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Argument

Issue 1

The investigating officer lacked reasonable suspicion to stop the defendant's vehicle and as a result, both the stop and the subsequent search violated the defendant's Fourth Amendment rights under the United States Constitution.

A person's mere presence in a high-crime area in addition to an anonymous caller's tip does not, by itself, justify a stop. *State v. Montel*, Franklin Court of Appeal (2003). In *State v. Montel*, the police officer stopped the defendant in a high-crime area known for drug activity on the basis of a tip by an informant who did not have personal knowledge of the facts - the police officer used a tip based on hearsay, where the declarant was anonymous. The court held that a person's mere presence in a high-crime area known for drug activity does not, by itself, justify a stop.

In this case, Officer Ted Simon had no reasonable suspicion to

stop the defendant's vehicle because Officer Simon just received an anonymous call and acted solely on the information he received from the anonymous informant. The State might argue that the Oxford Street Shop-Mart is a high-crime area because there have been reports of shoplifting and vandalism, but this is the first and only report of someone purchasing items for the alleged manufacture of methamphetamine at that Shop-Mart store. There never have been reports of drug activity or drug manufacturing before the instant case. The anonymous caller's tip just mentioned a few items, that in and of itself, are legal to purchase. Just because the defendant was merely present at the Oxford Street Shop-Mart purchasing regular items at a convenience store is not enough to justify the stop of the defendant's vehicle.

An anonymous tip corroborated by independent police work is only sufficient to provide reasonable suspicion to make the stop of a vehicle only under the totality of the circumstances. *State v. Grayson*, Franklin Court of Appeal (2007). In *State v. Grayson*, an anonymous caller reported that the defendant would be leaving an apartment building at a particular time in a particular vehicle with a broken right taillight and the defendant would be traveling to a particular motel and would be carrying cocaine in a briefcase, but the police officer observed a vehicle matching the caller's description and observed the defendant leave the apartment, matching the anonymous caller's description, and enter the vehicle and drive off. The court held that the anonymous call and the police officer's observations were enough to provide reasonable suspicion. The court reasoned that the police officer's independent police work and the police officer's independent observations, coupled with the anonymous caller's tips, provided enough reasonable suspicion for the stop, which was appropriate under the totality of the circumstances.

The instant case is distinguished from the facts in *State v. Grayson* in that Officer Simon did not personally observe the defendant enter the vehicle. Also, the anonymous informant in the instant case only stated that the defendant bought two boxes of Sudafed cold medicine and some coffee filters and overheard the defendant ask the cashier if Shop-Mart had quit selling engine-starter fluid. None of these factors indicate actual knowledge of drug use, drug possession, or drug manufacturing. Even Officer Simon stated in the suppression hearing that it is not a crime for an individual to buy two boxes of Sudafed or coffee filters. In *State v. Grayson*, the anonymous caller actually had information that the defendant had possessed cocaine in his briefcase, whereas the anonymous informant in the instant case did not supply enough information to indicate the presence of criminal activity.

Issue 2

Count 2, which states the lesser-included offense of "Possession of Equipment or Supplies with the Intent to Manufacture Methamphetamine," must be dismissed if the defendant is charged with "Manufacture of Methamphetamine."

A lesser-included offense is necessarily included within the greater offense if it is impossible to commit the greater offense without first having committed the lesser offense. *State v. Decker*, Franklin Supreme Court (2005). Franklin Criminal Code § 51 states that it is unlawful for any person to knowingly manufacture methamphetamine, which includes packaging or repackaging the substance either directly or indirectly by extraction from substances of natural origin or by means of chemical synthesis. Franklin Criminal Code § 43 states that no person shall knowingly possess equipment or chemicals or both for the purpose of manufacturing a controlled substance, including

methamphetamine. In order to package and repackage the substance of methamphetamine, one must possess equipment or chemicals for the purpose of manufacturing methamphetamine. The

END OF EXAM

Seperac
NY Bar
Essay/MPT
Analysis