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April 7, 2013

VIA HAND DELIVERY

RECEIVED

APR 07 2014

SC Court of Appeals

The Honorable Jenny Abbott Kitchings
Clerk, S.C. Court of Appeals
1015 Sumter Street
Columbia, South Carolina 29201

Re: *State v. Randy Crosby*
Appellate Case No. 2011-205207

Dear Ms. Kitchings:

On behalf of Appellant Randy Jarrod Crosby, I am writing in accordance with Rule 208(b)(7), SCACR to provide the Court with a supplemental citation that has come to my attention after the filing of the briefs in this case. The case is Miller v. State, 780 So.2d 151 (Fla. Ct. App. 2000). Enclosed is a copy of the case.

This case is in reference to Appellant's issue that the information given by the informant was not sufficiently reliable so as to provide officers with reasonable suspicion needed to stop the vehicle in which Appellant was a passenger nor probable cause required to search Appellant or the vehicle in which he was riding.

By copy of this letter, we are this day serving counsel for the State via electronic mail with a copy of this correspondence and a copy of the enclosed opinion.

Sincerely,

Carmen V. Ganjehsani
Appellate Defender

CVG

Enclosure

cc: Mark R. Farthing, Esquire (*via electronic mail*)

780 So.2d 151, 26 Fla. L. Weekly D125
(Cite as: 780 So.2d 151)



District Court of Appeal of Florida,
Second District.

Arseles MILLER, Appellant,

v.

STATE of Florida, Appellee.

No. 2D99-1773.

Dec. 29, 2000.

Defendant was convicted in the Circuit Court, Hillsborough County, Jack Espinosa, Jr., J., of possession of cannabis and possession of cocaine, and he appealed. The District Court of Appeal held that information given by confidential informant was not sufficiently reliable so as to provide officers with reasonable suspicion needed for stop nor probable cause required to search defendant or his vehicle.

Reversed.

West Headnotes

Arrest 35 60.2(5)

35 Arrest

35II On Criminal Charges

35k60.2 Investigatory Stop or Stop and Frisk

35k60.2(5) k. Necessity for cause for arrest.

Most Cited Cases

(Formerly 35k63.5(5))

Arrest 35 63.4(10)

35 Arrest

35II On Criminal Charges

35k63 Officers and Assistants, Arrest Without

Warrant

35k63.4 Probable or Reasonable Cause

35k63.4(7) Information from Others

35k63.4(10) k. Anonymous or unidentified informers. Most Cited Cases

Information given by confidential informant (CI) was not sufficiently reliable so as to provide officers with reasonable suspicion needed for stop nor probable cause required to search defendant or his vehicle, where CI had never before been used by officers, CI was arrested earlier on day of events at issue and released after giving information regarding drug supplier, and neither pager number of drug supplier nor call back number was obtained by officers. U.S.C.A. Const.Amend. 4.

*151 Victor D. Martinez, Tampa, for Appellant.

Robert A. Butterworth, Attorney General, Tallahassee, and John M. Klawikofsky, Assistant Attorney General, Tampa, for Appellee.

PER CURIAM.

Arseles Miller appeals his judgment and sentence for possession of cannabis and possession of cocaine. Miller contended in his motion to suppress the evidence that the confidential informant (C.I.) used by the investigating officers was **not reliable** and that the facts known at the time of his arrest by the officers did not justify a **stop** and search of his **vehicle** and person. Although the case was tried by a jury and a guilty verdict rendered, we determine that the order denying suppression of the evidence was dispositive and reverse.

The C.I. in this case had never been used by the investigating officers before. He was arrested earlier on the day of these events and, after giving infor-

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mation concerning his drug supplier, was released. By arrangement with the officers, the C.I. used a pay phone to call a pager number that he said belonged to his supplier. The call was returned, and the C.I. stated to the officers that a man named Rolo would arrive at an agreed location to sell him drugs in about fifteen minutes. Neither the pager number nor the call-back number was obtained by the officers. The C.I. told the officers where Rolo lived, that he would be driving a maroon Buick with a tan top, and there would be drugs under the seat on the driver's side of the car.

The officers set up surveillance outside Miller's apartment. The officers already had information about Miller, knew he was known as Rolo on the street, and knew where his apartment was located. Approximately fifteen minutes after the phone call, Miller and another man left the apartment and drove away in a maroon Buick with a tan top. However, they did not go to the expected meeting point; instead, they went to pick up lunch at a restaurant. Miller then drove toward the described meeting place but was stopped approximately one and one half blocks away. The meeting place, the restaurant where Miller picked up lunch, and his apartment complex were all within a one-mile radius. Miller was immediately ordered*152 out of the car and searched. He did not consent to the search of his person or the automobile. Drugs were found on his person and under the driver's seat.

In *Everette v. State*, 736 So.2d 726 (Fla. 2d DCA 1999), this court held:

We must first consider whether the initial stop was within constitutional limits. To determine whether information from a confidential informant gives rise to probable cause a court must look at the totality of the circumstances. See *Illinois v. Gates*, 462 U.S. 213, 103 S.Ct. 2317, 76 L.Ed.2d 527 (1983); *State v. Butler*, 655 So.2d 1123 (Fla.1995). Using this analysis, the court must measure the confidential informant's veracity as well as the basis of the C.I.'s knowledge. Veracity can be established

by proof that the C.I. has provided reliable information in the past or has provided detailed and verifiable information on the occasion in question.

736 So.2d at 727.

The information given by the C.I. was not sufficiently reliable so as to provide the officers with the reasonable suspicion needed for a *Terry*^{FN1} stop nor the probable cause required to search Miller or his vehicle. See *Dozier v. State*, 766 So.2d 1105 (Fla. 2d DCA 2000). The motion to suppress should have been granted.

FN1. *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968).

Reversed.

NORTHCUTT, A.C.J., and GREEN, J., and CARLIN, SCOTT, Associate Judge, concur.

Fla.App. 2 Dist.,2000.

Miller v. State

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