

10.07.10 - Drew & Drew - Current LASC Search & Seizure Cases

Updated at least quarterly. Next Scheduled Update: 1.1.11. Tell another Law officer.

Abbreviations:

Law Enforcement Officer = *LEO*; Search Incident to Arrest = *SITA*; Probable Cause = *PC*;

Reasonable Suspicion = *R/S*; La. Supreme Court = *LASC*; U.S. Supreme Court = *USSC*.

The most recent case is at the beginning; the oldest case is at the end.

1. **State v. Jackson**, 42 So.3d 368 (LA 7.6.10).

Traffic stop of stolen rental car. LEO detects Plain Smell; Damned Dog Doesn't. HELD:

A. With enough Knowledge, Training, and Experience, the LEO still has PC;

B. No vehicular privacy rights exists, anyway, for thieves in a stolen car.

Two months earlier: a similar LASC plain smell case : State v. Allen, ___ So.3d ___ (5.7.10).

2. **State v. Escoto**, 41 So.3d 1160, (LA 7/6/10) - 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 a written inventory policy about containers.

3. **State v. Aites**, 37 So.3d 993 (LA 5.28.10) - Ample corroboration of anonymous tip can lead to PC for arrest. Chronology of one certain day in Port Allen:

- burglary is committed;
- one of the alleged burglars confesses to a person, revealing where the stuff was;
- the tipster calls in this info anonymously to the Port Allen Chief, advising as to the whereabouts of the stolen items.
- LEOs go to the apartment, and see the two suspects standing outside.
- Owner of premises allowed police to search.
- Officer stood with Aites while consent search was conducted.
- Stolen gun from burglary was found behind the apartment.
- Aites was taken to the police station, where he confessed.

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.

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

4. **State v. Hamilton**, 36 So.3d 209 (LA 5.11.10) - LEOs ask Hamilton to approach; he does, with hand in pocket; LEOs tell him to remove hand (for safety), and when he does, some drugs appear on the ground. Lawful seizure.
5. **State v. Brown**, 35 So.3d 1069 (LA 5.11.10) - 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 gets them out, secures the drugs, and spots a gun. LEO had PC + exigency, authorizing an entry, but (more importantly) trespassers have no reasonable expectation of privacy in the premises they have unlawfully occupied.
6. **State v. Elliott**, 35 So.3d 247 (LA 3.16.10) - 911 caller (concerned citizen, not an anonymous tipster) gives real time information about a dangerous driver (suspected DWI) who nearly hit the caller, and whom the caller is following. Dispatch says driver is headed towards Benton, LA, and to stop the car. The Benton officer observes no bad driving, but makes a good stop because of collective knowledge, and because of the public safety exception - **NY v. Quarles**, 467 US 649 (1984). The *Elliott* case recognizes the sudden danger of DWIs.
7. **State v. Surtain**, 31 So.3d 1037 (LA 3.16.10) - Separate Observations by two officers.
Three issues:
 - A. Officer testified he was detaining and frisking, thereby seizing drugs; LASC said it was not constrained by how the officers categorize an encounter; There was PC for an Arrest at X of search; the crime allowed an arrest; therefore the search incident to arrest was OK;
 - B. SITA pre-arrest OK, 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/Arrest, even if all of the information is not communicated to the officer who makes the search/arrest.
8. **State v. Alvarez**, 31 So.3d 1022 (LA 3.16.10) - LEOs writing a ticket. They observe Alvarez sneakily observing them, acting strange, and trying to hide. LEOs ask to talk. He balks, then runs [Drew & Drew note: This triggers R/S of criminal activity, allowing a stop, as per **Illinois v. Wardlow**, 120 S.Ct. 673 (2000) and **St. v. Benjamin**, 772 So.2d 988 (LA 1998)] between two apartment bldgs. He takes a pistol out of pants and discards it, triggering PC for Illegal carrying of weapons, R.S. 14:95, a jailable misdemeanor. Pursuit into apartment was held to be lawful, because the LEOs had PC and were in close pursuit.

9. **State v. Hunt**, 25 So.3d 746 (LA 2009) - Tinted windows, excessively so on the side. LEO makes a stop. When driver's window is lowered, he is not strapped. Pistol seen on floorboard. Turns out to belong to NOPD. Lawful Seizure.
10. **State v. Herrera**, 23 So.3d 896 (LA 2009) - Consensual encounter on train platform. LEO ID's himself as a LEO and shows badge. Leads to consent to search luggage. Held lawful.
11. **State v. Richardson**, 23 So.3d 254 (LA 2009) - 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. Drugs secured legally. Flashing Blue Lights - probably a different story? [D & D Comment: May have had R/S anyway.]
12. **State v. Guillory**, 21 So.3d 945 (LA 2009) - LEOs approach a car with several people around it, including a known drug dealer. The guys start fast-walking off. Another drug user is seen in the car. White crumbs seen on console = good seizure of powder cocaine.
13. **State v. Pratt**, 16 So.3d 1163 (LA 2009) - 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. B sees Pratt and another at a gas station, counting \$\$ on front seat. Officer B detains them and takes three magnetic metal boxes from under car. Two of the 3 boxes contain drugs. HELD: Collective Knowledge = OK. No privacy rights on outside of a car. Legal stop/lawful seizures.
14. **State v. Palmer**, 14 So.3d 304 (LA 2009) - Two issues:
 - A. Cuffing (w/out PC to arrest) approved "to maintain the status quo, for officer safety" - late at night; high-crime area; more subjects than LEOs. Similar LASC cases approving cuffing (without probable cause to arrest) in certain officer safety situations:
 - **State v. Adams**, 836 So.2d 9 (LA 2003)
 - **State v. Porche**, 943 So.2d 335 (LA 2006).
 - B. Consent to search can be granted by cuffee. Not testimonial.Just because LEOs are investigating a dope case does not automatically justify cuffing.