

05/06/2011 "See News Release 027 for any Concurrences and/or Dissents."

**SUPREME COURT OF LOUISIANA**

**No. 11-KK-0569**

**STATE OF LOUISIANA**

**VERSUS**

**MARK RAINEY**

*On Writ of Certiorari to the Court of Appeal, Fourth Circuit, Parish of Orleans*

**PER CURIAM<sup>1</sup>**

Writ granted.

The trial court erred in suppressing the evidence for lack of probable cause to arrest defendant for possession of a firearm. The record shows that defendant's arm movement from the driver to passenger side of the vehicle and the unusual location of the firearm under the driver's right thigh provided probable cause for the defendant's arrest.

Constructive possession occurs when a firearm is subject to the defendant's dominion and control. **State v. Johnson**, 2003-1228 (La. 4/14/04) 870 So.2d 995, 998. Defendant's abrupt arm motion witnessed by police as they approached the vehicle during the traffic stop and the location of the firearm were sufficient to cause the police to believe that more likely than not the defendant had dominion and control over the firearm to establish constructive possession. The fact that the firearm was ultimately found underneath the driver's right thigh when police reached the side of the vehicle does not detract from a finding of probable cause because dominion and control constitute possession even if temporary or if shared.

***Id.***

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<sup>1</sup> Kimball, C.J., not participating in the decision.

