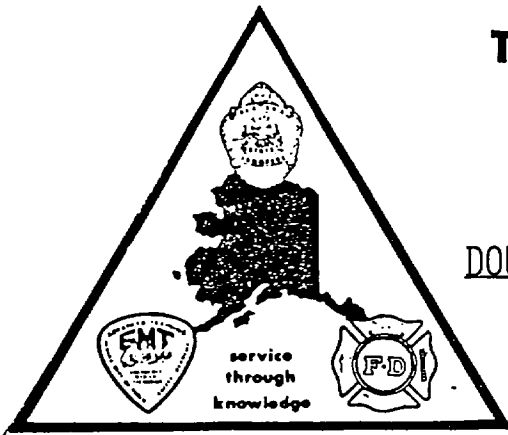


DEPARTMENT OF PUBLIC SAFETY

TRAINING ACADEMY

LEGAL BULLETIN NO. 56
May 18, 1982



DOUBLE HEARSAY USED TO OBTAIN SEARCH WARRANT

Reference: Alexander A. RESEK, Jr.
v.
State of Alaska

Alaska Court of Appeals
Opinion No. 88
P.2d
May 13, 1982

FACTS:

Mrs. Albert Monsma went looking for a young girl who had threatened to commit suicide. She went to the apartment of Nada Alayoubi where she saw an unattended child and a plate containing cocaine. Monsma became upset because she thought there was enough cocaine on the plate to kill the child if the child got into it. Sometime later, Alayoubi came out of a bedroom and offered to sell some of the cocaine to Mrs. Monsma. Mrs. Monsma refused the offer and left the apartment.

She told her husband what she saw and he contacted the police and relayed the information. A police officer went before a judge and told the judge what Mr. Monsma said his wife had told him. The court issued a search warrant for the Alayoubi residence.

When the warrant was served, cocaine paraphernalia was seized. Alayoubi told the officers that the paraphernalia belonged to a man she knew as Jose. Shortly thereafter, a man identified by Alayoubi as Jose arrived. Jose, later identified as Alexander RESEK, Jr., was taken into custody. A search "incident to his arrest" uncovered a small vial of cocaine which RESEK had been carrying on his person. The officers then applied for a search warrant for RESEK's car. The warrant was issued and the search uncovered 2.2 ounces of cocaine.

RESEK moved to suppress the issuance of the original search warrant.

ISSUE:

Does the fact that the warrant was founded upon double hearsay make it necessary to require the invalidation of the warrant?

HELD: No.

REASONING:

1. It is clear that the warrant was predicated on double hearsay--the police officer told the court what Mr. Monsma said his wife had told him.

2. When information is provided by a cooperative citizen or an informant not from the criminal milieu, there is less need for establishing credibility of the informant.

3. Mr. and Mrs. Monsma were trustworthy and reliable. Their provision of information was apparently based on a sense of civic duty as well as concern for the safety of others.

4. Some of the information was independently verified by the police.

NOTES:

In this case, the police officer who applied for the warrant testified that he was aware of the search for the girl who had threatened suicide having heard a "locate" broadcast over his police radio. The fact that Alayoubi was the occupant of the apartment was known by the police because she had been contacted there several days before by another officer.

Review Legal Bulletin No. 11, Keller v. State, where a search warrant was obtained based on a reliable informant. The Alaska Supreme Court upheld issuance of that warrant as does the Court of Appeals in this case.