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# DPS TRAINING BULLETIN

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LEGAL BULLETIN NO. 211  
February 17, 1997

AFFIDAVIT FOR SEARCH WARRANT LACKING  
RELIABILITY OF INFORMANT

Reference: John P. Stam  
v.  
State of Alaska

Alaska Court of Appeals  
Opinion No. 1489  
P.2d  
October 11, 1996

FACTS:

Over a period of several days, a police informant (designated as MS94-5) telephoned the Statewide Drug Enforcement Unit (SDEU) and told officers that John Stam was growing marijuana on his homestead north of Galena. MS94-5 provided an extremely detailed description of Stam's property. MS94-5 declared that he/she had been to Stam's homestead a few days earlier and saw about ninety mature plants growing on Stam's property with another ninety or more "starter" marijuana plants growing indoors. MS94-5 said Stam bragged about selling marijuana for a living and that, even though he was a fisherman, he had not fished this year because he was making enough money selling the marijuana.

Police conducted a records check and determined that MS94-5 had no criminal record. Troopers assigned to Galena were contacted and reported that, whereas he was a fisherman, Stam had not fished during the season.

A search warrant was obtained and executed. Police discovered and seized 219 live marijuana plants. Stam argued that the evidence should be suppressed because MS94-5 did not meet the Aguilar/Spinelli two-prong (reliability and personal knowledge) test.

ISSUE:

Under the Alaska requirement, did MS94-5 meet the Aguilar/Spinelli test? (emphasis added)

HELD: No.

REASONING:

1. MS94-5 must be treated as a "police informant" (identity not revealed) rather than a "citizen informant."
2. The Aguilar/Spinelli rule is designed to protect citizens against the issuance of search warrants that are based solely on the uncorroborated assertions of police informants.

NOTES:

The United States Supreme Court has abandoned the Aguilar/Spinelli two-prong test in Illinois v. Gates, Legal Bulletin No. 73. Alaska courts continue to require that information supplied by informants be based on the two-prong test. Review of Section M of the manual is recommended, especially:

Hugo v. State, Legal Bulletin No. 194--regarding probable cause based on "corroborated" statement from informant; and Carter v. State, Legal Bulletin No. 199--reliability was found lacking on informant.

NOTE TO SUBSCRIBERS TO THE ALASKA LEGAL BRIEFS MANUAL:

Add this case to Section M, "Warrants, Affidavits and Informants," of your Contents and Text. File Legal Bulletin No. 211 numerically under Section R of the manual.