

127838

No. 127838

**IN THE
SUPREME COURT OF ILLINOIS**

PEOPLE OF THE STATE OF ILLINOIS,

Plaintiff-Appellee,

v.

ANGELO CLARK,

Defendant-Appellant.

On Appeal from the Appellate Court of Illinois, First Judicial District, No. 1-18-0523
There Heard on Appeal from the Circuit Court of Cook County, Criminal Division
No. 13 CR 16035
The Honorable Nicholas Ford, Judge Presiding

**BRIEF OF *AMICUS CURIAE* CITY OF CHICAGO
IN SUPPORT OF PLAINTIFF-APPELLEE**

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TABLE OF CONTENTS, POINTS, AND AUTHORITIES

INTEREST OF <i>AMICUS CURIAE</i>	1
ISSUE PRESENTED	1
STATEMENT OF FACTS	1
ARGUMENT	
ARRESTS ARISING FROM AN INVESTIGATIVE ALERT AND SUPPORTED BY PROBABLE CAUSE ARE CONSTITUTIONAL	4
<u>People v. Tisler,</u> 103 Ill. 2d 226 (1984).....	4
<u>People v. Grant,</u> 2013 IL 112734	4
<u>People v. Hopkins,</u> 235 Ill. 2d 453 (2009).....	4
<u>People v. Jackson,</u> 232 Ill. 2d 246 (2009).....	4
<u>People v. Robinson,</u> 167 Ill. 2d 397 (1995).....	4
<u>Gordon v. Degelmann,</u> 29 F.3d 295 (7th Cir. 1994)	5
<u>People v. Buss,</u> 187 Ill. 2d 144 (1999).....	5
<u>People v. Ewing,</u> 377 Ill. App. 3d 585 (4th Dist. 2007).....	6
<u>Derik T. Fettig, <i>Who Knew What When? A Critical Analysis of the Expanding Collective Knowledge Doctrine,</i></u> 82 UMKC L. Rev. 663 (2014)	7
<u>People v. Braswell,</u> 2019 IL App (1st) 172810.....	8

<u>People v. Thornton,</u> 2020 IL App (1st) 170753	8
<u>People v. Bass,</u> 2019 IL App (1st) 160640	8
<u>People v. Harris,</u> 2022 IL App (3d) 200234	9
<u>Gerstein v. Pugh,</u> 420 U.S. 103 (1975)	9
725 ILCS 5/109-1(a)	9
Chicago Police Department General Order G06-01	9
<u>County of Riverside v. McLaughlin,</u> 500 U.S. 44 (1991)	9
<u>People v. Williams,</u> 161 Ill. 2d 1 (1994)	9
CONCLUSION	11

INTEREST OF *AMICUS CURIAE*

In 2001, the Chicago Police Department (“CPD”) put into place an investigative alert system that allows law enforcement personnel to share critical investigatory information with their fellow officers. As pertinent here, the investigative alert system also has the capacity to indicate whether probable cause supports a person’s arrest. The City of Chicago has a direct interest in this case because defendant-appellant Angelo Clark contends that any arrest pursuant to an investigative alert is unconstitutional, even when the alert correctly indicates that probable cause exists. The City submits this brief to describe more fully the investigative alert system and to explain why the appellate court correctly decided that an arrest arising from an investigative alert is lawful when police have probable cause to believe the arrestee committed an offense.

ISSUE PRESENTED

The City addresses the following issue:

Whether this court should affirm the appellate court’s holding that an arrest pursuant to an investigative alert comports with constitutional requirements, where probable cause supports the arrest.

STATEMENT OF FACTS

Pursuant to the CPD special order that governs the investigative alert system, an investigative alert is a notice “identifying a specific individual

that . . . investigative personnel are attempting to locate.” Chicago Police Department Special Order S04-16, available at <https://directives.chicagopolice.org/#directive/public/6332>. To request that an investigative alert be entered, an officer must provide, among other things, the subject’s name, known aliases, and last known address, as well as a physical description and the “[j]ustification for the investigative alert request.” Id. Supervisors are responsible for reviewing requests and deciding whether to approve them. Id. Once an alert is approved, a name check on a person for whom an investigative alert exists will display the alert and include all the information that went into the request. Id.

Supervisors in the Bureau of Detectives and the Bureau of Organized Crime are responsible for maintaining investigative alert files “contain[ing] sufficient information relating to the subject of the alert to allow any member of the investigating unit to handle the investigation if the requesting member is not available.” Chicago Police Department Special Order S04-16. To that end, “[c]opies of all reports, documents, etc. supporting the investigative alert request and a summary of how the subject was involved in the crime or incident” must go into the file. Id. The file must also include “a copy of the subject’s most recent photograph,” if one is available. Id.

There are two types of investigative alerts. One is an “Investigative Alert/No Probable Cause to Arrest,” which identifies a person whom “investigative personnel seek to interview concerning a specific police

matter,” where “there is no probable cause to arrest that person on the strength of the investigative alert alone.” Chicago Police Department Special Order S04-16. If a name check reveals this kind of alert, the investigating officer will “be reminded that if no other crime was committed, an arrest is not authorized.” Id. (emphasis omitted). Rather, the officer is to inform the subject of the alert that an “investigative member seeks to interview the individual about a specific police matter and request that the subject voluntarily accompany the officer(s) to the district station to speak with the investigating officer so that the matter may be resolved.” Id. (emphasis omitted).

The other type of investigative alert is an “Investigative Alert/Probable Cause to Arrest,” which “identifies an individual that is wanted by . . . investigative personnel concerning a specific crime, and while an arrest warrant has not been issued, there is probable cause for an arrest.” Chicago Police Department Special Order S04-16. If an officer conducts a name check that reveals an investigative alert indicating probable cause to arrest, the officer is to place the person in custody and notify the unit of the officer who requested the alert. Id. The arrestee is then processed in accordance with CPD policies. Id. CPD policies require, among other things, that anyone arrested without a warrant who has not been released from custody “will appear in court, without unnecessary delay. Under no circumstances will such a person appear in court any later than 48 hours from the time of

arrest.” Chicago Police Department General Order G06-01, available at <http://directives.chicagopolice.org/#directive/public/6401> (emphasis omitted).

In addition to covering the two kinds of investigative alerts, the CPD special order also provides for “temporary wants,” which may be used “to prevent a wanted person for whom there is probable cause to arrest from seeking refuge across jurisdictional boundaries while circumstances prevent the immediate acquisition of a warrant.” Chicago Police Department Special Order S04-16. When a name check reveals a temporary want, the officer is to place the person under arrest and “ensure that either the warrant information or the basis for probable cause has been articulated on the arrest report . . . prior to the arrestee being sent to court.” Id. Temporary wants automatically expire after 48 hours. Id.

ARGUMENT

ARRESTS ARISING FROM AN INVESTIGATIVE ALERT AND SUPPORTED BY PROBABLE CAUSE ARE CONSTITUTIONAL.

The federal and Illinois Constitutions prohibit unreasonable seizures, and an arrest is reasonable under both when an officer has probable cause to believe the arrestee committed an offense. People v. Tisler, 103 Ill. 2d 226, 236-37 (1984). Thus, this court has repeatedly explained that warrantless arrests are lawful when they are supported by probable cause. E.g., People v. Grant, 2013 IL 112734, ¶ 11; People v. Hopkins, 235 Ill. 2d 453, 472 (2009); People v. Jackson, 232 Ill. 2d 246, 274-75 (2009); People v. Robinson, 167 Ill.

2d 397, 405 (1995). When an investigative alert accurately identifies the existence of probable cause, a warrantless arrest pursuant to that investigative alert is therefore constitutional.

Clark premises his challenge to his arrest on the notion that CPD's system for issuing investigative alerts is a "proxy warrant system." Clark Br. 19. But an investigative alert is not a proxy warrant. Rather, it is simply a means of sharing investigatory information among officers. If that information establishes probable cause, the alert includes an instruction to arrest the suspect. An investigative alert is thus akin to a wanted flyer or an all-points bulletin, which are well established law-enforcement tools that direct officers to make an arrest based on the information their fellow officers have gathered. See Gordon v. Degelmann, 29 F.3d 295, 300 (7th Cir. 1994). The lawfulness of an arrest arising from such a bulletin or flyer "depends on the information available to the police collectively; if the person issuing the radio bulletin or authorizing the wanted poster had probable cause to do so, the facts need not be present to the mind of the person making the arrest." Id. And indeed, regardless of the precise means that officers use to share information with each other, this court has long recognized that "[w]hen officers are working in concert, probable cause can be established from all the information collectively received by the officers even if that information is not specifically known to the officer who makes the arrest." People v. Buss, 187 Ill. 2d 144, 204 (1999) (internal quotation marks omitted). Thus, where the

facts underlying an investigative alert establish probable cause, an officer may rely on the collective knowledge of the officers responsible for the alert and effectuate a constitutional arrest.

If anything, an arrest pursuant to an investigative alert that correctly identifies the existence of probable cause should be even less objectionable than other kinds of warrantless arrests that are based on officers' collective knowledge. In general, the collective knowledge doctrine merely imputes the knowledge of one officer to fellow officers. E.g., People v. Ewing, 377 Ill. App. 3d 585, 594-95 (4th Dist. 2007). By contrast, an officer who acts pursuant to an investigative alert can also review the justification for the alert and knows the probable cause determination has been approved by a supervisor. By affording an opportunity for deliberation and requiring supervisory approval, investigative alerts serve only to strengthen the basis upon which one officer relies on another's probable cause determination.

Properly understood, then, investigative alerts give law enforcement officers a useful tool for sharing vital investigatory information. And they improve the administration of criminal justice in at least three ways. First, they protect the residents of Chicago by providing law enforcement a means for more readily identifying and apprehending criminal suspects. Second, investigative alerts help improve the accuracy of probable cause determinations by requiring a contemporaneous, written record of the factual basis for probable cause. This, in turn, helps improve judicial evaluations of

probable cause by providing the court with a pre-arrest written record of what facts the police believed justified an arrest.

Third, investigative alerts promote officer safety. An officer conducting an investigation is at a distinct “disadvantage when not given information known to fellow law enforcement officers,” as compared to an officer who possesses “all the pertinent information about a suspect” and can “conduct himself more carefully” in accordance with that information. Derik T. Fettig, Who Knew What When? A Critical Analysis of the Expanding Collective Knowledge Doctrine, 82 UMKC L. Rev. 663, 697 (2014). For example, an officer who learns from an investigative alert that the person he has stopped for a minor traffic offense is suspected of a violent crime knows to conduct himself more carefully, whether by calling for backup or taking other protective measures such as asking the suspect to exit his vehicle. Without the information provided in the investigative alert, the officer is left to rely on nothing but “assumptions and conjecture,” *id.*, putting him at greater risk of harm.

In light of these benefits, courts should not interpret the state or federal constitutions in a way that would inhibit the flow of valuable investigatory information among police officers. Yet that would be one of the perverse effects of accepting Clark’s position in this case. Invalidating an arrest because it was based on an investigative alert would, as the appellate court has aptly put it, “create[] the somewhat paradoxical situation where

police may arrest an individual without a warrant and without an investigative alert if they have probable cause to do so, but that same arrest becomes unconstitutional if police issue an investigative alert based on the same facts that gave rise to the probable cause.” People v. Braswell, 2019 IL App (1st) 172810, ¶ 39. A case illustrating that paradox is People v. Thornton, 2020 IL App (1st) 170753, in which officers stopped the defendant pursuant to information from a 911 call, id. ¶ 30, and then arrested him when they discovered an investigative alert indicating he was wanted for sexual assault, id. ¶ 41. The panel majority held that the arrest pursuant to the investigative alert was constitutional because the facts supporting the alert gave rise to probable cause. Id. ¶ 44.

But a concurring member of the panel, who was also a member of the majority in People v. Bass, 2019 IL App (1st) 160640, vacated in relevant part, 2021 IL 125434, ¶ 31, concluded that the arrest was constitutional only because the arrest took place before the arresting officer learned that the investigative alert existed. Thornton, 2020 IL App (1st) 170753, ¶ 69 (Pucinski, J., specially concurring). In other words, had the officer known of the investigative alert – and thus gained *more* information supporting probable cause – before making the arrest, the otherwise lawful arrest would have become unconstitutional. That is misguided and would discourage the sharing of useful and pertinent information among police officers. This court should reject that approach.

Clark's criticisms of the investigative alert system lack merit as well. In an effort to show that investigative alerts are "proxy warrants," Clark claims that investigative alerts replace a judge's assessment of probable cause with that of a police officer, Clark Br. 20, thereby "precluding a determination of probable cause from a neutral magistrate" and "usurp[ing] the role of the judiciary," *id.* at 22. That is not accurate. "[T]he mere use of alerts to disseminate information among officers does not eliminate judicial evaluations of probable cause." *People v. Harris*, 2022 IL App (3d) 200234, ¶ 13. Indeed, the United States Constitution and Illinois law require a prompt probable cause hearing following a warrantless arrest, *Gerstein v. Pugh*, 420 U.S. 103, 125 (1975); 725 ILCS 5/109-1(a), and those are provided. CPD policy requires that any person arrested without a warrant be brought to court "without unnecessary delay," and no later than 48 hours after the arrest. Chicago Police Department General Order G06-01. An arrest followed by a probable cause hearing before a judge within 48 hours of the arrest typically satisfies constitutional requirements. *County of Riverside v. McLaughlin*, 500 U.S. 44, 56 (1991).

Clark also argues that CPD used an investigative alert "as the basis to arrest [him] at his residence." Clark Br. 13 (heading). But Clark does not seek reversal on the ground that he was arrested at his residence without a warrant. So although a police officer may not "mak[e] a warrantless entry into a private residence to effectuate a routine felony arrest" absent exigent

circumstances, People v. Williams, 161 Ill. 2d 1, 25-26 (1994), this case does not implicate that rule. And in any event, Special Order S04-16 does not purport to authorize warrantless arrests in residences. Clark argues that the policy is illegal “to the extent that [it] places no limitations on the enforcement of investigative alerts,” Clark Br. 20, but the policy need not expressly incorporate all conceivable limitations on arrests to pass legal muster. By the same token, Special Order S04-16 does not mention the prohibition on the use of excessive force, but no reasonable reading of the order would suggest that it somehow sanctions excessive force in arrests pursuant to investigative alerts.

Elsewhere, Clark argues that if “CPD wanted to issue an alert to stop [him] until they could get an arrest warrant, they would have issued a Temporary Want, which expires after 48 hours.” Clark Br. 22. The fact that Clark would not have objected to an arrest pursuant to a “temporary want” is telling. An arrest pursuant to a temporary want, like one pursuant to an investigative alert, occurs prior to a judicial determination of probable cause. But in both cases, that sequence of events does not render the arrest unlawful. A prompt post-arrest judicial determination of probable cause comports with constitutional requirements, as we have explained.

In sum, an investigative alert is an important law enforcement tool that neither supplants judicial determinations of probable cause nor acts as a substitute for warrants. Instead, it provides for the sharing of vital

information among law enforcement officers, which in turn advances the efficient and safe administration of criminal justice. Accordingly, this court should affirm the appellate court's decision that an arrest pursuant to an investigative alert that is supported by probable cause is constitutional.

CONCLUSION

For the foregoing reasons, this court should affirm the judgment of the appellate court.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) table of contents, points, and authorities, the Rule 341(c) certificate of compliance, and the certificate of service, is 11 pages.

/s/ Stephen G. Collins
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CERTIFICATE OF SERVICE

The undersigned certifies under penalty of law as provided in 735 ILCS 5/1-109 that the statements in this instrument are true and correct and that the foregoing Brief of *Amicus Curiae* City of Chicago in Support of Plaintiff-Appellee was served on all counsel of record via File & Serve Illinois on April 5, 2024.

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