

Criminal Law Updates 2024

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Taught from the True Blue Drew Book

Criminal Procedure Statutory Updates

New Crimes of Violence

- **Illegal use of weapons or dangerous instrumentalities.**
- **First degree vehicular negligent injuring, when the operator's blood alcohol concentration exceeds 0.20 percent by weight based on grams of alcohol per one hundred cubic centimeters of blood.**

Enhanced Penalties

- La. R.S. 14:32-Negligent homicide - Penalty raised to ten years.
- La. R.S. 14:34.9 Battery of a dating partner & 14:35.3- Domestic abuse battery involving strangulation - If the strangulation results in serious bodily injury, the offender . . . shall be imprisoned at hard labor for not less than five nor more than fifty years without benefit of probation, parole, or suspension of sentence.

Enhanced Penalties

- La. R.S. 14:64 Carjacking - whoever commits the crime of carjacking shall be imprisoned at hard labor for not less than five years nor more than twenty years. . . When serious bodily injury results shall be imprisoned at hard labor for not less than twenty years nor more than thirty years, without benefit.
- La. R.S. 14:134 – Malfeasance in office - Shall be imprisoned for not more than ten years.

La. R.S. 14:57.1- Vandalizing, tampering with, or destroying a crime camera system

- It shall be unlawful for any person to intentionally vandalize, tamper with, or destroy a crime camera system...
- “Crime camera system” includes any camera or license plate reader erected or installed for the purpose of observing or deterring illegal activity as well as any lights, mounting poles or brackets, actuator motors, computer control boards, connection interfaces, signage, software, protective housing, lenses, power supply systems, recording or battery backups, microphones, data connectivity hardware, or other component parts or ancillary equipment necessary for proper functionality and operation.

La. R.S. 14:61- Unauthorized entry of a critical infrastructure

- Definition of “critical infrastructure” now includes:
 - B(1) . . . liquefied natural gas. . . [and] water control structures including floodgates or pump stations, wireline and wireless communications and data network facilities.

La. R.S. 14:62- Simple burglary

- Added new definition
 - The unauthorized entering of any dwelling or other structure with the intent to temporarily or permanently deprive the owner, lessee, or tenant of full use of the dwelling or structure, or to temporarily or permanently assert any right of ownership or use of such property
- An offender shall be liable for any damage that has resulted from a violation of Paragraph (A)(2) of this Section.

La. R.S. 14:63- Criminal trespass; squatters

- "Remain in or upon property" . . . includes:
 - The continued presence of an occupant, as defined by Code of Civil Procedure Article 4704, for longer than five days after being served with written notice to vacate. . .
 - The continued presence of a squatter who has been directed to vacate by a lawful possessor either verbally, by written notice, or by posting of conspicuous signage advising that the property is privately owned and unlawful trespass is prohibited.
 - The continued presence of a person in violation of a temporary restraining order, preliminary injunction, or a permanent injunction.
- "Squatter" means any person who remains in or upon property to which he lacks a right of possession, ownership, occupancy, or a lease interest.

La. R.S. 14:64.4- Second Degree Robbery

- Amended Simple Robbery and Second Degree Robbery
 - Moved the language about retail establishments and three or more people from Simple Robbery to Second Degree Robbery and added additional penalty if the Second Degree Robbery is committed with a firearm.

La. R.S. 14:67-Theft

- If the offender commits the crime of theft of a package that has been delivered to an inhabited dwelling owned by another, he shall be imprisoned, with or without hard labor, for not more than two years, or may be fined not more than two thousand dollars, or both.
- If the offender commits an assault upon a store or merchant's employee who is acting in the course and scope of his employment duties, during the commission or attempted commission of theft, at least fifteen days of the sentence imposed . . . shall be served without benefit of probation or suspension of sentence.

La. R.S. 14:67.4- Anti-Skimming Act

- Definition of “Re-encoder” or scanning device for purposes of this act now includes:
- B(4) "Re-encoder" means an electronic device that places encoded information from the microchip or . . .
- (5) "Scanning device" means a scanner. . . any other electronic device that is used to access. . . information encoded on the microchip . . . of a payment card.
- C. It shall be unlawful for any person to do any of the following:
 - (3) Possess a re-encoder or scanning device with the intent to defraud.

La. R.S. 14:67.6- Mail theft

- Any of the following acts shall constitute mail theft:
 - (1) Removing mail from a mail depository or taking mail from a mail carrier with a postal service with an intent to steal.
 - (2) Obtaining custody of mail by fraud or deception with an intent to steal.
 - (3) Selling, receiving, possessing, transferring, buying, or concealing mail obtained by acts described in Paragraphs (1) or (2)... while knowing or having reason to know the mail was obtained illegally.
- An offense committed under this Section may be prosecuted in any of the following parishes:
 - (1) The parish where the offense occurred.
 - (2) The parish of residence or place of business of the direct or indirect victim.

La. R.S. 14:67.7- Theft or unauthorized reproduction of a mail receptacle key or lock

- Any of the following acts shall constitute theft or unauthorized reproduction of a mail receptacle key or lock:
 - (1) Stealing or obtaining by false pretense any key or lock adopted by a postal service for any box or other authorized receptacle for the deposit or delivery of mail.
 - (2) Knowingly and unlawfully making, forging, or counterfeiting any such key, or possessing any such key or lock adopted by a postal service that delivers mail with the intent to unlawfully or improperly use, sell, or otherwise dispose of the key or lock, or to cause the key or lock to be unlawfully or improperly used, sold, or otherwise disposed.

La. R.S. 14:72.2- Monetary instrument abuse

- A. Whoever makes, issues, possesses, sells, or otherwise transfers a counterfeit or forged monetary instrument of the United States, a state, or a political subdivision thereof an organization, **or a person . . .**
- B. Whoever makes, issues, possesses, sells, or otherwise transfers an implement designed for or particularly suited for making a counterfeit or forged monetary instrument with the intent to deceive **or defraud. . .**

La. R.S. 14:72.- Monetary instrument abuse

- Expands the definition of “forged” to include the following:
 - D(2). Forged also means the washing through the use of chemical solvents or physical removal of ink writing on a monetary instrument with the intent to defraud, including but not limited to the washing or physical removal of a name of a payee or dollar amount on a monetary instrument.
- It also expands the definition of “monetary instrument”:
 - (3)(a) A note, stock certificate, treasury stock certificate, . . . , check or draft. . .
- Added to the definition of “organization” is now:
 - (4) "Organization" means. . . limited liability company, company, federally insured financial institution

La. R.S. 14:81.6- Possessing, trafficking, or importing a child sex doll; reporting

- A person commits the crime of possessing a child sex doll by intentionally or knowingly possessing a child sex doll.
- A person commits the crime of trafficking a child sex doll by knowingly manufacturing, distributing, selling, transferring, offering to sell, advertising, providing, shipping, delivering for shipment, offering to deliver for shipment, or possessing with the intent to manufacture, distribute, sell, ship, or transfer a child sex doll.
- “Child sex doll” means an anatomically correct doll, mannequin, or robot that both:
 - (1) Has features of or features that resemble those of an infant or a child under eighteen years of age.
 - (2) Is intended to be used for sexual stimulation or gratification.

La. R.S. 14:87.1- Definitions

- (1)(a) "Abortion" or "induced abortion" means the performance of any act with the intent to terminate a clinically diagnosable pregnancy with knowledge that the termination by those means will, with reasonable likelihood, cause the death of the unborn child, whether or not the child survives. . .

La. R.S. 14:95- Illegal carrying of weapons

Illegal carrying of weapons is any of the following:

* * *

- **(5)(a) The intentional possession or use of a dangerous weapon by any person in any of the following locations:**
 - **(i) A law enforcement office, station, or building.**
 - **(ii) A detention facility, prison, or jail.**
 - **(iii) A courthouse or courtroom, provided that a judge may carry such a weapon in his own courtroom.**
 - **(iv) The state capitol building.**
- **(b) The provisions of this Paragraph shall not apply to a peace officer . . . in the performance of his official duties.**

La. R.S. 14:95- Illegal carrying of weapons

- Now reads:
- The provisions of ... this Section shall not apply to **any person who is eighteen** years of age or older **and** is not prohibited from possessing a firearm under R.S. 14:95.1, 18 U.S.C. 922(g), or any other state or federal law.
- **Any person lawfully carrying a handgun pursuant to Subsection M of this Section shall be subject to the restrictions contained in R.S. 40:1379.3(I), (M), (N), and (O) (concealed handgun permit statute).**

La. R.S. 14:95.1- Possession of firearm or carrying concealed weapon by a person convicted of certain felonies

- This Section shall also apply to any person who committed a felony-grade delinquent act . . .while in possession of a firearm, if adjudicated when that person was fifteen or sixteen years of age, and the person is under the age of twenty-two years at the time of the violation of this Section.
- The provisions. . .shall not apply to any person who has been accepted into military service as a member of any of the branches of the armed forces of the United States . . .the reserve components of the armed forces of the United States. . . or the Louisiana National Guard.

La. R.S. 14:95.5- Possession of firearm on premises of alcoholic beverage outlet

- Provides that persons with a concealed handgun permit are permitted to be on the premises where alcohol is legally sold or served.

La. R.S. 14:97.1- Solicitation on an interstate highway or in a public right-of-way

- Adds public right-of-way to solicitation statute:
- Solicitation on an interstate highway or in a public right-of-way is the intentional act of soliciting, begging. . . anything of value on any interstate highway, public right-of-way. . .

La. R.S. 14:98.1- Operating while intoxicated; first offense; Interlock device

- The court shall order that the offender not operate a motor vehicle during the period of probation for no less than six months unless any vehicle, while being operated by the offender, is equipped with a functioning ignition interlock device

La. R.S. 14:102.1-Cruelty to animals; simple and aggravated

- Adds additional penalties to the crime so that:
- The court may issue an order prohibiting the defendant from owning or keeping animals for a period of not more than one year.
- Whoever commits a second or subsequent offense of simple cruelty to animals. . . In addition, the court may issue an order prohibiting the defendant from owning or keeping animals for a period of not more than five years.
- In addition. . . the offender shall be ordered to undergo a psychological evaluation. . . and may be banned by court order from owning or keeping animals for a period of not more than ten years.

La. R.S. 14:102.5- Dogfighting; training and possession of dogs for fighting

- The following activities shall be admissible as evidence of a violation:
 - Possession or use of a bait dog to train another dog for dogfighting.
- "Bait dog" means a dog that is used as bait to train another dog to be more aggressive and accustomed to attacking other dogs for the purpose of dogfighting.

La. R.S. 14:303.3- Disturbing the peace; residences

- No person shall petition, picket, demonstrate, or assemble with other persons within fifty feet of an individual's residence in a manner which interferes, disrupts, threatens to disrupt, or harasses the individual's right to control or use his residence.
- "Residence" shall mean the dwelling, house, apartment, or other structure used in whole or in part as a home or place of abode of any individual.

La. R.S. 14:108- Resisting a peace officer

“Obstruction of” in addition to its common meaning, shall also mean the following:

* * *

Failure to provide or display the person's state issued driver's license or identification on the officer's request when the person is an operator of a motor vehicle, the person has been lawfully detained for an alleged violation of a law, and the officer has exhausted all resources at his disposal to verify the identity of the person.

La. R.S. 14:107.4- Unlawful posting of criminal activity for notoriety and publicity

- Posting of criminal activities in this section now includes “live stream or video:”

* * *

- For the purposes of this Section, "live-stream" shall mean a video of an event distributed on the Internet while the event is taking place

La. R.S. 14:109-Approaching a peace officer lawfully engaged in law enforcement duties

- No person shall knowingly or intentionally approach within twenty-five feet of a peace officer who is lawfully engaged in the execution of his official duties after the peace officer has ordered the person to stop approaching or to retreat.
- It shall be an affirmative defense. . . if the defendant can establish that the lawful order or command was neither received nor understood by the defendant nor capable of being received or understood under the conditions and circumstances that existed at the time of the issuance of the order.
- Misdemeanor

La. R.S. 14:110(A)(4)- Simple escape

- **Expands definition of simple escape to include:**
- **The intentional alteration, destruction, removal, or disabling of electronic monitoring equipment while participating in a home incarceration program.**

La. R.S. 14:112.22- Unlawful entry or reentry into the state of Louisiana by an alien

- The crime of unlawful entry or unlawful reentry is committed when an alien enters or reenters into this state and is unlawfully present in this state.
- First offense – misdemeanor
- Second offense – felony
- Exception if they have been granted asylum or if witness.

La. R.S. 14:130.1- Obstruction of justice

- The crime of obstruction of justice now includes:
- Contacting a family member of the victim in a manner that knowingly and intentionally violates the provisions of R.S. 46:1844(Y) (basic rights of victims).

La. R.S. 14:202.1- Residential contractor fraud; increased penalties

- A person sentenced under the provisions . . . of this Section **when the victim is sixty-five years of age or older**, in addition to any other penalties. . . shall be imprisoned, with or without hard labor, for not more than five years to be served concurrently with the sentence imposed.

La. R.S. 14:283.2- Nonconsensual disclosure of a private image

- A person commits the offense of nonconsensual disclosure of a private image when all of the following occur:
 - (1) The person intentionally discloses an image of another person . . . who is either engaged in a sexual performance . . . or who is engaged in sexual conduct.
 - (2) The person who discloses the image obtained it through unauthorized access or [when] a reasonable person would know or understand that the image was to remain private.

* * *

- "Unauthorized access" means the retrieval of an image from an individual's telecommunication device. . . without that individual's permission.

La. R.S. 14:337- Unlawful use of an unmanned aircraft system

- The list of prohibited places in which an unmanned aircraft system cannot be used now includes:
- The intentional use of an unmanned aircraft system over [a] . . . state building . . . **Can be seized by law enforcement or by court order and on second offense can be forfeited.**

La. R.S. 14:1382- Negligent carrying of a concealed handgun

- The intentional or criminally negligent carrying by any person, whether or not authorized or licensed to carry or possess a concealed handgun. . . when a law enforcement officer or others are placed in reasonable apprehension, or the law enforcement officer has a reasonable suspicion that the handgun may discharge.

La. R.S. 15:1352-Definitions

- Added the following crimes to RICO statute:
 - (71) R.S. 14:329.1 (Riot)
 - (72) R.S. 14:329.2 (Inciting to riot)
 - (73) R.S. 14:51.1 (Injury by arson)
 - (74) R.S. 14:52.1 (Simple arson of a religious building)
 - (75) R.S. 14:54.2 (Manufacture and possession of delayed incendiary devices; penalty)
 - (76) R.S. 14:54.3 (Manufacture and possession of a bomb)
 - (77) R.S. 14:55 (Aggravated criminal damage to property)
 - (78) R.S. 14:56.5 (Criminal damage to historic buildings or landmarks by defacing with graffiti)
 - (79) R.S. 14:61.1 (Criminal damage to a critical infrastructure)
 - (80) R.S. 14:71.1 (Bank fraud)
 - (81) R.S. 14:34.2 (Battery of a police officer)
 - (82) R.S. 14:40.1 (Terrorizing; menacing)
 - (83) R.S. 14:63.4 (Aiding and abetting others to enter or remain on premises where forbidden)
 - (84) R.S. 14:96 (Aggravated obstruction of a highway of commerce)
 - (85) R.S. 14:97 (Simple obstruction of a highway of commerce)
 - (86) R.S. 14:225 (Institutional vandalism)
 - (87) R.S. 14:327 (Obstructing a fireman)

La. R.S. 32:65- Drag racing – impound car

- Can impound car for up to 14 days to gather evidence.
- Owner (if not driver) may claim the vehicle from the impound facility once notified by law enforcement.
- If it's a rental, only the driver of the vehicle shall be subject to higher fines and the total cost of impound fees. The car rental agency may claim the vehicle from the impound facility once notified by law enforcement.

La. R.S. 40:1379.1.3- Carrying of concealed firearms by qualified law enforcement officers

- B.(2)(a). A person who meets the qualifications of R.S. 14:95(M) shall not be required to possess a valid concealed handgun permit.
..
- No concealed handgun may be carried into and no concealed handgun permit shall be valid or entitle any permittee to carry a concealed handgun in any facility, building, location, zone, or area in which firearms are banned by state or federal law.

La. R.S. 40:1379.1.3- Carrying of concealed firearms by qualified law enforcement officers

- No business organization shall deny entry or otherwise prohibit a qualified law enforcement officer who is lawfully carrying a concealed firearm from entering a venue.
- "Business organization" means a sole proprietorship, partnership, corporation, limited liability company, or other business association. . .
- "Venue" means a physical location open to the public that is operated, managed, owned by, or otherwise under the control or authority of a business. . .

La. R.S. 40:1379.3- Statewide permits for concealed handguns

- No individual to whom a concealed handgun permit is issued or a person carrying a handgun pursuant to R.S. 14:95(M) may carry and conceal such handgun while under the influence of alcohol or a controlled dangerous substance. . . A permittee or person carrying a handgun shall be considered under the influence as evidenced by a blood alcohol reading of .05 percent or greater. . .
- Misdemeanor

La. R.S. 40:2405.8- Additional peace officer training requirements

- (1) The council shall develop and continuously update trauma informed training materials related to domestic violence, sexual assault, and sex trafficking in its basic and in-service training curriculums.
- (2) . . . trauma-informed materials shall include skills, practices, and leadership relating only to domestic violence, sexual assault, and sex trafficking.
- (3) The initial orientation. . . shall be classroom instruction and shall be conducted at a P.O.S.T. accredited academy or a P.O.S.T. approved training center. . .
- (4) All peace officers employed on August 1, 2024, who have been employed for one year or more, shall complete the training within one year after the curriculum has been developed and approved by the council.

Controlled Substances

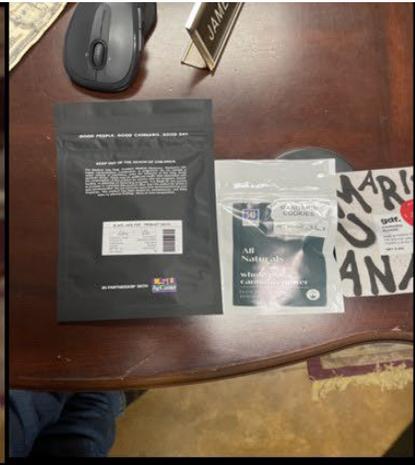
Prescription Marijuana



They do not prescribe cookies or brownies.







La. R.S. 40:964- Composition of schedules

- Schedules IV added the following drugs:
- **Mifepristone, Misoprostol. (Abortion pill)**
- **It shall not be a violation of this Subsection for a pregnant woman to possess mifepristone or misoprostol for her own consumption.**

La. R.S. 40:967.1 -Distribution of fentanyl with certain characteristics

- "Reasonable appeal to a minor" shall mean a design of the fentanyl or the fentanyl's packaging that, due to the shape, color, taste, or design, includes but is not limited to a resemblance of any of the following:
 - (a) A noncontrolled substance that is primarily consumed by and marketed to minors.
 - (b) The shape of an animal, vehicle, person, or character.
 - (c) Food or beverage that is attractive to minors and that is commonly sold in retail establishments, regardless of whether the food or beverage is generic, trademarked, or a branded product.
 - (d) Candy.
- 25 – 99 years without benefit.



La. R.S. 40:1025- Marijuana Paraphernalia

- Adds penalty for possession for marijuana paraphernalia:
- The penalty for possessing drug paraphernalia intended for, or used solely for, the inhalation, ingestion, epidermal or sublingual absorption, or other method of introducing marijuana or marijuana derivatives into the human body are as follows for quantities of paraphernalia not exceeding those required for individual personal use:
 - (1) On a first conviction, a fine of one hundred dollars.
 - (2) On a second conviction, a fine of five hundred dollars.
 - (3) On a third. . . conviction, a fine of two thousand five hundred dollars

AI – Generated Images

R.S. 14:73.13- Unlawful deepfakes

- Can't create, possess, distribute, sell, etc. a deepfake depicting a minor engaged in sexual conduct
- Can't create, possess, distribute, sell, etc. a deepfake depicting another person (without their consent) engaged in sexual conduct
- Serious felony –without benefit.

R.S. 14:73.13- Unlawful deepfakes

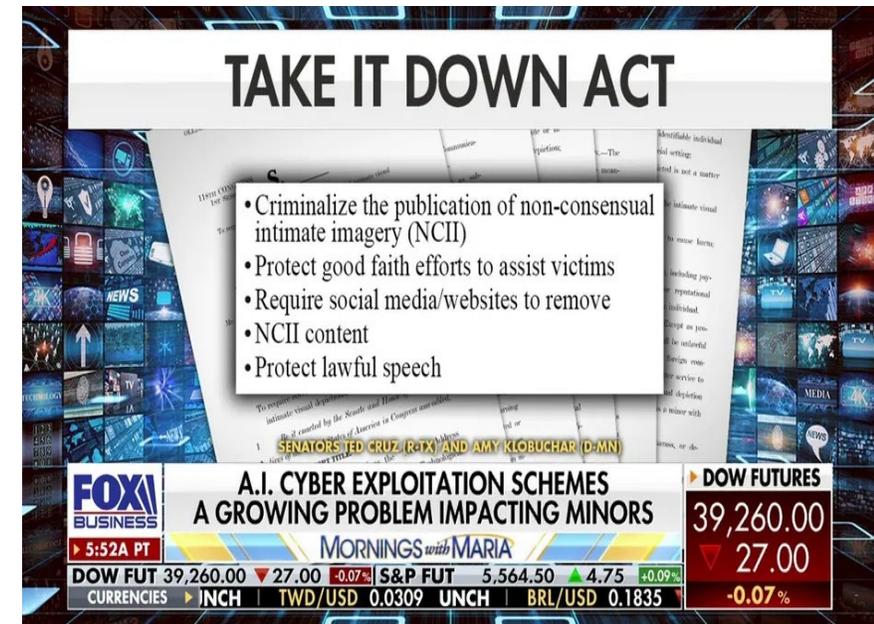
- “Deepfake” means any audio or visual media in an electronic format, that is created, altered, or digitally manipulated in a manner that would falsely appear to a reasonable observer to be an authentic record of the actual speech or conduct of the individual or replace an individual's likeness with another individual and depicted in the recording.
- “Deepfake” does not include any material that constitutes a work of political, public interest, or newsworthy value, including commentary, criticism, satire, or parody, or that includes content, context, or a clear disclosure visible throughout the duration of the recording that would cause a reasonable person to understand that the audio or visual media is not a record of a real event.

R.S. 14:73.14-Unlawful dissemination or sale of images of another created by artificial intelligence

- Cannot with the intent to coerce, harass, intimidate, or maliciously disseminate or sell any video or still image created by AI that depicts another person who is totally nude or in a state of undress so as to expose the genitals, pubic area, buttocks, or female breast, when the person disseminating the video or still image knows or has reason to know that he is not licensed or authorized to disseminate or sell such video or still image.
- A violation of this Section may be prosecuted in the parish where the unlawful act occurred or where any video or still image was created, produced, reproduced, found, stored, received, or possessed in violation of this Section.
- Misdemeanor

AI cyber exploitation victim speaks out

- 14-year-old Texas student discovered deepfake nude images of herself had been circulated around her school last October.
- “[They were going] all around school — Snapchat, Instagram, throughout all different social medias.”
- It was discovered later that a male classmate orchestrated the scheme by taking two photos from her private Instagram account and rendering her nude using AI software. The student had also done this to two of the victim’s friends.
- Sen. Ted Cruz and Minnesota Democratic Sen. Amy Klobuchar are two among the bipartisan lot of lawmakers sponsoring the “Take it Down Act,” which would criminalize the publication of non-consensual intimate imagery, require social media platforms to remove the content.



La. Ch. C. art. 804- Definitions

- Before March 1, 2019, and on or after April 19, 2024, "child" means any person under the age of twenty-one, including an emancipated minor, who commits a delinquent act before attaining seventeen years of age.
- From March 1, 2019, and until June 30, 2020, "child" means any person under the age of twenty-one, including an emancipated minor, who commits a delinquent act on or after March 1, 2019, until June 30, 2020, when the act is not a crime of violence as defined in R.S. 14:2, and occurs before the person attains eighteen years of age.
- From July 1, 2020, until April 19, 2024, "child" means any person under the age of twenty-one, including an emancipated minor, who commits a delinquent act on or after July 1, 2020, until April 19, 2024, and before the person attains eighteen years of age

Code of Criminal Procedure Updates

La. C. Cr. P. art. 234 - Booking photographs

- New law removes limitation of the release and dissemination of mugshots.



La. C. Cr. P. art. 335 Rule to show cause; bond forfeiture

- The time period for filing a rule to show cause to obtain a judgment of bond forfeiture **shall be within five years** after the notice of warrant for arrest is sent.

La. C. Cr. P. art. 611-Venue; trial where offense committed

- If the offender is charged with a violation of R.S. 14:110 (simple escape), the offense is deemed to have been committed in either of the following:
 - (1) The parish of the court that ordered or sentenced home incarceration, confinement, or any other legal restraint.
 - (2) The parish where any act or element occurs in violation of R.S. 14:110.

New Cases

United States v. Campos-Ayala (5th Cir. 6/7/24)

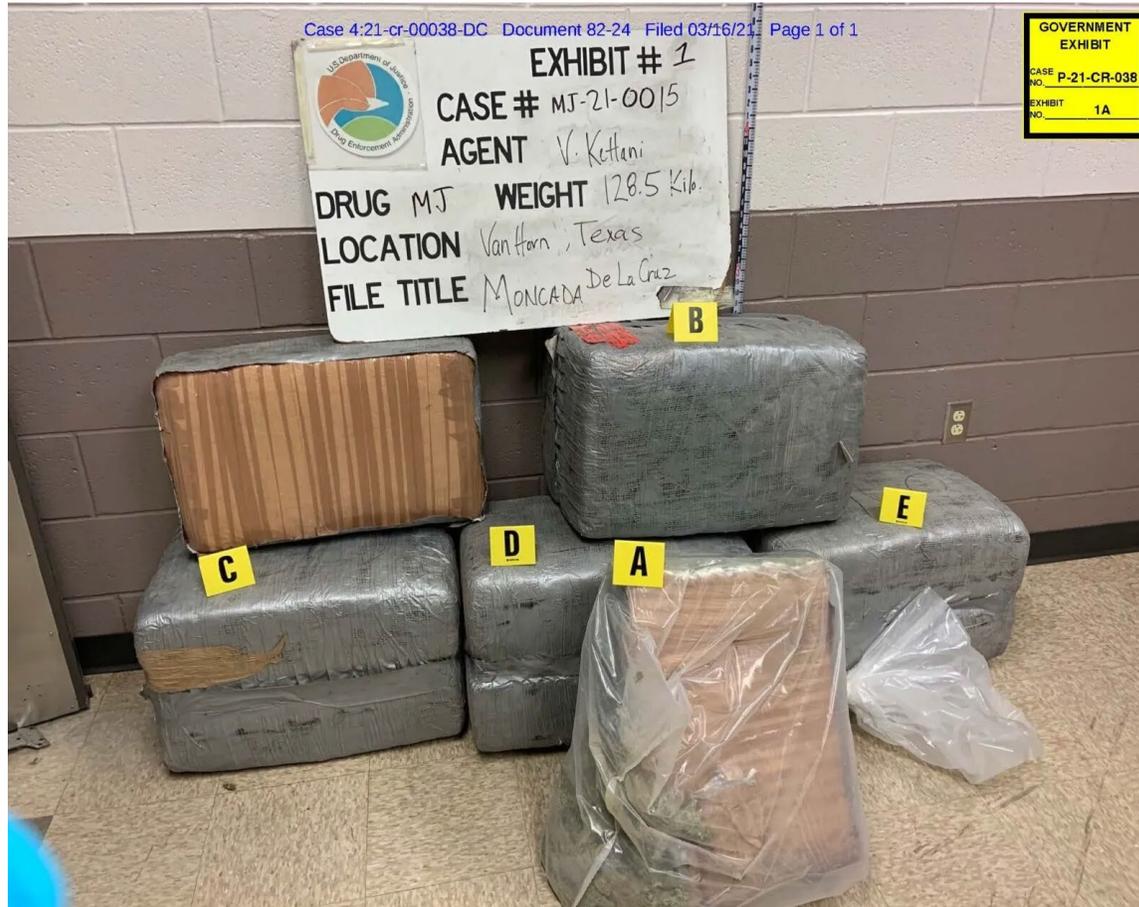
- Facts: Border Patrol in Van Horn received a phone call from a “concerned citizen” that a group of people had loaded large rectangular bundles into a car at a rest stop.
- Found 283 pounds of marijuana.
- Campos- Ayala said “that’s just the way things are and I was in possession...”
- Found guilty by jury.
- Constructive possession and Miranda issues on appeal. Initially, conviction overturned.
- Rehearing – June 2024

United States v. Campos-Ayala



- A person has constructive possession by (1) ownership, dominion or control over the item itself or (2) dominion or control over the premises.
- The government must establish an adequate nexus between the accused and the prohibited substance; mere presence in the area where drugs are found is insufficient to support a finding of possession.
- The evidence of possession of a controlled substance is insufficient where it has shown only that the defendant ran with bad company.
- Questions about presence of guns or drugs, in early phase of traffic stop, do not necessarily amount to custodial restraint, for the purpose of Miranda.

United States v. Campos-Ayala



- Convictions affirmed.

United States v. Wright, 74 F.4th 722 (5th Cir. 2023)

- Dispatch received a “suspicious vehicle call” on a regular phone line. Caller told where a gold Toyota Corolla was parked and that the occupants were drug dealers.
- Officer was dispatched and discovered the vehicle as described.
- Vehicle later searched, found a gun. Convicted felon.
- Defendant was indicted on one count of being a felon in possession of a firearm. He moved to suppress the evidence of the weapon, claiming that the gun was the fruit of an unlawful seizure because the officer lacked reasonable suspicion to initiate a “*Terry* stop.”
- District Court: denied the motion to suppress
 - Didn’t get enough facts in first hearing so had to have another hearing.

United States v. Wright , 74 F.4th 722, 727 (5th Cir. 2023).

- Fifth Circuit concluded:
 - That the officer had a particularized and objective basis for suspecting that a suspect was engaged in criminal activity, and thus, a *Terry* stop did not violate the Fourth Amendment.
 - Touched on doctrine of collective knowledge (dispatcher and officer).
 - Didn't matter that tipster did not use 911 to make his report.
 - Didn't matter that officer did not witness any criminal activity.
 - *Terry* stop justified by:
 - Reliable anonymous tip (caller actually testified at the motion to suppress hearing).
 - Confirmation by officer of the tip within minutes.
 - Officer knew area known for criminal activity.
 - Suspect got out of car after being told to stay in the car.

United States v. Clayton, 98 F.4th 256 (5th Cir. 2024)

- Three month drug trafficking investigation into Clayton.
- Video surveillance.
- GPS tracking devices on vehicles.
- Mother visited multiple pharmacies in Texas.
- RCI information about buying heroin and deliveries twice a month.
- Obtained search warrants for home and two vehicles.
 - But they were not executed immediately.
 - After a couple of weeks, got new SW for home but not vehicles.
- Executed SW at the home. Stopped one of the vehicles in immediate vicinity. Found drugs and money in the vehicle.

United States v. Clayton

- Did not verbally invoke Miranda rights on side of the road.
- Later asked about stuff in the car and stated everything belonged to him.
- Filed motion to suppress the evidence found in the car as well as statement about what was found.
- Fifth Circuit:
 - Held that a reasonable person would have believed that evidence of the drug trafficking would be present in the car at the time the stop was effectuated.
 - Police had probable cause, the automobile exception applies, and officer's search of the vehicle was not a violation of the 4th Amendment.
 - Clayton failed to properly invoke his 5th Amendment right to silence.

Qualified Immunity

Reitz v. Woods 85 F.4th 780 (5th Cir.)

- Using a blocked number, an anonymous individual twice called 9-1-1 in Abilene, Texas, relaying a serious threat of gun violence against officers and an alleged hostage while providing his location.
- Abilene Police responded, only to find the apartment occupied by Plaintiff-Appellant Robert “Bobby” Reitz and his dog, with no hostage or lethal firearm in sight. Reitz was detained, taken to the police station, and ultimately released when an investigation proved inconclusive.
- Officer Woods (initial officer) told him to not talk to reporters.
- Officer Wilson then assigned case to follow up. Believed it was Reitz on the 911 call. Referred to DA’s office.
- DA investigator Tatum got the warrant.
- After getting the warrant, had the voice analyzed. Dismissed the case.

Reitz v. Woods

- All three officers sued by Reitz - First and Fourth Amendment violations.
- Court's analysis of First Amendment Claim
 - Was he engaged in constitutionally protected activity, (2) did defendant's actions cause him to suffer injury that would chill person of ordinary firmness from continuing to engage in that activity, and (3) were defendant's adverse actions substantially motivated against plaintiff's exercise of constitutionally protected conduct?
 - This claim dropped against Woods.

Reitz v. Woods

- Court's analysis of Fourth Amendment Claims
 - Probable cause" means fair probability that defendant committed crime, which requires more than bare suspicion but less than preponderance of evidence.
 - Woods arrest of Reitz at home not based on probable cause. Not entitled to qualified immunity.
 - Wilson had subjective impression that the 911 caller was Reitz. Entitled to qualified immunity.
 - Police officers who reasonably but mistakenly conclude that probable cause is present are entitled to qualified immunity.
 - Tatum had qualified immunity for getting the warrant based on information they had at the time.

Bailey v. Iles, Bailey v. Iles, 87 F.4th 275 (5th Cir. 2023)

- Defendant made a post concerning COVID-19, stating that sheriff's deputies would shoot COVID-19 "infected" persons "on sight."



Bailey v. Iles

- Without an arrest warrant, Detective Iles and numerous deputies with bullet proof vests and weapons drawn went to the defendant's home and arrested him for Terrorizing.
- Bailey said it was a joke.
- DA eventually dismissed the charges.
- The plaintiff brought a §1983 action against detective and sheriff, alleging false arrest under the Fourth Amendment, First Amendment retaliation, as well as state law claims for malicious prosecution and false arrest, arising from his arrest.

Bailey v. Iles

- District Court: granted Defendants' motion and dismissed the plaintiff's claims with prejudice. The plaintiff appealed.
- Fifth Cir.: Reversed the dismissal
 - Plaintiff's speech was protected by the First Amendment.
 - No probable cause for arrest.
 - No qualified immunity.

Barnes v. Felix, 91 F.4th 393 (5th Cir. 2024)

- Officer Felix responded to a radio broadcast for a vehicle with outstanding toll violations.
- Made stop. No documentation for the car. Driver said might be in the trunk.
- According to the dashcam:
 - The driver was ordered to open the trunk.
 - The left blinker was on, indicating the keys were in the ignition.
 - The driver opened the trunk.
 - The blinker went off.
 - The driver is asked to exit the vehicle.
 - The driver door opens, the blinker comes back on.
 - Officer draws and points his weapon, ordered the driver not to move as the vehicle begins to move.
- Fired two shots into the vehicle before the vehicle came to a stop. The driver was later pronounced dead.

Barnes v. Felix

- The driver's mother filed suit.
- Defendants moved for summary judgment, arguing that Officer Felix did not violate the driver's constitutional rights and was entitled to qualified immunity.
- District Court: granted Defendants' motion for summary judgment.
- Fifth Cir.: found that the officer's use of deadly force against the driver during a traffic stop was not excessive, where the officer was hanging onto the moving vehicle and believed it would run him over, which could have made the officer reasonably believe his life was in imminent danger.
- The court reasoned that the reasonableness of a police seizure is determined based only on the "moment of threat." This "moment of threat" test means that "the focus of the inquiry should be on the act that led the officer to discharge his weapon."

Questions?