No. 127412

IN THE SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Respondent-Appellee, v. GERMEL DOSSIE, Petitioner-Appellant.	))))))))))))	On appeal from the Appellate Court of Illinois, First Judicial District, No. 1-20-1050 There heard on appeal from the Circuit Court of Cook County, Criminal Division No. 15 CR 10914 Honorable William H. Hooks, Judge Presiding

BRIEF AND APPENDIX FOR THE PETITIONER-APPELLANT

Sharone Mitchell Jr.
Cook County Public Defender
Suzanne A. Isaacson
Assistant Public Defender
Office of the Cook County Public Defender
69 W. Washington
15th Floor
Chicago IL 60602
(312) 603-0600
LRD.PD@cookcountyil.gov

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CYNTHIA A. GRANT
SUPREME COURT CLERK

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TABLE OF CONTENTS AND POINTS AND AUTHORITIES

POINTS AND AUTHORITIES

NATURE OF THE CASE

The Circuit Court of Cook County, Illinois, granted defendant Germel Dossie's pre-trial motion to quash arrest and suppress evidence on August 14, 2020. The court found both that Germel Dossie's arrest was not supported by probable cause and that the procedure by which he was arrested – an "investigative alert" issued by the Police Department rather than an arrest warrant approved by a judge – rendered his arrest unconstitutional.

The State filed a certificate of substantial impairment and notice of appeal on September 3, 2020. The Appellate Court reversed the circuit court's suppression order in a Rule 23 order entered on June 11, 2021. No issues are raised on the pleadings.

JURISDICTION

The Appellate Court of Illinois entered a Rule 23 order on June 11, 2021. Defendant Germel Dossie's petition for leave to appeal was filed on July 6, 2021, and was allowed on September 29, 2021. This Court has jurisdiction over this appeal pursuant to Illinois Supreme Court Rule 315.

ISSUES PRESENTED FOR REVIEW

I. Whether the trial court properly granted Germel Dossie's pre-trial motion to quash arrest and suppress evidence because he was arrested without a warrant in violation of the fourth amendment and Illinois Constitution, as his arrest was not supported by sufficient reliable and corroborated evidence to establish probable cause.

II. Whether the investigative alert procedure, pursuant to which Germel Dossie was

arrested, is unconstitutional, and rendered Germel Dossie's arrest unlawful, because as a proxy system used in lieu of a warrant when a warrant would otherwise be used or required, it violates both state and federal procedures for warrants, constitutional requirements for warrant issuance, and the state separation of powers clause.

CONSTITUTIONAL PROVISIONS

UNITED STATES CONSTITUTION, FOURTH AMENDMENT

> The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

ILLINOIS CONSTITUTION OF 1970, ARTICLE I, SECTION 6

> The people shall have the right to be secure in their persons, houses, papers and other possessions against unreasonable searches, seizures, invasions of privacy or interceptions of communications by eavesdropping devices or other means. No warrant shall issue without probable cause, supported by affidavit particularly describing the place to be searched and the persons or things to be seized.

ILLINOIS CONSTITUTION OF 1970, ARTICLE II, SECTION 1

> The legislative, executive and judicial branches are separate. No branch shall exercise powers properly belonging to another.

STATEMENT OF FACTS

Seventeen-year-old Germel Dossie was charged with murder in connection with the June 1, 2015, shooting of Clifton Frye, who passed away almost two weeks later, on June 13, 2015. (C 24, 47).

Germel Dossie filed a motion to quash arrest and suppress evidence, alleging that his warrantless arrest on June 9, 2015, was unconstitutional. (C 152). A hearing was held on the motion on June 18, 2019, January 23, 2020, and August 14, 2020.

The court granted Germel Dossie's motion, finding the arrest to have been both unsupported by probable cause and undertaken pursuant to the Chicago Police Department's unconstitutional "investigative alert" procedure. (R 92).

Three witnesses testified at the hearing: Officer Sanchez, Officer Dingle, and Detective Tedeschi. The following evidence was presented at the hearing.

June 1, 2015

Initial Events at the Scene

At 1:11 p.m., Clifton Frye was shot on North Ashland Avenue in Chicago. (SR 45, 90).

Officer Sanchez heard a call of "shots fired" and headed to the location indicated. (R 13). Officer Sanchez and his partner, Officer Decker, were in the area because they had seen Clifton Frye conducting hand-to-hand narcotics transactions and attempted to detain him, but lost his car in traffic. (R 12).

Officer Sanchez saw Clifton Frye on the ground, surrounded by a small crowd of people. (R 13). Other officers, including detectives, also responded to the call. (R 13).

With information obtained from talking to unnamed persons, Officer Sanchez provided Detective Gonzalez, or Detective Hazlehurst, a description of the offenders as two male blacks, teens to early 20s, about 5'7" to 6' tall, and about 150 lbs., both wearing hooded jackets. (R 17-18). At the hearing, Officer Sanchez did not recall whether he had sent out a flash message with that description. (R 18-19).

Detective Tedeschi was assigned to go and assist officers at the scene. (Sup R 90-91). He did not recall what time he was assigned. (Sup R 90). Detectives Gonzalez and Hazlehurst, who were initially assigned, were at the scene. (Sup R 61, 91). Detective Tedeschi "assisted in the investigation," but did not recall what tasks he performed. (Sup R 92).

The Video Footage: Who Watched It

"At some point," Officer Sanchez learned that there were surveillance cameras at the building at the southeast corner of Ashland and Jonquil, and that video was available. (R 14). On June 1, Officers Gonzalez and Hazlehurst asked him if he would watch the video. (R 15). Officer Sanchez watched the video. (R 14). The record does not disclose the time that he watched it. "Other officers" also watched the video, but Officer Sanchez did not recall who. (R 14). He answered affirmatively when asked whether he watched it "inside a building." (R 14). The record does not disclose more specifically where he watched it.

Detective Tedeschi learned that there was video. (Sup R 47). The record does not disclose what time he learned that. He did not personally view the video at that time; he testified that Detective Hazlehurst and Detective Gonzalez viewed the video. (Sup R 48).

Detective Tedeschi testified that Officer Sanchez had located it, but that he did not know at what time he had viewed it. (Sup R 59). He testified, "I did not view it at the time that Hazlehurst and Jack Gonzalez did. They were the first detectives that viewed the video." (Sup R 59). The record would appear to suggest, although it is not entirely clear, that it was viewed by the non-testifying detectives some time on the afternoon of June 1, before Tyrone Crosby was stopped. (Sup R 59-60).

The Video: The Testimony as to What it Showed

Officer Sanchez testified that he saw, on the video, "[p]eople running different directions, an offender with a handgun, and more commotion after that." (Sup R 14-15). He answered affirmatively when asked whether he told Detectives Gonzalez and Hazlehurst that two black males were seen running eastbound on Jonquil Terrace, one holding a revolver. (R 15). At that time, Officer Sanchez did know Germel Dossie, but he could not identify him from the video. (R 15-16).

Detective Tedeschi learned the contents of the videos that Detectives Hazlehurst and Gonzalez saw. (Sup R 48). While someone apparently viewed the videos before Tyrone Crosby was stopped, the record does not disclose what time Detective Tedeschi learned the contents. Detective Tedeschi testified to the video showing the two individuals running westbound to the corner, one briefly disappearing from view, and both running back, eastbound. (Sup R 49).

Detective Tedeschi testified that the video showed a Hyundai Santa Fe with a visible license plate. (Sup R 50).

The video in the exhibits does not show the license plate number clearly.

Detective Tedeschi testified that the video affording a view of the license plate showed the vehicle while parked in the alley (Sup R 82-83), but the video exhibit, while showing a vehicle entering an alley, does not show it parked. Detective Tedeschi thought that video showing the actual alley had been inventoried. (Sup R 83).

The Police Locate Tyrone Crosby

Detective Tedeschi testified that before Tyrone Crosby was located, "[w]e had a description of a vehicle and a license plate." (Sup R 69). It was known only that the car he was associated with had been seen in the video. (Sup R 77). It was the license plate number as shown on the video that led the police to Crosby. (Sup R 83). The video had only provided a "very general description" of the two persons. (Sup R 56).

It is unclear what time Tyrone Crosby was stopped. Detective Tedeschi testified that Sergeant Holy had stopped Crosby "at approximately 1700 hours," or 5:00 p.m. (Sup R 71). Earlier, Detective Tedeschi answered affirmatively when asked whether Sergeant Holy's "interaction" with Tyrone Crosby had taken place at about 4:00 p.m. (Sup R 52).

Sergeant Holy called Detective Tedeschi to the scene of the encounter with Tyrone Crosby, on the 1300 block of West Touhy. (Sup R 71). Sergeant Holy had observed the red Hyundai parked on that block. (Sup R 50). Sergeant Holy interviewed Tyrone Crosby on Touhy; Detective Tedeschi was not present for that conversation. (Sup R 53, 72). Still on Touhy, however, Sergeant Holy told Detective Tedeschi that the woman in the vehicle with Crosby was Crosby's grandmother, and the owner of the vehicle. (Sup R 53).

Tyrone Crosby was taken to Area North police headquarters "for further

investigation." (Sup R 53). He was driven there by unknown members of the Chicago Police Department. (Sup R 72-73). Detective Tedeschi arrived at the station about 40-45 minutes later. (Sup R 72).

Initial Interview of Tyrone Crosby at Area North Police Headquarters

When Detective Tedeschi arrived at Area North, he began to interview Tyrone Crosby right away. (Sup R 72). The detective answered affirmatively when asked whether that conversation took place "around dinner time." (Sup R 55).

During that conversation, Tyrone Crosby told Detective Tedeschi that he was the driver of the Hyundai Sante Fe; that he drove to the location; and that he drove away from it after the shooting. (Sup R 53). Crosby said that he went to pick up "Lil Shawn," who had called him, and also picked up "Spazz." (Sup R 54, 80). When they got to the vicinity, he drove around the block; then Lil Shawn and Spazz exited the vehicle. (Sup R 54). After a short time, Crosby heard several gunshots. (Sup R 54). Then Spazz came running back holding a large barrel gun. (Sup R 54). Both got back in Crosby's car. (Sup R 54-55). Crosby said he was unaware of anyone having a weapon when they got in his car. (Sup R 80). He did not see the shooting. (Sup R 80). Tyrone Crosby was not shown the video during that interview. (Sup R 79).

Detective Tedeschi's Database Search

Based on the information received from Tyrone Crosby, Detective Tedeschi "conducted a computer database search for Spazz and for Lil Shawn" and "identified Spazz as Germel Dossie and Lil Shawn as Shawn Randall." (Sup R 55).

The Issuance of the Investigative Alert

The State asked Detective Tedeschi, "Once you had that information" from the database search, "what did you do with it?" (Sup R 55). He testified, "I issued what is known as an investigative alert." (Sup R 55). He testified, "An investigative alert is a tool that's used by the police department that if an individual is stopped and their name is run through the computer, that the alert will essentially pop [up] saying that they are wanted for questioning." (Sup R 55). He also issued one for Shawn Randall. (Sup R 56).

There is no indication that Tyrone Crosby was shown photos of Germel Dossie or Shawn Randall as of the time the investigative alert was issued.

When asked what time he issued the investigative alert for Germel Dossie, Detective Tedeschi initially testified, "It was either late on the first or early morning on the second. I don't recall the exact time." (Sup R 81). He then agreed that it had been issued on June 1, 2015, at 1708 hours (5:08 p.m.): "Yes. If that's what it says on there, yeah." (Sup R 81).

The investigative alert did not identify Germel Dossie as being the shooter. (Sup R 81). It just said that he was involved in an aggravated battery with a handgun. (Sup R 81). The investigative alert was not itself made of record.

The Night of June 1 - June 2, 2015

Tyrone Crosby spent the night of June 1 - June 2, 2015 at Area North. (Sup R 73). Detective Tedeschi testified, "He voluntarily stayed" and "never asked to leave." (Sup R 73-74). He was kept in an interview room. (Sup R 74). "He was a participant in

th[e] investigation." (Sup R 74). To use the bathroom, he would be escorted. (Sup R 75-76).

June 2, 2015

Detective Tedeschi participated in a video statement of Tyrone Crosby on the morning of June 2, 2015. (Sup R 56). A prosecutor took the statement. (Sup R 56). The prosecutor used exhibits during the video statement, including a photograph of Germel Dossie. (Sup R 56). He identified Germel Dossie as the person who had the gun, ran out of the car, and ran back after shots were heard. (Sup R 56-57).

Later on June 2, 2015, the police drove Tyrone Crosby to the grand jury at 26th and California. (Sup R 57, 76-77). He "volunteered" to testify and did not appear under subpoena. (Sup R 76). Detective Tedeschi learned that during Crosby's grand jury testimony, exhibits were used, and Crosby identified Germel Dossie. (Sup R 58).

June 2 - June 9, 2015

There is no information in the record as to what occurred between June 2, when Tyrone Crosby testified before the grand jury, and the early evening of June 9, 2015.

June 9, 2015: Germel Dossie's Arrest

On June 9, 2015, Officer Dingle was assigned to the fugitive apprehension section of the Police Department. (Sup R 31). He was working third watch, in the afternoon. (Sup R 32-33). The "front office" assigned Officer Dingle the investigative alert for Germel Dossie. (Sup R 32). Neither the location of the unit nor the identity of the person in the "front office" who assigned the alert was made of record. Officer Dingle was told to call Detective Tedeschi or Detective Gonzalez once Germel Dossie was placed in

custody. (Sup R 41).

Officer Dingle printed out the investigative alert. (Sup R 41). It stated only that Germel Dossie was identified as being involved in an aggravated battery with a handgun. (Sup R 41). It did not say what he had done. (Sup R 41).

Before leaving the station, the officers "did a background check on Mr. Dossie's arrest history, contact cards, places he's been. Things of that nature." (Sup R 37). They also obtained a photograph of Germel Dossie. (Sup R 38).

Officer Dingle and his partners, Officer Suthar and Officer Malm, from a covert vehicle, set up surveillance of a multi-unit apartment building at 3543 Sunnyside. (Sup R 31-33, 38).

Germel Dossie exited the building and got in a jeep. (Sup R 34). Officer Dingle, who was driving, followed the jeep, and radioed for marked police units to initiate a stop. (Sup R 34, 38). The marked units did stop the jeep, on Montrose, with Officer Dingle's group to the rear. (Sup R 34-35). Germel Dossie did not attempt to run away and complied with all requests. (Sup R 35). He was not seen committing any crimes. (Sup R 35).

Germel Dossie was arrested on Montrose, and Officer Suthar placed him in custody. (Sup R 35, 39). He was handcuffed and was placed in a "marked unit with a proper cage for prisoner transports." (Sup R 35-36). Officer Dingle called area headquarters after the arrest, while en route. (Sup R 41). Officer Dingle and his partners brought Germel Dossie to area headquarters and placed him in a detective's room. (Sup R 36). Germel Dossie was then under arrest. (Sup R 36).

The officers had no arrest warrant for Germel Dossie. (Sup R 36). Officer Dingle later learned, after Germel Dossie had been arrested, that he had a juvenile warrant that had been issued by the Illinois Department of Corrections. (Sup R 39, 40).

Officer Dingle had no prior involvement with Germel Dossie's case, or information about it – "just the investigative alert." (Sup R 37).

On June 9, 2015, Detective Tedeschi learned that Germel Dossie was in custody. (Sup R 44). He questioned him, and took his statement. (Sup R 45).

Exhibits

Defense Exhibit 1 is a photograph of Tyrone Crosby, identified by Detective Tedeschi. (Sup R 85-86).

Defense Exhibit 2 is a 15-minute surveillance video, shown to Detective Tedeschi. (Sup R 87). Two persons running along the sidewalk are seen at 9:16 - 9:34. The video is taken from a different angle than Defense Exhibit 3. The persons' faces are entirely obscured.

Defense Exhibit 3 was played during closing argument. (R 33-35). At 00:17, a maroon vehicle turns into the alley. At 00:25, two persons emerge from the alley and run along the sidewalk. They are wearing hoodies, and their faces are obscured. By 00:32, both are out of view. At 00:37, they re-emerge, and run back along the sidewalk.

Defense Exhibit 4 on the Impound Order (mistakenly referred to as Defense Exhibit 2 in the transcript) is a Chicago Police Department event query, referencing a June 1, 2015, flash message, time 23:20:33. (R 24). It indicates that a caller said that three shots were heard. (R 25). There is also a reference to a black male, mid 20s,

driving a small red SUV and a male black, 20s, driving a small red car. (R 25).

The Court's Ruling

The court granted the motion to quash and suppress. (R 92).

The court found that probable cause to arrest had not been shown. (R 90). While the court found the testifying officers to be credible (R 66-67), it concluded that their testimony did not amount to probable cause to arrest.

The police relied on Tyrone Crosby's statement, yet the court noted the absence, apart from the video, of "any information concerning any other corroboration" of it. (R 73). The video was of poor quality, and "at most appeared to show a black male or two black males" whose weights and heights could not be discerned. (R 69).

The court further noted the lack of information about Crosby's criminal record or any pending cases at the time he was questioned. (R 73). Yet, the police "credited" his statement, at least "to a degree," including the nicknames he provided of his companions in his vehicle – which were attributed to Germel Dossie and another person by means of a database of unknown reliability, even though some nicknames are common to a number of persons. (R 73-75, 82-83). The sole basis for arresting Germel Dossie, more than a week after the shooting, was the statement of the single witness Crosby, of unknown background. (R 77).

The court also granted the motion to quash and suppress on the additional basis that the police chose to arrest Germel Dossie pursuant to an "investigative alert" rather than a warrant. (R 90-91). Had the police sought a warrant, a court would have had many questions, such as about Crosby's rap sheet – as is typically provided *in camera* –

and would have inquired about other information to assist in assessing Crosby's credibility. (R 74). Arrest warrants have been denied when insufficient information has been presented to the court. (R 79). None of the officers explained why a warrant was not sought. (R 78). The court found it problematic that Tyrone Crosby could be brought before the grand jury, yet not before the judge for a warrant. (R 78).

The court also criticized the "frequent and blatant use of the investigative alert system," which "ignor[es] the constitutional obligations of any sitting court judge," and noted that "State's Attorneys are available around the clock to review and make charging decisions or support the preparation of search warrants and arrest warrants for judges to consider" – all of which the Police Department uses to circumvent the State's Attorney's Office, the court system, and the Constitution itself. (R 86-88). The court considered the relevant cases and concluded that the investigative alert procedure was unconstitutional. (R 88).

The State filed a certificate of substantial impairment, and a notice of appeal. (C 243, 244). The Appellate Court reversed the judgment of the circuit court, *People v. Dossie*, 2021 IL App (1st) 201050-U, and this Court allowed Germel Dossie's petition for leave to appeal.

I. The Trial Court Properly Granted Germel Dossie's Motion to Quash Arrest and Suppress Evidence Because His Warrantless Arrest Rested on the Non-Inculpatory Account of a Person Who Was Not Shown to Be Sufficiently Reliable, Or Corroborated, to Establish Probable Cause, Nor Was the Evidence Presented at the Hearing Generally Sufficient to Establish Probable Cause to Arrest.

The trial court found that the State had failed, during the hearing on the motion to quash arrest and suppress evidence, to show probable cause for the police to arrest Germel Dossie without a warrant. The trial court's decision to suppress evidence resulting from the unlawful arrest was entirely reasonable and proper and must be affirmed and reinstated, and the Appellate Court's order reversed.

On review, great deference is accorded to the trial court's factual findings, which may only be reversed if against the manifest weight of the evidence, while the court's "ultimate ruling on a motion to suppress involving probable cause" is reviewed *de novo*. *People v. Grant*, 2013 IL 112734 at ¶ 12 (standard of review).

The United States and Illinois Constitutions require that arrests be made upon probable cause. *Henry v. United States*, 361 U.S. 98, 102 (1959); *People v. Bloxton*, 2020 IL App (1st) 181216 at ¶ 18; U.S. Const., amends. IV; Ill. Const., art. I, § 6 (1970). "Probable cause to arrest exists where the facts and circumstances within the officers' knowledge and of which they had reasonably trustworthy information are sufficient to warrant a person of reasonable caution in the belief that a crime has been committed by the person being arrested." *People v. Avery*, 180 Ill. App. 3d 146, 154 (1st Dist. 1989). Veracity, reliability, and the informant's basis of knowledge are all "highly relevant" to the determination. *Illinois v. Gates*, 462 U.S. 213, 230 (1983). The totality-of-the-

circumstances approach set forth in *Gates* "permits a balanced assessment of the relative weights of all the various indicia of reliability attendant upon the giving of the probable cause information." *People v. James*, 118 Ill. 2d 214, 223 (1987).

The State failed to meet its burden of establishing that the information offered by Tyrone Crosby rose to a sufficiently reliable and trustworthy level to establish probable cause that would justify the arrest of Germel Dossie.

At a hearing on a motion to quash and suppress, the initial burden of proving that the seizure was unlawful is on the defendant, which may be met by showing that he was doing nothing unusual or illegal when arrested, as Officer Dingle's testimony established here. *See People v. Moncrief*, 131 Ill. App. 2d 770, 773 (3d Dist. 1971); SR 35. The burden of proving the validity of the arrest – that is, the burden of going forward with evidence to establish that the police had probable cause – then shifts to the State. *See id.; see also People v. Broge*, 159 Ill. App. 3d 127, 140 (1st Dist. 1987). Any information that gives rise to probable cause must be "established by the evidence" at the hearing. *Moncrief*, 131 Ill. App. 2d at 773. Here, while the court found the testifying officers credible (R 66-67), the quantum of information to which they testified, in particular the corroboration that would establish reliability, fell short of demonstrating probable cause.

A review of the evidence of record at the hearing shows that it was unsatisfactory to establish probable cause, and that it would not have led a reasonable, prudent, and cautious officer, without more than was adduced here, to arrest Germel Dossie.

The State principally relied on information offered to the police by Tyrone Crosby, who did not testify at the hearing. As summarized by Officer Tedeschi, Crosby

relayed that two persons, whom he knew as "Lil Shawn" and "Spazz," were in his car; the two got out; Crosby heard shots but saw nothing; soon after, Spazz, whom he later identified as Germel Dossie, returned with a large-barrel gun while Lil Shawn returned holding his side; and the two entered the vehicle. (SR 53-57).

At first glance, Crosby's account might appear to be incriminating to Dossie, but on closer inspection, its deficiencies become evident, and the record fails to establish that a prudent officer exercising reasonable caution would deem it sufficiently reliable to justify the arrest.

While Detective Tedeschi characterized Crosby's submitting to questioning and remaining overnight at the station as voluntary – "[h]e volunteered to help in this investigation" – (SR 74), various factors suggest that, subjectively, he would have perceived himself to be in a vulnerable position. The police tracked down his vehicle, in which he was stopped by a police sergeant and was taken to Area North for "further investigation." (SR 53). Crosby had, that same afternoon, responded to "Lil Shawn's" request to pick him up and had driven the same vehicle, transporting two persons, possibly both armed, to the vicinity of a shooting immediately before and after gunshots were heard. (SR 53-54, 80).

Far from being a disinterested citizen, Tyrone Crosby was involved in what transpired and may well have feared being deemed an accomplice – "one who is in some way concerned in or associated with another in the commission of a crime" – whose account should be considered with "great caution." *People v. Touhy*, 361 Ill. 332, 352, 353 (1935). Unless, perhaps, the person offers evidence against penal interest, *see James*,

118 Ill. 2d at 223 – yet, Crosby was careful to avoid implicating himself in any wrongdoing, as when he said that he did not know that anyone had a weapon when entering the car (SR 80), although a gun is visible on the video. While Crosby's account was self-serving in nature and not against his penal interest so as to rise to sufficiency for probable cause, he ought to be viewed as certainly perceiving himself as being under suspicion as an accomplice, and vulnerable to prosecution, at the time he was taken to area police headquarters and questioned.

The detective's recounting of the information relayed by Crosby was brief in nature. For example, there was no mention of Crosby's describing any statements or admissions by the two persons as to what they had done, if anything at all, even though the three persons would have been in the vehicle together for some length of time. There was no mention of the circumstances surrounding the call from Lil Shawn asking to be picked up.

The Appellate Court, in reversing the trial court's determination, stated that the State need only show "some indicia of reliability." *People v. Dossie*, 2021 IL App (1st) 201050-U at ¶ 25. But "some" is not properly construed as the barest minimum of information; it is properly construed as entailing an element of reliable sufficiency, and must rise to the level of reliability as a totality. To that end, the information presented must be duly considered and assessed.

When a warrant, unlike here, is sought, the affidavit supporting the application "must provide the magistrate with a *substantial basis* for determining the existence of probable cause." *Gates*, 462 U.S. at 239 (emphasis supplied). And the magistrate, to

issue a warrant, is expected to make "*informed and deliberate* determinations." *United States v. Ventresca*, 380 U.S. 102, 105 (1965) (search warrant; emphasis supplied). When a warrant is bypassed, surely no less is expected of the court reviewing probable cause at a suppression hearing. That was expressly acknowledged in *Wong Sun v. United States*, 371 U.S. 471, 479 (1963) (the reliability of the information on which an officer may act "surely cannot be less stringent than where an arrest warrant is obtained"), and *People v. Johnson*, 94 Ill. 2d 148, 153 (1983) ("The standards applicable to a police officer's probable cause assessment at the time of the challenged arrest and search are at least as stringent as the standards applied to a magistrate's assessment; less stringent standards would encourage police to avoid obtaining a warrant"). Consistent with those principles, the trial court did not require a showing of proof beyond a reasonable doubt. Rather, it properly exercised, as part of its assessment, an element of qualitative and quantitative analysis to determine whether the standard of prudent caution on the part of the Police Department had been satisfied. To that end, the factors considered by the court were consistent with that purpose, are well taken, and were properly considered.

Even after hearing the testimony of three witnesses, the information presented was unsatisfactory to the extent the trial court was left "with questions that could fill a small book." (R 76). The court noted that no information was presented on Crosby's criminal record, his state of sobriety when he gave his account, nor any "information as to any promises or pending cases" at the time of his "cooperation with law enforcement." (R 73). The court's concerns were entirely reasonable and were proper subjects for its consideration, as courts have recognized.

It is reasonable, for example, for courts to consider the informing witness's criminal history, including pending investigations, in determining probable cause. *Cf. People v. Wise*, 2019 IL App (2d) 160611 at ¶ 69. It is reasonable for courts to consider the informing witness's sobriety, whether at the time of the events he witnessed or the time he furnished information to the police. *Cf. People v. Jackson*, 2014 IL App (3d) 120239 at ¶ 92.

The court further observed that there was no evidence on whether there were intimations of leniency in exchange for Crosby's cooperation, and why he was not charged. (R 73, 84). Whether a person has been offered "promises of leniency or other inducements" for his information is, as the court recognized, another important factor in assessing reliability. *People v. Ollins*, 231 Ill. App. 3d 243, 606 N.E.2d 192, 199 (1st Dist. 1992). If "a criminal suspect is offered leniency or promised anonymity if he provides information against others, that information is clearly suspect because of the obvious motivation to shift blame to someone else." *James*, 118 Ill. 2d at 224.

As the trial court found, the video footage provided inadequate verification of Crosby's account, as it was of poor quality – "not a high-quality video within any meaning of the word." (R 68-69). The persons' faces are entirely obscured. In fact, Officer Sanchez testified to prior dealings with Germel Dossie, yet could not identify him on the video. (R 15-16). The video does not show time stamps and had no audio, and there was little information about the officer's process of retrieving it and attributing it to the same incident of the shooting. Detective Tedeschi thought that someone had shown Crosby the video, but not himself – he did not know who, and did not know when (Sup R

80), and if indeed he saw it, no testimony was offered about any conversation about it.

And what of any witnesses at the scene? Officer Sanchez found a "small crowd" of people when he responded to the call. (R 13). Unnamed and undescribed persons in the area led to a rather non-specific description of "two black males," "teens into early 20's," "approximately five foot seven to six foot," "approximately 150 pounds," with dark clothes and hooded jackets. (R 17-18).

The trial court was also troubled because the reliability of the Police Department's nickname database was not established. (R 75). It was through that database that the police deduced that "Spazz" and "Lil Shawn" were Germel Dossie and Shawn Randall. But, as the court noted, "how information gets into that Chicago Police database with respect to nicknames that track back to other names, this Court has no idea about." There was no testimony as to "what degree of reliability" supports the information in the database, whether that information was collected by the Chicago Police Department only, and when it was collected. (R 75). Indeed, the reliance on computerized files that may not be kept up to date, yet which may lead to persons being deprived of their liberty, was a concern of the Court in *People v. Joseph*, 128 Ill. App. 3d 668, 672 (1st Dist. 1984).[1]

Courts have the "responsibility to assess the reliability of the informant upon whose information the arrest was carried out." *People v. Shelby*, 221 Ill. App. 3d 1028, 1037, 1039 (1st Dist. 1991) (no probable cause to arrest when indicia of reliability of the

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[1] More recently, the Chicago Police Department's "gang database" in use as of 2020 has been "criticized as ineffective, inaccurate, and outdated." Chicago Police set to revamp controversial gang database, Chicago Sun-Times, February 26, 2020.

co-offender who named the defendant, such as "independent verification, corroborating witnesses, admission of the crime and detailed statements," were not presented). Regardless of whether the source of information is an eyewitness or other witness, probable cause to arrest requires a showing of independent indicia of reliability, and the "personal reliability" of the informing witness must be considered. *People v. Jackson*, 2014 IL App (3d) 120239 at ¶ 84. The State bore the risk of failing to provide the court with information that would assist it in discharging that responsibility, and it failed to meet its evidentiary burden at the suppression hearing.

That no attempt to arrest Dossie was undertaken until June 9, 2015 – eight days after Tyrone Crosby gave his account to Detective Tedeschi, and a full week after his grand jury testimony – suggests that the police, themselves, may have been unconvinced that the information in their possession was of such quality and quantity to suffice for probable cause.

And even accepting, for the purpose of this Issue I only, that an arrest warrant is not required for a felony arrest with probable cause, the failure to seek a warrant remains a relevant factor in the probable cause assessment, and a proper subject of concern for the court. As the Supreme Court noted in the search warrant context in *Ventresca*, 380 U.S. at 106, warrants are preferred, and "in a doubtful or marginal case," the police action with a warrant "may be sustainable where without one it would fail."

That the trial court would have posed many questions had a warrant application been submitted (R 74) is relevant. It has been viewed with approval that an informant appeared before a Cook County judge, "giving the judge an opportunity to ask questions

and thereby 'evaluate the informant's knowledge, demeanor, and sincerity.'" *Edwards v. Joliff-Blake*, 907 F.3d 1052, 1057 (7th Cir. 2018). Even if only a police officer had appeared for a warrant application – although the court would have preferred to hear Crosby as well, as it noted his presence in the courthouse before the grand jury, when he could have been brought before a judge – the court would have been able to make inquiries as to Crosby's background, potential inducements and other characteristics, and, indeed, would have been expected to "examine upon oath or affirmation the complainant or any witnesses." 725 ILCS 5/107-9 (statute governing the issuance of arrest warrants on complaint).

All of the trial court's concerns about an inadequate showing of reliability on the part of the State at the suppression hearing, largely pertaining to unexplained or absent information, perhaps never considered by the police at all and certainly not presented to the court at the hearing, are consistent with and supported by the law as to the factors properly considered in assessing probable cause. The court's well-considered decision to grant Germel Dossie's motion to quash arrest and suppress evidence should be affirmed – and the Appellate Court's order reversed – and all evidence obtained pursuant to his warrantless, unconstitutional arrest without probable cause must be suppressed, as the fourth amendment's exclusionary rule applies to the states through the due process clause of the fourteenth amendment, *Mapp v. Ohio*, 367 U.S. 643 (1961).

II. The Investigative Alert System, Pursuant to Which Germel Dossie Was Arrested, Is Inconsistent with the Illinois and Federal Constitutions, and Its Infirmities Provide an Alternative Basis For Finding Germel Dossie's Arrest Unlawful.

An independent and alternative basis for the trial court's order granting Germel Dossie's motion to quash arrest and suppress evidence is the court's finding that the Chicago Police Department's use of an "investigative alert," in lieu of a warrant, to effect his arrest was unconstitutional. The trial court's decision is correct, as the failure of the Police Department to seek a warrant in this "ordinary case," when it would have been feasible to present evidence of probable cause to a neutral and independent court, and to opt instead to rely on its parallel internal "investigative alert" procedure with neither judicial review or approval nor consistency with warrant procedures, violates Article I, § 6 of the Illinois Constitution of 1970, and the fourth amendment, U.S. Const., amends. IV, XIV.

The points raised in this section involve questions of law, including constitutional questions, and should be reviewed *de novo*. *See, e.g., Monson v. City of Danville*, 2018 IL 122486 at ¶ 14.

A. Investigative Alerts Defined

The current version of the Chicago Police Department's Special Order S04-16, issued on December 18, 2018, defines an investigative alert as "a notice entered into CHRIS[2] identifying a specific individual that Bureau of Detective or Bureau of Organized

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[2] CHRIS stands for the Criminal History Records Information System (CHRIS) Investigative Alert Application System. Special Order S04-16 § I.B (2018).

Crime investigative personnel are attempting to locate." Special Order S04-16 § II.A.[3] There are two types. "Investigative Alert/Probable Cause to Arrest" identifies an individual wanted in connection with a "specific crime, and while an arrest warrant has not been issued, there is probable cause for an arrest." *Id.*, § II.A.1. "Investigative Alert/No Probable Cause to Arrest" identifies an individual whom "investigative personnel seek to interview concerning a specific police matter. However, an arrest warrant for that individual has not been issued, and there is no probable cause to arrest that person on the strength of the investigative alert alone." *Id.*, § II.A.2.

Germel Dossie was arrested in 2015, when the previous version of Special Order S04-16, issued in March 2001, was in effect. That version of the Special Order replaced the term "stop order" with the term "investigative alert"; introduced the CHRIS system; and "inform[ed] members of the availability of investigative alert data via CHRIS and local Hot Desk name checks." Special Order S04-16 § I.A, D, E (2001). It indicates that there are Investigative Alerts/Probable Cause to Arrest and Investigative Alerts/No Probable Cause to Arrest, and while the definitions of those terms do not appear in the body of the 2001 Special Order, *see id.*, § IV.A.1, 2 (2001), the definitions had been formulated within the Police Department by 2010. *See Sanders v. Cruz*, 2010 U.S. Dist. LEXIS 76539 (N.D. Ill. 2010) at *8.

For the Probable Cause variety, the police are directed to take the offender into

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[3] The 2001 and 2018 versions of the directive have been included in the Appendix. Courts have judicially noticed the Chicago Police Department directives, *see People v. Brown*, 2019 IL App (1st) 161204 at ¶ 40, including S04-16, *Velez v. Atchison*, 2013 U.S. Dist. LEXIS 124385 at *37.

custody; for the No Probable Cause variety, an arrest is not authorized if no other crime was committed. Special Order S04-16 § IV (2001); § V (2018).

Any member of the Bureaus of Detectives or Organized Crime (or, in 2001, the Bureau of Investigative Services) with responsibility for follow-up investigation may request an investigative alert via the CHRIS Investigative Alert Application System. The requests are approved or rejected by "supervisors," and are effective immediately. Special Order S04-16 § II (2001); § III (2018).

B. The Investigative Alert Issued Here

Detective Tedeschi issued an investigative alert for Germel Dossie on June 1, 2015. (Sup R 55). He described investigative alerts as follows: "An investigative alert is a tool that's used by the Police Department that if an individual is stopped and their name is run through the computer, that the alert will essentially pop [up] saying that they are wanted for questioning." (Sup R 55). While the document was not made of record, Detective Tedeschi testified that it did not identify Germel Dossie as being the shooter; it merely said that he was "involved" in an aggravated battery with a handgun. (Sup R 81).

The record reflects nothing about the status of the investigative alert until June 9, 2015, when Officer Dingle of the Fugitive Apprehension Unit reported for third-watch duty and was assigned the investigative alert by the "front desk." (Sup R 31-33). The investigative alert received by Officer Dingle still said only that Germel Dossie had been identified as "involved" in an aggravated battery with a handgun, without saying specifically what he had done. (Sup R 41). Whether it was labeled an investigative alert with probable cause, or no probable cause, was not specified. Officer Dingle knew

nothing more about the case. (Sup R 37). Officer Dingle's Fugitive Apprehension group arrested Germel Dossie that same day, without a warrant and while Germel was behaving lawfully, based on the investigative alert assignment alone. (Sup R 35).

C. The Trial Court's Concerns, and Finding of Unconstitutionality

The trial court found it problematic that an arrest warrant could have been sought but was not, and observed that a court presented with a warrant application would have had many questions probative to witness Tyrone Crosby's reliability and credibility, which were left unanswered at the hearing. (R 74, 79, 90-91). Yet, without explanation, the police elected to proceed by investigative alert rather than arrest warrant – even though there was no exigency, and even though Crosby was brought right to the courthouse, for the grand jury, on Tuesday, June 2, 2015 – a weekday when the courthouse generally was open, with courts in session – but not before a judge in connection with a warrant application. (R 78).

The trial court also recognized the conflicting results as to the constitutionality of investigative alerts in *People v. Braswell*, 2019 IL App (1st) 172810, and *People v. Bass*, 2019 IL App (1st) 160640, *vacated in part*, 2021 IL 125434, and concurred with *Bass.* (R 85-86; *see Dossie* at ¶¶ 20, 21). *Bass* found that investigate alerts violate the search-and-seizure provision of the Illinois Constitution, which was held to provide greater protections than the federal constitution. (R 85-86).[4]

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[4] While the part of the Appellate Court's opinion involving investigate alerts was subsequently vacated when the Supreme Court affirmed on other grounds, its reasoning was adopted by the trial court here, so represents the substance of the trial court's finding.

The trial court also cited the "frequent and blatant use of the investigative alert system," whereby the Police Department has exempted itself from constitutional mandates, and which has resulted in a disregard of primarily the judiciary but also the prosecuting agencies, which have historically played a role in the warrant application process. (R 87-88). The court stated, "[w]hen the Chicago Police Department takes it upon themselves, regardless of their hierarchy and their internal operations, to circumvent the Cook County State's Attorney's office and the court system, they have not only circumvented those two entities but more importantly that have circumvented the United States constitution and Bill of Rights. They have circumvented the Illinois Constitution." (R 87-88). The investigative alert system, the court found, "is offensive to constitutional jurisprudence on a federal and state level." (R 90). The court noted that whether there were emergency or exigent circumstances could perhaps be considered in the appropriate case, but here there was no probable cause. (R 90).

D. The Investigative Alert System Establishes a Parallel, Internal Proxy Warrant Mechanism and Is Unconstitutional Because It Fails to Comply With Necessary Warrant Procedures

This Court has often stated that warrantless arrests may be made on reasonable grounds, which has been equated with probable cause. In support of that articulation, the cases have frequently cited section 107-2(1)(c) of the Code of Criminal Procedure, 725 ILCS 5/107-2(1)(c), or one of its predecessors, such as the former paragraph 657 of the Criminal Code. *See, e.g., People v. Holveck*, 141 Ill. 2d 84, 95 (1990); *People v. Boozer*, 12 Ill. 2d 184, 187 (1957). Sometimes the principle has been articulated following a general statement that neither the federal nor state constitutions prohibit all searches and

seizures, but only unreasonable ones, followed by citation to the statute. *See, e.g., People v. Fiorito*, 19 Ill. 2d 246, 252-53 (1960).

But the police here did not effect Germel Dossie's arrest on June 9, 2015, solely through the means of deciding that they had reasonable grounds or probable cause to believe that he was committing or had committed a crime. Rather, for reasons of operational efficiency or whatever purpose, the police elected to delegate the arrest by means of a centralized, codified investigative alert system, whereby an officer who stopped Germel Dossie at any time could have taken him into custody or, as here, an officer otherwise uninvolved in the investigation could be dispatched to do so by the "front desk" of the Fugitive Apprehension Unit.

In other words, the Police Department utilized a warrant system – an internal, *de facto* proxy warrant system of its own design, yet a warrant system nonetheless. Precisely as was stated in *People v. Hyland*, "[d]espite the terminology being used, practically speaking, an investigative alert has been elevated to the status of an arrest warrant, without the safeguards provided by a judicial determination of probable cause." 2012 IL App (1st) 110966 at ¶ 45 (Salone, J., concurring).

It need not be definitively determined in the instant case under precisely what circumstances an arrest without a warrant on probable cause may be made, for clearly the *police themselves* thought that for Germel Dossie's arrest, they needed a warrant, or proxy warrant, for their own operational reasons; and, that being the case, warrant procedures had to be adhered to, but were not.

There is not an unprincipled "paradox," as suggested in cases such as *People v.*

Braswell, 2019 IL App (1st) 172810 at ¶ 39, whereby the police may arrest without a warrant or investigative alert with probable cause, but the arrest is invalidated under the Illinois Constitution merely because an investigative alert happens to have been issued. For in this case, like doubtless many others, the police did *not* consider it feasible, for more than a week, to arrest Germel Dossie without a warrant-like mechanism.

In the estimation of the police – whether due to unfeasibility, inability, or whatever reason – Germel Dossie's arrest could not have been reasonably effected without such a systematic delegation mechanism, and hence, it was employed. The police did not engage in continual investigation or remain in continual pursuit of Germel Dossie over the course of eight days until Officer Dingle was directed to act on the alert. Hence, if not for the invention of investigative alerts, the only realistic recourse for securing the arrest would have been to obtain a warrant. That the investigating officers were not engaged in direct prior or contemporaneous contact, or concerted investigative efforts, with the Fugitive Apprehension officer who arrested Germel Dossie underscores the entirely warrant-like function of investigative alerts and their status as proxy warrants.

When an actual warrant is used, the necessary and lawfully-required procedures for proceeding by warrant must be adhered to. *Cf. People v. Clark*, 280 Ill. 160 (1917) (even if the information document used in lieu of a sworn affidavit for applying for a warrant was examined by the judge, who could inquire, and even if the information was sufficient, the absence of a sworn affidavit rendered the warrant invalid, and the motion in arrest of judgment should have been allowed); *People v. Krumery*, 74 Ill. App. 2d 298, 300 (5th Dist. 1966) (when an arrest warrant is issued, the defendant has a "substantial

right" for the issuance to be in compliance with statutory requirements). When a proxy warrant is issued, it should be held to the same standards if it is to withstand scrutiny.

The investigative alert system provides all the benefits of a warrant from the Police Department's perspective: efficiency, the ability to delegate within the Police Department at large, or to utilize officers entirely unfamiliar with the case. That may be officers from special units trained to engage in surveillance and make arrests, or it may be officers who might encounter the defendant at any time or place, as during traffic stops or on public ways. For all intents and purposes, investigative alerts are used in lieu of warrants to fulfill those purposes of warrants that are beneficial to the Police Department. From the perspective of benefits to the police, the system is a warrant system in all but name.

But the system has none of the safeguards that are required when a true warrant is at play, and therein lies its unconstitutionality. Procedures must be followed for the issuance of investigative alerts, but not, of course, the procedure of appearing before an impartial member of the judiciary, with a sworn affidavit, to request an arrest warrant (as the investigative alert system functions to replace the warrant application process). When a proxy warrant system is used for the Police Department's benefit, to pass constitutional muster, it must afford to the *citizens* the protections inherent in the warrant process.

And, in cases in which the proxy warrant system is used for the benefit of the police instead of the warrant procedure outlined in the Constitution, the presence of probable cause should not serve as a shield insulating an arrest that was, and would only have been, effected by that proxy warrant system.

E. Arrests on Warrants are Preferred

Even if warrantless arrests are not in all circumstances disallowed if probable cause is present, the warrant procedure has traditionally been preferred as a general rule, under both the federal and state systems. The United States Supreme Court has "expressed a preference for the use of arrest warrants when feasible." *Gerstein v. Pugh*, 420 U.S. 103, 112 (1975). "Arrest pursuant to warrant is the preferred constitutional method of taking an individual into custody, with certain exceptions." *People v. Hyland*, 2012 IL App (1st) 110966 at ¶ 41 (citations omitted) (Salone, J., concurring). In *Terry v. Ohio*, 392 U.S. 1, 20 (1968), the Court emphasized, "We do not retreat from our holdings that the police must, whenever practicable, obtain advance judicial approval of searches and seizures through the warrant procedure, or that in most instances failure to comply with the warrant requirement can only be excused by exigent circumstances" (citations omitted). The standards for arrests without warrants cannot be less stringent than when a warrant is obtained, for "[o]therwise, a principal incentive now existing for the procurement of arrest warrants would be destroyed," which would be undesirable, as the "arrest warrant procedure serves to insure that the deliberate, impartial judgment of a judicial officer will be interposed between the citizen and the police, to assess the weight and credibility of the information which the complaining officer adduces as probable cause." *Wong Sun v. United States*, 371 U.S. 471, 479-82 (1963). *Cf. People v. Johnson*, 94 Ill. 2d 148, 153 (1983) (standards for probable cause assessment by police must be every bit as stringent as those applied to magistrates; anything less "would encourage police to avoid obtaining a warrant"); *accord*, *Beck v. Ohio*, 379 U.S. 89, 96 (1964).

Consistent with that preference, "[f]acially valid arrest warrants carry a presumption of validity." *Zitzka v. Westmont*, 743 F. Supp. 2d 887, 910 (N.D. Ill. 2010).

Yet, the very presence of the investigative alert system undermines the preference for warrants and encourages the utter disregard of the warrant process, rendering largely irrelevant one of the most fundamental and longstanding principles embodied in our Constitution, irrespective of however feasible it may be to appear before a judge. That was starkly illustrated here, where the police, who had already issued an investigative alert for Germel Dossie, brought Tyrone Crosby to the courthouse to appear for questioning before the grand jury on June 2, 2015 – a Tuesday – yet no consideration was given to appearing with a warrant application before any of the judges in the building.

That seizing and arresting persons by investigative alert rather than *bona fide* arrest warrant is a deliberate choice is illustrated by the very presence of directives regarding arrest warrants. Special Order S06-12-02 pertains to non-felony warrants, including the preparation of formal complaints and arrest warrants for presentation to the court. § II.E.1, 3 (eff. 2019). Special Order S06-03 (eff. April 14, 2015) describes the procedures for felony arrest warrants.[5]

The creation of an often-used proxy system does not negate that it is used as a warrant system all the same, and as such, it must comport with constitutional requirements, and not merely bypass them. The availability of the probable-cause justification for arrests with warrants should be the exception and not for the "ordinary

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[5] http://directives.chicagopolice.org/#directive/public/6324; http://directives.chicagopolice.org/#directive/public/6241 (as of Dec. 7, 2022).

case," *Bass*, 2019 IL App (1st) 160640 at ¶ 62[6], as here, where there was no exigency and a warrant was eminently feasible, as the probable-cause justification has been expanded, in practice, into a routine mechanism for warrant avoidance.

F. The Procedures for Issuing Investigative Alerts Do Not Comply With the Procedures for Obtaining Warrants

Warrants are issued by neutral, detached magistrates. "The issuance of an arrest warrant is purely a judicial function." *Mitchell Buick & Oldsmobile Sales, Inc. v. National Dealer Services, Inc.*, 138 Ill. App. 3d 574, 585 (2d Dist. 1985). An arrest warrant is obtained by submitting an application to a "detached judicial officer," who "must resolve the question of whether probable cause exists to justify issuing a warrant." *People v. Tisler*, 103 Ill. 2d 226, 236 (1984). Presentation to an independent and neutral member of the judicial branch serves as a safeguard for the citizens. "The arrest warrant procedure serves to insure that the deliberate, impartial judgment of a judicial officer will be interposed between the citizen and the police, to assess the weight and credibility of the information which the complaining officer adduces as probable cause. To hold that an officer may act in his own, unchecked discretion upon information too vague and from too untested a source to permit a judicial officer to accept it as probable cause for an arrest warrant, would subvert this fundamental policy." *Wong Sun v. United States*, 371 U.S. 471, 481-82 (1963). The warrant process's "protection consists in requiring that [probable cause] inferences be drawn by a neutral and detached magistrate instead of

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[6] The Appellate Court's order was vacated, but is consistent with the trial court's finding that even if emergency, exigent or extraordinary circumstances might justify a departure from the warrant requirement (R 90), Dossie's was not such a case.

being judged by the officer in the often competitive enterprise of ferreting out crime." *Johnson v. United States*, 333 U.S. 10, 14 (1948).

Instead of a judge schooled in the law and independent from the police, the investigative alert system uses a "supervisor" within the Police Department. What is more, the directive reveals no expectation of an interactive examination of the information submitted by the approving supervisor, who is required to do no more than consult the CHRIS application screen. There is no expectation of true presentment as there is to the judge, who is expected to be inquisitive and interactive, *see* Part I *supra*, in furtherance of the exercise of the proper judicial role of assessing the sufficiency of the information brought forth.

The United States Supreme Court "underscore[d] the now accepted fact that someone independent of the police and prosecution must determine probable cause" in the issuance of warrants in *Shadwick v. Tampa*, 407 U.S. 345, 348 (1972). *Shadwick* found that for purposes of the fourth amendment, a warrant could be issued by a judicial-branch court clerk supervised by a municipal court judge for a municipal ordinance, but only because the "requisite detachment" was present. The Court emphasized, "Whatever elese neutrality and detachment might entail, it is clear that they require severance and disengagement from activities of law enforcement," and there must be "no connection with any law enforcement activity or authority which would distort the independent judgment the Fourth Amendment requires." *Id.* at 350-51. As the Court made clear, in the search warrant context, the "Fourth Amendment does not contemplate the executive officers of Government," whose duty is to enforce, investigate and

prosecute the laws, "as neutral and disinterested magistrates." *United States v. United States District Court*, 407 U.S. 297, 317 (1972).

A warrant issued by the Police Department violates the fourth amendment, and it violates Illinois law as well. Illinois has consistently has adhered to the issuance of arrest warrants as a judicial role, as indicated by the authorities above and section 107-9 of the Code of Criminal Procedure, 725 ILCS 5/107-9, which stipulates that arrest warrants be issued by courts and judges.

Next, the safeguard that the information presented be sworn to is absent in the investigative alert process. The court's decision whether to issue a warrant "is to be based on information contained in sworn statements or affidavits that are presented to the magistrate." *Tisler*, 103 Ill. 2d at 236. With investigative alerts, the officer merely enters the request into the computerized system, "utilizing the investigative alert application screen." Special Order S04-16 ¶ III.A (2018). While the officers who input the request are sworn personnel, *id.* at ¶ III, a general oath of office cannot take the place of the swearing as to information to be submitted to the magistrate. *People v. Clark*, 280 Ill. 160, 167 (1917). Thus, in *Clark*, a warrant that was issued based on an unsworn information with no accompanying affidavit as to the truth of the charges was invalid.

There is, moreover, no requirement in the investigative alert procedures, as there is in the warrant process, that any material changes in the facts of the affidavit that arise before the warrant is executed be reported to the magistrate, lest the warrant be invalidated, *see United States v. Marin-Buitrago*, 734 F.2d 889, 893 (2d Cir. 1984), nor any mechanism for oversight as to whether that is done. Retention of information is in

internal files.

And if, indeed, the investigative alert here must be construed as a warrant, it is clear that probable cause must exist both at the time of issuance and at the time of execution. *United States v. Bowling*, 900 F.2d 926, 932 (6th Cir. 1990). While it is submitted that there was no probable cause here at any time, *see* Issue I *supra*, surely there was none on June 1, when the investigative alert was first issued – before, as far as can be discerned from the record, Tyrone Crosby had even identified a photo of Germel Dossie. By ignoring that an investigative alert is a *de facto* warrant, the procedural protection of a probable-cause assessment as of both points in time is denied to the defendant.

G. Investigative Alerts Do Not Comply With the Illinois Constitution's Affidavit Requirement for Warrants

Investigative alerts do not comply with Illinois constitutional standards for arrests because, as proxy *de facto* warrants, they are not issued on "affidavit." The warrant clause of the Illinois Constitution provides, in pertinent part: "No warrant shall issue without probable cause, *supported by affidavit* particularly describing the place to be searched and the persons or things to be seized." Ill. Const., art. I, § 6 (1970) (emphasis supplied). That is different from the fourth amendment, which provides: "No warrant shall issue, but upon probable cause, *supported by oath or affirmation*, and particularly describing the place to be searched, and the persons or things to be seized." U.S. Const., amend. IV (emphasis supplied).

In *People v. Caballes*, the Court considered the terms "oath or affirmation" and

"affidavit" to be "virtually synonymous." 221 Ill. 2d 282, 291 (2006). It is submitted that the Court was in error, as demonstrated by the Appellate Court in *Bass*,[7] because its pronouncement contradicts both the history of our Constitution and the earlier decisions of this Court.

The Illinois affidavit provision dates to the 1870 Constitution. Ill. Const., art. II, § 6 (1970). On April 23, 1870, a version of Article III, § 7, of the Bill of Rights using the "oath or affidavit" text was proposed. Journal of the Constitutional Convention of the State of Illinois at 664-65 (App. A-33-34). However, Mr. Allen of Alexander moved to amend that text and replace it with "affidavit." *Id.* at 772. That motion was allowed. *Id.* at 773. (App. A-35-36). The "affidavit" text was adopted and was later set forth in the ratified constitution. Ill. Const., Art. II, § 6 (1870). The "affidavit" requirement was retained in the 1970 Constitution. It must be deemed to have been retained affirmatively, as the text of the clause was under express consideration, revised so as to include new material addressing privacy and communications-interception concerns.

The affidavit requirement goes beyond the oath-or-affirmation standard. An affidavit has long been defined as a declaration, on oath, *in writing*, sworn to before on authorized by law to administer oaths; and even statements in writing do not qualify as

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[7] While the Appellate Court's opinion was vacated, its reasoning was embraced by the trial court in the judgment now under review and, while not of precedential value (and the reasoning it sets forth is independently urged here), it may be considered persuasive authority, and should be recognized for its scholarly approach on a matter of first impression in our State. *See People v. Simms*, 192 Ill. 2d 348, 428 (2000), quoting *McKenzie v. Day*, 57 F.3d 1493, 1494 (9th Cir. 1995) (en banc) (a prior opinion had been vacated, but "remains persuasive authority, and we adopt its analysis of this issue as our own").

affidavits if "not sworn to before an authorized person." *Estate of Roth v. Illinois Farmers Insurance Co.*, 202 Ill. 2d 490, 493-94 (2002), citing, *inter alia*, *Harris v. Lester*, 80 Ill. 307, 311 (1875). "An affidavit that is not sworn is a nullity." *Estate of Roth*, 202 Ill. 2d at 497. Neither an "oath" alone nor "affirmation" must specifically be in written form, unlike an affidavit. *See Outlaw v. Davis*, 27 Ill. 466, 472 (1861). In *People v. Prall*, 314 Ill. 518, 522 (1924), the Court explained that the testimony on which the magistrate acts in issuing a warrant must be "reduced to writing" and "verified by affidavit," with the facts amounting to probable cause set forth with sufficient definiteness that, if false, "perjury may be assigned on the affidavit."

In confirming the affidavit requirement, the Court in *Myers v. People* stated: "If informations could be filed, upon which a warrant for arrest may issue without affidavit, the door would be opened to intolerable abuses; every man's liberty would be at the mercy of the caprice or malice" of prosecutors – or policemen. 67 Ill. 503, 510 (1873).

Illinois courts have firmly and consistently insisted that the affidavit requirement be strictly construed, and that a warrant can only be issued upon presentation to the judge of a sworn affidavit swearing to the truth of the information submitted. *See, e.g.*, *People v. Clark*, 280 Ill. 160 (1917). By requiring an affidavit rather than an oath or affirmation, the Illinois Constitution goes "a step beyond" the fourth amendment. *Lippman v. People*, 175 Ill. 101, 112 (1898). "[E]vidence of probable cause" must be submitted in a "permanent record in the form of an affidavit." *Id.* That is part of a system of safeguards designed to prevent the abuse of executive authority. *See id*. The judgment of an official accuser is not sufficient; a warrant application requires facts stated in the application that

would satisfy the affidavit requirement. *People v. Elias,* 316 Ill. 376, 382 (1925), *overruled on other grounds*, *People v. Williams*, 27 Ill. 2d 542, 544 (1963) (affidavits may be based on hearsay).

After consideration of the history of the warrant provision in the Illinois Bill of Rights, the Court properly concluded in *People v. Bass*, 2019 IL App (1st) 160640 at ¶ 62, that probable cause must be based not on a minimum threshold of sufficient facts but on those facts presented by sworn affidavit to a neutral magistrate, and that there is a historical presumption against executive branch officers making probable cause determinations without swearing to facts before a magistrate.

H. The Illinois Constitution Should Be Construed Such That Arrests in "Ordinary Cases" Must be Pursuant to Warrant

The Appellate Court, in its now-vacated opinion in *People v. Bass,* 2019 IL App (1st) 160640[8], declared:

> [T]he text of the Illinois Constitution leaves beyond dispute that a finding of probable cause must be based, not only on a minimum threshold of sufficient facts, but sufficient facts presented in proper form (a sworn affidavit) to the appropriate person (a neutral magistrate). The Illinois Supreme Court's early interpretations of our warrant clause show a strong presumption against executive branch officers making their own probable cause determinations without swearing to facts before a magistrate. Taking together the text of our constitution and its historical interpretation by our supreme court, we conclude that the Illinois Constitution requires, in the ordinary case, a warrant to issue before an arrest can be made. Arrests based on investigative alerts violate that rule.

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[8] *Bass* is cited for persuasive but not precedential effect. *See supra*.

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> We find that our constitution goes 'a step beyond' the United States Constitution and requires, in ordinary cases like Bass's, that a warrant issue before a valid arrest can be made. We hold an arrest unconstitutional when effectuated on the basis of an investigative alert issued by the Chicago Police Department.

Id. at ¶¶ 62, 71 (emphasis supplied). The Court left open whether in other than the "ordinary case," such as in an exigency when time is of the essence or in the case of a showing of unfeasibility of seeking a warrant, an investigative alert will not invalidate a warrantless arrest on probable cause alone.

The question perhaps need not be resolved here, as this is not such a case – this is a *de facto* arrest on a warrant, rather than an investigative alert functioning as an urgent bulletin or the like, and as a warrant-like mechanism was deemed necessary, a *bona fide* warrant is required, not a shortcut substitute lacking in safeguards. But, if the question is considered, the *Bass* Court's point that the Illinois Constitution requires warrants in the "ordinary case" is well-taken. While warrantless arrests on reasonable grounds or probable cause have been upheld in the past in Illinois, the time has come for reconsideration, and for departure from the fourth amendment, which has been construed as permitting warrantless arrests outside the home on probable cause, even without an exigency. *See United States v. Watson*, 423 U.S. 411 (1976).

If the fourth amendment is construed as permitting probable cause to serve as a lawful basis for the warrantless arrest in this "ordinary case" in which there was no exigency and in which it was not impractical to obtain a warrant, the question is whether

the Illinois Constitution would require an arrest with a warrant even if the fourth amendment did not. Even if the pertinent parts of the provision, apart from the affidavit requirement and 1970 additions to the text, are deemed the same, broader protections may still be offered under the state constitution, consistent with a "limited lockstep" or "interstitial" approach, which permits consideration of whether criteria such as "unique state history or state experience" justify a departure from federal precedent. *Caballes*, 221 Ill. 2d at 309-10.

The reasoning of those Illinois courts, such as *Myers, Clark* and *Lippman*, *supra*, that insisted on a strict construction of the "affidavit" requirement to prevent executive and police abuses when probable-cause determinations are made by those entities rather than the judiciary and when no sworn, permanent record of the factual basis for intrusions is made, applies equally to the question whether an arrest pursuant to a warrant should be preferred to a warrantless arrest when feasible, in both cases to protect the interests and rights of the citizens. Arrests are in all cases serious matters and protections should be broadly afforded, which can be provided when the basis for the arrest is memorialized by sworn affidavit submitted to a judge whenever feasible. The time has come to make the stated preference for arrest warrants a guaranteed and enforceable right in Illinois.

That our state experience calls for a different interpretation is illustrated by the proliferation of investigative alerts themselves, which have been extensively used – indeed, institutionalized – in lieu of warrants so as to sanction and encourage circumvention of the warrant process, and judicial evaluations of probable cause and the safeguards attendant thereto. Deferring to "probable cause" assessments by the police to

justify the vast majority of "ordinary case" arrests that require, for practical feasibility, an investigative alert to effect illustrates an abuse that has arisen in our state. That supports a different interpretation favoring a preference for warrants when feasible, in the "ordinary case."

Today there are many accessible judges and advanced rapid communications systems permitting the facilitation of arrangements to present for warrant applications. That makes warrants more often feasible and proxy systems ever more objectionable as maneuvers to circumvent warrants than in the earlier days of our State, when the practice of warrantless arrests often went unchallenged.

And, the investigative alert process as well as warrantless arrests on probable cause in non-exigent circumstances both lack the prudent caution attendant in the judicial warrant issuance process. It was stated in 2013, two years before Germel Dossie's arrest, that the "FBI maintains a database that has become a staple of officers across the country to check the backgrounds of nearly all those stopped by police. . . . . State police have a similar database for Illinois fugitives. But both accept only entries backed by warrants or the promise that police are trying to get them in the next 48 hours. Chicago alerts rarely make the cut." Chicago police criticized for bypassing warrant process to make arrests using 'investigative alerts,' Chicago Tribune (March 3, 2013). An arrest without an investigative alert, if not effected in an emergency or exigent circumstance, would fare no better. And probable-cause determinations by police officers, with or without the issuance of investigative alerts, may be made in reliance on questionable internal investigative tools that have arisen in our State, such as Chicago's gang database, *see* n.1

supra, that would be given much less weight, without scrutiny, by the neutral, inquiring, and independent judiciary.

The New Mexico Supreme Court has invoked its state constitution and imposed the same constraints as voiced by the trial court here on warrantless arrests on probable cause, essentially requiring warrants in the "ordinary case." In *Campos v. State*, 117 N.M. 155 (1994), the Court held that even when there is probable cause, the inquiry does not end, as warrantless arrests must comply with the "reasonableness" of the search and seizure provision in the state constitution's Bill of Rights (Art. II, § 10). The Court noted its recent willingness to accord defendants greater protection than the fourth amendment in other contexts – as has Illinois, in *People v. Krueger*, 175 Ill. 2d 60, 74 (1996).[9] The *Campos* Court "decline[d] to adopt the blanket federal rule that all warrantless arrests of felons based on probable cause are constitutionally permissible in public places," because "each case must be reviewed in light of its own facts and circumstances." It further noted the "duty of appellate courts to 'shape the parameters of police conduct by placing the constitutional requirement of reasonableness in factual context.'" *Campos*, 117 Ill. 2d at 158. The Court held that for a warrantless arrest to be reasonable, in addition to probable cause, "some exigency" that "precluded the officer from securing a warrant" must be present, and the Court will review warrantless arrests for whether it was reasonable to not

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[9] In other criminal justice contexts, Illinois courts, construing the Illinois Constitution, have not hesitated to depart from following federal constitutional limitations when greater protection is warranted to protect rights. *See People v. Washington*, 171 Ill. 2d 475 (1996) (due process construed so as to allow free-standing claims of actual innocence); *People v. McCauley*, 163 Ill. 2d 414 (1994) (no valid waiver of right to counsel when the police do not inform the suspect that counsel is present to consult with him).

procure an arrest warrant. *Id.* at 159.

While not declaring that the rule permitting warrantless arrests is limited to exigencies only, one of our State's early cases offered the potential for exigencies as a rationale for the practice. *See North v. People*, 139 Ill. 81, 105-06 (1891) (some offenses "can not be stopped or redressed except by immediate arrest," and in some cases, "[w]hile the officer is preparing an affidavit and obtaining a warrant the offender may meet his victim and acccomplish his purpose of violence"). Warrantless arrests have become far removed from their best-justified purpose and should now be reasonably limited.

It is acknowledged that warrantless arrests in public places have been permitted, on reasonable grounds or probable cause, in Illinois; that an exigency, nonfeasibility, or related exception to the warrantless-arrest principle does not appear to have been declared; and that the Court has cited *United States v. Watson*, 423 U.S. 411 (1976), which upheld warrantless arrests on probable case without an exigency or when it was not unfeasible to obtain a warrant. *See People v. Edwards*, 144 Ill. 2d 108, 127 (1991) (unlike here, considering, under the fourth amendment, an arrest in a home when a search warrant had been issued the day before). A number of cases have been decided in the context of searches incident to lawful arrest, with immediate recency in the development of probable cause. *See, e.g., People v. Jones*, 31 Ill. 2d 240 (1964).

But there does not appear to have developed, under the Illinois Bill of Rights, a strong tradition of specifically and affirmatively approving warrantless arrests in non-exigent circumstances, by delegation to non-judicial actors and after a considerable delay following the development of probable cause, when the question has been squarely

presented. With respect to whether our State reasonableness requirement should be interpreted so as to curtail an undue expansion of the warrantless-arrest principle by a proxy warrant system in the "ordinary case," the warrant clause of the Illinois Constitution has seldom been considered in its own right. The Illinois Constitution was considered in *Tisler*, but on the separate question whether to follow *Illinois v. Gates*, 462 U.S. 213 (1983), for whether tips amount to probable cause. It has been mentioned in proximity to general articulations of warrantless arrests being permitted on reasonable grounds, when there was no challenge to the failure to differentiate its applicability in the "ordinary case," such as here. *See, e.g., People v. Lee*, 214 Ill. 2d 476, 484 (2005).

Tisler recognized that the Court must "carefully balance the legitimate aims of law enforcement against the rights of our citizens to be free from unreasonable governmental intrusion." 103 Ill. 2d at 245. The result of balancing is not static and may evolve over time. The establishment of a separate, inferior warrant system is an important consideration in whether re-balancing is now due.

The Illinois Constitution incorporates a reasonableness requirement and the circumstances may have evolved so as to require large urban police departments to have warrantlike mechanisms, but have instituted, and continue to employ despite judicial criticism, an inferior proxy system that benefits only the police, but not the citizenry, even when there is no exigency and a warrant could be feasibly obtained. The "ordinary case" limitation on warrantless arrests, set forth by the Appellate Court in *Bass* and forming the substance of what the trial court contemplated here, is a sound response.

I. The Investigative Alert System Violates the Illinois Separation of Powers Clause

The Separation of Powers clause of the Illinois Constitution states, "The legislative, executive and judicial branches are separate. No branch shall exercise powers properly belonging to another." Ill. Const., art. II, § 1 (1970). The doctrine is violated "when one branch usurps the authority of another branch." *People v. Inghram*, 118 Ill. 2d 140, 147 (1987). Only if exceptions are made within the Constitution itself may an entity act outside its sphere and exercise powers properly belonging to another. *MacGregor v. Miller*, 324 Ill. 113, 120 (1926).

"The issuance of an arrest warrant is purely a judicial function." *Mitchell Buick & Oldsmobile Sales, Inc.*, 138 Ill. App. 3d at 585. "Whether there is probable cause for issuing the warrant is a judicial function, to be determined by the magistrate before whom the complaint is made." *People v. Prall*, 314 Ill. 518, 522 (1924). Constitutional standards also require that probable cause determinations in the warrant context be resolved by a "detached judicial officer." *Tisler*, 103 Ill. 2d at 236.

While the Police Department is not listed as an executive branch department under Article V of the Illinois Constitution, it has been characterized as "a department in the executive branch of the municipal government of the City of Chicago." *Lesner v. Police Board*, 2016 IL App (1st) 150545 at ¶ 58. Similarly, a sheriff's office was stated to be part of the executive branch of government in *Gekas v. Williamson*, 393 Ill. App. 3d 573, 579 (4th Dist. 2009). What is clear is that the police are not a part of the judiciary.

The separation-of-powers clause has not been previously cited, specifically, in the course of this case, but it reflects the substance of the trial court's articulated concern (R

87-88), and is therefore of record and not waived or forfeited. The question is also closely related to that of the permissibility of investigative alerts as a means of circumventing judicial arrest warrants, *supra*. Waiver is, in any case, "a limitation on the parties and not the jurisdiction of the court" to consider a claim. *Herzog v. Lexington Township*, 167 Ill. 2d 288, 300 (1995). And when, as here, "the trial court is reversed by the Appellate Court and the appellee in that court brings the case [to the Supreme Court] for further review, he may raise any question properly presented by the record to sustain the judgment of the trial court, even though those questions were not raised or argued in the Appellate Court." *People v. Donoho*, 204 Ill. 2d 159, 169 (2003) (considering claim not raised in Appellate Court or in petition for leave to appeal).

The Police Department's investigative alert procedure, which establishes a proxy or *de facto* warrant system for cases in which a warrant would otherwise be used, constitutes an unlawful exercise of judicial-branch powers by another branch of government. Germel Dossie's arrest, effected pursuant to that unconstitutional procedure, was properly quashed.

J. The Good Faith Exception Does Not Preclude the Suppression of Evidence Pursuant to the Exclusionary Rule

As appellant, in the Appellate Court, the State argued that if the Court were to find that Germel Dossie's arrest was unconstitutional because of the investigatory alert procedure, the good-faith exception to the exclusionary rule should apply. *See Dossie* at ¶ 18. Because it was reversing the suppression order, the Appellate Court did not decide the issue. If it is raised here, it should be rejected.

Any good-faith exception argument should be held forfeited because, even if raised in the State's response to the motion to quash and suppress (C 171), it was not urged in the State's argument to the trial court (R 43), and the court announced no finding on it. No motion for reconsideration was filed. The situation may be compared to a movant's responsibility to obtain a ruling in order to avoid forfeiture on appeal. *See, e.g., People v. Urdiales*, 225 Ill. 2d 354, 425 (2007), citing *People v. Redd*, 173 Ill. 2d 1, 35 (1996). "An alleged error is not preserved for review if the trial court fails to rule upon it," and objections are waived when a party has "failed to obtain a ruling on th[e] issue." *McCullough v. Gallaher & Speck*, 254 Ill. App. 3d 941, 946 (1st Dist. 1993).

When an error involving a timeliness requirement was raised in a motion for summary judgment, but the moving party "failed to raise this argument during the hearing on the parties' motions, and the trial court made no ruling on this issue," the issue was forfeited, because an "alleged error is not preserved for review if the trial court fails to rule on it." *PNC Bank, National Ass'n v. Wilson*, 2017 IL App (2d) 151189 at ¶ 29. Forfeiture should especially apply here, when it was the State that bore the burden of proving that the exclusion of evidence was not necessary pursuant to an exception. *See People v. Turnage*, 162 Ill. 2d 299, 313 (1994).

Without conceding on the forfeiture question, Germel Dossie submits that the good-faith exception would not apply here. The Code of Criminal Procedure does not aid the State because it defines good faith as evidence obtained pursuant to a *warrant* reasonably believed to be valid, or for a search incident to arrest for the violation of a law later declared unconstitutional or invalidated, neither of which applies here. 725 ILCS

5/114-12(b).

Nor is this a case of "binding appellate precedent that specifically authorized a particular practice but was subsequently overruled," *see People v. Burns*, 2016 IL 118973 at ¶ 49 (noting that Illinois has adopted that standard). The question of the constitutionality of the use of investigative alerts is an unresolved question rather than one for which there was specific precedent on point. *See People v. Bass*, 2021 IL 125434 at ¶¶ 61, 62 (Neville, J., dissenting in part) (courts are split and authoritative guidance is needed). The Appellate Court here stated that there has been "no definitive resolution of this issue from our supreme court." *Dossie*, 2021 IL App (1st) 201050-U at ¶ 21. Even if courts have affirmed convictions in cases in which the defendant was initially arrested on an investigative alert, but in which the issue of the constitutionality of investigative alerts under the federal and state constitutions was not squarely litigated, that is not the same as "binding appellate precedent that *specifically authorized* a particular practice." *Burns* at ¶ 49 (emphasis supplied). Passive acquiescence when a practice is not challenged is not the same as the specific authorization of it. The Court in *Burns* rejected the good-faith exception when there was no binding precedent specifically authorizing the officers' conduct in performing a search.

And even if it has been held that warrantless arrests on probable cause are permissible, it has not been held that, in cases where the police contemplate that an arrest can best be effected by delegation through a warrant or warrantlike procedure, they are free to design their own mechanism that fails to embody constitutional safeguards.

Moreover, Germel Dossie's arrest on an investigative alert, rather than being

"simple, isolated negligence," was part of a "deliberate" and systematic department-wide, longstanding and ongoing scheme, for which the need for "deterrence outweighs the cost of suppression." *See People v. LeFlore*, 2015 IL 116799 at ¶ 24. And even assuming, *arguendo*, that a "reasonably well trained officer" could have relied on an investigative alert in following orders to arrest when assigned, surely that cannot be said for the past and present policy-making apparatus in the Police Department that is responsible for the directives, and particularly after the harsh criticism of investigative alerts several years before Germel Dossie's arrest in *People v. Hyland*, 2012 IL App (1st) 110966.

And, in *People v. Krueger*, 175 Ill. 2d 60 (1996), the Court would not extend the good-faith exception to searches conducted in reasonable reliance on statutes later held unconstitutional. Reliance on a codified directive later held unconstitutional should have no greater protection under our state exclusionary rule.

CONCLUSION

Petitioner Germel Dossie respectfully requests that this Court reverse the judgment of the Appellate Court of Illinois, affirm the judgment of the Circuit Court of Cook County granting his motion to quash arrest and suppress evidence, and remand to the Circuit Court for further proceedings, without the suppressed evidence.

Respectfully submitted,

Sharone Mitchell, Jr.
Cook County Public Defender
Counsel for Appellant

Suzanne A. Isaacson
Assistant Public Defender
Of Counsel

RULE 341 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 contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the certificate of filing and service, and those matters to be appended to the brief under Rule 342(a) is 50 pages.

/s/ Suzanne A. Isaacson
Suzanne A. Isaacson
Assistant Public Defender
c/o Cook County Public Defender
69 W. Washington
15th Floor
Chicago IL 60602
(312) 603-0600
email: LRD.PD@cookcountyil.gov

RULE 342 APPENDIX

TABLE OF CONTENTS TO THE APPENDIX

E-FILED
12/7/2021 1:12 PM
CYNTHIA A. GRANT
SUPREME COURT CLERK

TABLE OF CONTENTS: RECORD ON APPEAL

Common Law Record

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[10] The Joint Motion for Continuance filed November 14, 2019, confirms that the last court date on which testimony was heard was June 18, 2019. (C 191). On November 14, 2019, the case was continued to January 23, 2020, for the testimony of Officer Sanchez. (C 193-94). The day it ruled, the court confirmed that the only relevant transcripts were of June 18, 2019, and January 23, 2020. (R 66).

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

IN THE CIRCUIT COURT OF COOK COUNTY
COUNTY DEPARTMENT-CRIMINAL DIVISION

PEOPLE OF THE STATE OF ILLINOIS
Plaintiff-Appellant,

vs.

GERMEL DOSSIE

Defendant-Appellee.

No. 15 CR 10914

Honorable
William Hooks
Trial Judge

NOTICE OF APPEAL
Separate Appeal

An appeal is taken from the order or judgment described below:

1. Court to which appeal is taken: 1st District Appellate Court
2. Name and address of Appellant's attorney on appeal:
   Name: Cook County State's Attorney
   Address: 50 West Washington
   Richard J. Daley Center, 3rd Floor
   Chicago, Illinois 60602
   Phone: 312-603-5496
3. Name of Appellee's Attorney and address to which notices shall be sent:
   Name: Assistant Public Defender Sandra Parris
   Address: Law Office of the Cook County Public Defender, 2650 South California, 7th Floor, Chicago, Illinois 60608

   If Appellee is indigent and has no attorney; does he want one appointed? _____
4. Date of Judgment or Order: August 14, 2020
5. Appeal is taken from: Trial Court Order

MARINA C. PARA (electronically)

Assistant State's Attorney

Notice filed dated: 8.14.20
Appeal check date: 9.3.20

THE DEFENDANT: I don't see them.

MS. PARRIS: I'm waving. Do you see me? You still don't see me?

THE DEFENDANT: Oh.

Excuse me. Can you help me? There you go. My bad. I see you.

MS. SHAMBLEY: My picture is up, Mr. Dossie.

MS. PARRIS: Okay.

THE COURT: Ms. Shambley cannot wave. She's a picture this morning.

MS. SHAMBLEY: Yes.

THE COURT: And she can stay behind the picture.

State, can you identify yourself? And the room prosecutors can be on hold now since I'm going to go ahead and do the Dossie matter.

Ms. Para, can you identify yourself for the record?

MS. PARA: ASA Marina Para, P-a-r-a, on behalf of the People.

THE COURT: Thank you.

Court is in session. It should have started at 9:00 o'clock but it was not the fault of the parties. Cook County just put the Defendant online moments ago.

This is the decision in the matter of 15 CR

10914. The Defendant is Germel, G-e-r-m-e-l, Dossie, D-o-s-s-i-e.

The Court has taken into account the well-briefed memorandums of law submitted by both sides, the initial motion filed by the defense in this case, hearing testimony that took place before the pandemic in open court.

The testimony taken in open court is documented by way of two extensive transcripts. The first transcript is a transcript of proceedings going back to 18 June of 2019. The last transcript the Court has and the only other relevant transcript at this juncture is a 23 January 2020 transcript of proceedings before the Court. The same attorneys that appear before the Court today appeared before the Court for those two hearings.

The Court for the purpose of this motion finds the testimony of the following witnesses to be credible for the purpose of this motion only:

The Court finds the testimony of a Detective Dingle, D-i-n-g-l-e, to be credible, again, for the purposes of this motion. The Court also finds the testimony of a Detective last name is spelled T-e-d-e-s-c-h-i as credible. Those two witnesses appeared before the Court on June 18, 2019.

On the date of 23 January 2020, the Court finds the testimony of Officer Nicholas Sanchez to also be credible.

I may have said it before, the briefs filed by the parties are well prepared. The arguments of counsel were very extensive and the Court was given enough to make a decision in this case.

What is particular -- the Court probably has over almost an hour of findings of facts and conclusions of law, but in light of the current circumstances, the Court is going to attempt to collapse much of that, which in this Court's assessment will not take away from what the Court's intent was and what the Court heard and the Court's final decision in this matter. I'll go through the most relevant portions of this Court's finding this morning and I will decide the case accordingly.

As I said before, the Court finds the testimony of the testifying officers to be credible. On June 1, 2015, officers were setting up to conduct surveillance near the street in Cook County, Illinois, which bears the name of Ashland and a place known as Jonquil Terrace in Chicago, Cook County, Illinois. That's around 7655 North Ashland. The target of that surveillance

activity was intended to be one Clifton Fry, F-r-y.

While setting up the surveillance location, the Chicago Police officers who were then and there received a report of shots fired and the target of their surveillance and they responded to an area in which was reported that a person had gone down as a result of shots being fired. In finding this Mr. Fry on the ground with persons surrounding him, he was eventually taken or rushed to Cook County -- not Cook County, rushed to a nearby hospital to undergo surgery. The police immediately started their investigation with attempting to talk to witnesses in the area shortly after the shooting took place.

In quick order on the same day, amazingly fast investigative work by the Chicago Police Department, they located a surveillance camera which showed Mr. Fry had been approached by two people. The people were observed towards Mr. Fry -- going towards Mr. Fry and later the surveillance video also showed these two people running away from him. One of the two people was observed with what the officers believed to be a gun. The video was also seen by the testifying witnesses before the proceeding and later shown to the Court.

The video in this Court's assessment was not a

high-quality video in any meaning of that word. The video at most appeared to show a black male or two black males and the Court was unable to discern the weight and height of those persons and is unclear that the police had much more than that.

Eight days later, and there's some gaps I'll fill in in a bit, Mr. Dossie was arrested without a warrant approved by a judge. He was arrested on a unique Chicago Police Department -- I don't want to call it an artifact but Chicago Police Department procedure called an investigative alert. The Court also finds that in that video, in the video, there was an automobile that was observed. Law enforcement was able to discern a license plate from that vehicle and they concluded the make of that vehicle. I don't think there was any -- the police did not indicate the year of that vehicle but they did discern a license plate.

The Court is unclear -- there was testimony that the vehicle that was observed on the video was a red vehicle. The Court does not recall at this point whether the video that was provided to the Court was of such a character or nature that one could discern the specific color of the vehicle. The parties, if it becomes relevant to one party or another after I make my

ruling, perhaps that could be brought up in some other proceeding but it was characterized by testimony as being a red vehicle by one of the law enforcement officers.

Subsequently, a Santa Fe Hyundai vehicle was observed within a one-mile radius of the place that the body was found. In that vehicle was a driver, also in that vehicle was a second individual who is believed to be the grandmother of the occupant of the vehicle that law enforcement believed to be the vehicle that had some relationship to the shooting of the victim in this case.

The person who provided information after law enforcement intervened and talked to the person in the vehicle was a one Tyrone Crosby, C-r-o-s-b --

MS. PARA: I'm sorry to interrupt, Judge. I just got an e-mail that the victim's mother got kicked out on her iPhone.

THE COURT: You know what, Counsel -- but, Counsel, nobody kicked them out. To interrupt the Court while I'm making a ruling is probably not the wisest thing to do but I will go back. And as I look at this, I'm not sure whether the victim's mother is on or not.

The Court is in the middle of a ruling and I certainly include persons, but in the middle of a

ruling, please do not interrupt the Court. I cannot have my ruling dictated by the technology of the persons involved. I will say I did not kick out anybody --

MS. PARA: Of course.

THE COURT: -- people that are irrelevant to the proceeding right now, so that's where we are.

MS. PARA: My apologies, Judge.

THE COURT: So I will not be observing the screen to see if somebody else is out from outer space or someone else joins the call. It is important that the victim's family be allowed in but the Court is not monitoring that. I'm trying to issue a ruling.

Now, State, since I've been interrupted, can you see whether the person that you want in this proceeding is aboard?

MS. PARA: I can see that she's not in the room, Judge. I am going to try to send her --

THE COURT: Okay. But, Counsel, I am in the middle of a ruling. You can do whatever you want to do. But I will tell you I'm now letting more people in. After I finish letting the rest of these people in, that's it. I cannot be the technical person and the person responsible for ruling in a murder case or any case.

So you've done the best you can do and that's

it. Those persons that are also monitoring the rooms from the State and maybe some of my room Public Defenders, if you see people that are waiting to come in, please send them a note and indicate that the Court is in the middle of a ruling. I will get them in on the 9:30 call when I can.

Going back to what I was doing. Upon law enforcement questioning the Tyrone Crosby individual, Mr. Crosby provided a statement that indicated that, on the evening in question, he picked up two people and drove them to a location that's closest to an area in which the shooting took place. Again, we are I believe still on June 1, 2015. The timeline between the discovery of the body and when the body was discovered, he was -- the victim was not immediately assessed as being deceased and instead, as I indicated before, was rushed to the hospital and underwent emergency surgery.

Law enforcement then moved forward and there was a process where the police officers involved in the initial investigation credited and took the word of Mr. Crosby as to who he picked up, what he observed with respect to the two individuals, one of which is Mr. Dossie who is now standing trial -- standing proceedings related to him being charged eventually with

first-degree murder.

The Court is without any information concerning whether Mr. Crosby has any criminal record whatsoever at the time of the -- relevant time to these proceedings. The Court is without any information as to the degree of sobriety one way or another with respect to Mr. Crosby who was the person on which the police department eventually obtained this -- what's called an investigative alert. The Court is without information as to any promises or any pending cases that the individual, Mr. Crosby, may have had at the time of his cooperation with law enforcement. The Court is without any information concerning any other corroboration of Mr. Crosby's statement other than that provided in the video. But the Chicago Police officers principal to this investigation credited themselves the statements of Mr. Crosby to a degree.

Mr. Crosby also provided two nicknames for who he picked up on that evening, who he later allowed in the car after what he testified to was one of the individuals who's now identified as the Defendant came back to the vehicle with a firearm. The Court believes this testimony, that Mr. Crosby saw a firearm with this same person who is now identified as Mr. Dossie when he

left the vehicle; however, there are many open questions that a judge who sits to review search warrants, arrest warrants, would have asked in the normal course of business in the performance of judicial duties that judges are required to perform under their oath of office as neutral and detached magistrates in proceedings.

The questions that this Court would have had for Mr. Crosby or any reasonable trier of fact would have had for Mr. Crosby are at least a dozen or so in length. The Court is typically provided a rap sheet for anyone who comes in to provide information in-camera to this Court at the request of law enforcement and the Court. This Court and other courts must consider the setting in which the information was initially given to law enforcement, the credibility of the person that purportedly gave the information, the seasonal nature of -- the freshness of the information given to both law enforcement and the information that's passed to the Court for the perfection or execution of a search warrant or arrest warrant. The Court is without any of that with respect to what he has now as a murder case where an individual has been charged.

In fact, the provider of the information,

Mr. Crosby, did not provide Mr. Dossie's name as Germel Dossie. Instead, he provided a nickname. He also provided a nickname for the second person who Mr. Crosby indicated was in the vehicle Crosby had control over. The Chicago Police apparently entered these two nicknames into a database, the credibility or reliability of which the Court has no idea about. The -- how information gets into that Chicago Police database with respect to nicknames that track back to other names, this Court has no idea about. There was no testimony concerning how and what degree of reliability of such information in the database.

The Court is without any information as to whether this was a sole database that was collected and promulgated by the Chicago Police Department only. The Court is without any information as to when the data concerning the so-called nicknames that then later result in the police producing a picture to show to Mr. Crosby for Mr. Crosby to make an identification of. The Court does not know -- the record is silent concerning all of those matters which this Court would have some interest in, a lot of interest in, before issuing a search warrant or arrest warrant.

The Court has no idea as to how many people

would have had the same -- I want to say nickname -- I don't want to say -- well, I'm going to say nickname because some refer to those things as street names. There is no testimony as to this being a street name -- I mean, a street name concerning Mr. Dossie or the second individual that may have been in the vehicle.

So the Court is left with a -- with questions that could fill a small book but, instead, law enforcement got whatever information they got from this person, background of which I don't know about Mr. Dossie -- I mean, Mr. Crosby. They took a couple of un -- they took a couple of statements from this person and those statements were oral statements to law enforcement, to separate law enforcement officers, before then conducting a video statement from Mr. Crosby.

Mr. Crosby was then taken before a Cook County Grand Jury in short order. Testimony was given at the Cook County Grand Jury. The testimony was said to have been consistent with the information that was given to the police officers by Mr. Crosby at the time he cooperated with law enforcement. Again, the Court has no information as to motivation, opportunity to observe, lighting conditions, previous involvement with any of

the nicknamed individuals who eventually get tracked back -- one of which gets tracked back to Mr. Dossie. I have none of that.

The Court finds and both parties have conceded in this matter there has been no search warrant issued in this matter. There was no arrest warrant issued in this matter and the sole vehicle used by the Chicago Police Department for later charging Mr. Dossie with first-degree murder was the statement of this single witness, background of which is a mystery to the universe.

At some point after, and this started off as an investigation of a shooting, it ends up being some time shortly down the road as a murder investigation because the victim passes away. After obtaining the information they had -- and the Court notes there is approximately a week, roughly a week, between what law enforcement had as the information that they believed established in their mind probable cause to arrest Mr. Dossie, they had about a week. They had so much time that this was -- obviously, this was not an onsite arrest. Obviously, this was not something they observed but they had about a week.

So during that week, we've got Grand Jury

testimony from what attorneys refer to as a single-finger identification situation. There's no information of record that the law enforcement officers involved in this attempted to contact any circuit court judge for the purpose of obtaining an arrest warrant. The State's Attorney took what she had and did the best she could with it. When the Court asked her why the officers did not obtain the search warrant, she honestly as she always does in proceedings before this Court, she said she didn't know. She didn't know.

The testimony of the various officers in connection with this motion, there was no reason advanced by them as to why they did not obtain a search warrant. The Court is baffled how a witness ends up before a Grand Jury and does not end up before a judge. The Court is baffled as to why a transcript, even after these statements attributed to the single-finger person -- and I hate to use that term but that's what both State and defense, not in this case but in other cases use, how they then did not use that to even obtain an arrest warrant or seek to obtain an arrest warrant.

Now, the arrest warrant process in front of judges is problematic in and of itself because it depends on the industry, just like the word sounds, and

the -- the industry, the interest and the time that the judge wants to put to questioning the law enforcement officers that appear before a judge for an arrest warrant. The arrest warrants come to judges by well-meaning law enforcement officers and they have the apparent indica of officialty. You have a document that purports to have -- if it's an affidavit from an affiant, the law enforcement officer, but then on the side of it, there's a signature by a felony review assistant, which is a process that the Cook County State's Attorney's office uses to say that at least the felony review prosecutor, a licensed lawyer, believes that the affidavit and believes that the support for the affidavit is sufficient for a judge to consider in connection with either an arrest warrant in some cases or search warrant in other cases, then it's left up to the judge, as I said before, based upon their due diligence as to how far they're going to go in terms of questioning the law enforcement officer who appears, accepting the petition for the warrant or denying it.

This Court has not hesitated on occasion to reject the information provided to it when questions I'm interested in are not properly addressed by the law enforcement officers who seek those types of

proceedings. There's a cynical process. But in any event, the information about Mr. Dossie, again his specific name was not given, but the mystery computer from the Chicago Police Department spits that descriptor of him out, whatever nickname he was given out, and it tracks it to him. That information was then given to another section of the Chicago Police Department that is referred to as a Fugitive Apprehension Unit.

The Court is familiar with the Great Lakes Fugitive Task Force, which is a federal task force which involves local law enforcement, federal and state law enforcement but I believe -- I believe in this case, there was no identification of the Great Lakes Fugitive Task Force. It was a Chicago Police task force. That's not to suggest that the Great Lakes Task Force should be given any different consideration, so all I have is it is a Chicago Police fugitive task force.

That task force apparently has authority to not only -- well, to operate on investigative alerts. There was no testimony that this same task force was used on arrest warrants and I'm not going to speculate as to whether they do or not. But in any event, they got the assignment. They tracked down the Defendant, now Defendant Dossie, through assistance. It can be

characterized by intelligence information. They went to a location where they believed he may be based upon the information I've spread of record now and they saw him leave a certain location, get into a vehicle. They sought the assistance of a uniform officer in a marked car, uniform officer or officers, who followed the instructions of the detectives or the officers assigned to the Fugitive Task Force Unit and they perfected a traffic stop.

At the traffic stop, they arrested now Defendant Germel Dossie without incident. He was processed. During the processing, it was learned he had an IDOC warrant of a juvenile designation. But, again, this is after he was already arrested, not before they went to get him. It is clear from the record that the arrest -- and the record is clear that this was not a bring in for questioning. This was a full-blown arrest of Mr. Dossie in connection with a shooting, albeit not a murder. The murder -- I mean, the shooting turned into a murder charge but at the time that he was arrested -- no, at the time the investigative alert was issued, it was a shooting case, not a murder. And I don't believe it was changed into a murder while it was in the investigative alert stage. But that's not going

to affect my analysis in the case one way or another.

What is significant is that, again, a week later, the connecting of the dots which are made with invisible ink, there was a perfection of an arrest against then 17-year-old Mr. Dossie. At the time of the arrest, I think that the officers did testify that based upon, quote, the background they had of Mr. Dossie, they had a picture of him and from the records they had without knowing that he had this IDOC juvenile hold, I believe at the time of the arrest they may have known he was 17 years of age. But, anyway, the fugitive team did their job. They brought him in without incident and that's where we are.

The subsequent actions are the subject of another motion, which this Court has not heard and that has to do with whether or not the Court would admit the statement that's not before the Court today. I'm not considering anything in the filing in making my ruling today. I have basically included those factors that I believe to be relevant. Bear with me.

Foolish nicknames that were of record that were testified to and consistent as nicknames of two individuals, again, how that tracks in the database of the Chicago Police Department still remains a mystery to

this Court and whether -- the Court will state in several of his federal cases, people with very somewhat incriminating nicknames for one example were run through the DEA computers and I learned, this Court learned when he was a practicing attorney, some of those nicknames were so common that there may have been five or six people with the same nickname. But the nickname situation is what produced Germel Dossie's picture.

The driver of the vehicle which I will call the hot vehicle, not stolen but the vehicle that may have been involved with the shooting of the decedent, then ID'd Mr. Dossie as the person -- one of the two people in the vehicle. He also identified the second person. The Court is not sure what the second person provided as information. It's not really -- it's nothing the Court finds at this point that is essential to the determination that I now have.

So the questioning of the law enforcement officers was very precise by the defense team. Likewise, I will say that the testimony by the State was similar. The parties on both sides, the attorneys on both sides did not fill the Court up with a lot of unnecessary information. Likewise in their briefs, they used the same effective but efficient -- providing the

trier of fact with information relevant to the sole question of whether or not what they believed, both sides believed, the Court should consider with respect to the defense motion to quash and suppress. So I have that.

So now the question becomes whether the Court finds that -- well, first I'll say I find the record is clear enough for me to make the decision I'm about to make. The Court has not been asked to at this juncture decide whether there's probable cause to have arrested Mr. Crosby, the person who was found in the vehicle that was near the place the shooting took place because he's not a Defendant and that case is not before me. I don't even know if there is such a case. I'm not speculating whether there should be such a case but I would have much more to make a decision concerning Mr. Crosby than I do concerning Mr. Dossie. Excuse me, I do have information to decide Mr. Dossie but I don't have information so that the suggestion that probable cause exists in favor of the State is triggered.

Here's where the Court is: The Court sits as a trial court obviously and not a court of appellate jurisdiction. The Court has found in the several cases that I have that involve investigative alerts, the Court

has attempted to look at the facts and circumstances of each one of these cases that are presented to the Court individually, specifically, with little or no carryover between the cases. Until the Illinois Supreme Court speaks with a definitive voice concerning the two cases, Braswell and Bass that are pending, which they contradict one another, trial courts on the lower level such as I am on, the bottom level, we're left to evaluate those cases on a case-by-case basis.

The Court understands the Bass court's concerns because the Bass court basically raised those issues concerning how an individual police department can be in a position to have a Chicago exception to Fourth Amendment juris prudence from the Supreme Court, US Supreme Court, the federal courts down to Illinois courts, particularly in light of the fact that not only do Defendants in Illinois have the protections of the federal court system and the Supreme Court that lives in Washington and works in Washington, they have the benefit of an Illinois constitution that was crafted at the Illinois constitutional convention for the sole purpose, I believe in 1970 or so, to give persons charged or looked at in Illinois more individual rights or interpretation of more liberty interest rights than

even those who are being prosecuted in the federal court systems. That was a state court decision. I mean, that was a state law decision made by the legislature.

State courts can give in my assessment more rights to persons in civil liberty or civil rights areas. In this Court's assessment, those individual legislatures can legislate more widely with respect to the rights of persons brought forth for charges by the government than while under federal legislation, federal case law. I don't even know if the Court has the go-to that Illinois, constitutional law versus federal constitutional law, under any interpretation, the determination can become one of probable cause.

The frequent and blatant use of the investigative alert system with not only ignoring of the constitutional obligations of any sitting court judge, sitting Illinois judge, it also aggregates the authority and supervisory authority that the Court believes that any prosecutorial agency has over its subordinate law enforcement agencies such as a police department, city or state. An elected State's Attorney who hires agents called Assistant State's Attorneys not only has an obligation to prosecute cases, they have the obligation to in this Court's assessment make sure the

constitutional proceedings -- constitutional procedures are used in law enforcement agencies that they typically do business with.

The Cook County State's Attorney's over the -- agencies over the years are elected and those appointed under elected officials have attempted to do that. They have attempted to do that in a variety of ways. One of the ways is the typical -- all Cook County State's Attorneys offices historically are called upon by the Chicago Police Department and other law enforcement agencies to provide classes to law enforcement officials on issues of constitutional import. I do not believe that policy has changed under our current Cook County State's Attorney in any way whatsoever. It would be amazing. I'm just sure it didn't happen.

Law enforcement officers have assigned to their areas -- I don't know how it works during the pandemic, but at the time of this case, the pandemic did not exist. State's Attorneys are available around the clock to review and make charging decisions or support the preparation of search warrants and arrest warrants for judges to consider. When the Chicago Police Department takes it upon themselves, regardless of their hierarchy and their internal operations, to circumvent the Cook

County State's Attorney's office and the court system, they have not only circumvented those two entities but more importantly they have circumvented the United States constitution and Bill of Rights. They have circumvented the Illinois constitution. They have -- in fact, they have put Illinois in a position but more specifically the City of Chicago in a position that they're exempt from the constitution. They have become an extraordinary jurisdiction that does not have to follow the procedures that exist.

This Court has worked for a federal judge. This Court has heard FBI, IRS agents come in to seek search warrants with the US Attorney himself. And I say him because we have not gotten our First US Attorney for the Northern District. The Court is familiar with the process that a federal judge takes, in my time, the US Attorney himself through before issuing a federal search warrant.

Now, in the federal court system, US magistrate judges and any federal judge can issue those arrest warrants and search warrants. There was a period of time where only the Chief Judge could issue some, certain ones. There is no exception.

Now, in the second paragraph of the State's

brief -- let me do something here. Bear with me. The Court has paused to, for lack of another word, police his Zoom cycles, please. I won't say police, judge his website, his website connection and take effective action.

Let me just tell anybody online that while I'm making my ruling, before I make my ruling, while I make my ruling, anybody else that's talking, unless you're an attorney or a party that's called, you need to silence your mic. I also remind everybody that videotaping this proceeding, video, visual, will be considered as contempt of court.

One second. I think I just removed the problem.

So as I was saying, courts are often accused of being rubber stamps for a federal government, State government, county government. And I don't know if that is a fair assessment of courts that are called upon to decide the propriety of issuing search warrants or arrest warrants. Different courts have different procedures but the Court is unaware of any court that finds acceptable -- well, first of all, there is a two-step analysis. I will give you this.

There's a two-step analysis. First is courts

determine whether or not there's a search warrant -- I mean, arrest warrant, or in this case, the information is there's an investigative alert. It's not contested. This was a straight investigative alert. This Court goes through another process that even when that questionable constitutionally-offensive Chicago-only policy is implemented, this Court as well as other courts then go to the other level of, well, is there probable cause.

This Court has also in the past and will in the future look at whether there are emergency or exigent circumstances. If there are extraordinary reasons why a law enforcement official decides to use a house-created procedure called investigative alert, house being the Chicago Police Department house, this Court would -- has to weigh that. This Court, even in the interpretation of probable cause, finds that the police department didn't have probable cause. The Court finds that.

The issuance or the effecting an arrest of this Defendant under the Chicago-unique homemade-pizza procedure, Chicago homemade-pizza procedure called investigative alert is offensive to constitutional juris prudence on a federal and state level. The Court -- the State makes several arguments that the Court had to

consider in making its opinion in this case.

The State makes the argument, which I have heard in other matters, that the Court is obligated to do the probable cause analysis and there was probable cause. Well, as I said, this Court looks at probable cause in this cases where we've used the Chicago-only, deep-dish, home-baked pizza procedure known as investigative alert and has found for the State in certain cases. This is not that case. The State has -- the State did not do this. The State did not cause the investigative alert. The State was ignored just like a judicial officer was ignored. The consequence of that -- and I did go to a second level, even though I shouldn't have to go to that second level, the second level was the probable cause level.

The Court finds that based upon the information that the Court now has, the arguments of the parties, the briefs of the parties which were extensive, the transcripts, this Court -- just to give an idea, this Court has gone over these transcripts and gone over notes on these transcripts and caused the parties to give me another -- make sure I already had the transcripts on several occasions. The Court is without any bases whatsoever to deny the Defendant's motion to

quash and suppress evidence.

Accordingly Defendant's motion to quash and suppress evidence is exceptionally granted.

State, pick your appeal check date.

MS. PARA: Judge, are you Mondays, Wednesdays and Fridays now?

THE COURT: Let's see. This is a roulette wheel. Let me see what the roulette wheel says. You can pick your 30 days, and if your 30 days is not within whatever it is, I will adjust it. But my room prosecutor is online. Do you want to come back a date in September --

MR. PATTAROZZI: You're odd days in September.

THE COURT: Odd days in September.

MS. PARA: I would suggest September 3rd if that is amenable for counsel and the Court.

THE COURT: Yes, that's amenable to the Court.

Defense, are you-all available on September 3rd, which is a Thursday?

MS. SHAMBLEY: Judge, I am.

MS. PARRIS: Yes, I am, Judge. Sorry, I had my mic off.

THE COURT: This is a by-agreement date. It's September 3, 2020.

State, I said it but you were going to say it.

So the Convention agreed to the motion of Mr. Neece and struck out section 11.

The question then being, "Will the Convention adopt section 12, as amended?"

Mr. Dement moved to amend, by inserting after the word county, in the third line, the following, viz: "and no grand jury shall be impanneled in Circuit Courts; but offenses shall be prosecuted therein in such manner as may be provided by law."

Pending which, at 5 o'clock and 48 minutes,

On motion of Mr. McCoy,

The Convention adjourned.

SATURDAY, APRIL 23, 1870.

Convention met, pursuant to adjournment

Prayer by Rev. Mr. Miller.

Journal partially read, when,

On motion of Mr. Vandeventer,

The further reading was dispensed with.

The committee on the Bill of Rights, through Mr. Allen of Alexander, submitted the following report; which was laid upon the table, and 200 copies ordered printed for the use of the members, and made the special order for Thursday next, April 28th, at 9½ o'clock, A. M., viz:

ARTICLE III.

BILL OF RIGHTS.

SECTION 1. All men are by nature free and independent, and have certain inherent and inalienable rights: among these are life, liberty and the pursuit of happiness. To secure these rights and the protection of property, governments are instituted among men, deriving their just powers from the consent of the governed.

§ 2. No person shall be deprived of life, liberty or property without due process of law.

§ 3. The free exercise and enjoyment of religious profession and worship, without discrimination, shall forever be allowed in this State; and no person shall be denied any civil or political right, privilege or capacity, on account of his religious opinions; but the liberty of conscience hereby secured shall not be so construed as to dispense with oaths or affirmations, excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of the State.

§ 4. No person shall be compelled to attend or support any ministry or place of worship against his consent, nor shall any preference be given by law to any religious denomination or mode of worship.

§ 5. Every person may freely speak, write and publish his sentiments on all subjects, being responsible for the abuse of that liberty; and in all trials for libel, both civil and criminal, the truth, when published with good motives and for justifiable ends, shall be sufficient defense to the person charged.

§ 6. The right of trial by jury, as heretofore enjoyed, shall remain inviolate, but the General Assembly may authorize the trial of civil cases before justices of the peace by a jury of less than twelve men.

§ 7. The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated; and no

warrant shall issue without probable cause, supported by oath or affirmation, particularly describing the place to be searched, and the persons or things to be seized.

§ 8. All persons shall be bailable, by sufficient sureties, unless for capital offenses where the proof is evident or the presumption great; and the privilege of the writ of *habeas corpus* shall not be suspended, unless when, in cases of rebellion or invasion, the public safety may require it.

§ 9. No person shall be held to answer for a criminal offense, unless on indictment of a grand jury, except in cases of *petit* larceny and offenses less than felony, in which the punishment is by fine or imprisonment otherwise than in the penitentiary, in cases of impeachment, and in cases arising in the army and navy, or in the militia when in actual service in time of war or public danger.

§ 10. In all criminal prosecutions, the accused shall be allowed to appear and defend, in person and with counsel; to demand the nature and cause of the accusation against him, and to have a copy thereof; to meet the witnesses face to face, and to have compulsory process to procure the attendance of witnesses in his behalf, and a speedy public trial by an impartial jury of the county or district in which the offense is alleged to have been committed.

§ 11. No person shall be compelled, in any criminal case, to give evidence against himself, or be twice put in jeopardy for the same offense.

§ 12. All penalties shall be proportioned to the nature of the offense—the true design of all punishment being to reform, not to exterminate mankind.

§ 13. No conviction shall work corruption of blood or forfeiture of estate; nor shall any person be transported out of this State for any offense committed within the same.

§ 14. No person shall be imprisoned for debt, unless upon refusal to deliver up his estate for the benefit of his creditors, in such manner as shall be prescribed by law, or in cases where there is strong presumption of fraud.

§ 15. Private property shall not be taken or damaged for public use without just compensation. Such compensation, when not made by the State, shall be ascertained by a jury, or by not less than three commissioners, appointed by a court of record, as shall be prescribed by law. The fee of land taken for railroad tracks, without consent of the owners thereof, shall remain in such owners, subject to the use for which it is taken.

§ 16. The General Assembly shall not pass any *ex post facto* law, or law impairing the obligation of contracts, nor make any irrevocable grant of special privileges or immunities.

§ 17. The military shall be in strict subordination to the civil power.

§ 18. No soldier shall, in time of peace, be quartered in any house without the consent of the owner; nor in time of war, except in the manner prescribed by law.

§ 19. The people have the right to assemble together in a peaceable manner to consult for the common good, to make known their opinions to their representatives, and to apply for redress of grievances.

§ 20. All elections shall be free and equal.

§ 21. Every person within this State ought to find a certain remedy in the laws for all injuries or wrongs which he may receive, in his person, property or character; he ought to obtain right and justice freely and without being obliged to purchase it, completely and without denial, promptly and without delay, conformably to the laws.

§ 22. A frequent recurrence to the fundamental principles of civil government is absolutely necessary to preserve the blessings of liberty.

The Convention then resumed the consideration of the report of the committee of the Whole on the Judiciary Article.

The pending question being the motion of Mr. Dement, introduced on yesterday, to amend section 12, as amended by the committee of the Whole,

Mr. Sedgwick moved that the amendment of Mr. Dement be committed to the committee on the Bill of Rights, with instructions to report back a clause in the Article on Bill of Rights, providing that the

Those voting in the negative are,

Messrs. Allen of Alexander,	Messrs. Coolbaugh,	Messrs. Moore,
Abbott,	Dement,	Rice,
Anthony,	Fuller,	Sedgwick,
Atkins,	Haines of Lake,	Turner,
Benjamin,	Hankins,	Wall,
Browning,	Hart,	Whiting,
Bryan,	Harwood,	Wilson.
Church,	McDowell,	

And so the Convention agreed to the amendment offered by Mr. Wells.

Under the further operation of the previous question, the question was put, "Will the Convention agree to section 4, as amended?"

It was decided in the affirmative.

And so the Convention adopted section 4, as amended.

The question then being, "Will the Convention agree to section 5, as reported by the committee?"

Mr. Haines of Lake offered the following amendment to said section: strike out the word "trials," in the second line, and insert in lieu thereof, the word "prosecutions;" which amendment was not agreed to.

Section 5, as reported by the committee, was then adopted.

The question then being, "Will the Convention agree to section 6, as reported by the committee?"

Mr. Skinner moved to amend, by striking out the words, "before justices of the peace," in the second line; which amendment was not agreed to.

Mr. Ross moved to amend, by striking out the words "as heretofore enjoyed," in the first line; which motion was not agree to.

Mr. Forman moved amend, by adding, "and in all cases the concurrence of three-fourths of a jury shall constitute a verdict."

Mr. Browning moved the previous question; which was seconded.

And the question being, "Shall the main question be now put?" it was ordered.

And under the operation thereof, the question was put, "Will the Convention agree to the amendment of Mr. Forman?"

And being put, it was decided in the negative.

So the Convention refused to agree to the amendment of Mr. Forman.

The question then being, "Will the Convention adopt section 6, as reported by the committee?"

And being put, it was decided in the affirmative.

So the Convention adopted section 6.

The question then being, "Will the Convention adopt section 7, as reported by the committee?"

Mr. Allen of Alexander moved to amend, by striking out the words "oath or affirmation," and insert the word "affidavit," in lieu thereof.

Mr. Wagner moved the previous question; which was seconded.

And the question being, "Shall the main question be now put?" it was ordered.

And under the operation thereof, the question was put, "Will the Convention agree to the amendment of Mr. Allen of Alexander, and strike out the words, "oath or affirmation," and insert the word "affidavit."

And being put, it was decided in the affirmative.

So the Convention agree to the amendment of Mr. Allen of Alexander.

The question then being, "Will the Convention adopt section 7, as amended?"

A division of the question was called for; which was ordered.

And the question being, "Will the Convention adopt the first clause of section 7?"

And being put, it was decided in the affirmative.

So the Convention adopted the first clause of section 7.

The question then being, "Will the Convention adopt the second clause of section 7, as amended?"

And being put, it was decided in the affirmative.

So the Convention adopted the second clause of section 7, as amended.

The question then being, "Will the Convention agree to section 9, as reported by the committee?"

Mr. Dement offered the following substitute for section 9, to-wit:

No grand jury shall be impanneled in Circuit or County Courts after the end of the first General Assembly after the adoption of this Constitution; but offenses shall be prosecuted on information, in such manner as may be provided by law: *Provided*, that after the year 1874, grand juries may be established by law."

Mr. Sedgwick moved the previous question.

And the question being, "Shall the main question be now put?" and being put, it was ordered.

And under the operation thereof, the question was put, "Will the Convention agree to the substitute for section 9, offered by Mr. Dement?"

It was decided in the affirmative, { Yeas.....29 / Nays.....23

The yeas and nays being demanded by five members.

Those voting in the affirmative are,

Messrs. Allen of Alexander,	Messrs. Fox,	Messrs. Sedgwick,
Abbott,	Gamble,	Sherrell,
Anderson,	Goodell,	Snyder,
Anthony,	Hankins,	Turner,
Bayne,	Hart,	Wagner,
Coolbaugh,	Harwood,	Wall,
Cross,	McDowell,	Washburn,
Cummings,	Medill,	Whiting,
Dement,	Parker,	Wilson.
Forman,	Perley.	

Those voting in the negative are,

Messrs. Allen of Crawford,	Messrs. Goodhue,	Messrs. Springer,
Atkins,	Hinesol Lake,	Underwood,
Benjamin,	Hildrup,	Vandeventer,
Browning,	McCoy,	Wait,
Church,	Parks,	Wells,
Cody,	Rice,	Wendling,
Eldridge,	Ross,	Wheaton.
Fuller,	Sharpe,	

And so the Convention agreed to said substitute for section 9.

On motion of Mr. Wall,

The Convention reconsidered the vote by which the substitute offered by Mr. Dement for section 9 was agreed to,

Chicago Police Department

INVESTIGATIVE ALERTS

Special Order S04-16

ISSUE DATE:	18 December 2018	**EFFECTIVE DATE:**	18 December 2018
RESCINDS:	05 March 2001 version		
INDEX CATEGORY:	04 - Preliminary Investigations		
CALEA:			

I. PURPOSE

This directive

A. defines categories of Investigative Alerts.

B. *continues* the **Criminal History Records Information System (CHRIS) Investigative Alert Application System** to be utilized by the Bureau of *Detectives (BOD) and Bureau of Organized Crime (BOC)*.

C. informs members of the availability of investigative alert data via *CLEAR*, CHRIS, and local Hot Desk name checks.

D. delineates responsibilities of *BOD, BOC,* and the *Field Services* Section.

E. outlines procedures when processing Investigative Alerts and Temporary Wants.

F. *satisfies the CALEA law enforcement standard in chapter 42.*

II. DEFINITIONS

A. Investigative Alert An Investigative Alert is a notice entered into CHRIS identifying a specific individual that Bureau of Detective or Bureau of Organized Crime investigative personnel are attempting to locate. Investigative Alert information is available via CHRIS, *CLEAR,* and the Hot Desk computer system. There are two categories of Investigative Alerts: Investigative Alert/Probable Cause to Arrest and Investigative Alert/No Probable Cause to Arrest.

1. Investigative Alert/Probable Cause to Arrest An Investigative Alert/Probable Cause to Arrest identifies an individual that is wanted by Bureau of Detective or Bureau of Organized Crime investigative personnel concerning a specific crime, and while an arrest warrant has not been issued, there is probable cause for an arrest.

2. Investigative Alert/No Probable Cause to Arrest An Investigative Alert/No Probable Cause to Arrest identifies an individual that Bureau of Detective or Bureau of Organized Crime investigative personnel seek to interview concerning a specific police matter. However, an arrest warrant for that individual has not been issued, and there is no probable cause to arrest that person on the strength of the investigative alert alone.

B. Temporary Want Under certain circumstances, a law enforcement agency may enter a Temporary Wanted Person Record or "Temporary Want" into the LEADS and/or NCIC computer systems prior to obtaining a warrant. This kind of entry may be made 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. Temporary Want records are purged automatically forty-eight hours after entry into the LEADS or NCIC computer system.

III. CHRIS INVESTIGATIVE ALERT APPLICATION SYSTEM

All requests for Investigative Alerts are entered and approved into CHRIS by sworn *BOD and BOC* personnel. Any *BOD or BOC* member with a responsibility for follow-up investigation may request an Investigative Alert via the CHRIS Investigative Alert Application System.

A. Members will enter investigative alert requests into CHRIS utilizing the investigative alert application screen. Each person wanted must be entered separately.

B. Supervisors will approve or reject investigative alert requests in CHRIS.

C. An investigative alert is effective immediately upon approval and is available to Department members via *CLEAR*, CHRIS, or Hot Desk name checks.

D. *CLEAR*, CHRIS, and Hot Desk name checks will display investigative alert and pertinent investigative alert data (i.e., required data listed in Item III-F of this directive) whenever a name check is performed on an individual who has an investigative alert on file.

E. The unit investigative alert file will be audited in accordance with Item *IV-A-6* of this directive to ensure that investigative alerts no longer needed are purged from the Investigative Alerts Application System.

F. The following data is required to request an investigative alert:

1. Offense code
2. Name of subject (include all known aliases)
3. *government issued arrest-related identifying numbers, when available (such as IR, SID, or FBI.)*

   NOTE: *If subject does not have an IR number, this required CHRIS field may be entered as 000000.*
4. Physical description (sex, height, DOB, etc.)
5. Last known address
6. Justification for the investigative alert request
7. Requesting member's information (name, star number, unit, etc.)
8. RD number, in all instances that one has been issued.

IV. RESPONSIBILITIES

A. Bureau of *Detectives and Bureau of Organized Crime* supervisors will ensure that:

1. a unit investigative alert file is maintained. The investigative alert file will contain 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. Copies of all reports, documents, etc., supporting the investigative alert request and a summary of how the subject was involved in the crime or incident will also be included in the investigative alert file;
2. a copy of the subject's most recent photograph, if available, is attached to a paper copy of the approved investigative alert request and placed in the unit investigative alert file;
3. a current list of investigative alerts requested by the unit is maintained;
4. if a juvenile is involved or is alleged to be involved in an offense, every effort is made to apprehend the juvenile before an investigative alert is requested. This will include requesting that Area *Violent Crimes Section* personnel search their files for pertinent information that could assist in the apprehension of the juvenile;

   NOTE: Members will follow the procedures outlined in the Department directive titled "Processing of Juveniles and Minors Under Department Control" when processing or interrogating juveniles.
5. investigative alert requests are updated or canceled as necessary;

NOTE: Any *BOD or BOC* member of the rank of sergeant or above is authorized to update or cancel an investigative alert *initiated from their assigned unit.*

6. the unit investigative alert file is audited each police period to ensure investigative alert requests on file are canceled when the subject of the alert has been apprehended or the investigative alert is no longer needed;

7. Temporary Want entry requests are telephoned or faxed to the Field *Services* Section Central Warrant Unit to be entered into the LEADS and/or NCIC computer systems; and

8. the Help Desk is contacted if there is a problem with the CHRIS Investigative Alert Application System.

B. *Field Services* Section

If a fingerprint verification of an arrestee's identity indicates that an investigative alert is in effect, the *Field Services* Section will immediately make notifications to both the district of detention and the unit that originated the investigative alert.

NOTE: The *Field Services* Section will notify the Cook County Fugitive Unit upon verification that the arrestee is a participant (inmate or offender) in an electronic home monitoring detention program supervised by the Illinois Department of Corrections, probation supervisory authority, sheriff, or any other office charged with authorizing and supervising home detention.

V. PROCESSING INVESTIGATIVE ALERTS AND TEMPORARY WANTS

A. *Department members who conduct a name check on individuals and the name check reveals an:*

1. **Investigative Alert / Probable Cause to Arrest** will:

   a. *only enforce the alert if its status is "active" or "renewed";*

   b. place the subject into custody if not already in custody;

   c. notify the requesting *BOD or BOC* member's unit that the subject is in custody and indicate on the Arrest Report the name and star number of the investigating member notified;

      NOTE: If the investigative alert is for an arrestee who is a participant in an electronic home monitoring detention program, the officer will notify the *Field Services* Section.

   d. process the arrestee in accordance with the procedures outlined in the Department directive titled "Processing Persons Under Department Control." Indicate on the Arrest Report that the arrestee is the subject of an *"active" or "renewed"* Investigative Alert / Probable Cause to Arrest; and

   e. notify the *district station supervisor* of the incident.

2. **Investigative Alert / No Probable Cause to Arrest** will:

   a. be reminded that **IF NO OTHER CRIME WAS COMMITTED, AN ARREST IS NOT AUTHORIZED;**

   b. *only follow-up on the alert if its status is "active" or "renewed"; and*

   c. inform the individual that a *BOD or BOC* 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.

d. if the individual consents, the officer will assist the individual to the district station, and:

(1) notify the *district station supervisor* of the incident;

(2) notify the requesting member's unit indicating that the subject of the Investigative Alert is at the district station voluntarily and has consented to speak with the investigating member; and

(3) complete an **Automated Information Report** in accordance with the Department directive titled "Automated Information Report System," documenting the incident. Include the pertinent Investigative Alert data and indicate that the subject voluntarily accompanied the officer to the district station.

e. if the individual will not voluntarily accompany the officer(s) to the district station:

(1) notify the *district station supervisor* of the incident;

NOTE: **DO NOT DETAIN SUCH PERSONS IN ORDER TO MAKE NOTIFICATIONS.**

(2) notify the requesting member's unit that the subject was located; and

(3) complete an **Automated Information Report** in accordance with the Department directive titled "Automated Information Report System," documenting the incident. Include the pertinent Investigative Alert data and indicate that the subject declined to accompany the officer to the district station.

NOTE: **IF NO OTHER CRIME WAS COMMITTED, AN ARREST IS NOT AUTHORIZED.**

f. if the subject is in custody for some other offense and a name check reveals Investigative Alert / No Probable Cause to Arrest, the officer(s) will:

(1) *only follow-up on the alert if its status is "active" or "renewed";*

(2) notify the requesting *BOD or BOC* member's unit that the subject is in custody; and

(3) document the Investigative Alert / No Probable Cause to Arrest and the name and star number of the investigating member notified on the Arrest Report.

NOTE: It is not necessary to complete an Information Report if the subject has been arrested for some other offense and a name check reveals Investigative Alert / No Probable Cause to Arrest.

3. Officers who conduct a name check on individuals who have a **Temporary Want** on file will:

a. take the wanted person into custody if not already in custody;

b. process the arrestee in accordance with the procedures outlined in the Department directive titled "Processing Persons Under Department Control";

c. contact the Field Services Section, Central Warrant Desk, for direction on how to proceed with the Temporary Want arrest; and

d. ensure that either the warrant information or the basis for probable cause has been articulated on the arrest report as soon as that information is available and prior to the arrestee being sent to court.

B. *District station supervisors and designated supervisors of non-district facilities*

If a person in custody is the subject of an investigative alert or Temporary Want, district station supervisors and designated supervisors of non-district facilities will ensure that the:

1. *Investigative Alert or Temporary Want is "active" or "renewed";*
2. the Investigative Alert is investigated before an arrestee is let to bail;
3. requesting *BOD or BOC* member's unit is notified;
4. requesting *BOD or BOC* unit responds or notifies the district of detention if the Investigative Alert is no longer in effect;
5. *Field Services* Section is notified if the arrestee is a participant in an electronic home monitoring detention program; and
6. Field Services Section, Central Warrant Desk, is contacted for directions on procedures to be followed whenever a Temporary Want arrest is made.

C. *Watch operations lieutenants will ensure compliance with policy and procedures regarding arrestee processing and booking, including but not limited to reviewing each arrest situation to determine the propriety of the charge and proper indication of initial approval of the probable cause.*

NOTE: Whenever the detention of a person in Department custody would result in the subject being held more than **48 hours** from the time of arrest **and** the subject was arrested without a warrant **and** the approval of charges has not occurred, the subject must be **either** released without charging **or** sent before the appropriate court for a determination of probable cause. Members will refer to the Department directives titled "Processing Persons Under Department Control" *and* " Duty Judge Procedures" for further guidance.

D. Bureau of *Detectives and Bureau of Organized Crime* sworn members will:

1. respond to the district station immediately upon notification that the subject of an Investigative Alert is in custody or at the district station on a voluntary basis (if the individual is the subject of an Investigative Alert / No Probable Cause to Arrest);
2. conduct follow-up investigations relative to information received from Investigative Alert Information Reports; and
3. ensure that a supervisor is notified if an Investigative Alert is to be updated or canceled.

E. Field *Services* Section-Central Warrant Desk

When processing Temporary Wants, the Central Warrant Unit will:

1. enter Temporary Want requests into the LEADS and/or NCIC systems;
2. include any additional information and all known aliases;
3. place a copy of the Temporary Want request into the warrant file after entry has been made into the systems; and
4. include a list of active Temporary Wants in the LEADS, NCIC, or Hot Desk systems within the weekly listing of active warrants provided to the *Bureau of Detectives*.

(Items indicated by *italics/double underline* were revised.)

Authenticated by KC

Eddie T. Johnson
Superintendent of Police

17-035 MJC

Chicago Police Department

Special Order S04-16

INVESTIGATIVE ALERTS

ISSUE DATE:	05 March 2001	**EFFECTIVE DATE:**	06 March 2001
RESCINDS:	G01-02		
INDEX CATEGORY:	Preliminary Investigations		
[redacted]			

I. PURPOSE

This directive

A. discontinues the use of the term "stop order" and replaces it with the term "**investigative alert.**"

B. discontinues the use of the Stop Order or Cancellation Request form (CPD-31.961).

C. defines categories of investigative alert.

D. introduces the **Criminal History Records Information System (CHRIS) Investigative Alert Application System** to be utilized by the Bureau of Investigative Services (BIS).

E. informs members of the availability of investigative alert data via CHRIS and local Hot Desk name checks.

F. delineates responsibilities of BIS and the Identification Section.

G. outlines procedures when processing investigative alerts and Temporary Wants.

II. CHRIS INVESTIGATIVE ALERT APPLICATION SYSTEM

All requests for investigative alerts are entered and approved in CHRIS by sworn BIS personnel. Any BIS member with a responsibility for follow-up investigation may request an investigative alert via the CHRIS Investigative Alert Application System.

A. Members will enter investigative alert requests into CHRIS utilizing the investigative alert application screen. Each person wanted must be entered separately.

B. Supervisors will approve or reject investigative alert requests in CHRIS.

C. An investigative alert is effective immediately upon approval and is available to Department members via CHRIS or Hot Desk name checks.

D. CHRIS and Hot Desk name checks will display investigative alert and pertinent investigative alert data (i.e., required data listed in Item II-F of this directive) whenever a name check is run on an individual who has an investigative alert on file.

E. The unit investigative alert file will be audited in accordance with Item III-A-6 of this directive to ensure that investigative alerts no longer needed are purged from the Investigative Alerts Application System.

F. The following data is required to request an investigative alert:

1. Offense code
2. Name of subject (include all known aliases)
3. IR number
4. Physical description (sex, height, DOB, etc.)
5. Last known address
6. Justification for the investigative alert request
7. Requesting member's information (name, star number, unit, etc.)

8. RD number, in all instances that one has been issued.

III. RESPONSIBILITIES

A. Bureau of Investigative Services

Bureau of Investigative Services supervisors will ensure that:

1. a unit investigative alert file is maintained. The investigative alert file will contain 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. Copies of all reports, documents, etc., supporting the investigative alert request and a summary of how the subject was involved in the crime or incident will also be included in the investigative alert file.
2. a copy of the subject's most recent photograph, if available, is attached to a paper copy of the approved investigative alert request and placed in the unit investigative alert file.
3. a current list of investigative alerts requested by the unit is maintained.
4. in the event a juvenile is involved or is alleged to be involved in an offense, every effort is made to apprehend the juvenile before an investigative alert is requested. This will include requesting that area Special Victims Section personnel search their files for pertinent information which would assist in the apprehension of the juvenile.

   NOTE: Members will follow the procedures outlined in the Department directive entitled "**Processing of Juveniles and Minors Under Department Control**" when processing apprehended juveniles.

5. investigative alert requests are updated or canceled as necessary.

   NOTE: Any BIS member in the rank of sergeant or above is authorized to update or cancel an investigative alert.

6. the unit investigative alert file is audited each police period to ensure investigative alert requests on file are canceled when the subject of the alert has been apprehended or the investigative alert is no longer needed.
7. Temporary Want entry requests are telephoned or faxed to the Field Inquiry Section - Central Warrant Unit to be entered into the LEADS and/or NCIC computer systems.
8. the Help Desk is contacted if there is a problem with the CHRIS Investigative Alert Application System.

B. Identification Section

If a fingerprint verification of an arrestee's identity indicates that an investigative alert is in effect, the Identification Section will immediately make notifications to both the district of detention and the unit which originated the investigative alert.

NOTE: The Identification Section will notify the Cook County Fugitive Unit upon verification that the arrestee is a participant (inmate or offender) in an electronic home monitoring detention program supervised by the Illinois Department of Corrections, probation supervisory authority, sheriff, or any other office charged with authorizing and supervising home detention.

IV. PROCESSING INVESTIGATIVE ALERTS AND TEMPORARY WANTS

A. Field Officers

1. Officers who run name checks on individuals who have an **Investigative Alert / Probable Cause to Arrest** on file will:

   a. take the subject into custody if not already in custody.

   b. process the arrestee in accordance with the procedures outlined in the Department directive entitled "**Processing Persons Under Department Control**." Indicate on the Arrest Report (CPD-11.420) that the arrestee is the subject of an Investigative Alert / Probable Cause to Arrest.

   c. notify the desk sergeant of the incident.

   d. notify the requesting BIS member's unit that the subject is in custody and indicate on the Arrest Report the name and star number of the investigating member notified.

   NOTE: If the investigative alert is for an arrestee who is a participant in an electronic home monitoring detention program, the officer will notify the Identification Section.

2. Officers who run name checks on individuals who have an **Investigative Alert / No Probable Cause to Arrest** on file are reminded that **IF NO OTHER CRIME WAS COMMITTED, AN ARREST IS NOT AUTHORIZED.** Officers will:

   a. inform the individual that a BIS 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.

   b. if the individual consents, the officer will assist the individual to the district station, and:

      (1) notify the desk sergeant of the incident.

      (2) notify the requesting member's unit indicating that the subject of the investigative alert is at the district station voluntarily and has consented to speak with the investigating member.

      (3) complete an **Information Report (CPD-11.461)** documenting the incident. Include the pertinent investigative alert data and indicate that the subject voluntarily accompanied the officer to the district station.

      (4) forward a copy of the Information Report to the requesting BIS member's unit.

      (5) forward the original Information Report to the Office of the Assistant Superintendent, Operations.

   c. if the individual will not voluntarily accompany the officer(s) to the district station:

      (1) complete an Information Report documenting the incident and include the pertinent data obtained from the investigative alert.

      NOTE: **IF NO OTHER CRIME WAS COMMITTED, AN ARREST IS NOT AUTHORIZED.**

(2) notify the desk sergeant of the incident.

NOTE: **DO NOT DETAIN SUCH PERSONS IN ORDER TO MAKE NOTIFICATIONS.**

(3) notify the requesting member's unit that the subject was located.

(4) forward a copy of the Information Report to the BIS requesting member's unit.

(5) forward the original Information Report to the Office of the Assistant Superintendent, Operations.

d. if the subject is in custody for some other offense and a name check reveals Investigative Alert / No Probable Cause to Arrest, the officer(s) will:

(1) notify the requesting BIS member's unit that the subject is in custody.

NOTE: It is not necessary to complete an Information Report if the subject has been arrested for some other offense and a name check reveals Investigative Alert / No Probable Cause to Arrest.

(2) document the Investigative Alert / No Probable Cause to Arrest and the name and star number of the investigating member notified on the Arrest Report.

3. Officers who run name checks on individuals who have a **Temporary Want** on file will:

a. take the wanted person into custody if not already in custody.

b. process the arrestee in accordance with the procedures outlined in the Department directive entitled "**Processing Persons Under Department Control**."

c. contact the Field Inquiry Section - Central Warrant Unit for direction on how to proceed with the Temporary Want arrest.

d. ensure that either the warrant information or the basis for probable cause has been articulated on the arrest report as soon as that information is available and prior to the arrestee being sent to court.

B. Watch Commanders

If a person in custody is the subject of an investigative alert or Temporary Want, watch commanders will ensure that:

1. the investigative alert is investigated before an arrestee is let to bail.

NOTE: Whenever the detention of a person in Department custody would result in the subject being held more than **48 hours** from the time of arrest **and** the subject was arrested without a warrant **and** the approval of charges has not occurred, the subject must be **either** released without charging **or** sent before the appropriate court for a determination of probable cause. Members will refer to the Department directive entitled "**Processing Persons Under Department Control**" for further guidance.

2. the requesting BIS member's unit is notified.

3. the requesting BIS unit responds or notifies the district of detention if the investigative alert is no longer in effect.

4. the Identification Section is notified if the arrestee is a participant in an electronic home monitoring detention program.

5. the Field Inquiry Section - Central Warrant Unit is contacted for directions on procedures to be followed whenever a Temporary Want arrest is made.

C. Bureau of Investigative Services

Bureau of Investigative Services sworn members will:

1. respond to the district station immediately upon notification that the subject of an investigative alert is in custody or at the district station on a voluntary basis (if the individual is the subject of an Investigative Alert / No Probable Cause to Arrest).
2. conduct follow-up investigations relative to information received from investigative alert Information Reports.
3. ensure that a supervisor is notified in the event an investigative alert is to be updated or canceled (i.e., additional information is available, a warrant has been served and the investigative alert is no longer necessary, complainant/witness is no longer available, etc.).

D. Field Inquiry Section - Central Warrant Unit

When processing Temporary Wants, the Central Warrant Unit will:

1. enter Temporary Want requests into the LEADS and/or NCIC systems.
2. include any additional information and all known aliases.
3. place a copy of the Temporary Want request into the warrant file after entry has been made into the systems.
4. include a list of active Temporary Wants in the LEADS, NCIC or Hot Desk systems within the weekly listing of active warrants provided the Detective Division.

Jerry G. Hillard
Superintendent of Police

00-113 ZMM(PMD)

2021 IL App (1st) 201050-U

FIFTH DIVISION
June 11, 2021

No. 1-20-1050

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

PEOPLE OF THE STATE OF ILLINOIS, Respondent-Appellant, v. GERMEL DOSSIE, Petitioner-Appellee.	)	Appeal from the Circuit Court of Cook County No. 15 CR 10914 Honorable William H. Hooks, Judge, presiding.

PRESIDING JUSTICE DELORT delivered the judgment of the court.
Justices Hoffman and Rochford concurred in the judgment.

ORDER

¶ 1 ***Held:*** We reverse the circuit court's order quashing defendant's arrest and suppressing evidence. The police had probable cause to arrest defendant and the use of an investigative alert did not invalidate the arrest.

¶ 2 BACKGROUND

¶ 3 Defendant Germel Dossie was arrested pursuant to an investigative alert related to the shooting of Clifton Frye. Frye later died of his injuries and defendant was charged with six counts of first-degree murder (720 ILCS 5/9-1(a) (West 2014)). Defendant moved to quash his arrest and suppress an incriminating statement that he made while under arrest. He argued that

the police did not have probable cause to arrest him and that the use of an investigative alert, rather than an arrest warrant, was unconstitutional. The court held an evidentiary hearing on the motion, during which several police officers testified.

¶ 4 Officer Nicolas Sanchez testified that on June 1, 2015, he and his partner were engaged in narcotics surveillance in the Rogers Park neighborhood of Chicago. Around 1:00 p.m., Sanchez observed Clifton Frye in a red Pontiac, conducting what Sanchez suspected to be a hand-to-hand narcotics transaction. Sanchez and his partner then lost sight of Frye's car. Shortly thereafter, a report of "shots fired" came across the police radio. Sanchez and his partner drove to the scene and found Frye on the ground injured.

¶ 5 After other officers and detectives arrived on the scene, Sanchez went into a building near the corner of Ashland Avenue and Jonquil Terrace to view its surveillance video. According to Sanchez, the video showed two Black males in their teens or early twenties, dressed in dark clothing with hooded jackets. The men were shown running eastbound on the south sidewalk of Jonquil Terrace, one with a revolver in his hand and the other with his left hand in his jacket pocket.

¶ 6 Detective Brian Tedeschi testified that he was assigned to investigate the shooting of Clifton Frye. He testified, based on information he received from other officers, that security camera footage from a building near the corner of Ashland Avenue and Jonquil Terrace showed a red Hyundai Santa Fe driving westbound on Jonquil through the intersection with Ashland. A short time later, the same car drove eastbound through the intersection and out of frame. The video then showed two individuals running from the direction of the car to the intersection. At the intersection, one of the individuals turned onto Ashland Avenue and out of frame. He came

back into frame shortly thereafter, and the two individuals sprinted back in the direction of the car. The Hyundai's license plate was clearly visible in the footage.

¶ 7 Tedeschi later learned that another police officer had located the car from the video. In the car were Tyrone Crosby and his grandmother. Tedeschi testified that Crosby was taken in for questioning. Crosby told Tedeschi that he was driving the car at the time of the shooting. He told Tedeschi that he had picked up individuals known to him as Lil' Shawn and Spazz. Crosby said that after they reached the intersection of Ashland and Jonquil, they circled back, and he stopped to let Lil' Shawn and Spazz out of the car. Shortly thereafter, Crosby heard gunshots and Lil' Shawn and Spazz came running back to the car. Spazz had a "large-barrel handgun" in his hand, and Lil' Shawn was holding his side.

¶ 8 Tedeschi testified that, based on Crosby's statements, he searched a police database for the nicknames "Lil' Shawn" and "Spazz". The results of that search led Tedeschi to identify Lil' Shawn as Shawn Randall and Spazz as defendant. Tedeschi then issued investigative alerts for both Randall and defendant.

¶ 9 Tedeschi testified that the next morning, June 2, Crosby gave a recorded statement to an assistant Cook County State's Attorney. During the statement, Crosby identified a photo of defendant as Spazz. Crosby also reaffirmed his statement that defendant was the individual with the "large-barrel handgun". Tedeschi testified that later that day, Crosby also testified before a grand jury. During that testimony, Crosby again identified defendant.

¶ 10 Officer Chris Dingle testified that on June 9, 2015, he was working on "fugitive apprehension" detail. While he and his partners were conducting undercover surveillance, he observed defendant leaving an apartment building and get into a car. Once defendant drove off, Dingle followed him and radioed for a marked police car to initiate a stop.

¶ 11 After a marked car pulled defendant over, another officer handcuffed him and put him in the car. Dingle testified that defendant was taken to the police station. Dingle testified that he did not have an arrest or search warrant for defendant at the time of the arrest. He also testified that he did not witness defendant commit any crimes and that defendant complied with all police requests.

¶ 12 Dingle testified that the investigative alert stated that defendant was involved in an aggravated battery with a handgun. However, the investigative alert did not specify the nature of that involvement. He also testified that he later learned that the Illinois Department of Corrections had issued a juvenile warrant for defendant, but that he was unaware of that warrant at the time of the arrest.

¶ 13 The circuit court heard closing argument and reviewed additional briefing. In its ruling, the court found that defendant's arrest, pursuant to an investigative alert, was unconstitutional. The court analyzed a then-existing split of authority between panels of this district of the Appellate Court on the issue and concluded that the use of investigative alerts is a "questionable, constitutionally-offensive Chicago-only policy" that impermissibly circumvents the warrant requirements of the United States and Illinois constitutions. Of particular concern to the court was the lack of exigent circumstances; the police had Crosby testify before a grand jury within a day of the shooting but did not arrest defendant until a week later. However, the record showed no indication that the police ever sought an arrest warrant.

¶ 14 The circuit court also held that even if the use of an investigative alert did not invalidate the arrest, the police lacked probable cause to arrest defendant. In its ruling, the court specifically found that the witnesses had all offered credible testimony during the hearing. However, the court questioned the reliability of the information provided by Crosby. The court explained that

had the police sought a warrant in the first instance, it would have requested information about Crosby's criminal history, the conditions under which he gave information to the police, and other considerations that would bear on his credibility. Crosby's background, the court observed, "is a mystery to the universe," unprobed by the mechanisms designed to ensure that arrest warrants issue only upon probable cause.

¶ 15 Moreover, the court noted that Crosby did not identify defendant by name, but only as "Spazz." The State provided no evidence about the reliability of the database used to link that nickname to defendant, including how that database was compiled and maintained, or how many individuals were linked to the nickname "Spazz." Because of these unanswered questions about the reliability of Crosby and the police database, the court ruled that the police lacked probable cause to arrest defendant.

¶ 16 On two separate grounds, therefore, the circuit court granted defendant's motion, quashed his arrest, and suppressed all evidence stemming from the arrest. The State filed a certificate of substantial impairment, and this appeal followed.

¶ 17 ANALYSIS

¶ 18 The State makes three arguments for reversing the circuit court's ruling on defendant's motion: (1) that the court erred in finding that arrests based on investigative alerts are *per se* unconstitutional, (2) that the court erred in finding that police lacked probable cause to arrest defendant, and (3) even if the arrest was unconstitutional, the exclusionary rule should be relaxed because the police acted in good faith.

¶ 19 Our review of a ruling on a motion to quash arrest and suppress evidence presents questions of both fact and law. See *People v. Luedemann*, 222 Ill. 2d 530, 542-43 (2006). We give great deference to factual findings and will not disturb them unless they are against the

manifest weight of the evidence. *People v. Burns*, 2016 IL 118973, ¶ 15. The circuit court's ultimate ruling on the motion, however, is a question of law which we review *de novo*. *Id.* ¶ 16.

¶ 20 In ruling that defendant's arrest was unconstitutional because it was based on an investigative alert, the circuit court relied upon *People v. Bass*, 2019 IL App (1st) 160640, ¶ 71, *aff'd in part, vacated in part*, 2021 IL 125434, ¶ 34 (holding that "an arrest [is] unconstitutional when effectuated on the basis of an investigative alert issued by the Chicago Police Department."). Although other panels of this court subsequently disagreed with *Bass*—beginning with *People v. Braswell*, 2019 IL App (1st) 172810—*Bass* remained good law at the time of the circuit court's ruling in this case and the circuit court was entitled to follow it. See *People v. Harris*, 123 Ill. 2d 113, 128 (1988) ("It is fundamental in Illinois that the decisions of an appellate court are binding precedent on all circuit courts regardless of locale"), citing *People v. Thorpe*, 52 Ill. App. 3d 576, 579 (1977).

¶ 21 Defendant argues that the *Braswell* court and subsequent courts misread *Bass*. He contends that *Bass* did not stand for the proposition that the use of investigative alerts is *per se* unconstitutional, notwithstanding the court's statement that "[w]e hold an arrest unconstitutional when effectuated on the basis of an investigative alert issued by the Chicago Police Department." See *Bass*, 2019 IL App (1st) 160640, ¶ 71. Rather, he argues, *Bass* stood for the proposition that an investigative alert is not an adequate substitute for a warrant in a case where a warrant is required. See *id.* ¶ 62 ("in the ordinary case, a warrant [must] issue before an arrest can be made. Arrests based on investigative alerts violate that rule."). But defendant's reliance on *Bass* is misplaced because our supreme court has now vacated those portions of *Bass* analyzing the constitutionality of investigative alerts. *People v. Bass*, 2021 IL 125434, ¶ 31. Without a definitive resolution of this issue from our supreme court, we will continue to follow *Braswell*

and the line of cases disagreeing with *Bass*. See, *e.g.*, *People v. Simmons*, 2020 IL App (1st) 170650, ¶ 64; *People v. Bahena*, 2020 IL App (1st) 180197, ¶¶ 59-64; *People v. Thornton*, 2020 IL App (1st) 170753, ¶¶ 45-50. Consequently, we find the circuit court erred in ruling that the arrest was unconstitutional simply because it was based on an investigative alert.

¶ 22 We note that the timing of the *Bass* decisions put the circuit court and the parties in a difficult position. The evidentiary hearing in this case took place on non-consecutive days, and this court issued its opinions in *Bass* and *Braswell* between those days. Coincidentally, the Illinois Supreme Court issued its opinion in *Bass* after this appeal was partially briefed. The state of the law has been in flux and our supreme court has specifically vacated the appellate court's holding in *Bass* on which the circuit court relied. We choose to follow the most recent case law on point, which requires us to reverse the circuit court on this issue.

¶ 23 Turning to the second issue, we find that the circuit court erred in ruling that there was not probable cause for the police to arrest defendant. "[P]robable cause exists when the facts known to the [arresting] officer at the time are sufficient to lead a reasonably cautious person to believe that the arrestee has committed a crime, based on the totality of the circumstances. The standard is the probability of criminal activity, not proof beyond a reasonable doubt or even that it be more likely than not." *People v. Gocmen*, 2018 IL 122388, ¶ 19. "When 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) (quoting *People v. Bascom*, 286 Ill. App. 3d 124, 127 (1997)). When relying on third-party information, the State must establish that such information bears "some indicia of reliability and must be sufficient to establish the

requisite quantum of suspicion." *People v. Maxey*, 2011 IL App (1st) 100011, ¶ 54 (quoting *People v. Jackson*, 348 Ill. App. 3d 719, 730 (2014)).

¶ 24 There are no contested issues of fact because the circuit court specifically found that all the witnesses at the hearing were credible. Therefore, we simply review, *de novo*, the court's ultimate ruling. See *Burns*, 2016 IL 118973, ¶¶ 15-16. The evidence at the hearing established that police officers quickly responded to a report of "shots fired" and found Clifton Frye on the ground injured. The evidence showed that the police then viewed surveillance video from a nearby building, which showed two Black males getting out of a red Hyundai Santa Fe, running to the street corner, then running back to the car. The police located that car, and questioned one of its occupants, Tyrone Crosby. Crosby's account of the afternoon included picking up an individual later identified as defendant, driving to the scene of the crime, seeing defendant with a handgun in his hand, and driving away after hearing gunshots.

¶ 25 In his brief, defendant—as did the circuit court its ruling—speculates about reasons that Crosby may not have been reliable. However, the State need not establish that third-party information be unimpeachable, only that it has "some indicia of reliability". *Maxey*, 2011 IL App (1st) 100011, ¶ 54. Crosby's account was corroborated by the security video, which showed a red Hyundai Santa Fe—the same car in which Crosby was first located by the police—at the scene of the crime. The video and Crosby also both depicted two Black males getting out of that car, going to the street corner, then sprinting back to the car. And although Crosby only identified defendant by a nickname, he did identify a photo of defendant as "Spazz" and described picking up Spazz in his car and seeing Spazz holding a "large-barrel handgun" at the scene of the crime.

¶ 26 Taken together, the information collectively known to the police would have led a reasonably cautious person to believe that defendant had committed a felony. Consequently, the

police had reasonable cause to make the arrest. See *Gocmen*, 2018 IL 122388, ¶ 19. Having concluded that the circuit court erred in granting defendant's motion to quash his arrest and suppress evidence, we do not reach the State's argument that the exclusionary rule should be relaxed because the police acted in good faith.

¶ 27 CONCLUSION

¶ 28 We reverse the circuit court's order granting defendant's motion to quash his arrest and supress evidence, and we remand the case for further proceedings.

¶ 29 Reversed and remanded.

CERTIFICATE OF FILING AND SERVICE

I certify that on December 7, 2021, I electronically filed the foregoing Brief and Argument for the Defendant-Appellant, and Separate Appendix, with the Clerk of the Supreme Court of Illinois by using the Tyler Odyssey eFileIL system.

I further certify that the other participants in this appeal, named below, are registered service contacts on the Odyssey e-FileIL system, and thus will be served via the Odyssey eFileIL system.

Kim Foxx, State's Attorney
eserve.CriminalAppeals@cookcountyil.gov

Kwame Raoul, Attorney General
eserve.criminalappeals@ilag.gov

Under penalties as provided by law pursuant to section 1-109 of the Illinois Code of Civil Procedure, I certify that the statements set forth in this instrument are true and correct to the best of my knowledge, information and belief.

/s/ Suzanne A. Isaacson
Assistant Public Defender
69 W. Washington
15th Floor
Chicago IL 60602
(312) 603-0600
LRD.PD@cookcountyil.gov

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CYNTHIA A. GRANT
SUPREME COURT CLERK