No. 125434

IN THE
SUPREME COURT OF ILLINOIS

PEOPLE OF THE
STATE OF ILLINOIS,

Plaintiff-Appellant,

v.

CORDELL BASS,

Defendant-Appellee.

On Appeal From The Appellate Court Of Illinois
First Judicial District, No. 16-0640
There Heard On Appeal From The Circuit Court Of Cook County, Illinois
Criminal Division, No. 14-CR-15846
The Honorable Neera Lall Walsh, Judge Presiding

BRIEF OF *AMICUS CURIAE* CITY OF CHICAGO IN SUPPORT OF PLAINTIFF-APPELLANT PEOPLE OF THE STATE OF ILLINOIS

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POINTS AND AUTHORITIES

INTEREST OF *AMICUS CURIAE*

Since 2001, the Chicago Police Department ("CPD") has had in place a Criminal History Records Information System (CHRIS) Investigative Alert Application System authorizing the use of "investigative alerts" to provide officers in the field background information gathered by other officers so that field officers may conduct investigations.[1] The City has a direct interest in this case because the panel majority concluded sua sponte that arrests made on the basis of information described in investigative alerts are unconstitutional – even when supported by probable cause. That conclusion was deeply flawed, and in subsequent cases, the appellate court has squarely rejected it. People v. Thornton, 2020 IL App (1st) 170753 ¶¶ 45-50; People v. Braswell, 2019 IL App (1st) 172810 ¶¶ 36-39. The City submits this brief to explain more fully the investigative alert system and demonstrate why the appellate court's ruling concerning investigative alerts should be vacated or reversed.

ISSUE PRESENTED

Amicus curiae addresses the following issue:

Whether this court should vacate or reverse the portion of the appellate court's opinion declaring unconstitutional arrests made pursuant to an

[1] The special order creating the City's system of investigative alerts is a matter of public record, of which this court may take judicial notice on appeal, and may be found at http://directives.chicagopolice.org/directives/data/a7a57be2-12b780f4-30412-b787-088f791c8131bbf7.html (last accessed July 8, 2020).

investigative alert system.

STATEMENT OF FACTS

CPD Special Order S04-16 (the "special order") established the CHRIS system, which is used by members of CPD's Bureau of Detectives ("BOD") and its Bureau of Organized Crime ("BOC"). An investigative alert is "a notice entered into CHRIS identifying a specific individual that . . . . investigative personnel are attempting to locate," and may be created only upon the request of "sworn BOD and BOC personnel." An investigative alert must "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." It must also contain copies of all documentation that supports the alert, and "a summary of how the subject was involved in the crime or incident will also be included in the investigative alert file." Finally, a copy of the subject's most recent photograph on file must be included with the investigative alert. Once an investigative alert has been created, any name check performed on an individual for whom an alert is on file will reveal that individual's known aliases, physical description, and last known address, as well as the justification for the investigative alert and the requesting officer's identifying information. Investigative alerts must be audited regularly to ensure that they have been canceled if the subject of the alert has been apprehended or the alert is no longer needed.

The special order establishes two kinds of investigative alerts: (1) an

"Investigative Alert/Probable Cause to Arrest"; and (2) an "Investigative Alert/No Probable Cause to Arrest."[2] The former "identifies an individual that is wanted by . . . investigative personnel concerning a specific crime, and while an arrest warrant has not been issued, there is probable cause for an arrest." The latter "identifies an individual that . . . investigative personnel seek to interview concerning a specific police matter," but "an arrest warrant for that individual has not been issued, and there is no probable cause to arrest that person." If a name check on an individual reveals an investigative alert indicating probable cause to arrest, the officer conducting that name check must confirm that the alert is either "active" or "renewed" – if so, then the officer is to take the individual into custody, notify the requesting officer's unit that the individual is in custody, indicate on the arrest report the name and badge number of the person notified, process the individual in accordance with applicable CPD policies, and notify the district station supervisor of the incident. If the name check reveals an investigative alert indicating no probable cause to arrest, the officer conducting that name check must not arrest the individual if no other crime has been committed and may follow up on the alert only if it is "active" or "renewed." If the alert is active or renewed,

[2] The special order also establishes what is called a "Temporary Want," which lasts only 48 hours and is used "prior to obtaining a warrant" 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." This case does not involve a Temporary Want, so we do not address it further.

the officer must inform the individual that a member of BOD or BOC seeks to interview him and request that he voluntarily come to the district station to speak with the investigating officer so that the matter may be resolved. If the individual consents, the officer must assist that individual to the station, notify the district station supervisor of the incident, inform the requesting officer's unit that the subject of an investigative alert is at the station voluntarily and has consented to speak with the investigating officer, and complete a report documenting the incident. If the individual does not consent, the officer is to notify the district station supervisor of the incident, notify the requesting officer's unit that the individual was located, and complete a report documenting the incident. And for either type of investigative alert, if the individual is already in custody for another offense, the officer is to confirm that the alert is active or renewed, then notify the requesting officer's unit that the individual is in custody and document in his arrest report the investigative alert and the identifying information of the investigating officer who issued the alert.

Upon receiving notice that an individual subject to an investigative alert is in custody or at the district station on a voluntary basis, the BOD or BOC officer who requested the alert is required to respond to the district station immediately and conduct a follow-up investigation. And in all circumstances, watch lieutenants are required to ensure compliance with CPD policies and procedures regarding processing and booking of individuals

detained pursuant to an investigative alert. In particular, they are to confirm the propriety of the charges against the individual and that probable cause is present. In addition, individuals detained without a warrant who cannot be processed on the alert within 48 hours must either be released without charges or brought before the court for a determination of probable cause.

ARGUMENT

In setting aside Bass's conviction, the appellate court determined – in a case where the City was not a party – that CPD's investigative alert system allows "police officers [to] obtain approval for arrests without . . . the presentation of sworn facts to a judge," People v. Bass, 2019 IL App (1st) 160640 ¶4; accord id. ¶71 (investigative alerts "allowed [officers] to subjectively determine the sufficiency of their own probable cause without the protection of neutral [sic] magistrate"), and gives officers "unbridled power to take into custody persons without the benefit of an arrest warrant," id. ¶34 (quotation marks omitted), whenever a supervisor "order[s] the arrest of a suspect," id. ¶4.[3] The court believed that CPD had, in effect, created its own executive "warrant system" that "allows police to obtain warrant-like documents without . . . an affidavit presented to a neutral magistrate." Id.

[3] The appellate court also declared that "in many cases, investigative alerts take the same or more time to procure than a warrant." Bass, 2019 IL App (1st) 160640 ¶5. Nothing in the record supports this conclusion. Bass offered no evidence or testimony at his suppression hearing regarding the time it takes to obtain an investigative alert.

¶68. The court ruled that this violates the Illinois Constitution, citing the principle 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)." Id. ¶62. On this basis, the court held 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." Id.

The People argue, among other things, that this ruling should be vacated because the appellate court should not have reached it, and we support that position. But if this court addresses the constitutionality of the City's investigative alert system, it should reverse the appellate court's ruling that an arrest based on probable cause is unconstitutional if, in addition to probable cause, the arresting officer is also aware of an investigative alert. While the appellate court's interpretation of the Illinois Constitution is without merit – there is no bar on warrantless arrests, because the constitution's plain language requires only that searches and seizures be reasonable, *not* that every search or seizure be first authorized by a magistrate, e.g., People v. Brown, 38 Ill. 2d 353, 355 (1967) – the decision is also erroneous because the appellate court wholly misconstrued the structure and function of the investigative alert system, and wrongly characterized it as a "warrant system."

An investigative alert does not function as a warrant, but merely

"functions as a police bulletin broadcast within a jurisdiction," Taylor v. City of Chicago, No. 13 CV 4597, 2020 WL 92003, at *4 (N.D. Ill. Jan. 8, 2020), that is used to disseminate critical investigatory information to all CPD officers, by "inform[ing] police officers who come into contact with a suspect (perhaps on a traffic stop) that there is probable cause to arrest the subject," Craig v. City of Chicago, No. 08 C 2275, 2011 WL 1196803, at *3 (N.D. Ill. Mar. 25, 2011). This practice is not unique to CPD, see Bass, 2019 IL App (1st) 160640 ¶5; to the contrary, alerts of this type – more commonly known as "all-points bulletins," see https://www.merriam-webster.com/dictionary/all-points%20bulletin – are commonplace and used by law enforcement nationwide. E.g., Commonwealth v. Walters, 378 A.2d 1232, 1234 (Pa. Super. 1977) (all-points bulletin issued for suspect's arrest); State v. Johnson, 459 S.E.2d 246, 248 (N.C. 1995) (same). And the mere use of such bulletins to disseminate information among officers does not eliminate judicial evaluations of probable cause, as the appellate court believed. See Bass, 2019 IL App (1st) 160640 ¶4. Instead, the special order specifically requires that, whenever a suspect is arrested without a warrant on the basis of the information in an investigative alert, he, like any other warrantless arrestee, must be promptly brought before a magistrate to confirm that there was probable cause for the arrest, or he must be released. Nor does the use of such bulletins grant officers "unbridled" power to order a suspect's arrest. Id. ¶34 (quotation marks omitted). The opposite is true. The special order

specifically authorizes an arrest to be made on the basis of an investigative alert only when the issuing officer can affirmatively demonstrate in advance that the arrest complies with constitutional requirements, by providing both a written description of the facts establishing probable cause for the arrest and a specific identification of the person sought.

The appellate court further stated that officers may continue to "rely on the collective knowledge of their colleagues" even "in a world without investigative alerts," Bass, 2019 IL App (1st) 160640 ¶61, and acknowledged that it "is the rule" that "arresting officers can rely on information provided by nonarresting officers as long as the facts known to the nonarresting officers suffice to establish probable cause," id. ¶60 (citing People v. McGee, 2015 IL App (1st) 130367 ¶49 (where arrest is based on investigative alert, State must show that the non-arresting officers whose report was relied on had probable cause)). That acknowledgement reveals the appellate court's erroneous understanding of investigative alerts. When an officer makes an arrest with probable cause he gained from an investigative alert rather than his own personal knowledge, he is, in effect, relying on the knowledge of other CPD officers – in particular, those responsible for the alert. There is nothing remotely problematic about that. Indeed, the courts have long upheld arrests where, based on the collective knowledge doctrine, the arresting officers are presumed to have probable cause based on knowledge actually possessed by other officers. E.g., People v. Peak, 29 Ill. 2d 343, 349 (1963).

But the appellate court somehow seemed to think that adding an investigative alert stating there was probable cause for Bass's arrest and on what basis – a memorialization of the conclusion that other officers have determined that Bass was wanted for another offense – somehow undermined the arrest, even though the "facts amount[ed] to probable cause." See Bass, 2019 IL App (1st) 160640 ¶36. That does not compute. If anything, an arrest based on an investigative alert with probable cause should be even less objectionable than an arrest based purely on collective knowledge. While collective knowledge allows a court to impute knowledge to an arresting officer even when the arresting officer does not possess that knowledge at the time of the arrest, e.g., McGee, 2015 IL App (1st) 130367 ¶49, an officer who makes an arrest based on an investigative alert acts with real knowledge of the information in the alert.

Equally problematic was the appellate court's assertion that investigative alerts "fail to improve the administration of criminal justice." Bass, 2019 IL App (1st) 160640 ¶70. By disseminating concrete knowledge to officers in the field, investigative alerts directly improve the administration of criminal justice in at least three respects. First, the sharing of information among law enforcement officers protects the public at large "because it permits a proactive, and not just a reactive, approach to law enforcement," by allowing law enforcement officers "to inform one another about ongoing events, identify possible problem areas, and jointly develop plans to address

emerging concerns." James B. Perrine, Fusion Centers & The Fourth Amendment: Application Of The Exclusionary Rule In The Post-9/11 Age Of Information Sharing, 38 CAP. U.L. REV. 721, 737 (2010). Second, sharing information through investigative alerts helps improve the accuracy of probable cause determinations by requiring a contemporaneous, written record of the issuing officer's factual basis for probable cause whenever an investigative alert is issued, rather than only in those cases in which a warrant is sought in advance. It also improves judicial evaluations of probable cause by providing the reviewing court a detailed written record of the information actually relied on to justify an arrest, rather than information offered after the fact. Derik T. Fettig, Who Knew What When? A Critical Analysis of the Expanding Collective Knowledge Doctrine, 82 UMKC L. REV. 663, 693-94 (2014).

Third, sharing information through investigative alerts promotes officer safety, because an officer conducting an investigation in the field is at a distinct "disadvantage when not given information known to fellow law enforcement officers," when compared to an officer who possesses "all the pertinent information about a suspect" and is therefore able to "conduct himself more carefully" in accordance with that information. Fettig, supra, at 697. For example, an officer who learns from an investigative alert that the individual he has stopped for a minor traffic violation is suspected of a violent crime and should be considered armed and dangerous knows to conduct

himself more carefully, whether by calling for backup or taking other protective measures such as asking the suspect to exit his car. Absent the information provided in that alert, the officer is left to rely on nothing but "assumptions and conjecture," id., putting him at greater risk of harm.

In sum, an investigative alert is a commonplace law enforcement tool that neither supplants judicial determinations of probable cause nor acts as a substitute for warrants. Instead, it provides for the sharing of vital information among law enforcement officers, which greatly advances the efficient and safe administration of criminal justice. Whether some other system of investigative alerts – such as the system the appellate court erroneously attributed to the City without the benefit of a fully developed factual record – might violate the Illinois Constitution is simply not presented here. Accordingly, this court should vacate or reverse the portion of the appellate court's opinion declaring unconstitutional any arrest made on the basis of information in investigative alerts.

CONCLUSION

For the foregoing reasons, this court should vacate or reverse the portion of the appellate court's opinion declaring unconstitutional any arrest made on the basis of information in investigative alerts.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms with the requirements of Rules 341(a) and (b). The length of this brief, excluding the words contained in 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 12 pages.

/s/ Jonathon D. Byrer
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NOTICE OF FILING

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PLEASE TAKE NOTICE that on July 9, 2020, I shall electronically file with the Supreme Court of Illinois the brief of *amicus curiae* the City of Chicago, copies of which are attached hereto and herewith served upon you.

/s/ Jonathon D. Byrer
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CERTIFICATE OF FILING AND SERVICE

The undersigned certifies under penalty of law as provided in 735 ILCS 5/1-109 that the statements in this instrument are true and correct and that the foregoing Brief Of *Amicus Curiae* The City Of Chicago was served on the persons named in the above Notice of Filing, at the email addresses indicated, via File & Serve Illinois from 30 North LaSalle Street, Chicago, Illinois, on July 9, 2020, before 5:00 p.m.

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