ANSWER TO MPT

Argument

I. Officer Simon Had No Reasonable Suspicion to Justify the Stop and Interrogation of McLain.

A police officer may not stop and interrogate a person suspected of criminal conduct unless the officer has "'a reasonable suspicion, grounded in specific and articulable facts, that the person [is] involved in criminal activity' at the time." *State v. Montel* (Fr. Ct. App. 2003) *(citing Terry v. Ohio,* 392 U.S. 1 (1968).

While an anonymous tip from an informant who has proven reliable to police in the past may provide a reasonable suspicion, "an anonymous tip is different; it must be corroborated, such as by investigation or independent police observation of unusually suspicious conduct, and must be 'reliable in its assertion of illegality, not just in its tendency to identify a determinate person.'" *State v. Montel* (Fr. Ct. App. 2003) *(citing Florida v. J.L.,* 529 U.S. 266, 272 (2000). A stop "based solely on information received by an informant without [an independent investigation verifying the informant's investigation]" is invalid. *State v. Montel* (Fr. Ct. App. 2003) (discussing with approval *State v. Sneed* (Fr. Ct. App. 1999) wherein the *Sneed* court held that a tip from an untested confidential informant that a house was being used to peddle heroin was not sufficient to justify the search of an individual visiting the house where heroin was avertedly being peddled).

Officer Simon's stop and interrogation of McLain was exactly the sort of stop and interrogation based solely on an anonymous tip that is forbidden by *Montel*, and as the stop and interrogation violated McLain's Fourth Amendment rights, all evidence and statements following the stop must be suppressed under the fruit of the poisonous tree doctrine.

According to Officer Simon, McLain was stopped on the basis of the anonymous tipster's tip, and Officer Simon alluded to the justification that he further stopped McLain on the basis of his presence in a high-crime area. However, the averred high rate of criminal activity referred to by Officer Simon related to shoplifting and vandalism, and such crimes are irrelevant to the drug activity alleged by the anonymous tipster. In any event, any such assertion by Simon is irrelevant, as "a person's mere presence in a high-crime area known for drug activity does not, by itself, justify a stop[,]" and presence in a high-crime area does not suffice as sufficient corroboration to an anonymous tip to constitute reasonable suspicion justifying a stop and interrogation. *State v. Montel* (Fr. Ct. App. 2003).

Further, the anonymous tipster did not even allege and criminal activity. The tipster merely speculated that a person buying cold medicine and coffee filters, and commenting on the sale of engine-starter fluid, was engaged in the manufacture of methamphetamine. As Officer Simon testified, the purchase of all these items is perfectly legal, and as Officer Simon testified, the tipster omitted that McLain also purchase other innocuous and legal items.

Moreover, the situation here is distinguishable from that in *State v. Grayson* (Fr. Ct. App. 2007). In *Grayson,* the Franklin Court of Appeal held that an anonymous tip was "sufficiently corroborated [by independent police investigation]" as the tipster correctly predicted specific behavior that an individual would engage in, and the police then watched the individual to verify the tipster's reliability by cross-referencing the individuals behavior to the tipster's predictions. The tipster was able to accurately predict that the individual stopped left a particular apartment building, entered a particular vehicle with a broken tail-light, and followed a route described by the tipster. *Id.*

Here the anonymous tipster was only able to provide a general description of a "skuzzy looking" individual matching McLain's general description. Moreover, the anonymous tipster stated the "skuzzy looking" individual was at the Oxford Street Shop-Mart, when in fact, Officer Simon testified McLain was neither at Shop-Mart nor in Shop-Mart's parking lot. Further, the anonymous tipster reported that the "skuzzy looking" individual had purchased coffee filter, but omitted the fact he purchased coffee. According to Officer Simon coffee filters are commonly used to manufacture methamphetamine, but as a matter of common knowledge coffee filters are assuredly more often purchased to brew and manufacture coffee.

Unlike *Grayson,* here the tipster provided inaccurate information that Officer Simon actually proved false by his independent investigation. The tipster's vague and speculative assertions of criminal activity were not only uncorroborated by independent police investigation, but were proven false by independent police investigation. The tipster's observations were false, involved a pyramid of assumptions based upon inaccurate and incomplete evidence, and in no way justified a stop and interrogation of McLain.

Thus, here, as in *Montel,* the tip from the unidentifiable caller was "hearsay . . . there was no way of knowing [the unidentified tipper's] state of mind at the time [the tipper] gave the information, or whether [the tipper] could reliably and accurately relay events." *State v. Montel* (Fr. Ct. App. 2003). As independent investigation from Officer Simon proved the anonymous tipper's tip false and omissive, Officer Simon had no reasonable suspicion of criminal activity when he stopped McLain, and as a result, both the stop and subsequent search violated McLain's Fourth Amendment rights under the Federal and State Constitution. All evidence and testimony subsequent to Officer Simon's stop and interrogation of McLain must be suppressed, as such testimony and evidence

was obtained in violation of McLain's Fourth Amendment rights and is thus excludable under the fruit of the poisonous tree doctrine.

II. Count Two of The Criminal Complaint Must be Dismissed as it is a Lesser Included Offense of Count Three.

When the same series of events gives rise to two separate statutory actions, and the elements of a "greater" statutory action necessarily includes the elements of the other "lesser" statutory action, prosecution of both crimes violates the double jeopardy clause of the United States Constitution. *See State v. Decker* (Franklin Supreme Court 2005) (citing *Blockburger v. United States,* 284 U.S. 299 (1932)); *see also* Franklin Criminal Code Section 5(2). A lesser included offense is necessarily included within the greater offense if it is impossible to commit the greater offense without having committed the lesser offense. *Id.*

Moreover, "Franklin case law does not require a strict textual comparison such that only where *all* the elements of the compared offenses coincide *exactly* will one offense be deemed a lesser-included offense of the greater . . . if, in comparing the elements of the offenses in the abstract, the offenses are so similar that the commission of one offense will necessarily result in the commission of the other, then the offenses are multiplicitous." *State v. Decker* (Franklin Supreme Court 2005).

Here, Defendant McLain has been charged with both (1) the manufacture of methamphetamine and (2) possession of equipment or supplies with intent to manufacture methamphetamine.

The criminal code prohibiting manufacture of methamphetamine is codified in Franklin Criminal Code Section 51. Section 51 states in part that "[i]t is unlawful for any person to knowingly manufacture methamphetamine. 'Manufacture' means to produce, compound, convert, or process methamphetamine, including to package or repackage the substance, either directly or indirectly by extraction of substances of natural origin or by means of chemical synthesis." Franklin Criminal Code Section 51.

The criminal code prohibiting possession of equipment or supplies with intent to manufacture methamphetamine is codified in Franklin Criminal Code Section 43. Section 43 states in part that "[n]o person shall knowingly possess equipment or chemicals, or both, for the purposes of manufacturing a controlled substance, to wit, methamphetamine . . . ." Franklin Criminal Code Section 43.

Thus, under the Franklin Criminal Code, to unlawfully manufacture methamphetamine, one must take raw elements or chemicals and through scientific process or chemical synthesis create methamphetamine. Further, under the Franklin Criminal Code, the possession of the raw elements of chemicals or the scientific

equipment necessary to synthesize methamphetamine is considered criminal possession of equipment or supplies with intent to manufacture methamphetamine.

As a matter of law and logic, the crime of unlawfully possessing equipment or supplies with intent to manufacture methamphetamine is the lesser included offense of the crime of manufacturing methamphetamine. Under the statutory definition of "manufacture[,]" one must have the raw elements necessary to manufacture methamphetamine in order to actually manufacture methamphetamine. The possession of these raw elements is a necessary element in the crime of the unlawful production of methamphetamine.

As one cannot make an omelet without eggs, one cannot manufacture methamphetamine without the raw materials necessary to do so. As Officer Simon testified, the items McLain purchased or possessed (coffee filters, Sudafed cold medicine and matches) were all simply the raw elements that could allegedly be used for the manufacture of methamphetamme. Therefore, one must violate the statute prohibiting possession of the raw materials to manufacture in order to subsequently run afoul of the statute prohibiting manufacture.

Much as the elements of first-degree burglary necessarily include the elements of assault, the elements of manufacturing methamphetamme necessarily include the elements of unlawfully possessing equipment or supplies with intent to manufacture methamphetamme. *See State v. Decker* (Franklin Supreme Court 2005) (holding that since first-degree burglary requires intent to cause bodily injury and the causation of serious injury, and since assault required the same two elements, assault is a lesser included offense of first degree burglary). Just as the crime of first-degree burglary necessarily requires the commission of assault, the crime of manufacturing methamphetamme requires the commission of the crime of unlawfully possessing equipment or supplies with intent to manufacture methamphetamme.

The fact that the literal language of the statutes does not overlap is irrelevant, as under *Decker* a literal linguistic overlap is unnecessary for one crime to be the lesser included offense of another.

Moreover, the situation at hand differs from that in *State v. Jackson* (Fr. Ct. App. 1992), wherein possession of drug paraphernalia was found to be a separate and distinct offense from possession of drugs. One can possess drugs without possessing paraphernalia, yet here, one cannot manufacture methamphetamme without with raw materials to do so.

Count Two of the Criminal Complaint (for unlawfully possessing equipment or supplies with intent to manufacture methamphetamme) must be dismissed as it is a lesser included offence of Count Three (for unlawfully manufacturing methamphetamme), and

thus prosecution of McLain for both crimes would violate the double jeopardy clause of the United States Constitution and constitute reversible error. *See State v. Decker* (Franklin Supreme Court 2005).