

Recent Case Report

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U.S. v. Croto

(1st Cir. 2009) __ F.3d __ [2009 WL 1782628]

Issue

Did officers have probable cause to believe that Croto was plotting an attack on a police station?

Facts

Two men told officers in Biddeford, Maine that one of their friends was planning a series of violent acts directed at the police and the mayor. The men identified their friend as Sean Croto and said that, in the last few months, he had been telling them about his “anarchy plans,” saying he was going to “blow up” the Biddeford police station and kidnap the mayor. One of the men said that Croto had recently shown him a pistol and a rifle and asked him to “join in the action.” The man said that Croto usually concealed one of his guns in his hunting vest and kept others next to his desk in the living room of his apartment. The other man said he had seen “all kinds of guns and drugs” in Croto’s previous residence.

Later that day, a detective questioned the men and asked why they had waited to make a report. One of them said that, at first, he didn’t think Croto was serious. In addition, he had become “fed up” with Croto because he was selling drugs to kids. The other man said he decided to report the threat because he had started thinking that Croto might actually do it.

The detective checked Croto’s rap sheet and found that he had been convicted of drug trafficking and aggravated assault, both felonies. Based on this information, he obtained a warrant to search Croto’s home for firearms. In the course of the search, officers seized ammunition and three guns. Croto was subsequently charged with being a felon in possession of firearms. When his motion to suppress the evidence was denied, he pled guilty but reserved his right to appeal the court’s ruling.

Discussion

Croto contended that the warrant was not supported by probable cause because the detective had insufficient reason to believe that Croto’s friends were reliable or that their information was accurate. The court disagreed.

It is settled that probable cause requires information that is reliable, or at least “reasonably trustworthy.”¹ When this issue arises, the courts usually begin by distinguishing three types of sources: (1) untested informants, (2) tested informants, and (3) citizen informants. Because information from untested informants is inherently unreliable, it has little value unless officers have independent reason to believe it is accurate.² In contrast, information from tested informants and citizen informants will

¹ See *Beck v. Ohio* (1964) 379 U.S. 89, 91.

² See *Higgason v. Superior Court* (1985) 170 CA3 929, 946 (conc. opn. of Crosby, J.) [“There are few principles of human affairs more self-evident than this: The unverified story of an untested informer is of no more moment than a fairy tale on the lips of a child”].

ordinarily support a warrant, so long as officers have no reason to believe it is false. As the court in *Croto* explained:

There is nothing wrong with a police officer relying on information provided by others to support the warrant application he makes, as long as the affidavit provided to the court establishes a sufficient basis for crediting the informant's reliability and his basis for knowledge of the facts supplied.

The issue in *Croto* was whether the two men were merely untested informants (as *Croto* claimed) or citizen informants (as prosecutors claimed). As a general rule, a person will be deemed a citizen informant if, (1) he was the victim or witness to a crime, (2) he had identified himself to officers, and (3) the officers had no reason to doubt his reliability or the accuracy of his information.³

As for the first requirement, both men saw firearms in *Croto*'s possession and, thus they were eyewitnesses to a crime; i.e., possession of a firearm by a felon. The court did not, however, base its ruling on this circumstance. Instead, it applied the rule that a person who was not a witness to a crime may be deemed a citizen informant if it reasonably appeared that he furnished the information to officers as an act of good citizenship, not for some personal advantage.⁴ For example, in one case the registered owner of a car was deemed a citizen informant when he identified the person who had borrowed his car.⁵ In another case, an insurance company investigator qualified as citizen informant when he told officers about the information he had developed in the course of his investigation into a suspicious fire.⁶ Consequently, the court in *Croto* ruled the first requirement was satisfied because it reasonably appeared that *Croto*'s friends were simply "concerned citizens reporting potential criminal activity," and they "received nothing in return" for their information.

As for the second requirement, the court noted that both men identified themselves to the officers which, said the court, "bolsters their credibility because it opens them up for charges related to making a false report." Finally, the detective had no reason to disbelieve their information. In fact, the court noted that the men provided detailed information, as opposed to unsubstantiated conclusions.

Consequently, the court ruled that the search warrant was supported by probable cause, and that the district court properly denied *Croto*'s motion to suppress. POV

³ See *People v. Ramey* (1976) 16 Cal.3d 263, 269 ["[I]t may be stated as a general proposition that private citizens who are witnesses to or victims of a criminal act, absent some circumstance that would cast doubt upon their information, should be considered reliable."]; *People v. Amos* (1977) 70 Cal.App.3d 562, 566-67 ["[N]either a previous demonstration of reliability nor subsequent corroboration is ordinarily necessary when witnesses to or victims of criminal activities report their observations in detail to the authorities."]; *People v. Kershaw* (1983) 147 Cal.App.3d 750, 756 ["In the case of confidential citizen informers, the mere fact that they make their identity known to the police is, itself, some indication of their honesty."]; *People v. Prewitt* (1959) 52 Cal.2d 330, 337 ["Admittedly, an informer's failure or refusal to identify himself may cast doubt on the reliability of his information."].

⁴ See *People v. Jordan* (1984) 155 Cal.App.3d 769, 779-80 [store security officer furnished employment information about an employee]; *In re Joseph G.* (1995) 32 Cal.App.4th 1735 [woman who told officers that her son had reported seeing a fellow student with a handgun].

⁵ *People v. Moore* (1975) 51 Cal.App.3d 610, 616.

⁶ *People v. Superior Court (Bingham)* (1979) 91 Cal.App.3d 463, 472.