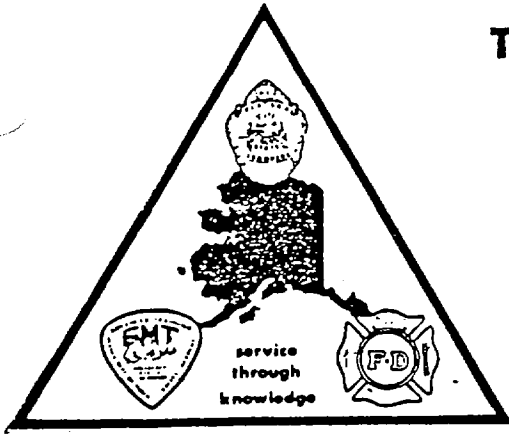


DEPARTMENT OF PUBLIC SAFETY

TRAINING ACADEMY

LEGAL BULLETIN NO. 73
June 21, 1983



AFFIDAVIT FOR SEARCH WARRANT BASED ON ANONYMOUS TIP

Reference: Illinois
v.
Lance GATES

United State Supreme Court
~~Opinion No. 81-430~~
462 U.S. 213
June 8, 1983

FACTS:

The Chief of the Bloomingdale, Illinois, Police Department received an anonymous letter alleging drug activities on the part of Lance GATES and his wife, Sue. The letter gave a street intersection indicating they lived in the condominiums at that location. The letter went on the state that Sue would drive the car to Florida and Lance would fly down to get the car and drive it back loaded with drugs. Sue was to drive the car to Florida on May 3rd and Lance was going to fly down to get it. The letter further indicated that a large amount of drugs was in the GATES' residence.

The detective assigned the case learned that the GATES couple did in fact live in the condominiums and that Lance had made a May 5th reservation on a flight to Florida. Arrangements were made with the Drug Enforcement Administration (D.E.A.) for surveillance of Lance. Lance took the flight, stayed overnight in a motel room registered in his wife's name and left the following morning in a car bearing an Illinois license plate issued to Lance. A search warrant for GATES' residence and vehicle was obtained from an Illinois state-court judge based on the officers affidavit setting forth the foregoing facts and a copy of the anonymous letter. During the subsequent search, the police discovered drugs in the residence and vehicle. The GATES' moved to suppress the evidence challenging the reliability of the informant and the informant's basis of knowledge. GATES won in the courts of Illinois and the State appealed.

ISSUE:

Can a magistrate issue a search warrant on the basis of a partially corroborated anonymous informant's tip?

HELD: Yes.

REASONING:

1. The rigid "two-pronged test" (reliability of informant and basis of knowledge), determining whether an informant's tip establishes probable cause for issuance of a warrant, is abandoned and the "totality of the

circumstances" approach that traditionally has informed probable-cause determination is substituted in its place.

2. The task of the issuing magistrate is simply to make a practical, common-sense decision whether, given all the circumstances set forth before him, there is a fair probability that contraband or evidence of a crime will be found in a particular place. (emphasis added)

3. The facts obtained through the independent investigation of the Bloomington police officer and the D.E.A. at least suggested that the GATES couple were involved in drug trafficking.

4. Finely tuned standards, such as proof beyond a reasonable doubt or by a preponderance of the evidence, useful in formal trials have no place in the magistrate's decision.

5. Sufficient information must be presented to the magistrate to allow him to determine probable cause; his actions cannot be a mere ratification of the bare conclusions of others.

6. Probable cause does not demand the certainty we associate with formal trials. It was enough that there was a fair probability that the writer of the anonymous letter had obtained his entire story either from GATES or someone they trusted and corroboration of major portions of the letter's predictions provides this probability.

NOTES:

The Alaska Supreme Court in Keller v. State (Legal Bulletin No. 11) adopted the "two-prong test" of Aguilar v. Texas, 38, U.S. 108, 1964, regarding affidavits based on informants. That test requires (a) reliability of the informant, and (b) personal knowledge. What the court will do when confronted with an issue such as this will depend on whether the court address the Fourth Amendment of the United States Constitution or Article I, Section 14, of the Alaska Constitution.

The United States Supreme Court in this case apologized for not addressing the "good faith exception", if any, to the Fourth Amendment. However, the State of Illinois did not argue that issue. The court has left the door open for a possible exception to the warrant requirement if the police acted in good faith, but we will have to wait until another case is argued with that issue before we will know the answer.