

SUPREME COURT OF LOUISIANA

99-K-3304

STATE OF LOUISIANA

versus

PAUL JAMES

ON WRIT OF CERTIORARI TO THE
FIRST CIRCUIT COURT OF APPEAL

KNOLL, Justice (concurring)

For the following reasons, I concur with the majority in the reversing of the court of appeal's decision. In Brown, the plurality noted that the jurisprudence reflects "the rule that if, while lawfully engaged in an activity in a particular place, police officers perceive a suspicious object, they may seize it immediately." Texas v. Brown, 460 U.S. 730, 739 (1971). The rule "merely reflects an application of the Fourth Amendment's central requirement of reasonableness to the law governing seizures." Id. Here, the majority held that LaPueble "could not particularize the association of film canisters with narcotics trafficking to the circumstances as he knew them at the time he reached into relator's pockets." I concur to emphasize that the officer practically had enough information to provide him with probable cause that the film canister contained contraband without the officer's ability to feel the contraband due to the hard case of the canister. The record reveals the following facts that raised LaPueble's suspicion when he felt the film canister: (1) he was an experienced officer who worked narcotics for three to four year and made in the area of three hundred stops; (2) over a third of the stops he made, about one hundred, involved drugs concealed in film canisters; (3) when asked what he was doing in the store parking lot, the defendant said that he was letting his old dog take a break under the tree towards the back of a building; (4) the defendant had no film equipment in his possession as

stipulated by the parties. However, the film canister and its contents were not immediately apparent. LaPueble could not feel the object's contour and mass and make its identity immediately apparent. His seizure of the film canister went *beyond the sense of touch* to determine the incriminating character of the film canister. LaPueble had to make a *further search* of the object in the defendant's pocket to determine its incriminating character. LaPueble had to reach into the defendant's pocket, remove the canister, shake it, and then open it to look inside before he could determine the object's incriminating character. Clearly, this search constitutes an invasion of a legitimate expectation of privacy. It cannot be said the film canister was in open view, nor was it viewed by LaPueble from a lawful vantage point. The search and seizure of the film canister was not a search independent of the initial intrusion that gave LaPueble his vantage point. Notwithstanding, I recognize that there are circumstances under which it may be reasonable to seize film canisters and other containers despite the inability of the officer to "feel" the contraband inside the container if the surrounding circumstances make it immediately apparent that the container holds contraband. However, in the present case, those surrounding circumstances are not sufficient.