



## DPS TRAINING BULLETIN



LEGAL BULLETIN NO. 327

April 4, 2008

### PROBABLE CAUSE TO ARREST BASED ON INFORMATION SUPPLIED BY GOOD CITIZEN

**Reference:** Russell Lee Duncan Jr. Alaska Court of Appeals  
v. Opinion No. 2151  
State of Alaska \_\_\_\_\_P.3d\_\_\_\_\_  
March 14, 2008

### **FACTS:**

A local resident who was the owner of a business in downtown Anchorage, called police to complain about drug dealing occurring outside of their business at an intersection . The caller told the dispatcher that a drug deal happened a minute before they had called, and also the night before. The caller further stated they had a picture of "the guy today" and that the guy was "the only one out there." The caller described the suspect's race, build, and the color and type of his clothing.

Sgt. Dennis Allen responded to the call. When he heard the report, he thought "it's probably Mr. Duncan." Sgt. Allen had contacted Duncan on "numerous occasions" in the past, and on several of those occasions, Duncan was suspected of drug sales. On arrival, Sgt. Allen observed Duncan and noted he was dressed as described by the caller. Sgt. Allen contacted Duncan and checked him for weapons with a pat-down search.

A second police officer, James Cross, also responded to the call. Officer Cross was also familiar with Duncan from prior contacts. Cross knew from experience that people involved with drugs often carried sharp objects like razor blades or needles. When Cross searched Duncan, he removed Duncan's hat and a piece of crack cocaine fell out of the hat. Cross found two other pieces of crack cocaine in the sweatband of the hat. Cross asked Duncan if he had anything else, and Duncan directed Cross to a crack pipe in his pocket. Duncan was arrested and charged with misconduct involving a controlled substance.

Duncan argued that the pat-down searches conducted by the officers exceeded the lawful scope of a pat-down search. Superior Court Judge Larry Card ruled that the search was justified as incident to arrest.

**ISSUE #1.**

Did the police have probable cause to arrest Duncan, and was the search justifiable as one incident to arrest?

**HELD:** Yes - probable cause to arrest exists if the facts and circumstances known to the officer would support a reasonable belief that an offense has been or is being committed by the suspect subject to the search.

**REASONING:**

**1.** The police may conduct a warrantless search incident to arrest when (1) the arrest is supported by probable cause; (2) the search is roughly contemporaneous with the arrest; (3) the arrest is not a pretext for the search; and (4) the arrest is for an offense, evidence of which could be concealed on the person.

**2.** The police can establish probable cause with reasonably trustworthy information provided by an informant. Informants are normally designated as "police informants" or "citizen informants". (emphasis added)

**3.** When a tip is provided by a "cooperative citizen, or an informant not from the criminal milieu, there is less need for establishing credibility of the informant." The identity of the citizen informant is known and available for cross-examination. (emphasis added)

**4.** The police in this case personally knew Duncan and his criminal history and knew that the area where the informant reported that Duncan was drug dealing was an area with a reputation for drug activity.

**5.** The police responded to a citizen complaint about drug dealing, and there is no evidence supporting a claim that the police used this complaint as a pretext to search Duncan incident to arrest.

**NOTE TO SUBSCRIBERS TO THE ALASKA LEGAL BRIEF MANUAL:**

File Legal Bulletin No. 327 numerically under Section R of the manual.