

No.127838

IN THE
SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee,	On Appeal from the Appellate Court of Illinois, First Judicial District, No. 1-18-0523
v.	There on Appeal from the Circuit Court of Cook County, Illinois, No. 13 CF 16035 (02)
ANGELO CLARK Defendant-Appellant.	The Honorable Nicholas Ford, Judge, presiding.

**ILLINOIS SHERIFFS' ASSOCIATION AND ILLINOIS ASSOCIATION OF
CHIEFS OF POLICE *AMICI CURIAE* BRIEF IN SUPPORT OF THE
PLAINTIFF-APPELLEE, PEOPLE OF THE STATE OF ILLINOIS**

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INTEREST OF AMICI CURIAE

This case is of interest to all 102 Sheriff's Offices throughout the State of Illinois along with the many municipal police departments in Illinois because the appellate court's decision addresses daily activity of law enforcement officers making arrests based on probable cause in the absence of a warrant.

Since 1928, the Illinois Sheriffs' Association ("ISA") has been dedicated to improving public safety throughout Illinois. The ISA is a non-partisan organization made up of all 102 County Sheriffs of Illinois. The primary mission of the ISA is to assist the Office of Sheriff in each Illinois county by providing Sheriffs and their executive staff with training, communications, and the necessary resources to serve local communities more efficiently.

The Illinois Association of Chiefs of Police ("ILACP"), which celebrated its 82nd anniversary in 2023, is a voluntary professional organization with over 1300 members representing over 400 law enforcement agencies across Illinois. Most members of ILACP are executive level members and leaders in law enforcement agencies across Illinois. The jurisdictions in which ILACP members serve include large urban centers employing thousands of police officers, suburban agencies with smaller complements of officers, and rural municipalities that only have a few officers. These agencies routinely engage in law enforcement activities including responding to calls for police service, investigating criminal activity, and routinely making arrests based on probable cause without having obtained warrants.

The position raised by the Defendant-Appellant and supporting *amici* that arrest without a warrant is somehow violative of the Illinois Constitution is a considerable

departure from precedent. Adopting their position would create uncertainty statewide over required procedures for arrest of persons when an offense occurs outside the presence of the police.

The position advanced by the Defendant-Appellant and supporting *amici* would require a statewide overhaul of practice for processing a vast number of arrests. It would significantly impact the operations of law enforcement agencies, prosecutors, and courts across the state. The introduction of a warrant requirement for all arrests would greatly slow the ability of law enforcement to respond to criminal activity quickly and effectively as well as increase the administrative burden on law enforcement officers and the criminal justice system.

Accepting the Defendant-Appellant's argument will impede criminal investigations. Actions that impose these types of burdens on law enforcement agencies by adversely impacting the effective and efficient administration of justice are of significant interest to the ISA and the ILACP. The ISA and ILACP membership are committed to the best interest of their respective communities and to promoting the highest professional standards for law enforcement activity throughout the state of Illinois.

ARGUMENT

The position advanced by the Defendant-Appellant is one that has been expressly rejected by the U.S. Supreme Court. In an attempt to address concerns over the practices of one jurisdiction on the State, the Defendant-Appellant seeks to impose significant new requirements for the vast majority of criminal arrests. The measures suggested by the Defendant-Appellant are not required pursuant to the prohibition against unreasonable search and seizures in either the U.S. Constitution or the Illinois Constitution. If accepted,

the Defendant-Appellant's position will adversely impact law enforcement operations statewide.

I. A Warrantless Arrest Based on a Showing of Probable Cause Is Constitutional

The question of imposing a warrant for every arrest was squarely rejected by the Supreme Court of the United States almost 50 years ago. In *Gerstein v. Pugh*, the Court expressly rejected the position that all arrests required issuance of a warrant. The *Gerstein* court noted that "it has never invalidated an arrest supported by probable cause solely because the officers failed to secure a warrant. [Citations Omitted]." *Gerstein v. Pugh*, 420 U.S. 103, 113 (1975).

In reaching this conclusion the Court sought to balance the rights of the individual at the same time recognizing the administrative burden that a warrant requirement would place on law enforcement. The *Gerstein* Court concluded that appropriate protection for the accused was met when the accused was afforded a prompt post-arrest opportunity for a neutral magistrate to address the issue of whether there was sufficient probable cause for an arrest. *Id.* at 125-6.

Illinois has likewise long accepted the fact that probable cause provides an adequate basis for arrest with or without a warrant. See, *People v. Peak*. 29 Ill.2d 343, 347 (1963). Illinois law also recognizes that probable cause can be established by the direct knowledge of the officer as well as other reasonable or trustworthy facts indicating an offense had been committed by a suspect. *Id.* at 348. Nothing in the protections against unreasonable search and seizure found in Article I, Section 6 of the Illinois Constitution changes that calculus.

Sections 109-1 and 109-1.1 of the Code of Criminal Procedure of 1963 meet the balancing requirements imposed under *Gerstein* because they, impose a requirement that

persons arrested with or without a warrant be brought before a judge without unreasonable delay. See, 725 ILCS 5/109-1 (West 2024) and 725 ILCS 5/109-1.1 (West 2024). These protections allow for the neutral magistrate referenced in *Gerstein* to address the issue of probable cause for arrest. The U.S. Supreme Court noted that once the individual is taken into custody the burden shifts in favor of the individual requiring the state to justify the continued detention. *Gerstein*, 402 U.S. at 114. Post-arrest, where the rights of an individual are more significantly impacted, there is a burden to quickly resolve the issue of probable cause. *Id.*

Not only does existing Illinois law address the concerns of *Gerstein* with respect to the issue of probable cause, but recent statutory changes to Sections 110-2, 110-5, and 110-6.1 of Code of Criminal Procedure of 1963 also serve to further reduce the possibility of potential harm that persons arrested without probable cause might suffer and limit the concerns raised in *Gerstein* by reducing the likelihood of continued detention. See, 725 ILCS 5/110-2 (West 2024); 725 ILCS 5/110-5 (West 2024); and 725 ILCS 5/110-6.1 (West 2024).

Under the “limited lockstep” doctrine, this court has generally interpreted provisions of the Illinois Constitution concerning search and seizure as following the same interpretations as those extended to the provisions of the U.S. Constitution. Only in the event of limited exceptions do the interpretations diverge. *People v. Caballes*, 221 Ill. 2d 282 (2006). No valid basis for an exception is presented in this case.

Defendant-Appellant’s contention that the administrative actions of a single jurisdiction in Illinois justify diverging from the established federal protections and restricting statewide the practice of warrantless arrest based on probable cause, is without

merit. There is no evidence that that the practice is causing statewide harm. Even with respect to the practices of the single jurisdiction in question, there is an absence of evidence of harm. The analysis of the practice by Justice Mason of the Appellate Court of Illinois, First Judicial District in *People v. Bass* demonstrates that claims of prolific misuse are vastly overstated. See, *People v. Bass*, 2019 IL App. (1st) 160640 ¶¶108-123. (Mason, J., concurring in part, dissenting in part.) Justice Mason concluded that undeveloped facts concerning one jurisdiction's practices were not sufficient to support the type of constitutional review of arrests without warrants conducted by the majority in that case. *Bass*, IL App. (1st) 160640, ¶119. This court reviewing the decision of the First District, declined to rule on that court's evaluation of the constitutionality of arrests without warrants vacating that portion of the appellate court's opinion. *People v. Bass*, 2021 IL 125434.

The Defendant-Appellant seeks to expand rights under the Illinois Constitution to require warrants for all arrest. Nothing in the proceedings related to the adoption of the 1970 Illinois Constitution suggests the concept of warrants for all arrests was ever even envisioned by the delegates, much less proposed, discussed, or debated. Rather than offering some evidence of this expansive intent (which Defendant-Appellant seemingly argues has laid hidden for over 50 years), the Defendant-Appellant and the supporting *amici* are simply engaged in policy advocacy.

That policy advocacy should be rejected by this Court. "The expansion of the protections guaranteed by the state constitution can be brought about by amending the constitution or by the enactment of statutes by the General Assembly." *Caballes*, 221 Ill. 2d at 316-17. Expanding rights "is not the function of this court." *Id.* at 317.

II. Requiring a Warrant for Every Arrest Will Handicap Law Enforcement and Adversely Impact Public Safety

Accepting the Defendant-Appellant's argument that, absent exigent circumstances, all arrests require warrants, will impose a substantial burden on law enforcement and impede the prompt administration of justice. The imposition of such a new warrant requirement will needlessly burden law enforcement and cause considerable confusion. Rather than pursuing offenders, police officers will be required to break in the middle of their investigations to seek warrants. Understanding when and how "exigent circumstances" would apply to excusing warrants is ill-defined and would cause additional uncertainty.

Consider the following hypothetical. Police are dispatched to the scene of a domestic disturbance on a Saturday night. When they arrive, they find a woman in her residence bleeding from a head wound. She indicates that she and her husband had a fight about his drinking. He had pushed her into a wall as he was leaving to go to the local tavern. The incident was captured on a cellphone video by the daughter who witnessed the domestic battery. Under the current law, armed with this evidence establishing probable cause, the officers would be free to go to the local tavern and arrest the husband for the domestic battery. However, under the legal requirement advanced by the Defendant-Appellant, a warrant would be required.

What would be the exigent circumstance excusing the requirement for a warrant? It simply cannot be that the offender left the scene of the incident. If that were that case, exigency would exist in every case where the suspect is not present. Absent evidence that the husband was attempting to flee the police, a warrant would be required.

Rather than simply going and arresting the offender based on the information

provided, the police would need to find a States Attorney and make an application to a judge for a warrant. This will take time on a Saturday night which will likely be busy with other calls for service. At the same time officers would be securing a warrant they would also likely need to be taking measures to safeguard the wife against a possible return of the husband. Even when the law so plainly would support probable cause, and even though there would be a prompt probable cause hearing after the arrest, law enforcement officers and the entire judicial system would be put through these additional steps.

Police respond to a vast number of incidents like the one outlined above. They conduct a substantial number of investigations to establish probable cause for incidents they did not personally witness and make arrests of individuals without warrants who are not present at the scene of a crime. There is no evidence that those actions are taken in a way resulting in arrests without probable cause. Moreover, as pointed out above, prompt post-arrest procedures to address the question of probable cause are already required.

Defendant-Appellants suggestion that exigent circumstances could determine whether a warrant is required is impractical. Consider the example of the husband in the domestic disturbance hypothetical above. If he were simply going to the tavern as he announced he was, then a warrant would be required. If, however, he was proceeding to the tavern to avoid the police, no warrant would be required because he could be considered as fleeing to elude capture. How could officers really know the difference?

The vision of arrest warrants for all arrests is solely predicated on activities in one jurisdiction, the largest in the state. It does not account for the operational concerns and the delays in response to issues of public safety in the hundreds of smaller jurisdictions in the state, some of which may be limited to very few officers on a midnight shift (in some cases

only one or two). One call for service like the one offered in the hypothetical above could consume the entire shift and delay, if not prevent, timely responses to other requests for law enforcement. Moreover, not only would law enforcement have slower response times, but the increase in warrants would significantly increase the burden on all levels of the criminal justice system in all 102 counties across the state.

The safety considerations, along with the burden imposed on law enforcement by a warrant requirement for every arrest, was clearly envisioned by the U.S. Supreme Court in *Gerstein* when it concluded that such a requirement would be an intolerable handicap. Nothing in the Illinois Constitution requires this court to reach a different result.

CONCLUSION

For the reasons stated above, *amici* Illinois Association of Chiefs of Police and Illinois Sheriffs' Association urges this Court to affirm the decision of the First District Appellate Court and reject the position advanced by the Defendant-Appellant.

Dated April 3, 2024

Respectfully submitted,

Amici Curiae

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CERTIFICATE OF COMPLIANCE

I certify that brief conforms to the requirements of Rules 341(a) and (b). The length of this Brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a) is 9 pages.

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