

Answer to MPT Question ONLY

ICIAL USE ONLY

MPT

In order to be sure that you are given full credit for your answer, you must adhere to the following directives:

- Write your SEAT NUMBER in the space provided above.
- Place your BAR CODED APPLICANT LABEL in the box above.
- Write your essay answers in **black or blue ink only**; **DO NOT USE PENCIL** for the essays.
- Begin your essay below on page 1 and write on **EVERY LINE** – do not skip lines when answering questions.
- Write on **RULED PAGES** only (the reverse sides will not be graded).
- Cross out any portion of your answer that you wish to delete. Do not remove any pages from this book.

DRAFT OF THE ARGUMENTS

From: Applicant

To: Marcia Pierce

Date: February 23, 2010

Re: State v. Brian McLoon

I was requested to draft the argument section ~~of~~ ^{at} our post-hearing brief. The arguments will be based (i) on the facts of reasonable suspicion ~~to~~ to justify the stop of our client and (ii) the substance of the letter – included offense ~~of~~ ~~the manufacture of Metamfetamine~~ of Possession of equipment to manufacture Metamfetamine.

ARGUMENT I

A Police Officer shall have a reasonable suspicion to justify a valid search and seizure of a vehicle.

The 4th Amendment of the Constitution of the United States, grant that in order to have a valid search and seizure of a person, the police officer needs to have a probable cause or a valid warrant over.

In order to have a valid warrant over ~~the~~^{the} Police Officer must receive the warrant from a not Bias Magistrate, stating the time, day and the person that should be arrested.

Moreover, Probable cause is paramount. ~~There are~~ ~~one or a few~~ exceptions to the warrant over, which are: (i) ~~Falsely~~ ~~and~~ ~~after~~ a valid arrest; (ii) ~~stop and frisk~~; (iii) Automobile exception and (iv) Hot Pursuit. To determine whether there was probable cause and the suspicion is reasonable, courts look at the totality of the circumstances ^{of the case}.

In the present case, the Police Officer seize and arrested

Dependant after an ~~an~~ ^{anonymous} call to the Police Department, ~~to~~ where the unidentified Person state the following facts: (i) A guy bought 2 boxes of Suprad cold Medicine and some coffee filters and (ii) he heard the man ~~saying~~ ^{asking} the cashier if Shop-Mart had quit selling engine-starter fluid.

Additionally, the anonymous caller gave some characteristics of the man, such as "maybe mid 20s, with dark hair and one of those goatees. He's wearing jeans and a dark hooded sweatshirt". Furthermore, he mentioned the man ~~was~~ ^{left} the store and was walking toward a red Jeep Cherokee.

Therefore, with these informations the Police Officer [#] went to the place where the Police Dependant told the call was made.

The Police Officer saw a red Jeep Cherokee and the man appeared to be and have the some characteristics of ~~the~~ ^{the} caller stated. However, this is not, in any reasonable way, or fact pattern of probable cause to arrest a person.

~~Proceeding~~ A TIP from a source known to police— especially one who has provided information in the past— may be sufficient, in and of itself, to warrant a Terry stop. However on anonymous tips AIP 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." ~~Florida v. J.B.~~ This was stated in the case Florida v. J.B., 529 U.S. 266 (2000) and clearly applies to the ~~present~~ case.

In the present case, the Police Officers Simon did not have a ~~reasonable~~ ^{reasonable} suspicion to stop the ~~defendant~~ defendant. According to the facts, there was never any report of ~~anything~~ ^{anything related to} mathematics.

Moreover, the Police Officers did not make any reasonable search to try to find the informant in order to be able to rely on ~~it~~ more information.

Additionally, there is no statute saying that buying coffee filters is illegal or that the mere fact of asking a store employee if the store stocks engine - starter fluid would give rise to think that someone is committing a crime.

Furthermore, the defendant did not violate, not this ~~time~~, ~~not~~ ever, the speed limit to give a reasonable suspicion to the officer that maybe a crime has been committed or it was about to be committed.

Therefore, ~~was~~ because the tip relating to the identification of the person ("mid 20s"); and the tip of the car (red chucker) and the tip of Depla's action (buying coffee filters) ~~are~~ have a low degree of reliability, more information ^{was} necessary to establish the requisite quantum of suspicion.

Hence, the tip, standing alone, was insufficient to provide reasonable suspicion for the officer's stop of McLean's vehicle.

SECOND ARGUMENT

(ii) DISMISSES COUNT TWO OF THE CRIMINAL COMPLAINT, ~~because~~
of ~~equivalent~~ to ~~major~~ ~~metabolism~~, or is a lesser-
included offense of Count Three, ~~major~~ of ~~metabolism~~.

When a same event or transaction gives rise to 2
statutory offenses, courts must determine if one
constitutes a lesser included offense of the other.

+

This analysis is based on the comparison of the elements
of both offenses, and ~~if~~ if the elements of the greater
crime include the elements of the lesser crime, the
latter offense is a lesser included and prosecution of
both crimes violates double jeopardy.

In the present case, ~~it~~ according to ~~law~~ ~~and~~
43 of Penal Law Criminal Code, the possession of
equivalent to ~~major~~ ~~metabolism~~ is a lesser included
offense of Count Three, ~~major~~ of ~~metabolism~~.

The element of possession with intent to deliver, ~~metabolism~~
includes ~~the~~ rule 43 "No local shall ~~violate~~ possession

equipment or devices for the purpose of manufacturing or
controlled substance, to wit, manufacturing, as
to person who commits such offense is ~~the~~ guilty
of felony.

Therefore, because the acts of selling are included in
the rule of manufacturing manufacture in Crim
Code § 51.

Seperac
NY Bar
Essay/MPT
Analysis

If you need Extra Booklets to complete the answer to this question, obtain EXTRA BOOKLETS from the Proctor