



SPECIAL REPORT

A legal brief from Scarabin's attorney

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MAY IT PLEASE THE COURT

STATEMENT OF THE CASE

Your Petitioner, Jeffery M. "Buzzy" Scarabin is disgusted. His tireless Pro Bono counsel is tiring. The eager-beaver associates at tireless Pro Bono counsel's firm ain't so eager anymore: their enthusiasm is flagging. The DEA, it seems, never tires, never relents, never.

Where do we go from here? This past January this Court remanded the Buzzy case back to the DEA. Most of us who read the Court's opinion understood the gentle suggestion that fundamental fairness by the DEA might be a good idea. Scarabin v. DEA 919 F.2d 337, (on rehearing) 925 F.2d 100.

This Court's description in Buzzy I of the maze of "short fused, dead end" administrative procedures used by the DEA was apparently interpreted by the DEA a. praise of the attributes of Big Government being slick. The slick-thinking DEA actually upped the ante on remand, where Buzzy got their full hose-down. Maybe they didn't understand. The DEA's decision on remand was like they were from Mars.

In an attempt to fan the flagging spirits of the "Free Buzzy" task force (and perhaps my own), a Buzzy Brainstorm meeting was called, after hours. Pro Bono (formerly Learned) counsel opened the proceedings with a little history: June 1, 1990 (boy, how time flies when you're having fun), the historic date of Operation Swamp Storm; the biggest event at the mouth of the Mississippi River since DeSoto (the explorer, not the car); The Deputies From The Land of Leander Perez struck the tiny Parish-owned Port Eads Marina at 3 a.m. like a sudden summer squall; they had a state court search warrant to look for dope; Sammy The Drug Sniffing Dog was there, tail a-waggin'; helicopters, speed boats, guys with machine guns, twenty or so of them, slapping mosquitoes, converging on the Parish Trailer and the snoozing Buzzy and his fuel dock employee, Joe. It must have been a sight. (1)

But alas, sorry Sammy, the haul was meager: try and try his very best, Sammy The Dog sniffed up only two pitiful marijuana cigarette butts. Neither near Buzzy or Joe. Roaches they call 'em. Two. Sammy The Dog was

heartbroken. The Deputies were restless. Boy, it costs a bunch to run those 'copters, those boats. Twenty guys had been up all night, on overtime, for what? Two roaches. Yeah, two lousy roaches. A tenth of what they could have gotten from any bar on any Tuesday night anywhere in the United States.

The High Sheriff, ooh, he gonna be ready to roll heads.

Operation swamp Storm is not turning out to be the homer the Diligent Deputies assured him in their search warrant affidavit it would be. For sure not a profit center. For sure, they hope, not an election issue. Well, maybe about this time, with Buzzy and Joe handcuffed and lying face down on the floor, trying not to look like fire plugs (Sammy was back), someone said "Buzzy, you got any money around?" And the rest is history.

Buzzy and Joe got their first helicopter ride, free, in the big blue one, to jail. Charged with possession of the roaches, even though Sammy The Dog sniffed up neither Roach near them, and possession of drug paraphernalia because a ransacking of the Parish Warehouse a half mile away turned up some cigarette papers and a scale (tTr. #68).

They also seized stuff under the state court's search warrant, these Diligent Deputies of the Swamp; they seized \$12,360 of Buzzy's cash. Then they "turned it over" to the DEA for forfeiture under the federal drug laws (Tr. #98), The Swamp Stormers (and the DEA) did not bother to seek an order from the state court which had issued the search warrant they were seizing under before they just "turned it over" to the DEA. (see Stipulations).

"Excuse me, Pro Bono" one of the Coors-sipping law clerks broke in, "How can the state deputies seize the cash when Buzzy was only charged with possession? Professor Boudreaux said in class last week that they can't forfeit stuff under the Louisiana drug forfeiture laws for simple possession."

"That Boudreaux, he ain't never been south of New Orleans, " Pro Bono retorted, "down where people wear White Boots to work; they think they've found the big loophole; the state guys (who cannot legally forfeit the cash under state law) just turn the money over to the DEA, and you know the DEA, being the feds, they never give it back, never, no matter what." "But Pro Bono," another clerk protests, "When the state sheriff's deputies seized the Buzzy Loot, they did it under the authority of the state court's search warrant, and the state court retains jurisdiction over the seized property under the Louisiana Code of Criminal

Procedure. Now can they just informally turn it over to the DEA without the state court's permission?" Another clerk chips in: "Yeah, and on top of that, the local D.A. dismissed the puny charges against Buzzy and Joe, to boot." (Tr. #68)

Pro Bono scratches his chin; he looks around the room and takes a deep breath; "There is a scam, a shell game, going on in parts of these United States, folks," he sighs, "I have found out just last week that the DEA kicked back exactly ninety percent of the Buzzy Loot to the Plaquemines Parish Sheriff in a U. S. Treasury check dated November 16, 1990." The Free Buzzy Brainstormers go wild; "No, No, tell us it ain't so, Pro Bono," they clamor in righteous indignation, "Tell us it ain't so that our government, our DEA, kicked back 90% of the Buzzy Loot to the local Sheriff who could not have touched one thin dime of it under Louisiana law." Pro Bono glanced from eager eye to eager eye: "It is so, people." (see Stipulations).

Continuing, now in a more somber atmosphere, Pro Bono recalled how the Free Buzzy Task Force had petitioned the DEA for Expedited Release because the federal law said we could do that if the Roaches weighed in at less than something or another, which the Buzzy Roaches did, and how the DEA with obvious glee said "gotcha." How we raced up and down the halls to the library, poring over the CFR's, the case books, and how we ended up in the Fifth Circuit, lickedy-split.

And how we got relief for Buzzy. How the second highest court in the land gave Buzzy relief and remanded the Buzzy Case to the DEA with pretty solid hints on how they could do right. "Did you get an inkling of what the DEA was going to do on remand when they filed that rehearing brief from Washington that looked like a Mamou phone book, Pro?" one associate asked, "Well, when they started all that stuff about me and Buzzy wrecking The War On Drugs, I was sort of leery of what they were going to do," Pro Bono admitted, and continued, "But we submitted a bunch of new evidence that had come up since we filed the original petition. Solid evidence that Buzzy had nothing to do with drugs, and I figured even they would see that the Buzzy Case was a bum deal from the start and the sap-suckers would just give Buzzy back his money."

Wrong. "We submitted all this new stuff, wrote them a nice brief, and look what we've got, gang" Pro Bono said as he held up the four page (plus one of citations) denial letter from the DEA. "Well, at least it's better than the one-liner we got the first time, Pro" an associate wise-cracked. Good, good, their blood is getting up a little, Pro Bono thought. "Yeah", another said "I'll bet you a pack of boudin they don't

put the Fifth Circuit citation for the Buzzy Cane in their canned list of cites."

"That's all great, gang" Pro Bono chided, "But what do we do now? The DEA has decreed: they are not going to give Buzzy his money back. Where do we go from here?"

"The Fifth Circuit, the Fifth Circuit!" they chanted in unison. And here we are once again, Your Honors. By consensus of the Buzzy Brainstormers, and of course, the law.

Your Honors, Buzzy Scarabin, who had never even gotten a traffic ticket in his 48 years, who does not drink or smoke, and who has never touched dope, much less sold it, is in deep trouble. His \$12,360 was his working capital for his little marina and seafood business. He survives today by the skin of his teeth largely by virtue of the largess of his family, friends, banker, and diesel fuel suppliers.

It is crystal clear the Plaquemines Parish Sheriff informally "turned over" Buzzy's money to the DEA for it to gobble up under the federal forfeiture law so the DEA could kick back 90% to the Sheriff. The same Sheriff who could not have touched one thin dime of it under Louisiana law.

One of Pro Bono's criminal lawyer friends suggested this sort of shell game was becoming fairly commonplace in parts of this country. Pro Bono, being not of the criminal lawyer persuasion, found it fairly far-fetched. It sounded pretty star-wars. Was the local Sheriff really slick enough to have figured out he could simply "turn over" Buzzy's money to the feds and get a big portion kicked back from them? Pretty improbable. When this possibility was discussed in a Buzzy Brainstorm session, Pro Bono and most of the associates and law clerks were mildly incredulous. Someone muttered the idea under their breath. We all started talking about it. No one really believed it could be the real key to the Buzzy Case.

Pro bono soon changed the subject and put them to other tasks. The next day he quietly called the Sheriff's lawyer and asked the big question: "How much of Buzzy's money did you guys get back from the DEA," The answer floored even crusty ole Pro Bono " \$11,124, the usual 90%."

Wow. It was true. The Sheriff had gotten 90% of the Buzzy Loot back from the DEA, the same DEA that the same Sheriff had illegally turned the Loot over to in the first place. Was the 10% that DEA kept it's "tip?" What did it all mean? After all, this is a pro bono case. Maybe they are really the best kind.

What it means is the DEA never legally assumed jurisdiction over the Buzzy Loot. It did not seize it. No DEA people slapped mosquitoes in Operation Swamp Storm. And it did not get the state court's permission to forfeit it. How you ended up with the Buzzy Loot is a trig problem, DEA. A due process problem. Pretty heady stuff in a \$12,360 case. But true, yes, true.

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