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**FIFTH CIRCUIT**  
**STATE OF LOUISIANA**  
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September 12, 2018

**RE: STATE OF LA VS. LANCE COWANS**  
**Appeal Number 17-KA-483**

**STATE OF LA VS. JUAN SALINAS**  
**Appeal Number 17-KA-485**

To all recipients of the opinions in the above referenced case:

On July 6, 2018 an opinion was rendered in the above cases. After reviewing the dissent included in the opinions, the following corrections have been made:

**PAGE 1 OF THE DISSENT IN APPEAL NUMBER 17-KA-483:**

First sentence of the body, the word "granting" has been changed to "denying".

**PAGE 1 OF THE DISSENT IN APPEAL NUMBER 17-KA-485:**

Second sentence of the body, the word "granting" has been changed to "denying".

The corrections have been made and enclosed is a copy of the corrected pages. Please substitute the corrected pages in the opinion previously sent.

Sincerely,

Cheryl Q. Landrieu  
Clerk of Court

CQL/mel  
enclosure

STATE OF LOUISIANA

NO. 17-KA-483

VERSUS

FIFTH CIRCUIT

LANCE COWANS

COURT OF APPEAL

STATE OF LOUISIANA

**GRAVOIS, J., DISSENTS WITH REASONS**

For the following reasons, I respectfully dissent from the majority's opinion that the trial court erred in denying the motion to suppress. In my opinion, under the particular facts and totality of the circumstances presented, the officers acted reasonably, based on rational inferences from the facts presented, and were thus justified in conducting the protective sweep for officer safety of the inside of defendant, Lance Cowans', residence, behind his residence, and in the open garages behind his residence.

In *United States v. Howard*, 106 F.3d 70, 73-75 (5th Cir. 1997), the U.S. Fifth Circuit Court of Appeals upheld a finding that exigent circumstances justified a warrantless entry into the home of a suspected drug dealer. In that case, DEA agents had credible information that the defendant's house was a stash house. A month later, DEA agents arrested an individual coming out of the defendant's house who agreed to cooperate with the agents and who advised the agents that the defendant was storing drugs in the house and that the defendant expected him to return to the house with a kilogram of cocaine. The court held that even though there was no evidence that the defendant posed a specific threat to officers, the warrantless entry into his house was justified based on officer safety because of the fact that drug traffickers often possess and use guns. Specifically, the

court found that “[a]lthough our review of the record reveals that there was no direct or circumstantial evidence supporting [the officer’s] belief that [the defendant] or anyone else who may have been with [the defendant] posed any specific danger to [the officer], the officers, or the community at large, the absence of a particularized fear (at least in our Circuit) is not controlling,” noting that “[a]t the hearing, [the officer] repeatedly stated that he had no knowledge that [the defendant] had weapons or that [the defendant] was a violent person.” *Id.* at 75.

Further, this Court’s opinion in *State v. Doussan*, 05-586 (La. App. 5 Cir. 2/14/06), 924 So.2d 333, is instructive. In *Doussan*, this Court upheld the denial of a motion to suppress evidence that was discovered during a protective sweep of a music studio. Based on information from a confidential informant (“CI”) who had purchased marijuana at the studio from the owner (the defendant) in the past that a fresh supply was available, officers applied for a search warrant. Prior to issuance of the warrant, officers set up surveillance of the studio around 9:00 p.m. from around a block away and instructed the CI to return to make a purchase. The CI made the purchase, which field tested positive. The surveillance team witnessed three other people enter and leave the studio, one of whom was stopped and found to be in possession of marijuana. The surveillance team witnessed the owner repeatedly walking in and out of the studio as if he were nervous. After a fourth man arrived, officers became concerned defendant might destroy evidence, fearing that one of the visitors may have alerted defendant to the surveillance, as well as they did not have the manpower to handle all of the foot traffic at the studio. The supervising officer ordered officers to secure the premises.

Officers approached the defendant, who was outside the studio with the fourth man, with guns drawn. The defendant fled inside the studio, locking the door. Officers pounded on the door, whereupon the defendant unlocked it, allowing the officers to enter. They performed a pat down search of his person and a protective sweep of the studio, during which they observed marijuana in plain view. Minutes after the studio was secured, officers received notice that the search warrant had been signed (around 9:45 p.m.), which arrived 10-15 minutes later.

The defendant argued that the protective sweep was not justified, since the surveillance officers should have known, having observed the comings and goings from the studio, that there was no one inside the studio, and that there was no need for a protective sweep of the premises to search for accomplices. This Court upheld the protective sweep, however, on the basis that the surveillance lasted only about 45 or 50 minutes, and the officers “could not have known whether anyone entered [the studio] before the surveillance began.” *State v. Doussan*, 924 So.2d at 342-43. Thus, this Court found that “the officers were justified in conducting a protective sweep of the premises for their own safety, and to prevent the destruction of evidence.” *Id.* at 343.

Similarly, in the present case, because the officers had not conducted surveillance of defendant’s residence on Fox Lane prior to arriving there, they could not have known whether anyone other than defendant was either inside of the residence, behind the non-fenced-in residence, or in the open garages behind the residence. When Lt. Shuff was specifically asked if he knew whether any other people were present on the property, he stated that he did not know one way or the other. And although the officers were advised by defendant that no one else was present at the home at that time,

under the circumstances presented to the officers at that time, they had no way of knowing whether defendant was being truthful with them in so stating at that time. Further, as argued by the State, the totality of the evidence shows that at the time of the protective sweeps, the officers were investigating serious and substantial allegations of narcotics trafficking at defendant's residence, that by its very nature, narcotics investigations present dangerous circumstances to officers, and that the officers had credible evidence that on an earlier occasion, numerous subjects known to be involved in narcotics trafficking had, in fact, been present at 836 Fox Lane, which they credibly suspected was a stash house for illegal narcotics, so as to justify the protective sweeps on the date in question. Accordingly, in my opinion, under the particular facts and totality of the circumstances presented, based on rational inferences from the facts presented, the officers acted reasonably and were thus justified in conducting the protective sweep for officer safety of the inside of defendant's residence, behind his residence, and in the open garages behind his residence.<sup>1</sup>

I agree with the majority, however, that protective sweeps are not permissible simply as a matter of "routine procedure" or "common practice" for officer safety. Rather, the facts and circumstances of each particular case must clearly justify that the protective sweep in question was conducted for

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<sup>1</sup> See also *State v. Hilton*, 16-0325 (La. 3/24/16), 187 So.3d 981, 982-83 (*per curiam*), in which the Louisiana Supreme Court reversed the trial court's ruling suppressing evidence seized following the execution of a search warrant predicated upon drug and firearm evidence observed during a protective sweep. The trial court found that the officers trespassed prior to obtaining the warrant when they went to a side door to knock and announce their presence and as a result, the search warrant based on drug and gun evidence obtained afterwards was fruit of the poisonous tree. In reviewing the evidence presented, the Supreme Court found that the officer standing at a front door which was chained shut with a lock affixed detected the smell of marijuana which prompted the officers to further investigate and discover an open and accessible side entrance. Upon knocking and announcing their presence, the earlier smell of marijuana, and the continuing commotion of people the officers could only dimly see once the door was opened, the court found that the officers were reasonable in directing the individuals to exit, detaining them, and conducting a protective sweep. The court found that "[b]ecause the police were unsure if all occupants had actually exited, the sweep was justified for officer safety and to prevent evidence from being destroyed." *Id.* at 983. Thus, it held that "[t]he search warrant, which was predicated upon drug and firearm evidence the police observed during the protective sweep, was thus not tainted by an unconstitutional search." *Id.*

actual officer safety purposes, based on rational inferences from the facts presented, as was the case here, in my opinion.

For the foregoing reasons, I respectfully dissent. I would uphold the validity of the warrantless search of defendant's premises and affirm defendant's convictions and sentences.