

ESSAY QUESTION NO. 9

Answer this question in booklet No. 9

An informant called Officer Smith of the Anchorage Police Department and told him that Dave was traveling from Anchorage to Valdez by ferry with heroin that day. The informant described Dave and provided Dave's home address in Valdez. The informant also told Officer Smith that Dave would be wearing loose brown Carhartt overalls and that Dave had taped the heroin to the inside of his legs with orange duct tape. The informant was a long-time heroin user whom Officer Smith only knew by his nickname. The informant had provided Officer Smith with good information about a dealer once before several years earlier. Officer Smith called Detective Baker of the Valdez Police Department and told him what the informant had said. Detective Baker checked with the Department of Motor Vehicles and confirmed that a person named Dave lived at the address provided by the informant and that the driver's license picture for Dave matched the description provided by the informant.

Detective Baker met the ferry when it arrived in Valdez. He spotted Dave walking off the ferry. Dave was wearing brown Carhartt overalls and matched both the informant's description and the driver's license picture. Detective Baker also noted that Dave had an odd gait. Detective Baker arrested Dave for felony possession of heroin and took him to the police station. Detective Baker searched Dave incident to arrest and found brown opaque bags taped to the inside of his legs with orange duct tape. The bags contained heroin.

Dave filed a motion to suppress the heroin on the basis that his arrest and Detective Baker's search violated the Alaska Constitution.

Discuss the arguments the state must make under the Alaska Constitution to establish the validity of the arrest and the search incident to arrest.

GRADERS' GUIDE

** QUESTION NO. 9 **

SUBJECT: CRIMINAL LAW

To defeat the motion to suppress, the state will have to demonstrate that the arrest and the search were valid. Because Detective Baker did not have a warrant to arrest or search Dave, the state's argument must establish that Detective Baker had probable cause to arrest Dave for a felony and that an exception to the warrant requirement applied.

I. Probable Cause to Arrest – 10%

"A police officer may make a warrantless arrest in Alaska only if he or she has 'probable cause to believe that a felony has been committed and a reasonable belief that that the person to be arrested was the one who committed it.'" *Schmid v. State*, 615 P.2d 565, 574 (Alaska 1980). The officer must be aware of facts and circumstances that would "justify a prudent person in believing that an offense had been or was being committed." *Id.* The officer's good faith belief is not sufficient. *Id.*

The facts establish that Detective Baker arrested Dave for a felony. Alaska Statute 11.71.140 includes heroin as a schedule 1A controlled substance. Alaska Statute 11.71.040 makes the possession of any amount of a schedule 1A controlled substance a felony.

The facts and circumstances may establish that Detective Baker had probable cause to believe that Dave committed a crime. An arrest may be based on information from an anonymous informant if the information satisfies the *Aguilar-Spinelli* standard. *Id.*

II. Application of the *Aguilar-Spinelli* Standard – 60%

The *Aguilar-Spinelli* standard has two prongs. *State v. Jones*, 706 P.2d 317, 324-25 (Alaska 1985). First, the information must establish the basis of the informant's knowledge. *Id.* The information must be based on the informant's personal knowledge and not on suspicions, belief, or rumor. *Id.* If the informant has not made an allegation of personal knowledge, the information must be so detailed that it supports an inference of personal knowledge. *Id.* Second, the information must establish that the informant was credible or that the information was reliable. *Id.* Independent police corroboration of the information can establish the informant's veracity. *Id.* Corroboration of incriminatory facts is not necessary, but it must relate to the tip in such a way that it lends credibility to the report. *Carter v. State*, 910

P.2d 619, 624 (Alaska App. 1996). The informant's past reliability may also establish the informant's veracity. *Jones v. State*, 706 P.2d 317, 324-25 (Alaska 1985).

"Generally, cases distinguish between two kinds of informants: 'citizen informants' and 'police informants.'" *Lloyd v. State*, 914 P.2d 1282, 1286 (Alaska App. 1996) quoting *Effenbeck v. State*, 700 p.2d 811, 813 (Alaska App. 1985). *Aguilar-Spinelli's* credibility prong applies in full force to 'police informants because their motivation for providing the information is suspect. *Id.* In contrast, a more relaxed rule applies when the informant is a cooperative citizen or someone not from the criminal milieu. *Lloyd*, 914 P.2d at 1286. Less corroboration is necessary for a "citizen informant" than for a "police informant." *Id.*

The informant did not make an affirmative allegation of personal knowledge, so the state will have to argue that the information was so detailed that it supports an inference of personal knowledge. The informant's information consisted of Dave's name, his description, his home address, his travel plans, and a description of how the heroin was taped to his legs. In *Schmid v. State*, 615 P.2d 565, 574 (Alaska 1980), the informant provided a detailed description of a drug courier that included the suspect's age, looks, and attire. The informant also described the suitcases containing the drugs and included the claim check numbers and the flight information for the bags. *Id.* The supreme court concluded that this information was sufficiently detailed to support an inference that the informant gained the information in a reliable manner. *Id.* at 574-75.

The informant in the fact pattern described Dave's appearance, attire, and travel plans. He also provided Dave's home address in Valdez. Most importantly, however, he provided a detailed description of how Dave was transporting the heroin and how he hid it on his body. The state must argue that these facts support an inference that the informant gained the information in a reliable manner, rather than by casual rumor. *See Schmid*, 615 P.2d at 574-75.

The state must also argue that the informant's veracity was sufficiently verified by corroboration and a showing of past reliability. In *Schmid*, the customs agent had known the informant for four years and the informant had provided accurate information in at least 10 previous cases.

The facts in the question suggest that Officer Smith has known the informant for several years because the informant provided Officer Smith with accurate information several years ago. But the inference of veracity is not as strong as in *Schmid* because the informant had only provided accurate information once before and that was several years ago.

The state will not have to rely solely on the informant's past reliability, however, because Detective Baker corroborated some of the information before he arrested Dave. Detective Baker corroborated that Dave lived in Valdez at the address indicated by the informant and that he matched the description given by the informant. Just confirming general background information about where a person lives is not sufficient. *Jones*, 706 P.2d at 325. However, Detective Baker also corroborated the information regarding Dave's travel to Valdez and Dave's attire. And he also noted that Dave had an odd gait. Although an odd gait by itself might not indicate any criminality, under these circumstances, it arguably supports an inference that Dave had something taped to his legs which prevented him from walking normally.

The state must argue that Detective Baker's corroboration in conjunction with the information regarding the informant's past reliability is sufficient to satisfy the second prong of the *Aguilar-Spinelli* test.

III. Detective Baker's Search - 30%

The state must argue that Detective Baker's search was constitutional as a search incident to arrest. As a general rule, a warrantless search is per se unreasonable unless it falls within one of the exceptions to the warrant requirement. *Crawford v. State*, 138 P.3d 254, 258 (Alaska 2006). One of the recognized exceptions is a search incident to arrest which allows the police to search the area within the suspect's immediate control at the time of arrest to ensure officer safety and to preserve evidence. *Id.* There are four requirements for a valid search incident to arrest: (1) there must be probable cause for the arrest; (2) the search must be roughly contemporaneous with the arrest; (3) the arrest must not be a pretext for the search; and (4) the arrest must be for a crime, evidence of which could be concealed on the person. *McCoy v. State*, 491 P.2d 127, 131 (Alaska 1971).

The first prong involves the analysis of the *Aguilar-Spinelli* standard above. The state will need to argue that the information provided by the informant along with the corroboration made by Detective Baker established probable cause.

The second prong requires the search to be roughly contemporaneous with the arrest. In *McCoy v. State*, 491 P.2d 127, 131 (Alaska 1971), the court held that the search could take place at the station house when the police took the suspect to the station house immediately upon arrest. Detective Baker arrested Dave and took him to the station where he searched him. Nothing in the facts indicates that there was any delay between the arrest and the search.

The third prong prohibits the police from making an arrest in order to conduct the search. As an example, the court in *McCoy* cited a federal case in which the police made an arrest for a minor traffic violation in order to search a car for marijuana. *McCoy*, 491 P.2d at 138, citing *Taglavore v. United States*, 291 F.2d 262, 265 (9th Cir. 1961). Detective Baker arrested Dave for possession of heroin and searched him for the heroin. There was no pretext.

The fourth prong requires the crime to be one for which evidence could be concealed on the body. Heroin can, of course, be concealed on the body, and Dave, in fact, concealed the heroin on his body. The heroin was packaged in brown opaque bags, but the court in *McCoy* approved of a search of a plastic wrapped, foil packet as a search incident to arrest. *McCoy*, 491 P.2d at 137-38.

The state must argue that the search was valid as a search incident to arrest because it met all four prongs of the test outlined in *McCoy*.