on his wife, advising that she was involved in criminal activity. She also fled from the LEOs, disobeying their order to pull into her driveway for questioning. Her subsequent flight led to numerous traffic violations, justifying her apprehension and the lawful impoundment of her car. A vehicular inventory led to the lawful discovery of drug paraphernalia.
- **STATE v. ARNOLD**, 2011-KK-0626 (LA 04.27.11) -  
Arnold was arrested on a traffic violation. A LEO entered his car to roll up the windows and turn off the engine. He saw, in plain view behind the passenger seat, an unzipped backpack containing bags of pot. The seizure was lawful, a situation similar to that in Cady v. Dombrowski, 413 U.S. 433 (1973). Because the LEOs had detected a strong odor of marijuana coming from the car when they first approached the vehicle, they also had PC to search the car. See last page for AZ v. Gant, 129 S.Ct. 1710 (2009) which this case distinguished, as there was no SITA.
- **STATE v. MORGAN**, 2009-KK-2352 (LA 03.15.11) -  
Reasonable Suspicion of Criminal Activity for a detention may be acquired in a **LOW-CRIME** area, if an experienced LEO observes unprovoked flight late at night in a poorly-lit area. "Objective reasonableness" of a LEO's actions depends upon the totality of the circumstances.
- **STATE v. BAUDOIN**, 2010-KK-2868 (LA 03.04.11) -  
The LASC HELD that LEOs lacked adequate reasonable suspicion of criminal activity to detain, since they had only some general information from a concerned citizen that three men,

sitting in a park, resembled Crime-Stoppers photos of homicide suspects. The LASC further held that the LEOs were justified in asking (not ordering) the men to approach, concluding that no reasonable person here could have felt that an official detention was imminent.

This all occurred in a high crime, drug-trafficking area. All three men initially complied with the request to approach. One, however, reached into his pocket and refused two requests to remove his hand as he approached the LEOs. These facts are similar to last year's St. v. Hamilton, 36 So.3d 209 (LA 05.11.10). See page four. The LEOs seized the man's hand, frisked him, then felt a soft packet "consistent with the packaging of marijuana." LASC OKs PC plain-feel seizure.

- **STATE v. SMITH**, 56 So. 3d 232 (LA 02.21.11) -

Smith was riding shotgun (front right) in a car slowly trolling through two hotel parking lots known for drug trafficking.

LASC HELD that the LEOs had PC to believe all passengers were involved in drug sales, as currency was passed from the back seat to the front seat during an apparent and obvious hand-to-hand transaction.

- **STATE v. CARTER**, 54 So. 3d 1093 (LA 01.19.11) -

A concerned citizen reported one or more suspicious persons in a neighborhood. The LEO who answered the call decided to enter into what he thought was an abandoned house.

The entry was held unlawful because the record contained nothing to back up the LEO's conclusion of abandonment (nothing about broken out windows, boarded up windows, heavy vegetation, etc.). Turns out one of the subjects lived there, and the property had been in his family for 40 years. The evidence seized from the house was suppressed.

- **US v. OLIVER**, 630 F.3d 397 [10.06.11 - **Texas Fed. 5th Circuit Case**] - Not binding in LA.

Private search doctrine applies, even if LEOs had no knowledge of a prior private search (by one unaffiliated with LEOs). If a private person conducts a search, there's no more reasonable expectation of privacy relative to the items discovered. This would have had a different result, had the LEOs coaxed the private citizen into conducting the search and seizure on their behalf.

- **STATE v. DAUZART**, 52 So. 3d 863 (LA 01.03.11) -

Trial court found no PC to arrest for possession of a firearm by a convicted felon. LASC reversed, finding that a reasonable LEO could conclude that the accused had dominion and control over a firearm that was in plain view and within his reach inside the vehicle.

The trial court had also based its ruling suppressing the gun because of there being no PC to make the arrest. LASC notes: Admissibility of evidence depends upon the circumstances as to how was obtained, not whether there was PC to believe the accused had committed a crime.

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- **STATE v. PAGE**, 47 So.3d 407 (LA 11.12.10) -  
 Another denial of a motion to suppress by the trial court. LASC reverses, holding that the LEO had PC for arrest upon discovering non-routine pills on a guy without a prescription.
- **CITY OF ONTARIO v QUON**, 130 S. Ct. 2619 (06.17.10) - **U.S. Supreme Court** -  
 Ontario's Police Department provided its LEOs with pagers to send and receive text messages. The contract with the service provider allowed each LEO to send and receive a set number of characters per month. The LEOs reimbursed the PD for any overage fees.  
 After Quon and other LEOs exceeded their limits for several months, the PD wanted to know if the limit was set too low, so it requested transcripts of Quon and another LEO's texts for two months. It was determined that few of the texts sent and received by Quon were related to work, and some were sexually explicit. Policy prohibited LEOs from pursuing personal matters while on duty, so the matter was sent to Internal Affairs. Before the transcripts of Quon's texts were reviewed by Internal Affairs, the transcripts were redacted to remove Quon's off-duty texts. Quon was disciplined.  
 He and his wife and his lover all sued, alleging Fourth Amendment violations.  
 Assuming that (1) Quon had a reasonable expectation of privacy in the texts sent on his department-issued pager, and (2) the review of the texts was a search under the 4th Amendment, the search of the texts was reasonable. There was a legitimate work-related rationale for obtaining and reviewing the transcripts - to determine if either the LEOs were paying for work-related texts or the overages were for personal texts. Reviewing the transcripts was an efficient and expedient way to determine this, so the P.D.'s actions were held not to be excessive in scope.
- **STATE v. JACKSON**, 42 So.3d 368 (LA 07.06.10) -  
 Stop of stolen rental car. LEO detects smell of MJ, but the damned dog ("Bronco") doesn't.  
 LASC HELD: A. With enough knowledge, training, and experience, a LEO can still have PC;  
 B. No vehicular privacy rights exists, anyway, for thieves in a stolen car.
- **STATE v. ESCOTO**, 41 So.3d 1160 (LA 07.06.10) -  
 Inventory of pill bottle approved, during inventory of an auto, even though LEO thought the bottle contained drugs. To inventory closed containers during vehicular inventories, agencies must also comply with FL v. Wells, 495 US 1 (1990), which requires each agency to have a written inventory policy granting officers this administrative right to inventory the contents of containers.
- **STATE v. WELLS**, 45 So. 3d 577 (LA 07.06.10) -  
 LEO observed Wells staggering as he walked along a NOLA sidewalk at 2:25 AM. His speech was slightly slurred and rapid. Although the LEO did not detect an odor of alcohol, Wells' overall demeanor indicated that he was intoxicated.

Wells was arrested for public intoxication. A SITA produced two crack rocks in Wells' pants pocket. The LEO testified that he arrested Wells because he was concerned about Wells' safety and didn't want him to get hit by a car or robbed.

HELD: The LEO acted in good faith in evaluating of Wells' level of intoxication. The LEO was confronted with making a judgment call, and under the circumstances, he had PC to arrest Wells who was very intoxicated and who presented a danger to himself and to others. The court noted that intoxication under the ordinance was not limited to alcohol, so the lack of an alcoholic odor was not a critical factor.

- **STATE v. AITES**, 37 So.3d 993 (LA 05.28.10) -

Ruling: Ample corroboration of an anonymous tip can blossom into PC for arrest.

Chronology of one certain day in Port Allen, Louisiana:

A burglary is committed. One of the burglars confesses to a person, revealing where the stolen items are located. The tipster calls in this information anonymously to the Chief, advising as to the whereabouts of the stolen items.

LEOs go to the named apartment. The two suspects are standing outside. The owner of the premises allows police to search. The Chief stands with Aites while the consent search is conducted. The stolen gun from the burglary is found behind the apartment. Aites is taken to the police station, where he promptly confesses.

HELD:

- 1). Even though LEO was standing with Aites during the search, he was not detained;
- 2). Involuntary trip to station house for questioning was OK, because the anonymous tip had now been corroborated to such an extent that it ripened into PC.

Drew & Drew Note: Hayes v FL, 470 US 811 (1985), requires PC to lawfully require a suspect to come to the station for an interrogation.

- **STATE v. HAMILTON**, 36 So.3d 209 (LA 05.11.10) -

LEOs ask Hamilton to approach; he does, with hand in pocket; LEOs order him to remove hand (for safety), and when he does, some drugs appear on the ground. Lawful seizure. Similar to St. v. Baudoin, 2010-KK-2868 (LA 03.04.11), on page two of this outline.

- **STATE v. BROWN**, 35 S0.3d 1069 (LA 05.11.10) -

Concerned citizen meets LEOs at the duplex she manages, and where she lives. She advises that dopers with guns were in other side of duplex without permission. LEO opens door, sees dope, Baggies, scales. He arrests the occupants and secures the drugs. LEO had PC + exigency, authorizing an entry, and then had the right to SITA the arrestees. More importantly, trespassers have no reasonable expectation of privacy in the premises they have unlawfully occupied.

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- **STATE v. ALLEN**, 55 So.3d 756 (LA 05.07.10) -  
A favorable view of a "Plain Smell" case.
- **STATE v. ELLIOTT**, 35 So.3d 247 (LA 03.16.10) -  
By 911 call, a near-victim of a suspected drunk driver gave real-time information about a motorist who nearly hit their car, and whom the caller was following, as he swerved up the Benton Road. Dispatch transmitted that a suspected drunk driver in a dark Bronco was headed towards the town of Benton, and should be stopped. A Benton LEO observed no bad driving, but made a good stop of the Bronco because of the doctrine of Collective Knowledge, and because of the public safety exception. as per NY v. Quarles, 467 US 649 (1984). LASC recognizes the dangers of DWIs.
- **STATE v. SURTAIN**, 31 So.3d 1037 (LA 03.16.10) -  
Separate Observations by two officers. Three issues:  
A. Each officer testified that he was detaining and frisking, thereby seizing drugs; LASC said it was not constrained by how the officers categorized an encounter; There was PC for an arrest at the time of the search. The crime allowed an arrest; therefore the SITA was OK.  
B. SITA before an arrest can be lawful, as per Rawlings v. KY, 448 US 98 (1980), and St v. Sherman, 931 So.2d 286 (LA 2006).  
C. Collective Knowledge of both officers can be used to support the SITA and the arrest, even if all of the information is not communicated to the officer who makes the search/arrest.
- **STATE v. ALVAREZ**, 31 So.3d 1022 (LA 03.16.10) -  
While writing a traffic ticket in a high crime area, LEOs observed Alvarez sneakily observing them, acting strange, and trying to hide. The LEOs asked him to talk with them.  
He balked, then ran. This triggered reasonable suspicion of criminal activity, justifying a stop, as per Illinois v. Wardlow, 120 S.Ct. 673 (2000) and St. v. Benjamin, 772 So.2d 988 (LA 1998)].  
During the pursuit, Alvarez removed a pistol from his pants and discarded it, triggering PC for Illegal carrying of weapons (R.S. 14:95), a "jailable misdemeanor." Pursuit by the LEOs into his apartment was held to be lawful, because the LEOs had PC and were in close pursuit.
- **STATE v. HERRERA**, 23 So.3d 896 (LA 12.18.09) -  
Consensual encounter on train platform. LEO ID's himself as a LEO and shows badge. This later leads to consent to search the passenger's luggage. HELD: Voluntary, thus lawful.
- **STATE v. HUNT**, 25 So.3d 746 (LA 12.01.09) -  
LEO makes a stop for excessively tinted windows. LEO sees that driver is not strapped, so he gets him out. LEO sees a pistol is seen on floorboard. Seizes it; discovers it belongs to NOPD. HELD: Lawful seizure and arrest.

- STATE v. GUILLORY**, 21 So.3d 945 (LA 11.20.09) -

LEOs approach a car with several people around it, including a known drug dealer. The guys start fast-walking off. Another known drug user is seen in the car. White crumbs are spotted on the car console. LASC HOLDS this to be a good seizure of powder cocaine.
- STATE v. RICHARDSON**, 23 So.3d 254 (LA 10.20.09) -

LEO follows a bicycling panhandler, asking to speak. Guy keeps pedaling, even when spotlighted (white light). He threw down drugs. HELD: Throw-down occurred before any seizure. HELD: Drugs secured legally. Flashing Blue Lights - probably a different story?

Drew & Drew Comment: The officer appears to us to have had reasonable suspicion of criminal activity, anyway, even had the white spotlight been held tantamount to a detention.
- STATE v. PRATT**, 16 So.3d 1163 (LA 09.04.09) -

Collective knowledge case. Officer A sees Pratt (1) retrieve a magnetic metal box from the car frame, (2) have a one-minute transaction, then (3) return the box under the frame.

Looks like a drug deal to Officer A, who radios Officer B to stop Pratt. Officer B sees Pratt and another at a gas station, counting much \$\$ on the hoopty's front seat. Officer B detains them and removes three magnetic metal boxes from under car. Two of the three boxes contain drugs. LASC finds all lawful. Basis: collective knowledge & no privacy rights outside a car.
- STATE v. PALMER**, 14 So.3d 304 (LA 07.01.09) -

Two issues:

**A.** Can officers, in dangerous situations, cuff someone during a frisk, without PC to arrest? LASC HELD: This was objectively reasonable and necessary to maintain the status quo, for officer safety. The time was late at night, in a high-crime area, with more subjects than LEOs.

Two older LASC cases approving cuffing (without LEOs having PC to arrest) in certain limited officer safety situations: ☞ State v. Adams, 836 So.2d 9 (LA 2003); and ☞ State v. Porche, 943 So.2d 335 (LA 2006).

**B.** Can a valid consent to search be granted by a "cuffee," without his having been apprised of the rights guaranteed him under Miranda v. AZ, 384 U.S. 436 (1966)?

LASC HELD: YES, because this permission is not testimonial. CAVEAT: Cuffing is not automatically justified, just because the LEOs are investigating a dope case.
- ARIZONA v. GANT**, 129 S.Ct. 1710 (04.21.09) - **U.S. Supreme Court** -

Vehicular SITA limited to situations where LEOs reasonably believe that evidence of the crime of arrest is in the car. SCOPE: Passenger compartment, for weapons or evidence.