



JUDICIAL THINKING SERIES

TRAIN YOUR MIND. SHARPEN YOUR JUDGMENT.
PROTECT THE CONSTITUTION.

SEARCH & SEIZURE

#3

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THE ANONYMOUS TIP

You are the magistrate judge.
Review the facts below.
What question must be answered?

125 OAK STREET



THE 911 CALL

11:20 PM

911 receives an anonymous call.
The caller states:

“ A man in a blue hoodie is selling drugs from a silver Honda Accord parked outside 125 Oak Street. ”

- ☎ The caller hangs up.
- 👤 No name.
- ☎ No callback number.
- ❓ No explanation of how the information was obtained.

WHAT OFFICER DAVIS OBSERVES WHEN HE ARRIVES



Silver Honda Accord



Parked outside 125 Oak Street



Driver wearing blue hoodie



Driver using cell phone



OFFICER DAVIS ARRIVES

~10 MINUTES LATER

Officer Davis arrives at approximately 11:30 PM.
He observes the following:



WHAT OFFICER DAVIS DOES NOT OBSERVE



No hand-to-hand transactions



No furtive movements



No odor of marijuana



No traffic violations



No other criminal conduct



THE CENTRAL QUESTION:

Did Officer Davis have reasonable suspicion to detain the driver?

Set the facts.
Identify the issue.
Don't decide yet — just observe.





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THE TRAP



The danger is confusing **INNOCENT** facts with **CRIMINAL ACTIVITY**.

Officer Davis verified several details of the tip...



WHAT OFFICER DAVIS VERIFIED
(innocent, readily observable facts)



The vehicle
Silver Honda Accord



The location
125 Oak Street



The clothing
Driver wearing blue hoodie



The behavior
Driver using cell phone

VS.



WHAT OFFICER DAVIS DID NOT VERIFY
(criminal activity is currently unverified)



Drug activity
No drugs seen. No sales observed.



Criminal conduct
No hand-to-hand transactions.



Reliability of the caller
Anonymous. No way to assess credibility.



Basis of knowledge
Unknown how the caller knew.



Timeliness / accuracy
That the information was current and accurate.



ALL OF THE VERIFIED FACTS ARE EASILY OBSERVABLE AND
CONSISTENT WITH INNOCENT BEHAVIOR.
CRIMINAL ACTIVITY IS CURRENTLY UNVERIFIED.



JUDICIAL TRAP

Verifying innocent facts
is **NOT** the same as
verifying criminal activity.



REMEMBER

Don't be trapped by facts that are innocent.
Look for facts that suggest criminal activity.



“ The Fourth Amendment protects the innocent, not just the guilty. | – Pennsylvania v. Mims, 434 U.S. 106 (1977) ”



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THE JUDGE'S THINKING

A judge must analyze the totality of the circumstances.

1 HOW RELIABLE IS THE TIP?



- Anonymous caller
- Unknown credibility
- Unknown basis of knowledge
- No way to assess reliability

WEIGHT:
WEAK



2 WHAT WAS CORROBORATED?



- Vehicle (Silver Honda Accord)
- Location (125 Oak Street)
- Clothing (Blue hoodie)
- Behavior (Using cell phone)

WEIGHT:
MODERATE



3 WHAT WAS NOT CORROBORATED?



- Drug sales or drug activity
- Hand-to-hand transactions
- Suspicious exchanges
- Criminal conduct
- Anything indicating criminal activity

WEIGHT:
IMPORTANT



*Totality
of the
Circumstances*

JUDICIAL CHECKLIST

- Reliability of the tip
- Extent of corroboration
- Nature of what was verified
- What was NOT verified
- Totality of the circumstances

4 WHAT DOES THE TOTALITY SUGGEST?

- Do the innocent facts, when considered together, reasonably suggest that criminal activity may be afoot?
- Does the tip provide sufficient indicia of reliability?
- Do any additional facts elevate the information beyond an unverified accusation?



THINK CAREFULLY...
Do not decide yet.
Proceed to Page 4.



REMEMBER

Conduct that is consistent with innocent behavior may still be considered in a reasonable suspicion analysis.
It may contribute, but it is not enough by itself.



STOP AND THINK

Commit to your analysis before turning the page.
What is your preliminary conclusion based on the totality?





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THE DECISION *Applying the law to the facts.*

COURT FINDING

NO REASONABLE SUSPICION

Based on the totality of the circumstances, the information available to Officer Davis did not amount to reasonable suspicion that criminal activity was afoot.

- The anonymous tip lacked sufficient indicia of reliability.
- The officer corroborated only innocent, readily observable facts.
- No criminal activity was observed.
- No suspicious exchanges were observed.
- No additional facts elevated the information beyond an unverified accusation.



JUDICIAL DETERMINATION

The detention was not supported by reasonable suspicion.

WHY? THE SUPPORTING REASONS



ANONYMOUS TIP

The caller's identity, credibility, and basis of knowledge are all unknown.



CORROBORATION LIMITED TO INNOCENT FACTS

Vehicle, location, clothing, and cell phone use are consistent with lawful behavior.



NO INDICATION OF CRIMINAL ACTIVITY

No drugs seen, no hand-to-hand transactions, no suspicious exchanges.



NO PREDICTIVE OR FUTURE INFORMATION

All details were current and easily observable.



TOTALITY DOES NOT SUPPORT RS

The information amounts to an unverified accusation.



THE JUDICIAL LESSON

An anonymous accusation, without more, does not automatically justify an investigative detention.



MDJ NOTE

A suppression issue may exist. Whether evidence is ultimately excluded is determined by the Court of Common Pleas.



“ The Fourth Amendment protects the innocent, not just the guilty. Reasonable suspicion requires more than an unverified tip.

– *Illinois v. Gates*,
462 U.S. 213 (1983)

