Contents

Burglary

FP#1: https://www.quimbee.com/essay-practice-exams/criminal-law-exam-2

On a cool, dark evening, A strolls through an unfamiliar neighborhood. The neighborhood is located in an up-and-coming part of the city, and it is dominated by once-commercial buildings that have been turned into residential lofts. A looks at a clock tower in the distance and notices the time, which is midnight. A decides that he needs a place to warm up before it gets any colder, so he begins looking for a building where he can spend the night.

Based on their dimly lit facades, all the buildings around A appear to be commercial buildings. In fact, they are all residential dwellings. To get some sleep, A breaks into a covered parking lot attached to a particular residential building that A genuinely believes is a commercial building.

After entering the parking lot, A notices a briefcase sitting next to a car. He briefly contemplates what he should do, and then he decides to steal the briefcase. After A takes the briefcase, security guards spot him from a hidden security camera located in the parking lot. The guards detain A and eventually turn him over to state law enforcement authorities.

A is charged with burglary. In this jurisdiction, burglary is defined as "recklessly breaking and entering into the dwelling of another at nighttime with the intent to commit a felony therein." The jurisdiction has adopted the Model Penal Code definitions for *mens rea* terms (Model Penal Code Section 2.02).

Larceny is a felony in this jurisdiction, and is defined as "taking and carrying away the property of another with the purpose to deprive the owner of the property."

Trespass is a misdemeanor in this jurisdiction, and is defined as "knowingly entering or remaining on another's property without the owner's consent."

FP#2: https://lawpreview.barbri.com/student-question-8/

At 10:00 p.m., while Geraldine Johnson was at the movies, Jessica Brown climbed the high fence surrounding Geraldine's home and entered the porch through an unlocked porch door. She then loaded all of the porch furniture onto the back of her pickup truck. While on the porch, she noticed that one of the windows to the living room was open. She could see an expensive TV and VCR, which she decided to take. She climbed through the window, but heard a noise and left hurriedly instead.

Student Response

GIVEN LAW: Burglary is the breaking and entering of a dwelling of another at night with the intent to commit larceny.

GIVEN DEFINITIONS:

Breaking = Force, however slight, must be used in entering.

Entering = Some part of the body must enter, or an implement which is then used to effect the entry enters. The entry must be without consent of the occupant.

Dwelling = Someone must live therein or have lived there and intended to return.

Nighttime = After sunset and before sunrise.

Intent = Required mental state. Remember, intent can be proven through circumstantial evidence.

Larceny = The taking and carrying away of the personal property of another with the intent to permanently deprive the owner.
The general issue is whether Jessica Brown (JB) may be guilty of burglary. At common law, a person commits burglary if she:

1. breaks or enters

2. the dwelling of another

3. at nighttime

4. with the intent to commit larceny.

Breaking.

The first issue is whether JB committed a breaking. To constitute a breaking, some amount of force, however slight, must be used in entering. JB met the element of breaking by using force in climbing over the high fence and entering through the unlocked porch door. It is common knowledge that the fence and the door serve as boundaries to separate the homeowner's private life from the public. Thus, JB's conduct of breaking across the boundary satisfies the element of breaking.

Entering.

JB also satisfies the second element, entering. Entering is established where some part of the body of the D enters, or an implement that is used to effect the entry must enter. Additionally, the entry must be without the consent of the occupant. Furthermore, entering is also proved

where JB climbed though the window in an attempt to take the TV and VCR. The element of entering is further established when JB entered the porch without Geraldine Johnson's (GJ) consent. GJ did not give JB consent to enter because GJ was at the movies.

Dwelling.

The third issue is whether the porch is a dwelling. Someone must live therein or have lived there and intend to return for a place to be considered a dwelling. Based on the facts, it is not clear whether the porch was used as a dwelling. Generally, a dwelling is established where the occupant performs her daily duties. Examples of daily duties are cooking, use of the bathroom and sleeping. The facts do not state that any one of these duties was performed on the porch.

However, the concept of "curtilage" has developed to protect the areas of the home that are not used to perform daily duties. Curtilage is defined as areas not used as living quarters but which are within the fenced-in area. The porch is considered part of the dwelling because the facts state that JB had to climb over a high fence before she entered the porch. Thus, the porch is within the fenced-in area and establishes that the porch is part of the dwelling. Additionally, it is common knowledge that a fence serves as a boundary between the dwellings of neighbors. The fence also helps protect the homeowner's private life. The element of dwelling is met because GJ lived there and she intended to return because she was at the movies.

Nighttime.

Next is the issue of nighttime. Nighttime is defined as the time just after sunset and just before sunrise. The rationale of this element is to protect homeowners when they are the most vulnerable. The majority of the public sleeps during the nighttime. Knowing this fact, criminals seek to take advantage of homeowners by committing burglary at night. The facts state the chain of events took place at 10:00 PM. This is a time when most people are asleep. Thus, the element of nighttime has been met.

Intent to commit larceny.

Lastly, the issue is whether JB had the intent to commit larceny. Larceny is defined as the taking and carrying away of the personal property of another with the intent to permanently deprive the owner. JB met the element of intent to commit larceny when she took and carried away the porch furniture. Furthermore, the fact that JB loaded the furniture onto the back of her pickup truck establishes her intent to permanently deprive GJ of her personal property. Based the facts given, the intent to commit larceny has been met.

Intent to commit larceny not found.

However, the defense will argue that JB did not form the intent to commit larceny at the time of her entry. Based on the facts given, it is difficult to prove if JB had intent to commit larceny when she first climbed the fence. The facts also state that it was not until JB was inside the porch when she fully formed the intent to steal the TV and VCR. She was already in the dwelling when the intent was formed. The intent to steal the TV and VCR was formed after the entry. Because JB's intent to commit larceny was formed after the entry, the defense will argue that intent element had not been satisfied.

Conclusion.

In conclusion, a court will most likely find that JB is guilty of common law burglary. JB satisfied the breaking and entering elements by climbing the fence and entering through the door of the porch. The dwelling house element has been met from the idea of curtilage. The fact that JB's actions took place at 10:00PM satisfies the nighttime requirement. The only element that may be problematic is the intent to commit larceny. Although the defense has a valid argument, the court will probably infer from the circumstantial evidence that intent was fully formed at the time of the entry. Additionally, because of policy concerns behind common law burglary, JB will probably be found guilty.

FP#3: https://lawshelf.com/shortvideoscontentview/burglary/

The Facts

Ben recently turned his storage unit into a high-tech “man-cave” and wants to show it off to one of his best friends, John. Ben invites John to watch a baseball game in the man-cave at noon. When John arrives, Ben opens the storage unit’s door and beckons John to enter the man-cave. John sits down inside and they watch the game. After the game, Ben asks John to leave, and John does. John makes it to his car, turns around, walks back into the man-cave, and grabs eighty-three cents worth of loose change that was on a side table right at the man-cave’s entrance. He takes the change from in front of Ben and runs away.

Common Law Approach to Burglary

John could not be convicted of burglary under the common law. John did not break into a dwelling at night and he did not intend to commit a felony (stealing less than $1 is a misdemeanor, not a felony). For John to be convicted, the following facts would have to be different. First, the man-cave must be Ben’s house. Second, John must break into the house. Third, John must intend to commit a felony, such as assault, not a misdemeanor, such as petty theft. Fourth, John must have taken these actions at night. Since John did none of these things, he could not be convicted of burglary under common law.

MPC Approach to Burglary

John could be convicted of burglary under the Model Penal Code. First, John entered an occupied structure, in this case Ben’s converted storage unit. Second, while John did not have to break into the man-cave, he did have to enter uninvited. Once John left the man-cave, he was no longer an invited guest and could re-enter the structure as a burglar. Finally, John must have intended to commit a crime in the building or structure. Here, John entered Ben’s man-cave with the goal of taking eighty-three cents worth of loose change. Thus, he could be charged with burglary.

State approaches to burglary offenses vary depending on what elements a jurisdiction’s statute has adopted. Some steadfastly adopt portions of the common law, some embrace the MPC’s take on burglary, and others go far beyond either the common law or the MPC. No matter what elements are needed, the intent of what burglary seeks to prevent remains clear and evident.

Burglary

Our understanding of burglary has evolved greatly as our society has changed. Some scholars even argue that burglary should no longer be a separate criminal offense.[1] Every state has its own rules for burglary and they vary widely from state to state.[2]

In this presentation, we will analyze the common law elements of burglary, the Model Penal Code’s approach to burglary, recent developments to burglary and a comprehensive example of burglary.

Common Law Elements

The required historical elements of burglary are:

- Breaking;
- an entering;
- into a dwelling or house;
- of another;
- at night;
- with the intent to commit a felony therein.[3]

"Breaking" requires that some force be used to enter the house. "Entering" requires that part of the burglar's body pass the threshold of the house. Originally, a "dwelling or house" meant only the physical home of a person. Next, common law burglary must have been committed at night (daytime breaking and entering was the lesser crime of trespass). The "of another" requires that the burglar break into someone else's home, as a person cannot commit burglary in his own home.[4] Finally, the burglar must intend to commit a felony once inside the dwelling. This is usually theft, but can also include intent to commit other crimes such as murder, rape, arson, and assault. Since these definitions were created, states have broadened, eliminated, or modified them extensively.

The Model Penal Code's Approach

The Model Penal Code is a series of criminal law rules written by experts in criminal law as a "model" for how they suggest states enact their criminal laws. It contains suggested statutory language and comments to help states codify criminal law.[5] The Model Penal Code has been adopted to some extent in some states. The comments of the Model Penal Code indicate that the drafters considered eliminating burglary as a separate offense because punishing it more severely than trespass and theft was "harsh and irrational."[6] The drafters of the code believed that the law concerning the crime "attempt" (as in "attempted theft") now encompassed actions that were traditionally thought of as burglary.[7] However, the drafters believed that burglary was so deeply embedded in American law that it could not be discarded.

Under the Code the required elements for burglary are:

(1) A person entering;

(2) A building, occupied structure, or separately secured portion thereof of another; and
(3) With the purpose to commit a crime therein.

These elements apply unless the premises are open to the public or the person is licensed to be there.[8]

The MPC's approach to burglary significantly broadened the scope of actions that could be considered burglary. First, the burglary no longer must take place at night. Second, the burglar does not have to break anything to get into the house. Finally, the crime committed inside does not have to be a felony.

Developments Post-Model Penal Code

The extent to which the Model Penal Code's approach to burglary has been adopted by the states is mixed.[9] Like the Code suggests, most states have eliminated the common law elements of "at night" and the "breaking" requirements.[10] Also, many states have broadened the definition of "occupied structure" to include any property owned by a victim. Lastly, many states provide that a burglary occurs if any crime is committed inside a structure.[11] However, states' laws vary on whether

they require an “entry,” if the structure must be a “dwelling,” and if the dwelling must belong to “another.”

Burglary Example

The following example will compare the common law approach to burglary with the MPC approach.

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State approaches to burglary offenses vary depending on what elements a jurisdiction’s statute has adopted. Some steadfastly adopt portions of the common law, some embrace the MPC’s take on burglary, and others go far beyond either the common law or the MPC. No matter what elements are needed, the intent of what burglary seeks to prevent remains clear and evident.

DUI/DWI

FP#1: https://www.nhattorney.com/dwi-case-evaluation-example/

Sample DWI Case Evaluation

In order to help you better understand the legal process surrounding DWI in New Hampshire, below is a sample fact pattern and case evaluation.

This is a hypothetical case and not based on a specific client.

Facts

John Doe, a 20 year-old male, drove to a friend's house around 7:00 p.m. on a Saturday night. He reportedly consumed 2-3 beers between the 7:00 p.m. and 9:30 p.m. when he left to drive some of his friends to a local store to get cigarettes. When he arrived at the store, his friends get out of the car and John waits in the vehicle. It just so happens that the local police were conducting an underage drinking "sting" to make sure the store is not selling to minors.

An officer in plain clothes approached John's vehicle and engages John in conversation through the partially opened window. In response, John rolled his window all the way down and starts to talk to the police officer. The officer had not yet identified himself.

The police officer reportedly detected an odor of alcohol coming from John's breath. At this point he identified himself as a police officer and asks John to get out of the car to perform some field sobriety tests. The officer conducted three tests and John thinks he does okay, but at the conclusion of the tests the officer arrested John.

He took John to the police department where John agreed to take a breath test. The officer sets up the machine while he is supposed to be observing John for 20 minutes to make sure nothing enters John's mouth which could throw off the test results. By the time John actually blows into the machine it is after midnight. John blew over the legal limit – a .10.

Penalties

Because John blew over the legal limit of .08, the NH Department of Safety sought to suspend his license for 6 months. Because John is under 21, the district court also sought to revoke John's license for a minimum of 12 months and fine him $500 plus penalty assessment. Because John agreed to the breath test, the 6 months imposed by DOS and the 12 months imposed by the court would run concurrently.

Analysis

When John rolled his window down in response to the officer, an unlawful seizure may have occurred. At the time of the seizure, the officer may not have had a reasonable and articulable reason to believe John had committed a crime or motor vehicle offense. Therefore, any evidence obtained thereafter was suppressed, and the charge dismissed.

Even if the officer was justified when he initially seized John, the officer was only entitled to ask a limited number of questions to either confirm or dispel his suspicion for the initial stop. Because this officer did not observe any problems with the operation of the vehicle or observe

any other of the common signs of impairment the officer may not have been justified in expanding the scope of his investigation to include field sobriety tests. Because John had no problem driving, did not initially exhibit blood shot eyes or slurred speech, and because he did relatively well on the field sobriety tests, there may not have been probable cause to arrest.

According to dispatch logs obtained in discovery, John was stopped at approximately 9:30 p.m. but did not take a breathalyzer test until after 1:00 a.m. The State needed to prove that John was either impaired at the time of the incident or had a blood alcohol content of .08 or greater at the time of operation. The passage of approximately 3.5 hours between the time of operation and the breath test creates a serious problem for the State. It takes up to 90 minutes for alcohol to be absorbed into the blood stream, and blood alcohol content can continue to rise for quite some time after consumption. Therefore, John's blood alcohol content could have been much lower than the legal limit at the time John was driving and on its way up at the time John took the test (a proposition more consistent with the other evidence in the case).

In addition to the passage of time between operation and breath test, the State had a problem with the required 20-minute observation period. In order for a valid test, the breath machine operator must observe the individual for 20 minutes before the individual actually blows into the machine. During the hearing, the Trooper admits that he did not observe John while he was setting the breath machine up for the test. The .10 blood alcohol result might be inadmissible, making the State's case that much more difficult to prove.

Summary

In conclusion, in any DWI case there many issues that can be explored which may result in penalties and/or charges being reduced or in an outright acquittal. We hope this hypothetical has bettered your understanding of the legal process surrounding DWI in New Hampshire. We encourage you to contact a qualified DWI attorney now. Do not delay or you may lose certain important rights. Call now.

FP#2: https://www.waterstreetlegalservices.com/dui-and-traffic-violations/hypothetical-dui-case-process

Facts

John Doe, a 20-year-old male, drives to a friend's house around 7:00 p.m. on a Saturday night. He reportedly consumes two-three beers between 7:00 p.m. and 9:30 p.m. When he leaves to drive some of his friends to a local store to get cigarettes. When he arrives at the store, his friends get out of the car and walk toward the entrance. John shuts the car off and waits in the vehicle. He's driving a 1989, VW Golf. It just so happens that the local police are conducting an underage drinking "sting" to make sure the store is not selling to minors.

An officer in plain clothes observes John approach the store and back into a parking space. The same plain clothed officer approaches John's vehicle. The officer engages John in conversation through the partially opened window. The officer does not yet identify himself. In response, John rolls his window all the way down and starts to talk to the police officer. The officer asks John whether he knows if there are any parties around town. The two talk about the fact that each looks familiar to the other. At one point, the police officer asks John for the time. John looks at the clock near the center of the dashboard and gives the officer the time and has no trouble doing so.

The police officer reportedly detects an odor of alcohol coming from John's breath. The officer asks John whether he's been drinking. John denies drinking. The officer asks John to get out of the car to perform some field sobriety tests. John agrees and gets out of his car. John has no trouble getting out of his car and no trouble walking to the area where the officer wants John to perform the tests. The officer conducts three tests — HGN (pen test), walk-and-turn, and one-leg stand. John thinks he does okay, but at the conclusion of the tests, the officer arrests John and places him in the rear of his police cruiser.

Learn more about the field sobriety test.

He takes John to the police department where he reviews John's ALS "rights" to him. John agrees to take a breath test. The officer gives John his Miranda warnings, and John answers some questions on an alcohol influence report. Since this police department is so small, the officer has to drive John to the local state police barracks in order to take the breath test. The officer is not qualified to conduct a breath test and calls a state trooper to conduct the test. The trooper sets up the machine while he is supposed to be observing John for 20 minutes to make sure nothing enters John's mouth which could throw off the test results. By the time John actually blows into the machine it is after midnight. John blows over the legal limit — a .10. The arresting police officer drives John back to the local PD, and John is released to his mother.

Penalties

Because John blew over the legal limit of .08, the New Hampshire Department of Safety will seek to suspend his license for six months. John has a right to request a hearing at the Bureau of Hearings to challenge this six-month loss of license. He must request this hearing within 30 days, or his right to do so will be waived. Because John is under 21, the district court will seek to revoke John's license for a minimum of 12 months and fine him $500 plus penalty assessment. Because John agreed to the breath test, the six months imposed by DOS and the 12 months

imposed by the court will run concurrently. In addition, John will have to complete IDCMP programming.

In Maine, since John is under 21 years of age, the Bureau of Motor Vehicles will seek to suspend his license for one year for a first violation and two years for the second, and if there was an under 21 passenger, an additional 180-day suspension will be imposed, although it is possible to apply for a cinderella license or early reinstatement if certain conditions are met.

Learn more about DUI penalties.

Analysis

In every criminal and/or motor vehicle case, there are going to be certain constitutional and/or factual defenses. In this case, John may have several constitutional defenses. For example, when John rolled his window down in response to the officer, an unlawful seizure may have occurred. At the time of the seizure, the officer may not have had a reasonable and articulable reason to believe John had committed a crime or motor vehicle offense. Therefore, any evidence obtained after that would be suppressed, and the charge dismissed.

Even if the officer was justified when he initially seized John, the officer would only be entitled to ask a limited number of questions to either confirm or dispel his suspicion for the initial stop. It is not against the law to drink and drive. However, it is against the law to drive while impaired by alcohol or to have a blood alcohol content of .08 or higher. Because this officer did not observe any problems with the operation of the vehicle or observe any other of the common signs of impairment — disheveled appearance, bloodshot eyes, slurred speech — the officer may not have been justified in expanding the scope of his investigation to include field sobriety tests.

Even if the officer was justified, the officer might not have had probable cause to arrest. Because John had no problem driving, did not initially exhibit bloodshot eyes or slurred speech, and because he did relatively well on the field sobriety tests (FSTs), there may not have been probable cause to arrest. This is especially true in light of testimony given by the arresting officer at John's ALS hearing, which revealed certain errors in conducting the FSTs. According to the NHTSA training manual itself, the validity of the FSTs is compromised if the officer deviates from established protocols.

In addition to potential constitutional defenses, based on both the United States and New Hampshire constitutions, John has some potential factual defenses. For example, according to dispatch logs obtained in discovery, John was stopped at approximately 9:30 p.m. According to the Intoxilyzer test ticket, John's first breath sample was obtained after 1:00 a.m. The state must prove that John was either impaired at the time of the incident or had a blood alcohol content of .08 or higher at the time of operation. The passage of approximately 3.5 hours between the time of operation and the breath test creates a serious problem for the state.

It takes up to 90 minutes for alcohol to be absorbed into the bloodstream, and blood alcohol content can continue to rise for quite some time after consumption. In addition, the average person can metabolize one drink per hour. Therefore, John's blood alcohol content could have been much higher at the time of operation and on its way down when he blew (a proposition inconsistent with the physical testing and observations in this case). Or his blood alcohol content could have been much lower than the legal limit at the time John was driving, and on its way up at the time John took the test (a proposition more consistent with the other evidence in the case).

In addition to the passage of time between operation and breath test, the state may have a problem with the required 20-minute observation period. For a valid test, the breath machine operator must observe the individual for 20 minutes (15 in Maine) before the individual actually blows into the machine. During the ALS hearing, the trooper admitted that he did not observe John while he was setting the breath machine up for the test. Moreover, based on the trooper's ALS testimony, he could not have been in a position to have heard John or observed him with peripheral vision. The 20-minute observation period, therefore, may have been inadequate. The .10 blood alcohol result might be inadmissible, making the state's case that much more difficult to prove.

Summary

In conclusion, in any DWI case there are many issues that can be explored which may result in penalties and/or charges being reduced or in an outright acquittal. We hope this hypothetical situation has bettered your understanding of the legal process surrounding DWI in New Hampshire. We encourage you to contact a qualified DWI attorney now. Do not delay or you may lose certain important rights.

FP#3

https://dui.findlaw.com/dui-charges/the-tale-of-two-drunk-driving-cases.html

Duncan Smith was driving home after meeting up with a friend for some drinks to celebrate the end of another week. He only had two beers, but wasn't a particularly large man and hadn't eaten lately, and the effect was noticeable on him. Still, feeling confident that two beers wouldn't incapacitate him, he said goodnight to his friend and drove home. On the way home, his cell phone slid out of his pocket and under the seat. He glanced down to see where it had fallen and by the time he looked up it was too late; his car jumped the curb and smashed into a fire hydrant.

Fortunately, Duncan had been driving at a relatively low speed and he was able to walk away from the crash. As he got out of his car to survey the damage, a police officer showed up. Suspecting alcohol, the officer gave Duncan field sobriety tests, making him recite the alphabet, stand on one leg, and try to touch his nose with one finger. The officer shined a flashlight in Duncan's eyes, making him look left and right, and saw that his eyes were red and watery. Even though Duncan passed the sobriety tests, because he had hit a tree and his eyes were red and watery, the officer placed him under arrest and took him to the station to get a blood test. The test showed that Duncan's blood alcohol content (BAC)was .09, just above the legal limit of .08.

The Booking of Duncan Smith

After Duncan's blood test revealed that his BAC was over the legal limit, Duncan was booked at the station. He was photographed, stripped of his possessions except for his clothes and his watch and put into a jail cell.

Duncan's booking report read: Suspect Duncan Smith. Inventory black leather wallet, containing identification, two credit cards, and $40; 4-door black Nissan Altima, impounded.

While Duncan sat in the jail cell, the arresting officer completed his paperwork, documenting the arrest, his investigation and attaching his pages of notes and comments. Once the officer's report was finished, it was delivered to the district attorney (D.A.). D.A. Beth Rinaldo received the report, scanned it and filled out the appropriate criminal complaint forms.

After the police ran background checks on Duncan, an officer came to tell him that his bail had been set at $1,000 and that he was allowed to make a phone call. Duncan called his mother, who came down to the station and paid his bail. Duncan was given a summons to appear next week in court for an arraignment.

Having been bailed, Duncan returns home and is instructed to either hire a lawyer or contact the public defender's office to be appointed one. Not having much money, Duncan contacts the public defender's office and is instructed to meet with his appointed public defender shortly before his scheduled arraignment.

Drug Trafficking

FP #1

https://nccriminallaw.sog.unc.edu/drug-users-drug-sellers-probable-cause/

Facts. Two officers, working on a drug investigation, "conducted a knock-and-talk at the home of a person they had never met." The officers told the resident that she was facing potential criminal charges for possessing marijuana. The resident "agreed to provide information regarding where she obtained the marijuana." She told the officers that she had purchased the drugs from the person who eventually became the defendant in the case, at his residence two days earlier. She gave the defendant's name, described him, and described his home and its location.

Officers confirmed the accuracy of the defendant's name, description, and the location of his home. They also learned that the defendant had previously been charged with possessing marijuana. Relying on this information plus the fact that they had received several citizen complaints about possible marijuana dealing at the defendant's residence over the past year, the officers sought and obtained a search warrant for the defendant's home. When they executed the warrant, they found marijuana and indoor growing equipment.

Procedural history. The defendant was charged with a variety of drug-related offenses. He moved to suppress, arguing that the search warrant was not supported by probable cause. A judge denied the motion, and the defendant pled guilty and appealed.

Court of appeals majority opinion. Judge Inman, joined by Judge Stephens, affirmed. The majority reasoned that the information given to the officers during the knock-and-talk should be treated as coming from a confidential and reliable informant. The officers had never met the person before, so she had no track record of reliability. However, she made statements that were "against her penal interest" and did so in face-to-face in a setting under which she was likely to be held accountable for any false information she provided. The information was very

fresh and the officers were able to corroborate at least the biographical components of the information. The majority found this to be sufficient to establish her reliability and so to support probable cause.

Dissent. Judge Hunter dissented. He noted that the informant's statements were made "after the officers told her she was facing criminal charges" and perhaps after some discussion of whether her daughter could be taken from her as a result of her drug activity. He did not think that the officers meaningfully corroborated the tip, since they did not confirm any of the incriminating aspects of the tip. And he noted that the citizen complaints were apparently from high school students and that little information about these complaints was elicited at the suppression hearing.

Comment. It will be interesting to see what the state supreme court does with *Jackson*, assuming that it is asked to review the decision. The part of *Jackson* that I found most intriguing was the majority's reliance on the fact that the informant's statement was against her penal interest. From one perspective, this was inarguably correct, as the informant admitted buying illegal drugs from the defendant. Several North Carolina appellate cases have applied the "against penal interest" rationale to facts like these. *See, e.g., State v. Beddard*, 35 N.C. App. 212 (1978) (finding probable cause existed to support a search warrant where an untested informant who had been caught with marijuana told an officer that he had recently purchased the marijuana from the defendant at his home; the court stated that the fact that the "informant's statement [was] against penal interest was a circumstance showing the information was reliable"). Plenty of out-of-state cases are in a similar vein. *See, e.g., Gaddy v. State,* 596 S.E.2d 109 (Ga. 2004) (ruling that "inculpatory statements that are made by [an] informant can establish probable cause for issuance of a search warrant"). Many of these cases ultimately rely on the statement in *United States v. Harris*, 403 U.S. 573 (1971), that "[a]dmissions of crime, like admissions against proprietary interests, carry their own indicia of credibility—sufficient at least to support a finding of probable cause to search."

But from another perspective, it seems likely that the informant's motivation in making her statement was not to clear her conscience by admitting wrongdoing, but rather to improve her legal situation by avoiding being charged with a crime. A few out-of-state cases view facts like those with considerable skepticism. For example, in *State v. Spillers*, 847 N.E.2d 949 (Ind. 2006), the court considered a situation in which a man was caught in possession of drugs, then told the police who had supplied them. The court found this information insufficient to support a search warrant for the supplier's home, rejecting the "against penal interest" argument. The court reasoned that "[a]lthough [the informant] admitted committing . . . possession of cocaine, his tip was less a statement against his penal interest than an obvious attempt to curry favor with the police."

FP #2

https://cdn.ymaws.com/www.ksbar.org/resource/group/2d4adfd9-7ab9-4456-b4fd-cd4484ef0120/materials/2018/2018MockTrial.pdf

Facts. On Wednesday, September 18, 2016 on a rainy early evening at approximately 5:30 PM, about an hour before sunset, agents from the Coeur d'Alene office of the Drug Enforcement Agency showed up at Meadow's Bounty Family Farm just outside of Priest River, Kansas. The owner of record of Meadow's Bounty is Stacy Collins, who set aside part of the farm to grow and sell medicinal marijuana, which had become legal in Kansas in 2011. DEA representatives arrived to serve a search warrant and conduct a search based on allegations that Stacy was going beyond his/her mandate to only grow and sell medicinal marijuana, and had instead, according to the allegations, been selling recreational marijuana to juveniles, which is not legal in Kansas. They set up in a church parking lot across the street from Stacy's property in an unmarked, black SUV, dressed in plain clothes. While the DEA officers were attempting to serve the warrant to Collins at his/her home, a gun battle ensued. Special Agent Avery Miller suffered gunshot wounds to both the shoulder and the leg. As a result of this incident, Stacy Collins has been charged with assault on a federal officer. Stacy has maintained his/her innocence, claiming that s/he fired in self-defense.

Disclaimers This is a work of fiction. The names, characters, businesses, organizations, places, events and incidents herein are the product of the authors' imaginations. This case is meant to provide an opportunity for students to explore current and relevant legal issues. It is not meant to provide any kind of commentary, either for or against, current political issues regarding the legality of marijuana or the state of veterans' affairs.

Human Trafficking

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