



SPECIAL REPORT

A legal brief from Scarabin's attorney

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Perhaps more unbelievable, the DEA then launches into an "analysis" of the damning evidence against Buzzy. They finally read the Keystone Kops-styled affidavit for the original Invasion of Port Eads search warrant. On the second page of the DEA letter, first paragraph, the DEA mentions the elusive boat captain from Alabama who allegedly told someone, who told someone, who told a Confidential Informant, (6) who told someone, who finally told someone who could write, that he (the boat captain) had bought marijuana at Port Eads from someone known as Buzzy. Look at page 4 of the warrant affidavit (Tr. #78). There it is, in black and white. And the DEA says we admit this in our supplemental submissions after remand. Right there in the letter, they claim we admit it. "Which one of you mullets told the DEA we "acknowledged" that Alabama boat captain stuff in our supplemental?" Pro Bono accused the group, "which one of you?" "Pro, what are you talking about?" they clamored back, "they just pulled that one out of the air, we don't even know who, when, where anyone from Alabama said anything." Silence. "Maybe the DEA just means we acknowledged Buzzy's nickname is "Buzzy" the clerk from Mamou chipped in. Thank goodness for law clerks from Mamou. We guess that's what the DEA means by that statement in the letter. Either that or the DEA got Buzzy mixed up with some case from Nebraska.

The second paragraph on page two of the DEA letter is also a joke, a bad joke. The guy that wrote the letter took some awfully heavy liberties with the "facts" recited in the search warrant affidavit. The statement in DEA's letter that anyone says they saw Buzzy "grab two more plastic bags filled with marijuana" is simply not what the affidavit says and the DEA should be ashamed of itself, if that's possible. The DEA implication that the routine fact Buzzy regularly talked on the marine radio, traded beer, cigarettes and groceries (and often cash U.S. bucks) for shrimp and fish even suggests that Buzzy is a dope pusher shows two things: first, an unwillingness to give one inch, not one; and second, a profound lack of sensitivity to how business is done down on the bayou.

The third paragraph on the second page of the DEA missive again shows the adversarial posture of Big Government. Read the Buzzy arrest report by Agent Illg. (7) Was this stuff,

two pitiful Roached, neither of which were Buzzy's indicative of narcotics trafficking? Sammy The Dog finding two old Roaches is indicative of drug trafficking? Baloney.

The DEA statement that Buzzy's \$12,360 was found in plastic bags, (8) containing, in the DEA's words, "a quantity marijuana" is not the kind of fact-stretching we need to be teaching those young lawyers and law clerks; teach 'em that we all bash on each other's positions, but we never, never take liberties with the facts. We don't make the facts, we just live with them the best we can. "Why did the DEA guy say the Port Eads Briefcase had a "quantity" of marijuana in it when in fact the arrest report says "fragments of green vegetable matter?" one law clerk inquired. "The local D.A.'s drug analysis never even identified the Port Eads Briefcase as being tested; how can they just say that? Pro Bono pondered this weighty question: "Perhaps the guy was just mistaken" he replied with a wry smile. "Point it out in our brief, Pro" another interjected, "Point out to the Fifth circuit that DEA was just not being honest."

The last paragraph on page two continuing to page three is a story in itself. Recall that it's probably about four a.m. by this time, Buzzy and Joe are handcuffed face down on the floor, Sammy is getting restless for a hydrant, and the tiring and worried Stormers suddenly want to know where Buzzy's money is. Buzzy is a Plaquemines Parish employee and collects slip rents for it at the Parish-owned marina. He leases the fuel dock and office from the Parish to run his fuel and seafood business. Luke Petrovitch is the Parish President. Cash is the only accepted medium of exchange south of latitude 29 degrees North. Your American Express, you can leave home without it; likewise with your Visa and your checkbook. Bring cash. There's Parish cash (from the slip rents and there's Buzzy cash (from the fuel and seafood). The guy who wrote the arrest report (Illg The Unpronounceable) took great glee in the fact he could not understand this distinction. The Swamp Stormers got both the Parish (Luke's) cash and the Buzzy cash. The DEA takes great hay out of the fact Buzzy must have been lying about his cash and who owned it. Luke got his cash back. Buzzy didn't.

We submitted a pile of evidence to the DEA originally and a new and bigger pile on remand. We submitted a letter from Buzzy's orthopedic surgeon verifying that he had given Buzzy the famous tour pills (9): we submitted a transcript of the plea hearing where Buzzy's brother, Wayne, pleaded guilty to being the owner of the Buzzy Roaches (maybe we should have called them the Wayne Roaches, and that would have made a difference to DEA). Wayne swore under oath Buzzy knew nothing about the Roaches; we submitted the

documentation on the complete dismissal of the misdemeanor charges against Buzzy and Joe;(10) we submitted a file full of marina invoices showing the volume of cash business Buzzy had recently done in fuel, groceries, seafood, etc.

The DEA simply blew off this evidence. DEA implies Wayne took the fall for Buzzy. If you knew Wayne, you would get a big picture of that. The DEA never talked to Wayne. They never talked to Buzzy, for that matter. They never talked to anyone. Next, the DEA smugly points out that the cash invoices we submitted didn't quite add up to \$12,360. We thought we were using them to prove that Buzzy routinely does a significant volume of cash business.

This is not a tax case, I hope. Or the CPA exam, which Pro Bono first miserably failed about 25 years ago.

The complete lack of fundamental fairness shown by the DEA is simply amazing. We're not talking about close. They seem to be imposing a burden of proof on us that goes even beyond a criminal "reasonable doubt." Is it a "shadow of a doubt"? We're not really sure, but whatever it is, it seems impossible to overcome, no matter what. Maybe they wonder if they relent, how they are going to get their 90% back from the Sheriff. That might be the DEA's only a legitimate issue in this case. That sure would worry the dickens out of us, too. On the merits, no reasonable person could conclude "Buzzy was involved in selling drugs. No reasonable person could conclude Buzzy's \$12,360 represented the fruits of drug deals. No reasonable person could do this even if they employed the DEA's method of selectively ignoring the evidence that cuts against their bogus theories. The Buzzy Case is the Sterling example of why this Court must exercise jurisdiction over the DEA's decisions, particularly after the Loot has been "shared" back to the locals and is gone, gone, gone.

CONCLUSION

The basic problem here is the DEA has at its disposal an extremely powerful tool Congress has given it to fight drug trafficking in our country. Congress passed these forfeiture laws in response to what most of us see as a major threat to our organized society. We all applauded it. Our courts upheld the constitutionality of these laws, by and large, also recognizing the severity of the drug threat. The law is not static: it must and does change to meet changing times. On the other hand, the DEA must walk a tightrope to avoid trashing innocent citizens' rights in the name of stamping out the drug problem. It has been entrusted with enormous powers under these laws. The DEA must be double careful

to use them wisely. It must follow all the rules, to the "t". Remember, the DEA did not itself conduct one iota of investigation in the Buzzy case. It simply took Buzzy's money from the Sheriff and followed blindly the assurances of the locals that Buzzy was a dope pusher, and promptly hit the road with poor Buzzy's \$12,360.

But the Buzzy Loot did not stay on the road for long. The Shell Game sent ninety percent of it back to the Sheriff. A pure windfall, or maybe to cover the wasted cost of the busted bust, Operation Swamp Storm. Did Congress ever intend the federal drug laws to be placed at the disposal of the Plaquemines Parish, Louisiana Sheriff without any supervision by anyone? We doubt it, but that's what has happened. The Shell Game.

It is very saddening to me as a lawyer to see what has happened in this case. How could we, as a nation, let a system evolve that can so callously trash the fundamental rights of any of us, like the DEA did to Buzzy? This question keeps nagging me in the shower. I'm not joking a bit. Yes, the drug problem is a nasty one and requires nasty solutions. But on the other hand, where is the control, where is the accountability, of the people who claim they fairly looked at Buzzy's situation and have concluded that his government is simply going to take away his money on these pitiful facts? Please, let this Court be that control, that accountability.

(1) The Port Eads Marina is located 110 miles southeast of New Orleans, near the seaward end of the South Pass of the Mississippi River, about 20 nautical miles from the nearest road. It is below the "frost line" on about the same latitude as Orlando, Florida, believe it or not. It is accessible only by boat or seaplane. The area has a long history, going back to the discovery of the Mississippi River from the sea by the Spanish in the 1500's. The marina is the legacy of Judge Leander Perez, the infamous ruler of Plaquemines Parish in the 60's and 70's. It is best known among sport fishermen for its close proximity to some of the best big game fishing in the Gulf. There are no banks (the kind you put cash money in) at Port Eads. In fact, other than the marina and the old French lighthouse, there is nothing there but roseau cane (sort of skinny bamboo), mud, and water.

(2) Louisiana has a comprehensive Civil drug forfeiture law patterned somewhat after the federal law. (La. R.S. 40:2601 et seq) Louisiana, however, has a misdemeanor exception. Section 2603(1) or Louisiana's law does not allow civil forfeiture if the crimes concurrently charged are only misdemeanors. Buzzy was arrested by the Diligent Deputies for first-offense possession of marijuana, a misdemeanor (La. R.s. 40:966 (D)) and possession of drug paraphernalia,

also a misdemeanor. (La. R.S. 40:1035) Both charges were subsequently dismissed by the local D.A. due to the total lack of evidence.

(3) See also, 21 U.S.C. 903, which mandates that the feds yield to the state law regarding the disposition of property under the jurisdiction of the state court, as there is no conflicting federal authority allowing the Sheriff-to-DEA transfer without state court authority.

(4) Long-time Secretary and de facto Mental Health Officer in the Buzzy Section of the law firm.

(5) Counsel for DEA and Buzzy stipulated that no state court order was obtained, and that the DEA gave the local Sheriff back \$11,124 (90%) of the Buzzy Loot on November 16, 1990. A joint motion for leave to supplement the record with this stipulation has recently been filed in this matter.

(6) The Confidential Informant turned out to be one of Buzzy's beaucoup nephews who was hired to work at the marina for the summer. Buzzy had fired him a couple of weeks before Swamp Storm for, oddly enough, using drugs on the job, and for allegedly stealing TV sets from houseboats in the marina. This C.I. is reportedly now safely tucked away in jail for unrelated transgressions. Pro Bono, and the other houseboat owners got their TV sets back, for whatever it's worth, since nothing but static can be picked up at Port Eads most of the time, anyway.

(7) Yes, that's really his name, and no, we can't pronounce it either. He's one of the Sheriff's Swamp Stormers.

(8) Locally known as a "Port Eads Briefcase" per the constant humidity that would make New Orleans seem like Phoenix. Pro bono, and everyone else, always keeps boat papers, fishing licenses, etc. in a zip-lock bag at Port Eads for fear they will otherwise turn to a sticky mush.

(9) The Stormers (or maybe it was Sammy The Dog) found four pills, two under a bed, and two in a bathroom. The pills turned out to have codeine in them. Buzzy had been in the hospital in Baton Rouge for his back trouble, and his orthopedic surgeon had given him the pills, per the good doctor's letter to Pro Bono. Buzzy was never charged with the Pill Crimes.

(10) Joe was the second leg of the pro bono undertaking. He was apparently so disgusted with the whole thing he left after the dismissal and has not been seen since.

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