



DPS TRAINING BULLETIN

LEGAL BULLETIN NO. 199
March 6, 1996

AFFIDAVIT FOR SEARCH WARRANT LACKING RELIABILITY AND PERSONAL KNOWLEDGE OF INFORMANTS

Reference: Phillip C. Carter, Jr.
v.
State of Alaska

Alaska Court of Appeals
Opinion No. 1456
P.2d
February 9, 1996

FACTS:

State Troopers obtained a warrant to search Carter's residence for evidence of a marijuana-growing operation. In support of the warrant, Troopers submitted two affidavits to establish their probable cause. The first affidavit described four anonymous tips called in to police over a period of three and one-half years. Each tip alleged Carter's involvement in drug activities. There was nothing to suggest the tips came from the same person nor included multiple tipsters.

The first tip was received by Anchorage Crimestoppers on March 19, 1990. The second tip was received by the Anchorage Drug Enforcement Unit (DEU) on January 27, 1992. The third tip was a Crimestoppers call to the Mat-Su Narcotics office on May 19, 1993. The final call was to the DEU on August 30, 1993. Each call indicated Carter was selling drugs out of his home. The last call described the Carter residence.

The second affidavit summarized Matanuska Electric Association (MEA) records of electrical consumption at Carter's residence. A MEA employee testified before the judge during application for the warrant. The employee stated that the electrical usage pattern showed "something other than normal household usage is taking place and the pattern was very consistent with growing marijuana."

In addition, Troopers were able to verify other information supplied by the anonymous tipsters--such as the location of the residence, names of other persons living there and the telephone number at the residence.

The warrant was served and 248 marijuana plants, as well as growing equipment (lights, scales, etc.), were seized. Carter moved to suppress the evidence, arguing that the warrant was not based on probable cause.

ISSUE:

Under the Alaska Constitution, did the Magistrate who authorized this search have adequate supporting facts to independently test the confidential informant's basis of knowledge and veracity?

HELD: No.

REASONING:

1. Applying the Aguilar-Spinelli two-prong test to the four anonymous tips received by police in this case reveals their deficiency.
2. Nothing in any of the tips would support an inference that the confidential informant, or informants, who reported them to police spoke truthfully or from personal knowledge. (emphasis added)
4. Utility records showing unusual electrical consumption have no inherent incriminatory value.
5. If an anonymous and conclusory allegation of drug-related activity were sufficient to elevate evidence of unusual electrical consumption from the level of mere suspicion to that of probable cause, then the probable cause requirement might well be reduced to little more than a hollow exercise in self-fulfilling prophecy.

NOTES:

Even though the United States Supreme Court has abandoned the Aguilar-Spinelli two-prong test in favor of "verified anonymous tips" (see Illinois v. Gates, Legal Bulletin No. 73; and Alabama v. White, Legal Bulletin No. 146), based on our Constitution, the Alaska Supreme Court continues to require that information supplied by informants be based on the two-prong test. Prong one is based on reliability of the informant (his/her track record); prong two is based on personal knowledge (Does he/she really know what they are talking about?). It could be that our courts may revisit the Illinois v. Gates case based on anonymous tips; but, in the meantime, the two-prong test is required. Review of Section M of your manual is recommended.

NOTES TO SUBSCRIBERS TO THE ALASKA LEGAL BRIEFS MANUAL:

Add this case to Section M, "Warrants, Affidavits and Informants," of your Content and Text. File Legal Bulletin No. 199 numerically under Section R of the manual.