

ESSAY QUESTION NO. 3

Answer this question in booklet No. 3

On April 12, 2007, an informant who wished to remain anonymous called the Anchorage Police Department to notify officers that a man named Dennis Dudley would be flying into Anchorage International Airport carrying a large amount of methamphetamine. According to the informant, Dennis was in his late twenties, was about 5'5" and about 150 pounds, and had blond hair and brown eyes. The informant reported that Dennis would arrive into Anchorage International on Midnight Airlines flight 363 out of Seattle two days later, and that the methamphetamine would be broken up into small plastic baggies hidden inside of multiple stuffed animals carried in two large maroon suitcases.

An Anchorage police detective followed up on this tip by calling Midnight Airlines. The airline confirmed that a person named Dennis Dudley was ticketed to be on flight number 363, coming from Seattle, on the evening of April 14. The detective then went to Anchorage International Airport the evening of April 14. As passengers of flight 363 deboarded, the detective noticed a man matching the description of Dennis Dudley that had been provided by the informant. The detective watched as this man waited at the baggage claim area and then claimed two very large maroon suitcases. When the detective approached and asked the man his name and where he had come from, he responded by telling the detective his name was Dennis and that he'd just flown in from Seattle.

The detective had Dennis' bags seized and held at the airport while he applied for a warrant to search the bags. In applying for the warrant, the detective set forth all of the above facts, including the information provided by the anonymous informant. The warrant was granted, and twenty minutes after having Dennis' bags seized, the detective returned to the airport and searched Dennis' bags. Inside, he found numerous small stuffed animals. Upon further examination, some of the stuffed animals had been cut open and contained small baggies of a substance that tested positive as methamphetamine. Dennis was charged for possession of the methamphetamine.

Dennis challenges the detective's seizure of his bags, as well as the validity of the warrant granted for the search of his bags.

1. Discuss whether or not the facts set forth by the detective in applying for the warrant, including the informant's tip, constituted probable cause supporting the warrant and subsequent search of Dennis' bags.

2. Was the detective's seizure of Dennis' bags permissible under the circumstances? Discuss why or why not.
3. Discuss whether the probable cause analysis in question #1 above would change if the detective did not find any stuffed animals containing methamphetamine in the suitcases, but instead found several large plastic bags of marijuana strewn throughout the suitcases.

GRADER'S GUIDE

*** QUESTION NO. 3 ***

SUBJECT: CRIMINAL LAW

- 1) **Discuss whether or not the facts set forth by the detective in applying for the warrant, including the informant's tip, constituted probable cause supporting the warrant and subsequent search of Dennis' bags. (70%)**

The detective's warrant application in this case relied heavily upon hearsay statements (statements made by an out-of-court declarant taken for the truth of the matter) of an anonymous informant. Where the government relies upon hearsay information in establishing probable cause for a warrant, the sufficiency of that hearsay is judged according to the *Aguilar/Spinelli* test. See, e.g., *Landon v. State*, 941 P.2d 186, 190 (Alaska App. 1997) (citing *Aguilar v. Texas*, 378 U.S. 108 (1964); *Spinelli v. United States*, 393 U.S. 410 (1969); and *State v. Jones*, 706 P.2d 317, 324-25 (Alaska 1985)). Under this test, to the extent that the warrant application relies upon hearsay, the government must satisfy a two-prong test:

First, the government must establish that the hearsay declarant obtained his or her knowledge in a reliable manner (generally, through first-hand observation) and is not just speculating or repeating gossip. Second, the government must establish that the hearsay declarant is a credible person; this prong may be met by showing reasons to believe that the informant is a trustworthy person, or by showing that the informant's information has been independently corroborated.

Hugo v. State, 900 P.2d 1199, 1201 (Alaska App. 1995).

With regard to the first prong of the *Aguilar/Spinelli* analysis, the informant in this case never explicitly told the police that his or her information was based upon personal observation. This does not, however, prevent the government from establishing that the informant obtained his or her information in a reliable manner. Where an informant's tip is sufficiently detailed, the Court can infer that the substance of the tip is based upon the informant's personal knowledge. See *Landon*, 941 P.2d at 190; *Rynearson v. State*, 950 P.2d 147, 150 (Alaska App. 1997). Here, the informant was able to supply the police detective with a great deal of detail. The informant knew and told the police Dennis' name, his approximate age, his appearance, where he would be coming from and where he was going, his date of departure and date of arrival, his specific flight number, the approximate time of day he would arrive in

Anchorage, the color and number of his suitcases, and the very specific manner in which he would be carrying the methamphetamine. Given all of these detailed facts provided by the informant, the Court would likely infer that the informant obtained his or her information in a sufficiently reliable manner. *See Rynearson*, 950 P.2d at 150 (Court of Appeals makes similar ruling based upon facts much like those present here).

Addressing the second prong of the *Aguilar/Spinelli* standard, the credibility of an informant can be established by evidence that the informant has provided reliable information in the past, by independent investigation that corroborates the informant's tip, or by evidence that the informant is among that group of informants that the courts presume to be credible, *i.e.* a citizen informant. *Stam v. State*, 925 P.2d 668, 670 (Alaska App. 1996).

Because the informant in this case remained anonymous, there is no information suggesting that the police or government knew this informant to have provided reliable information (or any information, for that matter) in the past.

With regard to classification of this informant, one should recognize that informants are traditionally divided into two categories: citizen informants and more traditional "police informants." *See, e.g., Ivanoff v. State*, 9 P.3d 294, 298 (Alaska App. 2000). Police informants "are often associated with the criminal milieu" and are generally mistrusted "because they may provide tips in exchange for payment, favorable treatment in the criminal process, or personal advantage or revenge." *Id.* A citizen informant, on the other hand, is an ordinary citizen who reports a crime that he has witnessed. A citizen informant is a witness to criminal activity who "acts with an intent to aid the police in law enforcement because of his concern for society or for his own safety," not expecting any gain or concession in exchange for his information. *Gustafson*, 854 P.2d at 756. The distinction between a citizen informant and a traditional police informant does not turn upon "the bare facts of the informant's past." *Id.* Rather, an informant's status turns on "the nature of the informant's involvement with the incident being investigated and his or her motivation for coming to the authorities." *Id.* (citing *Erickson v. State*, 507 P.2d 508 (Alaska 1973)). It is the State's burden to demonstrate that an informant is a citizen informant rather than a traditional police informant. *Rynearson*, 950 P.2d at 150.

Where an informant chooses to remain anonymous, classification of that informant can be a difficult task. Argument for either classification can be made. The Court might infer from the informant's decision to remain anonymous that the informant was not motivated by any personal gain, official concession, or reward. Here, one might argue that in providing information about Dennis' drug possession and potential distribution without any hope for

a reward, this informant was acting out of a desire to help the police stop drug crime and/or concern for fellow citizens and the impact that methamphetamine might have on them.

The Alaska courts have warned, however, that “an informant’s anonymity does not, by itself, qualify the informant as a ‘citizen informant.’” *Rynearson*, 950 P.2d at 150-51 (citing *Lloyd v. State*, 914 P.2d 1282 (Alaska App. 1996)). Despite the lack of any promise, reward, or official concession, the anonymous informant here might still be acting upon base motives such as a desire to get revenge upon, to harass, or to remove the target of the tip – Dennis, in this case – from competition in the drug trade. It may be that the criminal informant in this case knew about Dennis’ schedule and transportation of drugs because he is or was part of Dennis’ drug operation. Additionally, courts have expressed hesitation to extend citizen informant status to an anonymous informant where the police and/or the State have not recorded the call and cannot provide any assurance that the report was not fabricated. *Id.* at 151 (citing *Lloyd*, 914 P.2d at 1288). Here, there are no facts indicating that the informant’s tip was preserved in any way. While arguments can be made in support of different conclusions, the Court would likely rule that the government could not meet its burden of demonstrating that the anonymous informant should be treated as a citizen informant. The Court therefore would not grant this informant’s tip the automatic credibility associated with a citizen informant’s tip.

Rather, the credibility of this informant’s tip is likely demonstrated by the police detective’s corroboration of many of the details provided by the informant prior to applying for the search warrant. Prior to seizing Dennis’ bags and applying for a search warrant, the detective confirmed that a man named Dennis Dudley did indeed have a ticket on Midnight Airlines flight 363 from Seattle to Anchorage International, arriving in Anchorage on the date and at the approximate time provided by the informant. When the detective went to the Anchorage airport at the appointed time, he recognized a man in the group deboarding flight 363 that matched the description provided by the informant. The detective observed as this man claimed two large maroon suitcases, also matching the description provided by the informant. Further, the detective confirmed that this man was named Dennis and that he had just come from Seattle. While some of these details, such as Dennis’ general appearance, are readily available to the public and thus not very probative of the informant’s credibility, details such as Dennis’ specific travel itinerary and the specific luggage that would be packed and used by Dennis likely go beyond innocuous information that is generally available to the public. *See Landon*, 941 P.2d at 191. While one could argue this point either way, the Court of Appeals has held that corroboration of very similar details in a case much like this one did constitute sufficient corroboration to find an anonymous informant to be credible. *Rynearson*, 950 P.2d at 150-52.

Based on the arguments above, the court would likely find that there was probable cause supporting the warrant and subsequent search of Dennis' bags.

2) Was the detective's seizure of Dennis' bags permissible under the circumstances? Discuss why or why not. (20%)

The detective's seizure of Dennis' luggage was most likely permissible. The standard by which the legality of such a seizure is determined depends upon the intrusiveness of the seizure. See *Chandler v. State*, 830 P.2d 789 (Alaska App. 1992). Where the government's seizure of the belongings in question is minimally intrusive, that detention requires only reasonable suspicion – in this case, reasonable suspicion that drugs are present in the luggage and that the drugs are being illegally imported into the state or possessed for distribution. See *id.*; *LeMense v. State*, 754 P.2d 268, 272 (Alaska App. 1988). Here, where the detective did not have Dennis' luggage transported outside the airport prior to obtaining a warrant, and where the amount of time that passed between the seizure and the search of the bags was just twenty minutes, a court could determine that this was a minimally intrusive seizure and that it need only be supported by reasonable suspicion. See, e.g., *Peschel v. State*, 770 P.2d 1144, 1147-48 (Alaska App. 1989); *LaMense*, 754 P.2d at 272-74.

One could also make a case, however, that the detective's seizure of Dennis' bags was more than minimally intrusive. There is no indication here that the detective explained to Dennis what was happening to his luggage, where it would be kept, and how he could get it back. *Peschel*, 770 P.2d at 1147. Moreover, one could argue that twenty minutes was a significant period of time during which Dennis was deprived of his bags prior to a warrant being granted. *Id.* at 1147-48 (citing *United States v. Place*, 462 U.S. 696, 719 (1983)). In that case, the seizure of Dennis' bags must have been supported by probable cause. *Id.*

Regardless of the standard used to determine the legality of the seizure of Dennis' bags, that seizure would most likely be found permissible. As previously discussed in relation to the search warrant, the information provided by the anonymous informant, and the detective's corroboration of that information and subsequent investigation, likely constituted probable cause that Dennis was transporting methamphetamine into Alaska in his luggage. Where probable cause existed to search Dennis' bags, the detective was entitled to seize Dennis' luggage until a warrant could be obtained, regardless of the disruption caused to Dennis. *Id.* at 1148; *Ingram v. State*, 703 P.2d 415, 422 (Alaska App. 1985) (assuming probable cause, immediate warrantless seizure of the bag in question would have been justified by exigent circumstances).

- 3) Discuss whether the probable cause analysis in question #1 above would change if the detective did not find any stuffed animals containing methamphetamine in the suitcases, but instead found several large plastic bags of marijuana strewn throughout the suitcases. (10%)**

The fact that the result, or outcome, of the search changed cannot alter the analysis of whether the police had probable cause when they applied for the search warrant. The probable cause analysis is based upon facts known at the time that the police or the government applies for a warrant or conducts a search and/or seizure. While the anonymous informant was ultimately wrong under this question about the type of drugs being carried and the manner of packaging, and while that information may impact our evaluation of the informant's credibility in the future, such information could not have been known to police prior to actually searching the luggage in question. Such information cannot lead us to second-guess the evaluation of informant credibility and determination of probable cause in this case. A finding otherwise would suggest that all warrants or probable cause determinations not yielding the expected discovery or outcome could be invalidated after the fact.

In this vein, the Court of Appeals has held that while police or government corroboration of an informant's information is relevant to determining the informant's credibility, "the police need not independently corroborate the informant's ultimate incriminating assertion" in order to have probable cause sufficient to perform a search. *Landon*, 941 P.2d at 191.