



DPS TRAINING BULLETIN

LEGAL BULLETIN NO. 151
February 4, 1991

AFFIDAVIT FOR SEARCH WARRANT
BASED ON INFORMANT

Reference: Della Rae Fannin
v.
State of Alaska

Alaska Court of Appeals
Opinion No. 1101
P.2d
January 18, 1991

FACTS:

Paramedics and police responded to a residence regarding an overdose. The victim, Dee Vinberg, was transported to a local hospital. A warrant was issued to search the residence where the event occurred; no drugs were found.

Several days later, police interviewed other witnesses who indicated that the cocaine used by Vinberg had come from "Della, the lesbian's house on the hillside." Police believed this to be Della Rae Fannin's residence.

Several witnesses testified before a judge in support of the affidavit to search Fannin's residence for cocaine. A police officer testified he had checked Crimestoppers' reports for about the past two years and they indicated six calls had been received complaining of cocaine trafficking at Fannin's house. He also testified that he thought a search warrant had been served previously on Fannin's house, but had failed to disclose any drugs.

Another person, Daniel Merrigan, testified that Dee Vinberg told him the cocaine came from Jennifer Clark. She indicated she had thought Clark got the cocaine from Fannin, but did not say she ever bought any from Fannin nor ever went to Fannin's house. She told Merrigan that he could furnish police with this information.

On the basis of this testimony, a warrant was issued to search Fannin's house. Execution of the warrant led to the discovery of cocaine in the possession of Fannin and Kvasnikoff.

ISSUE:

Did the affidavit provide sufficient probable cause to believe that cocaine was present at the Fannin residence?

HELD: No.

REASONING:

1. The Alaska Supreme Court elected to follow the Aguilar/Spinelli two-prong test in determining whether hearsay information establishes probable cause for issuance of a warrant. This test requires the State to establish that the informant (a) has personal knowledge, and (b) is reliable.

2. Probable cause could not properly be found absent evidence to support the conclusion that Clark gave Vinberg reliable information about Fannin.

3. Nothing in Merrigan's testimony specified that Clark told Vinberg that she had supplied Fannin with cocaine.

NOTES:

The United States Supreme Court has overturned the Aguilar/Spinelli test in a case called Illinois v. Gates. According to the United States Supreme Court, the Federal Constitution provides for the issuance of a warrant on information based on hearsay by an anonymous tip. In the more recent case of Alabama v. White, the United States Supreme Court upheld the stopping of a vehicle based on an anonymous tip.

CAUTION--The Alaska Supreme Court and Court of Appeals have interpreted our State Constitution to require the two-prong test!

Review of the following cases, located in Section M of the Alaska Legal Briefs manual, is recommended:

Keller v. State, Legal Bulletin No. 11--requires the two-prong test.

Resek v. State, Legal Bulletin No. 56--upheld issuance of warrant containing double hearsay when both personal knowledge and reliability of known informant were included.

Allen v. State, Legal Bulletin No. 137--insufficient information from anonymous caller to justify the stop of a vehicle.

Compare/contrast the following two cases which were decided by the United States Supreme Court but not adopted by our State courts:

Illinois v. Gates, Legal Bulletin No. 73--affidavit for search warrant based on anonymous letter upheld when police conducted independent investigation to verify information.

Alabama v. White, Legal Bulletin No. 146--investigatory stop of vehicle based on anonymous tip upheld when the police corroborated information prior to stop.

NOTE TO SUBSCRIBERS TO THE ALASKA LEGAL BRIEFS MANUAL:

Add this case to Section M of your Contents and Text. File Legal Bulletin No. 151 numerically under Section R of the manual.