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MEMORANDUM

To: Marcia Pierce

From: Applicant

Date: February 23, 2010

Re: State v. Brian McLain, Motion to Suppress and Dismissal of Lesser
Included Defense

Motion to Suppress

Officer Simon lacked reasonable suspicion to stop Mr. McLain's
automobile

Under the principle cited in State v. Montel, an anonymous tip must be corroborated by independent police investigation to provide sufficient indicia of reliability to provide reasonable suspicion to provide a stop. The test is whether the suspicious was reasonable under a totality of the circumstances.

In Montel, the court found that a source of information known to police

may be deemed sufficient to independently warrant a Terry stop. However, information from an anonymous informant must be corroborated by independent police observation of unusually suspicious conduct, and must be "reliable in its assertion of illegality" and not only to identify a specific person. The court stated that information from an anonymous informant is hearsay that bears the risk of unreliability and may not accurately relate events. This is particularly true when the informant lacks personal observation of a crime. Moreover, in *State v. Sneed*, police acting under information from an untested confidential informant were deemed to have insufficient information to independently perform a Terry stop without corroboration.

In the present case, Officer Smith received information via an anonymous informant who refused to identify himself. The informant did not indicate that he had a prior relationship with police officers or had acted as an informant before. Without corroboration, the information from the informant was therefore unreliable. Furthermore, the informant did not provide information regarding a crime, but only suspicion of a crime. The informant noted that Defendant was making purchases that the informant associated with the manufacture of methamphetamine. However, the informant did not provide any information of an actual crime taking place.

Officer Simon's investigation was insufficient to corroborate any reasonable suspicion

In *State v. Grayson*, the court found that an infor

The state will likely argue that the area was known for drug-related activity. However, the store in question was known by Officer Simon for shoplifting rather than drug offenses.

but here ind invest

and location

but not illegal and no first hand obs., even loc no good 14

tip was hearsay montel,

here also undermined by inv.

3 common items at store

vague discr

anonymous informant, not reliable

only car and location

needed more info to establish requisite quantum of suspicion

even in montel they knew of gangs and arrests

simon 30 min to home, always an arrest

caller said for meth

no traffic violation- only observed conversation and supermarket with

bag

state will likely argue that

Officer Simon has experience

Dismissal of Lesser Included Defense

Count Two of the Criminal Complaint can be dismissed as

multiplicitous and violates Mr. McLain's right to due process and from

double jeopardy.

Under the principle cited in *State v. Decker*, a charge will be dismissed as a lesser-included offense "where the same event or transaction gives rise to two statutory offenses." The court will determine whether, based upon the strict elements of each offense, the greater crime necessarily includes the elements of the lesser crime. If the court finds in the affirmative, then prosecution for both the lesser offense and the greater offense constitutes a violation of double jeopardy. The test is codified in Franklin Criminal Code s 5(2). However, the test will not be satisfied if each of the offenses contains at least one element that the other does not.

In the present case, the strict elements of s 43, Possession of equipment or supplies with intent to manufacture methamphetamine are as follows: 1. knowingly; 2. posses; 3. purpose of manufacturing [...] methamphetamine.

The strict elements of s 51, Manufacture of methamphetamine are as follows: 1. knowingly; 2. posses; 3. manufacture methamphetamine.

As in *State v. Decker*, the court should determine that the offense listed under s 43 is a lesser-included offense of s 51, and dismiss Count Two of the charges against Defendant.

END OF EXAM

Seperac
NY Bar
Essay/MPT
Analysis