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MEMORANDUM

To: Marcia Pierce
From: Applicant
Date:2/23/2010
Re: State v. Brian BcLain

Dear Ms. Pierce,
Please find enclosed the memorandum I have prepared to support the motion to supress evidence and to dismiss count two of the complaint by the state, with Mr. McLain as a defendant.

1. The investigating officer lacked reasonable suspicion to stop the defendant's vehicle and the stop and the subsequent search violated defendant's Fourth Amendment Rights under the US Constitution. According to the ruling in Franklin Court of Appeal in State v. Montel (2003), the "Fourth Amendment protects individuals from unreasonable searches and seizures. Police, however, have the right to

stop and interrogate persons reasonably suspected of criminal conduct. Police may make a brief investigatory stop if they have a reasonable suspicion that criminal activity may be afoot."...Further the Court holds, that the "test is whether the officers have reasonable suspicion grounded in specific and articulable facts, that the person [is] involved in criminal activity at the time." The Court also concluded that in order for the courts to determine whether the suspicion was reasonable, the court should look at the "totality of the circumstances in each case." State v. Montel (2003)

In *Montel*, the police received an anonymous tip from an informant about a gun shot allegedly committed in a neighbourhood with higher crime activity. The informant's tip was a hearsay based on an alleged other information, the informant's cousin, whose name was not disclosed to the police. Based on this inormation, the police performed a Terry stop of the defendant and searched the defendant's car. In reference to the tip received by the police, the Court held that such tip may be sufficient, if it was from an informant, who provided information in the past. This would have given grounds for the police to perform a Terry stop. Furthermore, the Court referred to another case - State v. Sneed and where the Court held that the police based its Terry stop solely on the information provided by an unconfirmed informanet.

Like in *Montel* and *Sneed*, in Brian McLain's case the police received informaiton from an anonlymous informant about a suspicious activity. The informant was not identified, the information was provided to the police from a 911 call in an area with high crime activity. Again like in the cases mentioned, the police based its suspicion only on the information from the information and performed a terry stop to the defendant McLain. The defendant had not committed a traffic violation and the investigatory stop was not based on any particular conduct, other than the informant's tip.

Further in Montel, the court found that "reassonable suspicion requires

that the "tip be reliable in its assertion of illegality." In *Montel,* the informant provided the defendant's license plate numberand the area of the events was a suspicious one. However, the Court in *Montel* held that nevertheless, the license plate number and the mere presense in the high-crime area "did not warrant the stop." State v. Montel (2003). The Court concluded the police needed more information in orider to perform the Terry stop. In contrast, in State v. Grayson, the Court found that the tip provided by the informant was very specific and that based on the totality of the circumstances, the police had probable cause to perform a Terry stop and allowed police to form an "independent police corroboration." In this case, the Court allowed the evidence seized upon a Terry stop to be admitted in the defendant's trial.

In McLain's case, the police received the defendant's description from the anonlymous tip and there was no further specific information about the car plate number, for instance. The mere description of the defendant's outfit and appearance was not enogh for the police to have a probable cause, based on the tip only. Like, in *Montel,* the police had only a mere description of the defendant and his car's brand and model. There was not even information about the defendant's plate number. Unlike in Grayson, where the Court found that the tip was very specific, nevertheless anonymous, the reliablity provided grounds for suspicion and the police's work was independent corroboration, in McLain's case the police will not be able to base its conduct on the totality of the circustances. Therefore, I believe the Court would probably grant the motion to exclude the evidence incident to the Terry stop in McLain's case.

2. Possession of equipment or supplies with the intent to manufacture methamphetamine is a lesser-included offence of manufacture of methanfetamine, which renders the prosecution multiplicious and violates double jeopardy and due process provisions of the US

Constitution.

In State v. Decker, the Supreme Court of Franklin held that "where the same event of transaction gives rise to two statutory offenses, courts must determine if one consistutes a lesser-included offense of the other." Further in the case, the Court held that if "each offense contains at least one element the other does not, the test is not satisfied."

Based on the ruling in Decker and according to the Franklin Criminal Code, the defintion of one of the offenses McLain is being convicted of, must inclde at least one more element, taht the other does not, in order for the curt to find that there were two separate offenses. Therefore, here are the relevant potrtions of the code:

" 43(1) No person shall knowingly possess equipment or chemicals...for the purpose of manufacturing controlled substance to wit,methanfetamine" Franklin Criminal Code, art. 43

"51(1) It is unlawful for any person to manufacture methanfetamine. "Manufacture" means produce, compound, convert, process methanfetamine.." Franklin Criminal Code, art. 51

In Decker, the court found that franklin case law does now require strict texual comparison such that all elements of the compared offenses include the exactly the lesser-included offense. Instead, if the offenses are so similar, the court would find that the commission of one offense will necessarily result in the commission of the other, therefore the offenses would be found multiplicious.

Here, the defendant is being indicted for two offenses with very similar elements. Both offenses inclde the elements of knowingly posses equipment or chemicals with, the purpose of manufacturing controlled substance, In art. 51 of the Code, the manudacture is merely described as produce, compund.However, the article does not iclude any additional element of the manufacture offense.

Therefore and based on the rulings of the Supreme Court in Decker, the offenses in art. 43 and 51 must be mound multiplicious. The

defendant must not be tried for both defenses, due to this reason.

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