

STATE OF LOUISIANA

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NO. 2012-KA-0647

VERSUS

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COURT OF APPEAL

REBEKAH E. WOLFE

*

FOURTH CIRCUIT

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STATE OF LOUISIANA

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BELSOME, J., DISSENTS WITH REASONS

The record in this case fails to articulate a lawful basis for the removal of the plastic from the defendant’s pants. In the process of conducting a traffic stop, Officer James observed Ms. Wolfe make a “shoving motion” towards her waistband. Officer James further stated in his testimony that the shoving motion lead him to believe Ms. Wolfe was attempting to hide “contraband or a weapon.” At that point, he requests that Ms. Wolfe and her passenger exit the vehicle for a pat down for weapons.

Based on Ms. Wolfe’s gender, the officer called a female officer, Officer Robyn Scott, to the scene to conduct a weapons frisk. It was during the weapons frisk that Officer Scott seized the plastic from Ms. Wolfe’s waistband. The plastic contained individual foils of heroin.

Even though an investigatory stop is legal, and a frisk for weapons is justified, there must be an additional justification for seizing contraband during a pat down for weapons:

In *Minnesota v. Dickerson*, 508 U.S. 366, 371, 113 S.Ct. 2130, 2134, 124 L.Ed.2d 334 (1993), the Supreme Court addressed whether nonthreatening contraband detected through the sense of touch during a *Terry* patdown may be admitted into evidence. Analogizing to the "plain view" doctrine, ... the *Dickerson* Court held if a police officer lawfully pats down a suspect's outer clothing and feels an object whose contour or mass makes its identity immediately apparent, there

has been no invasion of the suspect's privacy beyond that already authorized by the officer's search for weapons; its warrantless seizure is justified by the same practical considerations that inhere in the plain-view context. *Dickerson*, 508 U.S. at 375-76, 113 S.Ct. at 2136-37.

State v. Boyer, 2007-0476, p. 22 (La. 10/16/07), 967 So.2d 458, 472.

The State has the burden of proving that the plain feel and plain sight exceptions may apply to the warrantless seizure of contraband. In asserting the plain sight and plain feel exceptions, the officer conducting the frisk must articulate his/her reasonable belief that what they saw or felt was contraband. *State v. Dappemont*, 98-446 (La. App. 4th Cir. 03/17/99), 734 So.2d 736, 741-43 (suppressing evidence discovered in a Popeye's bag located in defendant's waistband where the officer "articulated no facts to substantiate his belief that the bag contained contraband"); and *State v. Denis*, 96-956 (La. App. 4th Cir. 03/19/97), 691 So.2d 1295, 1300 (suppressing evidence because "no testimony was elicited which would indicate that the bulge in the back of the defendant's pants was immediately identifiable as contraband"). In this case, Officer Scott did not testify. For that reason, I find that the State did not meet its burden of proving that the warrantless search was lawful.

Accordingly, the heroin should have been suppressed. I would vacate Ms. Wolfe's conviction and sentence.