

ORIGINAL

OFFICIAL TRANSCRIPT PROCEEDINGS BEFORE

SUPREME COURT OF THE UNITED STATES

DKT/CASE NO. 81-430

TITLE ILLINOIS, Petitioner
v.

LANCE GATES ET UX.

PLACE Washington, D. C.

DATE October 13, 1982

PAGES 1 thru 54



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1 P R O C E E D I N G S

2 CHIEF JUSTICE BURGER: We will hear arguments
3 first this morning in Illinois against Gates. Mr.
4 Biebel, I think you may proceed whenever you're ready.

5 ORAL ARGUMENT OF PAUL P. BIEBEL, JR., Esq.

6 ON BEHALF OF THE PETITIONER

7 MR. BEIBEL: Mr. Chief Justice, and may it
8 please the Court:

9 This is a search and seizure case. It
10 involves the question of whether or not probable cause
11 for the establishment of a search warrant can be
12 established where an anonymous letter is sent to a
13 police department and many of the items of that
14 anonymous letter are then corroborated by the police.

15 Here, pursuant to a search warrant, the car
16 and the apartment of Lance and Susan Gates were searched
17 and large quantities of drugs were seized. However, a
18 motion to suppress was granted by the trial court,
19 DuPage County, Illinois. That suppression was affirmed
20 by the Appellate Court of Illinois and affirmed once
21 again by the Supreme Court of Illinois. Certiorari was
22 granted by this Court.

23 The pertinent facts are these. On May 3rd,
24 1978, the Bloomingdale, Illinois Police Department
25 received an anonymous letter which was postmarked May

1 2nd, 1978. That letter said that there was a couple
2 living in Bloomingdale, Lance and Sue Gates, who lived
3 on Greenway in the condominiums who made their living
4 off drugs. Most of their buys, according to the letter,
5 were done in Florida. Sue would drive a car down to
6 Florida; Lance would fly down later and drive the car
7 back.

8 The letter specifically stated that on May
9 3rd, Sue would be driving down to Florida and Lance
10 would be flying down a couple of days later to drive the
11 car back. The letter stated that the car would contain
12 \$100,000 worth of drugs in the trunk, and that there are
13 about \$100,000 worth of drugs in the couple's apartment
14 in the basement.

15 Further, the letter said that the Gates brag
16 about the fact that they don't have to work and that
17 they make their money off pushers. Finally, they
18 indicated that the Gates's were friends with drug
19 dealers who visit their house often.

20 Upon receipt of this letter on May 3rd, 1978,
21 the case was assigned to Detective Charles Mader of the
22 Bloomingdale Police Department who did several things to
23 check whether or not this letter was accurate. First of
24 all, he checked with the Illinois Secretary of State to
25 ascertain whether anybody with a driver's license by the

1 name of Gates lived in Bloomingdale, and he checked and
2 he found out that, indeed, a Lance Gates lived in
3 Bloomingdale; however, he lived on Dartmouth Avenue,
4 which was different from the letter.

5 The Secretary of State provided a description
6 of Mr. Gates. He was a male, white, born in 1947, brown
7 eyes, brown hair, five feet, eleven, 220 pounds.

8 Because of the discrepancy in the information
9 of the Secretary of State, Detective Mader went further
10 and checked with an anonymous informant who had provided
11 reliable information in the past, which gave him
12 information from financial records which his informant
13 had which indicated that Mr. Gates lived on Greenway,
14 which was consistent with the letter, and that his prior
15 address was on Dartmouth, which would indicate that he
16 had let his driver's license, in effect -- he didn't
17 follow it up with the new address.

18 Detective Mader then went and checked with the
19 Chicago Police Department who has responsibility for
20 O'Hare field and ascertained that an L. Gates was slated
21 to go out on Flight 245 on Eastern Airlines to Atlanta
22 and West Palm Beach, Florida at 4:15 on May 5th, which
23 would be consistent with the letter. A phone number was
24 given for L. Gates, who had registered.

25 Detective Mader then contacted the security

1 office of the Illinois Bell Telephone Company and found
2 out that that phone number was an unlisted number to
3 Lance Gates who lived on Greenway Drive in Bloomingdale,
4 Illinois.

5 Detective Mader then checked with the Drug
6 Enforcement Administration, and they had an agent out at
7 O'Hare field waiting to watch the people get on Flight
8 245. A man identifying himself as Lance Gates and
9 meeting the description got on that plane. Drug
10 Enforcement agents were in Florida when that plane
11 landed and they watched Mr. Gate get off the plane, they
12 watched him stay at the airport for about an hour, and
13 then they observed that he took a cab directly to the
14 West Palm Beach Holiday Inn. He was observed entering
15 the room, registered to Susan Gates.

16 The record will not reflect what time he
17 arrived, but it had to be about 8:00 o'clock,
18 considering the lapse in time and the delay of an hour
19 in the airport.

20 Within 12 hours, at 7:00 o'clock the next
21 morning, Mr. Gates and an unidentified female left,
22 checked out, got into an automobile with license plates
23 registered to Lance Gates and headed back on the
24 interstate, presumably towards Chicago. A check of the
25 license plates indicated that the plates were registered

1 to a car other than being driven in this case.

2 It was estimated by the drug agents that the
3 driving time from West Palm Beach, Florida to
4 Bloomington, Illinois was about 21 to 23 hours. Now,
5 this was May 6th in the morning.

6 In the evening of May 6th, which was a
7 Saturday, Detective Mader went and presented his
8 information to a judge who issued a search warrant for
9 the car and for the apartment based on the anonymous
10 letter and the corroboration of the letter. The search
11 warrant was executed at 5:14 the next morning, which was
12 some 23 hours after the Gates's had left Florida, which
13 would indicate virtually a non-stop trip.

14 In the trunk of the automobile were several
15 large bundles of marijuana weighing about 350 pounds. A
16 search of their residence uncovered more marijuana,
17 weapons, ammunition, drug paraphernalia, several scales
18 presumably for the weighing of the drugs. The couple
19 also had cocaine in their possession.

20 Both were indicted for unlawful possession of
21 cannabis with intent to deliver and unlawful possession
22 of a controlled substance, and Lance Gates was
23 separately indicted for possession of an unlicensed
24 firearm.

25 However, a motion to suppress was granted by

1 the Circuit Court of DuPage County, Illinois by Judge
2 William Hopf who indicated that neither prong of the
3 Aguilar or Spinelli test were met here. There was no
4 indication in the letter of the basis of the knowledge
5 of the letter writer, and there was nothing to
6 substantiate his reliability.

7 That was affirmed by the Appellate Court of
8 Illinois Section District in 1980 where that court,
9 admittedly disagreeing with several state and federal
10 cases, held that corroboration by the police can only be
11 used to satisfy the veracity prong of Aguilar and
12 Spinelli and cannot be used to satisfy the basis of
13 knowledge prong. And since there was no basis of
14 knowledge indicated, --

15 QUESTION: Counsel, where did all this prong
16 lingo come from? Is that in Aguilar itself?

17 MR. BEIBEL: Aguilar just set out at the end
18 of the opinion the two steps that have to be utilized
19 when informants are used. I think it was explicated in
20 the Spinelli case, and certainly there's been a great
21 deal of comment by courts and a Law Review article since
22 about the two-prong test and how it's described.

23 QUESTION: You think Aguilar and Spinelli
24 intended to cover the whole waterfront insofar as
25 probable cause and warrants --

1 MR. BEIBEL: We would certainly contend not
2 so, Your Honor, and that's the basis of our case here.
3 If Aguilar and Spinelli -- we would argue that Aguilar
4 and Spinelli ought to be carefully re-examined by this
5 Court in view of the fact that it's overly formalistic
6 and it's confused courts and police officers and
7 prosecutors.

8 But beyond that, I don't think that Aguilar
9 and Spinelli was meant to apply to a situation such as
10 here where you have an anonymous letter writer who
11 volunteers information. I think there's a distinct
12 difference between that and a police informant where
13 there may well be ulterior motives by a police informant
14 to lie.

15 The Appellate Court of Illinois, taking this
16 formalistic approach, said we're sorry, but the
17 corroboration of the police can only go to veracity and
18 it can't go to the basis of knowledge. And so there
19 wasn't any facial indication of basis of knowledge on
20 the affidavit for a search warrant; it had to fall.

21 The Supreme Court of Illinois affirmed the
22 appellate court but didn't go quite as far. In an
23 opinion by Mr. Justice Ward over dissents by Mr.
24 Justices Moran and Underwood, they held that neither
25 prong was met. They didn't feel that the corroboration

1 in this case of what they described as clearly innocent
2 activity was sufficient to meet either prong. However,
3 they didn't get to the question of whether or not
4 corroboration can be used to supply the basis of
5 knowledge prong.

6 The dissents, however, said in that case that
7 every detail of the letter was corroborated, like Draper
8 versus the United States, and consequently, both prongs
9 were satisfied and probable cause was properly granted.

10 It is our contention in this case, Your
11 Honors, that probable cause here for the issuance of a
12 search warrant was properly shown. The probable cause
13 standards enunciated by this Court in cases such as
14 Draper, Brinegar, Carroll, is whether the facts and
15 circumstances are such as to warrant a reasonably
16 prudent man to believe that a crime has been committed.
17 And when search warrants are involved, the question is
18 whether or not the items are probably present in their
19 location.

20 Since probable cause requires less evidence
21 than is required to justify conviction, hearsay can be
22 used to establish probable cause as long as there is a
23 substantial basis for crediting the hearsay, as this
24 Court has enunciated in Jones, Rugendorf, Harris and the
25 like.

1 Here, the hearsay evidence supplied by the
2 anonymous letter writer, coupled by the corroboration of
3 the police of the details of the letter, were sufficient
4 to warrant a reasonably prudent man in believing that
5 the drugs were probably located where the anonymous
6 letter writer said they were. This letter described a
7 classic drug run rather than an ordinary social or
8 business trip. And the predictions of the letter are
9 exactly what occurred

10 Lance Gates flew down to Florida, a place that
11 the Drug Enforcement Administration has identified as a
12 major port of entry of illegal narcotics into the United
13 States; a point that this Court can take judicial
14 knowledge of, as it did in Carroll with the role that
15 Detroit played with regard to illegal liquor during
16 prohibition.

17 He stayed less than 12 hours in Florida,
18 turned around in the automobile that his wife apparently
19 had brought down there and drove back virtually non-stop
20 to Bloomingdale, Illinois, arriving at his apartment in
21 the early morning hours of a Sunday. The letter was
22 correct, therefore, not only in its conclusion that the
23 Gates were running drugs, but also in the specifics of
24 the trip.

25 Now, the Supreme Court of Illinois has gone

1 off and said that this was clearly innocent activity.
2 We would like to note that that should not make a
3 difference as long as that activity, along with the tip
4 itself, is enough to supply probable cause. Certainly,
5 in the Draper case which I'll make reference to in a
6 minute, you had clearly innocent activity which,
7 combined with a tip, was judged to be enough for
8 probable cause.

9 Furthermore, there is an absence of an
10 apparent motive to lie in this case. With police
11 informants who are often either paid or receive some
12 sort of leniency or protection or perhaps pressure to
13 produce information by the police, there are oftentimes
14 those pressures to lie.

15 Here, the anonymous letter, however,
16 volunteered the information. And therefore, it should
17 be given credence like a citizen informant and presumed
18 to be credible. Consequently, because of the detail of
19 the letter which indicated specifically the time that
20 they would go down to Florida and how they would come
21 back, which proved to be true, because of the absence of
22 an apparent motive to lie, because of the extensive
23 police corroboration in this case which took in three
24 police departments, post office, financial records,
25 because of the inherently suspicious nature of the trip,

1 which was a short roundtrip staying less than 12 hours
2 in an area known to be source of narcotics, because of
3 the issuance of a search warrant --

4 QUESTION: What month of the year did this
5 occur in?

6 MR. BEIBEL: It occurred in May, Judge. All
7 taken together, all these factors taken together we
8 believe amply justify the judge's determination of
9 probable cause, particularly when you view that
10 preference ought to be given to search warrants as
11 opposed to warrantless searches, as this Court has often
12 said in cases such as Ventresca.

13 I might note that probable cause has been
14 found by this Court in cases with less evidence than
15 presented here. In Adams versus Williams, an opinion of
16 this Court, 1972, a policeman in Bridgeport, Connecticut
17 in the early morning hours was told by an informant, who
18 had only given information on one prior occasion and
19 that had to do with alleged homosexual activity in a
20 railroad station which did not result in any arrest
21 because it had been unsubstantiated -- that person told
22 the police officer that the defendant was sitting in a
23 specific location in an automobile; that he had a gun in
24 his waist and that there were substantial amounts of
25 drugs in the car.

1 The police officer went up to check the man,
2 asked him to open the car door. He simply rolled down
3 the window. The policeman then reached in and found a
4 gun in the man's waistband, precisely where the
5 informant said it would be. On the basis of this, he
6 then had a warrantless search of the automobile and the
7 man's person and found heroin -- substantial amounts of
8 heroin, both on his person and in the car.

9 This Court, in an opinion by Mr. Justice
10 Rehnquist, said that when we're dealing with probable
11 cause we're dealing with probabilities; we're not
12 dealing with technicalities. And since the gun was
13 found precisely where the informant said it would be,
14 then it predicted -- was reasonable to corroborate the
15 reliability of the informant that drugs would be in the
16 car as well as the gun in the man's waistband.

17 The theory of Adams was premised upon Draper
18 versus the United States where a reliable informant
19 precisely described the attire that Mr. Draper would be
20 wearing, that he would be carrying a tan zippered bag
21 and that he would be walking quickly. He also indicated
22 that Mr. Draper would be getting off a train from
23 Chicago in Denver, and he would be carrying heroin.

24 The police watched the train for two days.
25 The second day they saw a man meeting that description

1 get off the train, carrying a brown zippered bag and
2 walking quickly. On the basis of that information, they
3 stopped the man, they searched him without a warrant and
4 they found three ounces of heroin on him, as the
5 informant said they would.

6 This Court found there was probable cause in
7 that case because the preciseness of the description in
8 Draper gave support to the truthfulness of the statement
9 that Draper was carrying heroin.

10 We contend that this case is stronger than
11 either Adams or Draper because here there was extensive
12 police corroboration of activity that was less innocent
13 than either Adams or Draper. In Adams, the man was
14 sitting in a car; in Draper the man was simply getting
15 off a train and walking away quickly, carrying a bag.

16 Here we have all the earmarks of a trip to
17 obtain drugs. Lance Gates flew down to Florida, stayed
18 12 hours, drove his car non-stop back to Bloomingdale,
19 Illinois. Because the anonymous letter writer in our
20 case was precisely correct in the way the trip would go
21 down, in the days -- concerning the days that the trip
22 would take, it was, we believe, a justifiable decision
23 by the court that this would indicate that the further
24 allegations of the anonymous letter were true, too, and
25 that is that they were carrying drugs. And, in fact,

1 that was the case.

2 Probable cause should therefore be granted in
3 this case, as it was in Adams, as it was in Draper,
4 which I said were both warrantless cases. If there is a
5 question in favor or not in favor of a case if a warrant
6 has been issued, then preference ought to be given to
7 the warrant.

8 However, the difficulty arises in cases such
9 as this because of the application by the lower courts
10 of the two-prong Aguilar and Spinelli test to a
11 situation involving other than a police informant. Here
12 we have an anonymous letter writer.

13 Because a hearsay declaration is unknown to a
14 magistrate or a judge who is required to determine
15 probable cause for a warrant, the two-prong test was
16 established to require police to state to the judge
17 first of all, the basis for why they believe that the
18 informant has veracity, and secondly, what information
19 the informant has to indicate that he believes that a
20 crime has been committed.

21 But according to some courts, including the
22 Appellate Court of Illinois in this case, when
23 information comes from other than a police informant --
24 in this case, an anonymous letter writer, volunteering
25 information -- the information is per se defective if

1 there are not enough -- there isn't a basis for the
2 knowledge facially indicated on the request for a
3 warrant or on the letter, and there are not enough facts
4 to permit self-verification, as this Court utilized in
5 the Spinelli case.

6 The appellate court citing Judge Moilan, who
7 is often cited in this area in his case, Stanley versus
8 the State, an intermediate appellate court in Maryland,
9 1974 opinion, that police corroboration, though relevant
10 in determining veracity, cannot be used to satisfy the
11 basis of knowledge prong.

12 We respectfully contend that that conclusion
13 finds no support in the opinions of this Court. It
14 reduces the standards of determining probable cause to
15 ones of form over substance. And furthermore, it avoids
16 the mandate of this Court in Ventresca that Fourth
17 Amendment issues ought to be considered in a common
18 sense fashion rather than an over-formalistic fashion
19 because search warrants, requests for search warrants
20 are often drafted by non-lawyers in the midst and in the
21 hiatus of criminal investigations, which is just exactly
22 what occurred here. The police really had a very short
23 time in order to whether or not this information was
24 reliable.

25 We find it ironic that under the appellate

1 court opinion, which has accepted the Moilan theory,
2 that a basis for knowledge can be obtained by
3 non-corroborated statements in a letter, but cannot be
4 supplied by the kind of extensive corroboration seen in
5 this case.

6 If the appellate court theory is maintained
7 here, then an anonymous letter which does not supply
8 sufficient facts to indicate a basis of knowledge can
9 never be utilized for the determination of probable
10 cause because the corroboration by the police simply
11 can't be used to bolster the basis of knowledge prong.

12 It simply defies common sense, because
13 corroboration can be utilized not only to show the
14 veracity of a declarant, -- and certainly this Court has
15 said that -- but also to indicate that there are enough
16 verified facts to justify a finding that the letter was
17 not based on conjecture or on rumor.

18 In the Draper case, certainly, the
19 self-verifying facts only became verified because the
20 police corroborated what occurred. They saw that the
21 man had the same clothing as the informant said, that he
22 was carrying a bag as the informant said, and that he
23 would be walking quickly.

24 QUESTION: Let me interrupt you with a
25 question, Mr. Biebel. Do you think there's any

1 distinction for purposes of analysis in the portion of
2 the warrant that authorized the search of the car, which
3 I guess was done immediately when it returned, and the
4 portion of the warrant that authorized the search of the
5 apartment?

6 MR. BEIBEL: I don't think so. I think if you
7 take the --

8 QUESTION: What is the corroboration of the
9 fact that -- I understand all your theory on the
10 corroboration of what was in the trunk of the vehicle,
11 which presumably was sent down to get back up there.
12 But what other than the information in the letter itself
13 supported the view that there was something to be found
14 in the apartment?

15 MR. BEIBEL: The letter said that there were
16 \$100,000 worth of drugs in the car as well --

17 QUESTION: Right. Was there any corroboration
18 of that?

19 MR. BEIBEL: No. I think the corroboration
20 simply has to do with the kind of drug trip that was
21 taken and it's reasonable for a judge to take the
22 further step and say they've got them in the car, and
23 they have them, as the declarant says, in the apartment
24 as well.

25 QUESTION: But do you presume that -- on a

1 drug trip like this -- that the stuff would always be
2 placed in the apartment of the driver? Is that what you
3 assume?

4 MR. BEIBEL: I don't think you can make that
5 presumption particularly, but when it is alleged in the
6 letter and when the letter proves to be true in every
7 basic aspect, then I think that the judge can together
8 indicate that there is probable cause. The tip and the
9 corroboration.

10 QUESTION: You would not think your case was
11 any stronger on the car part than on the house part, is
12 what I'm after.

13 MR. BEIBEL: I think the case is probably
14 stronger on the car part, certainly, because they drove
15 the car and there was more in the letter about the car
16 than the apartment, but I would say that the same theory
17 would hold true --

18 QUESTION: And they were apprehended just as
19 they arrived back, weren't they?

20 MR. BEIBEL: They were waiting for them when
21 they arrived at 5:15 in the morning.

22 I might note that this two-pronged test has
23 caused severe problems for other courts who have been
24 required to consider it when there haven't been the
25 traditional police informant cases.

1 The United States versus Bell, for example,
2 cited at page 19 of our brief involved a situation where
3 an arrest warrant was quashed because the supporting
4 affidavit did not attest to the credibility and
5 reliability of the eyewitness in that case. The
6 eyewitness.

7 The Fifth Circuit, however, reversed and said
8 that Aguilar and Spinelli was not meant to pertain to
9 situations like this and should be limited to police
10 informants only.

11 Similarly, in United States versus Burke that
12 is cited in our brief, the Second Circuit noted that
13 there's been a growing recognition that the two-pronged
14 test ought to be addressed to professional informants
15 and should not be applied in a wooden fashion to citizen
16 informants such as witnesses or as victims.

17 QUESTION: You mean the part of the test about
18 truthfulness, about honesty.

19 MR. BEIBEL: It could be either, Judge.

20 QUESTION: Well, you suggest that if a
21 policeman comes in and says I have good cause to believe
22 that there are stolen goods at a certain address, please
23 give me a warrant. Now, the magistrate knows him as an
24 honest officer who always tells the truth, and he knows
25 he's experienced. Do you think that's enough to get a

1 warrant?

2 MR. BEIBEL: Not under the standards of this
3 Court in Nathanson and cases such as this.

4 QUESTION: Well, that happens -- Nathanson
5 happens to be the basis for the Aguilar requirement that
6 the officer, or whoever it is, gives the basis for his
7 belief.

8 MR. BEIBEL: That's right.

9 QUESTION: Well, then, you don't really mean
10 what you said a while ago.

11 MR. BEIBEL: I don't mean what I said about
12 what? I'm sorry.

13 QUESTION: You said that both prongs of
14 Aguilar shouldn't apply in certain circumstances.
15 Neither one of them should apply in certain
16 circumstances.

17 MR. BEIBEL: What I am simply saying is that I
18 think the two-pronged test gets overly formalistic, and
19 what you ought to do is you ought to take the tip that's
20 involved -- and in this instance we have a tip from an
21 anonymous informant and not a police informant. When
22 there's a police informant, the police have, it seems to
23 me, an --

24 QUESTION: Then you apparently -- you do agree
25 that there must be some basis for the person's assertion

1 that there's a crime being committed.

2 MR. BEIBEL: Certainly, and I think the basis
3 has been shown here. We had the tip, albeit we don't
4 know who it was that made the tip. But there was ample
5 corroboration made, and the suspicious nature of the
6 trip indicates that the situation was as the declarant
7 said.

8 QUESTION: Why are you complaining about
9 Aguilar's requirement that there must be a showing of
10 the basis for the belief? You apparently don't take
11 exception to that, do you? You think Nathanson is
12 right, don't you?

13 MR. BEIBEL: No, I'm saying that in a
14 situation that in this case, as the appellate court did,
15 they said there is no showing of a basis for belief.

16 QUESTION: I know, but you think there should
17 be a showing of the basis, and that that requirement was
18 satisfied in this case.

19 MR. BEIBEL: I think that what we're moving
20 to, and you can see it in our brief and the Solicitor's
21 brief, you will see, I think you get caught up in the
22 really confusing aspects of two prongs; a basis for
23 belief and the veracity prong. Rather, we ought to go
24 back, it seems to me, to the common sense approach: is
25 there substantial evidence to establish the probable

1 cause. It was shown here.

2 And there are many cases, Carroll, Husty,
3 Brinegar, Chambers, Adams versus Williams, where if you
4 take a strict two-pronged analysis, probable cause may
5 not be found. But what the court did in those cases was
6 look at the case, look at the totality of the
7 circumstances and say yes, in this case there was
8 sufficient evidence to establish probable cause. And
9 ironically, most of those cases were warrantless
10 searches.

11 Here, the police officers established all
12 sorts of corroboration and then went before a judge and
13 the judge was convinced there was enough to establish
14 probable cause. And we think that that ought to be
15 given due deference by this Court.

16 Whatever time I have remaining I'd like to
17 reserve for rebuttal, Your Honor.

18 CHIEF JUSTICE BURGER: Very well. Mr. Reilley.

19 ORAL ARGUMENT OF JAMES W. REILLEY, Esq.

20 ON BEHALF OF THE RESPONDENTS

21 MR. REILLEY: Good morning, Mr. Chief Justice,
22 and may it please the Court:

23 This case involves the question of whether the
24 search warrant naming the defendants, their home and an
25 automobile, based upon an anonymous letter and absent

1 any exigent circumstances, with no police observations
2 of any criminal activity, informed the issuing
3 magistrate of some of the underlying circumstances from
4 which the anonymous tipster concluded that the narcotics
5 were where he or she claimed they were, and some of the
6 underlying circumstances from which the magistrate could
7 have concluded that the tipster, whose identity was
8 unknown, was credible or his information reliable.

9 I start off, if I may, with that statement and
10 couch it in the terms of the Aguilar case because I
11 believe in our opinion, our feelings and our theory from
12 the trial court up until today have been the same. We
13 have read the opinions of this Court in Aguilar and
14 Spinelli. We have postulated them to both the trial
15 judge, the Illinois Appellate Court and the Illinois
16 Supreme Court.

17 QUESTION: Have you read Draper?

18 MR. REILLEY: Yes, Your Honor, I intend to
19 discuss Draper and compare it to the facts of this case,
20 Your Honor.

21 The test, as I have indicated --

22 QUESTION: Do you think that the Draper
23 provides an alternative approach to probable cause for
24 search warrants?

25 MR. REILLEY: Yes, Your Honor, it does provide

1 an alternative approach, if I may, with regard to the
2 facts of this case. As stated in Spinelli, Draper was a
3 suitable benchmark for a comparison in terms of the
4 two-pronged or two-basis test.

5 In Draper, however, we had, as the court
6 stated, a reliable informant with a past track record,
7 compared to the Gates case, there was an anonymous
8 letter which I described as written in the third
9 person. The letter writer stated facts and conclusions,
10 talked about the trip to Florida on May 3rd by Mrs.
11 Gates, talked about him flying down, and was incorrect
12 in terms of the corroboration that my opponent suggests
13 because the letter writer, the anonymous tipster, said
14 she would fly down -- or drive down, rather, leave the
15 car to be loaded with drugs and fly back immediately.

16 When the police, the DEA, watched Susan Gates
17 into the room, they saw her get into the car with Mr.
18 Gates the next morning, contrary to what the letter
19 writer said. The letter write said she'd leave the car
20 and fly back immediately; contrary to that, she got in
21 the car.

22 QUESTION: Well, Draper involved one small
23 inaccuracy on the part of the informer, too. Wasn't he
24 a day off on the day that Draper would arrive in the
25 Denver station?

1 MR. REILLEY: I believe, if I recall, Your
2 Honor, he said that Draper would be returning to Denver
3 on either September 8th or 9th in that case, and it was,
4 in fact, the 9th. I believe he gave an alternative date.

5 QUESTION: Did the alternative -- the informer
6 give an alternative?

7 MR. REILLEY: Yes, he did. And he did
8 describe the physical description of Draper. In
9 addition, the informant, whose name was Hereford, was
10 named by the court, by the officer in his testimony.

11 QUESTION: Supposing that you were, say, a
12 police sergeant or a magistrate, rather than an
13 attorney, and this case were presented to you on its
14 facts not at the present time, but supposing that
15 another informant turns up at a later date and it turns
16 out to be the same as this -- the same person as wrote
17 this anonymous letter. Would you say that this
18 anonymous letter gave reason for thinking that the
19 informant was a credible one, a second time around?

20 MR. REILLEY: Is your question that we now
21 find the person who wrote the letter?

22 QUESTION: Right.

23 MR. REILLEY: And we're trying to back up what
24 he said by what was said in the letter?

25 QUESTION: Yes. Can you say that he gave you

1 previous credible information by virtue of what he did
2 in this case?

3 MR. REILLEY: No, sir, I would have to say
4 not, only based upon the content of the letter. The
5 letter itself does not express where the letter writer
6 -- even if we know who it is -- obtained his information.

7 QUESTION: Well, does that really make sense?
8 My own personal -- if this isn't probable cause, I never
9 saw probable cause. And it seems to me that if you go
10 back to the terms of the Constitution and talk about
11 reasonable searches and that sort of thing, no one in
12 their right mind would conclude that this was not a
13 reasonable action on the part of the police.

14 MR. REILLEY: My answer to that, Your Honor,
15 is specifically this. That this Court has said that the
16 probable cause standard for a search warrant, now, for a
17 search warrant as opposed to an emergency on the street
18 as in Adams versus Williams where there was perhaps a
19 danger to the police officer or to society because of a
20 gun. Specifically, this Court said that hearsay can now
21 be the basis for a search warrant, as opposed to the
22 direct observations of an officer.

23 In addition, the Fourth Amendment commands
24 require that a magistrate be neutral and detached and
25 not be a rubber stamp for the police. So keeping that

1 as the guideline that we're going to use hearsay and not
2 direct observations of the swearing police officer who
3 stands before the magistrate, there must be some
4 guideline or some test to protect the citizens and their
5 Fourth Amendment rights from unreasonable searches and,
6 of course, the police to ferret out crime.

7 Keeping that as the basis, Your Honor, my
8 answer to your question is no, this does not establish
9 probable cause because the judge who signed the search
10 warrant had absolutely no way to know whether the letter
11 writer had a grudge, picked up this information in a
12 neighborhood bar, as this Court has said on occasions,
13 gossip in the underworld, that type of conversation.

14 I believe in the Spinelli --

15 QUESTION: Anytime you're going by hearsay you
16 don't know that the person may not have been motivated
17 by a grudge in this particular instance.

18 MR. REILLEY: Yes, sir, that's true, but there
19 is a way to find out if there's any way to credit that
20 hearsay, and this Court has enunciated that; with either
21 the past track record of reliability or as in Harris, a
22 statement against one's penal interest to add some
23 reliability to it.

24 QUESTION: But that simply rules out the use
25 of anonymous tips, then. If you're dealing with a

1 police informer, a knowledgeable police officer can have
2 his affidavit drawn in such a way that to the extent he
3 truthfully can he puts forth the requirements set forth
4 in the cases of this Court. But when you're dealing
5 with an anonymous tip, you can't say well, you really
6 ought to have said a little more on this subject. You
7 either act on it or you don't. And you're saying, in
8 effect, you can't act on it.

9 MR. REILLEY: Your Honor, I'm saying that
10 anonymous tips do have a place in criminal law and in
11 crime prevention. I certainly do not say that they do
12 not have a case.

13 However, I will say that the anonymous tip in
14 this case, even with the corroboration, contrary to my
15 opponent's view, I do believe that this Court has stated
16 that the corroboration of what an anonymous person says,
17 or what a reliable says, the corroboration itself cannot
18 give the court or the issuing magistrate the ability to
19 find out where he found that information out. Whether
20 he heard it -- corroboration, or even a reliable
21 informant could fabricate out of the whole cloth, as
22 this Court stated. Could lie in detail or lie generally.

23 So we don't know just by corroboration of
24 facts subsequently -- in fact, if we use the
25 corroboration approach of my opponent, the corroboration

1 was not specifically as the letter stated. As a matter
2 of fact, the letter writer did not give the specific
3 address of the Gates's; he gave no physical description
4 -- he or she gave no physical --

5 QUESTION: Did the initial address?

6 MR. REILLEY: The initial address of the
7 Gates's was not stated, Your Honor, in the letter.

8 QUESTION: Yes, but that -- the man had simply
9 overlooked sending his change of address to the motor
10 vehicle department.

11 MR. REILLEY: No, I'm sorry, maybe I
12 misunderstood you, Mr. Chief Justice. The letter
13 writer, the anonymous tipster, did not, in his letter to
14 the Bloomingdale Police Department give an address for
15 the Gates's. He said -- he gave a location. On
16 Greenway in the condominiums in Bloomingdale.

17 The affidavit and the verification of the
18 officer found three separate addresses which are stated
19 in the complaint. The first one was through the
20 Secretary of State. That's the one I believe Your Honor
21 is referring to -- 209 Dartmouth. The confidential
22 informant who is referred to who reviewed some financial
23 records -- we do not know, of course, what financial
24 records he reviewed, where he obtained them, whether
25 they were his or someone else's -- gave 198 Greenway

1 Drive. But yet, when the officer checked with the
2 airlines to determine that Gates was boarding a flight,
3 he got a phone number and the Illinois Bell Telephone
4 Company gave yet a third address -- if you read it
5 carefully, it's 189 Greenway Drive.

6 QUESTION: And what difference does this make
7 to the ultimate fact?

8 MR. REILLEY: To the ultimate fact? Is the
9 question of where the specific information comes from to
10 enable the magistrate to, himself as opposed to rubber
11 stamping someone else's opinion -- himself determine
12 from the raw facts if probable cause exists.

13 QUESTION: Suppose that the letter had said
14 that Mrs. Gates would be wearing a red leather jacket
15 when she was down in Florida, and it turned out she was
16 wearing a brown leather jacket. Would you say that
17 that's relevant to anything in this scheme?

18 MR. REILLEY: My answer is this. That the
19 anonymous letter writer is -- the fact that we don't
20 know where that information came from is the critical
21 fact. We don't know the basis of the knowledge.

22 If you're going to say the question of a brown
23 versus a red jacket, I think we'll have to go back to
24 Draper, Your Honor, and discuss the -- in Draper,
25 although a previously reliable informant giving, let's

1 say, 10 facts, 9 out of 10 prove true by corroboration,
2 therefore, the syllogism would go to the test, therefore
3 the drugs are present. However, I believe this Court in
4 Spinelli said that Draper presumed a reliable informant
5 giving that information.

6 Here we have an anonymous person. We do not
7 know the motive, we don't know who the person is --

8 QUESTION: What's the motive got to do with it?

9 MR. REILLEY: I believe in assessing the
10 credibility of the writer and the source of his
11 information. We don't know if he heard it, if he saw it
12 himself, if he was in the Gates's home or if somebody
13 passed this rumor on three times removed from the author
14 of the letter. And I believe that's critical because
15 we're talking about going into someone's house with a
16 search warrant to search that person's house.

17 Perhaps in this case it would be fair to say
18 that the police got lucky, and we can't justify what the
19 legality of the search warrant by what it produced. If
20 nine out of ten times an anonymous letter writer might
21 be speaking out of hearsay, rumor or gossip and the
22 facts would become untrue and they could search anyone
23 in this courtroom's home and find nothing, I believe
24 this Court would not tolerate a standard based on
25 anonymity as the basis for a search warrant without

1 something more.

2 Again, I don't say that anonymous tipsters do
3 not have a part in criminal law; they certainly do. I
4 believe the police, however, are obliged to take the
5 information and do something more with it in order to
6 establish criminality.

7 There is nothing in this search warrant that
8 establishes any criminal conduct. Our Supreme Court
9 viewed it -- the appellate court reviewed it and the
10 trial judge viewed it as corroborating innocent
11 activities, even in view of the letter.

12 QUESTION: Can you seriously maintain that
13 this was consistent only with innocence, when you have
14 the quick flight to South Florida and the non-stop trip
15 back?

16 MR. REILLEY: That fact in and of itself, Your
17 Honor, is innocent activity.

18 QUESTION: Didn't we also have a license plate
19 issued for a different vehicle?

20 MR. REILLEY: Yes, we did.

21 QUESTION: And isn't that something a little
22 out of the ordinary?

23 MR. REILLEY: The license plate was listed to
24 Lance Gates. It was, in fact, on a red Hornet instead
25 of a Mercury vehicle. However, we have this fact: Mr.

1 Gates traveled -- to use the example of perhaps the
2 profile type cases -- Mr. Gates traveled to Florida
3 under his own name. This was not a typical drug courier
4 profile. If he was going to travel down there to bring
5 \$100,000 worth of drugs back, he certainly would think
6 to use a phony name on an airline ticket. That he
7 apparently didn't do because the police officer saw that
8 he used his own name.

9 His wife registered under her own name in the
10 hotel in Florida. That is inconsistent. I believe, in
11 answer directly to your question, that the license plate
12 perhaps could be an oversight in terms of -- or perhaps
13 the Secretary of State's office didn't get the transfer
14 in time. The license plate would be placed on another
15 vehicle if one was sold and one was purchased, and maybe
16 the computers didn't catch up to the file. We can't
17 assume on that theory that that's criminal activity.

18 QUESTION: Are we to take it from that that if
19 Mrs. Gates had registered as Mrs. Jones and in getting
20 his airline ticket he said his name was Anderson, that
21 then you wouldn't be here?

22 MR. REILLEY: I would say if that were true,
23 that could be an element that the court could consider
24 in determining some criminal activity or some means of
25 attempting to hide something. Nothing that was done

1 here was done in any circuitous fashion or in an attempt
2 to hide from or evade the police. Whether he knew he
3 was being observed or not is not the point. Even drug
4 couriers may or may not feel they're being followed, but
5 they certainly come in and they use different names on
6 their airline tickets which is part of the profile that
7 this Court is considering.

8 QUESTION: You say they do. Now clearly, the
9 evidence, as it has demonstrated, shows he was a drug
10 courier, but he did not use a false name. So your --

11 QUESTION: Your Honor, the evidence shows that
12 he was a drug courier, only after they opened the trunk.

13 QUESTION: Well, but that's the fact. You
14 just made the statement that drug couriers use false
15 names. Now, here was a drug courier who did not use a
16 false name. Is that not so?

17 MR. REILLEY: Yes, sir, that is --

18 QUESTION: So your generalization is not very
19 reliable, is it?

20 MR. REILLEY: I guess my response, Your Honor,
21 was to Justice O'Connor's question about the license
22 plate and regarding whether that fact meant anything.
23 And in response to that I was talking about the fact
24 that his own name was apparently used, since that's what
25 the affidavit seems to indicate.

1 But I fail to see, in reading the affidavit,
2 what if any of those facts, taken either together or
3 separately, corroborates any criminality. The question
4 that something may or may not be unusual, we don't know
5 if Mr. Gates was having an argument with his wife and
6 went down and they made up and he drove back. It
7 certainly does not reflect the statements in the
8 anonymous letter which would be typical if that's true,
9 that she would drive down, leave the car to be loaded
10 with drugs and get out of there. And that he would
11 drive it back alone. That's not what occurred. So the
12 letter was not corroborated in that specific and
13 important detail."

14 If we can assume from the letter that that
15 would be the profile of a drug courier, then we can take
16 the converse and say that since they drove back together
17 that the car was not loaded with drugs. And she did not
18 follow what the anonymous tipster, from whatever his
19 source of information, stated. And those were the facts
20 which were not corroborated, contrary to Draper where
21 every single fact was corroborated including the
22 alternative date of arrival.

23 QUESTION: You're suggesting that when there's
24 an anonymous tip, then, there must be 100 percent
25 accuracy on predicting future conduct.

1 MR. REILLEY: No, sir, I'm not. If I may, an
2 anonymous tip could play a part, for example, in an
3 emergency situation on the street. For example, in
4 Chicago we have a situation now with Tylenol. And
5 anonymous tip calls are coming in constantly. The
6 police must follow up on those calls to determine the
7 source of the cyanide. However, they can't break into
8 someone's house with or without a search warrant based
9 upon an anonymous phone call that says, for example,
10 there was one in the paper that said the PLO was
11 responsible. There's no way that that tip can support
12 probable cause under the standards of this Court.

13 But the police can certainly follow up with
14 investigative procedures. This is a computer world;
15 they have many things available to them to substantiate
16 criminal activity if it exists. If they can't
17 substantiate criminal activity under the standards this
18 Court has stated, then they simply can't search. It
19 doesn't arise to probable cause. That doesn't mean that
20 anonymous tips are not important. They certainly are.
21 They can be a beginning point for something, but I don't
22 think they, in and of themselves, and substantiated only
23 by innocent activity at best, can amount to probable
24 cause in the way this Court has described it.

25 QUESTION: Do you think that a detailed

1 anonymous tip which is corroborated and which -- and the
2 details of which could be characterized as suspicious
3 would be sufficient, Mr. Reilley?

4 MR. REILLEY: No, I do not. Under the present
5 standards of this Court --

6 QUESTION: You don't think that would be
7 adequate, either.

8 MR. REILLEY: No, I do not. And the reason,
9 if I may be specific as to my response to you, is this.
10 Even the detail of the tip -- the detail might
11 establish, might establish some degree of basis of
12 knowledge. And I cite specifically Spinelli for that
13 proposition. If the detail is --

14 QUESTION: Self-verifying details.

15 MR. REILLEY: Yes.

16 QUESTION: Spinelli is indicated as all right
17 for the basis of knowledge prong.

18 MR. REILLEY: That's right, that is correct.
19 However, if the tip that Your Honor suggests is
20 anonymous, then the Spinelli and Aguilar holdings would
21 say that there's something missing, however. The
22 veracity of the speaker. Again, the testing -- the
23 hearsay --

24 QUESTION: Well, the corroboration of the
25 details would supply that, would it not?

1 MR. REILLEY: If, in fact, the details could
2 be corroborated.

3 QUESTION: Well, that was my assumption, and
4 you said that that would not be enough in your view.

5 MR. REILLEY: No, I do believe that
6 corroboration can establish one aspect of the
7 two-pronged test; namely, the veracity standard.

8 QUESTION: Veracity. And we can have
9 self-verifying details for the other prong, so there we
10 are. Right?

11 MR. REILLEY: However, I don't believe that
12 applies to this case. The theory does but the facts do
13 not. And specifically, the facts that were educed in
14 this letter were not and did not come close to Draper.
15 There were substantial differences between that letter
16 writer and Draper, in addition, of course, to the fact
17 that Draper was an anonymous informant.

18 But taking Your Honor's suggestions, I agree
19 with the theory, yes. The letter does not approach
20 Draper and the detail was not sufficient enough to give
21 some characterization to it as a reliable basis of
22 knowledge.

23 The corroboration, on the other hand, in terms
24 of the veracity prong, was also not sufficient because
25 the corroboration, although innocent detail was

1 corroborated in Draper, was not totally corroborated.
2 There were some errors; there were some things that were
3 not correct.

4 So if you're taking -- and I think the Court
5 would have to look seriously and closer at an anonymous
6 tip than it would at a confidential police informant.
7 And I think in a case like this, you can use those
8 theories but I think they have to be very carefully
9 analyzed because we're talking about a Fourth Amendment
10 right. And admittedly, they may apply but not in this
11 fact situation.

12 QUESTION: Why is an anonymous tip more
13 suspect than that of a police informer who is presumably
14 maybe dependent for his living on what he supplies to
15 the police in the way of information?

16 MR. REILLEY: I think the answer is this, Your
17 Honor. That the anonymous tip, we don't know what
18 provokes or suggests him to become anonymous and write
19 the letter. Why would he want to remain anonymous? If
20 he knew that, perhaps I could answer your question.

21 QUESTION: Maybe he wants to stay alive.

22 (Laughter.)

23 MR. REILLEY: But then maybe again, he is a
24 jealous drug smuggler who wants to take revenge on
25 another drug smuggler, so he writes letters to the

1 police department.

2 QUESTION: You have a hypothesis? It could be
3 with good motive, it could be with bad motive; you
4 simply don't know.

5 MR. REILLEY: Yes, sir.

6 QUESTION: Why is that worse than the case of
7 the police informant who is basically being paid for his
8 information and who presumably has to provide some good
9 information, may have to provide some bad information,
10 too?

11 MR. REILLEY: Because here we have -- with a
12 police informant at least we can, number one, we can
13 establish a real, live human being, a body, who is
14 standing there either before the magistrate or at least
15 with the police officer.

16 QUESTION: Well, if he's a police informant,
17 he's not standing there with the magistrate.

18 MR. REILLEY: Okay. He's standing with the
19 police officer. The police officer knows who he is.
20 Admittedly, he's involved in criminal conduct of some
21 sort, but assuming the typical police informant with a
22 track record, despite his conduct in society which we
23 don't condone, the fact is he has given information
24 before and it's proven to be accurate.

25 So although there is a standard to look at him

1 closely because of the nature of who he is, we still can
2 establish a track record of his reliability in the
3 past. Whereas with an anonymous person, for whatever
4 his motives may be, good or bad or a desire to live or a
5 jealous drug smuggler, we don't know what those motives
6 are. Therefore, we can't make any judgment about him
7 because we don't have him standing before the officer
8 who can also make a judgment. He's anonymous; we have
9 no basis to know it.

10 And we're talking about that information being
11 supportive for a search warrant. And I believe that
12 that type of information cannot get over the hurdle
13 without more.

14 QUESTION: Over what hurdle?

15 MR. REILLEY: Over the Fourth Amendment
16 hurdle, Your Honor. In other words, to amount to
17 probable cause.

18 QUESTION: And you base that on the Aguilar
19 case?

20 MR. REILLEY: I base it on Aguilar and Jones,
21 and I base it on Spinelli and Draper. I base it on a
22 combination, and I also would cite Harris. The whole
23 line of cases in terms of the problems this Court has
24 discussed in terms of what's missing in a search warrant
25 and how to cure it.

1 QUESTION: Do you think the sum of those cases
2 is to come out with a kind of tomistic approach that
3 some of the lower courts have applied where you have
4 these very complicated prong inquiries? Do you think
5 all that can be spun out of the simple language of the
6 Fourth Amendment that says there shall be no
7 unreasonable searches?

8 MR. REILLEY: No, I really don't think so,
9 unless you're going to have a search warrant only based
10 upon the --

11 QUESTION: You don't think that can be spun
12 out of that.

13 MR. REILLEY: It can be spun out only with a
14 little analysis, a simple analysis, of two aspects, and
15 I don't believe the Fourth Amendment alone can do that.
16 We need a little extra language to assist the Fourth
17 Amendment. The Fourth Amendment doesn't talk about
18 basis of knowledge and veracity.

19 But the Fourth Amendment perhaps didn't
20 contemplate hearsay informants as the basis for a search
21 warrant, either.

22 QUESTION: What makes you think that?

23 MR. REILLEY: I can only assume that.

24 QUESTION: Why do you assume it?

25 MR. REILLEY: Because the language doesn't

1 seem to indicate that.

2 QUESTION: Well, there isn't a whole lot of
3 the law of evidence laid down in the Constitution, is
4 there?

5 MR. REILLEY: Yes, sir, that's correct.

6 QUESTION: Suppose next week a letter comes
7 into the same people as were involved here giving the
8 details of some other drug smuggler, and the police
9 officer looking at it says this looks like the same
10 handwriting as that fellow that we had in the Gates
11 case, which we -- he is saying we lost in the Supreme
12 Court of Illinois.

13 So they pull in the handwriting expert and he
14 says yes, this is the same handwriting; the same person
15 wrote both these letters. Now, they go before the
16 magistrate and present to the magistrate the facts I've
17 just recited, plus all the contents of the tip. Do you
18 think they've now made out a case of reasonably reliable
19 trustworthy informant?

20 MR. REILLEY: I can answer your question this
21 way, Your Honor. First of all, if the second letter is
22 written in the third person as the first one is, the
23 answer to the first part of your question is no, because
24 even if the question you postulate substantiates some
25 kind of reliability, if the letter is written as this

1 one was -- and I would have to presume in your fact
2 setting that it is -- it still doesn't establish how the
3 letter writer knew what he said. Whether he heard it --
4 I'm only using this Court's analysis of barroom gossip
5 and rumor. We have tried to follow the decisions of
6 this Court in terms of what that means. Why was there a
7 necessity for basis of knowledge. Why was there a
8 necessity for reliability?

9 In your case, Your Honor, there would not be a
10 basis of knowledge because the party is speaking in the
11 third person, not reiterating raw data, something he saw
12 or heard or smelled. And the Court has been consistent
13 in that regard, and we feel that this fact situation
14 cannot be supported and does not support probable cause
15 based upon that analysis. It simply doesn't state how
16 the person came to his knowledge.

17 QUESTION: Let's take it one step beyond now.
18 The police act on this second letter which they think is
19 written by the writer of the first letter, and they
20 catch the smuggler and he's convicted, but the Supreme
21 Court of Illinois sets aside that conviction on the same
22 ground that you've just advanced.

23 Now, a month from now they get a third letter
24 exactly the same prediction about some other activity,
25 and the handwriting experts say yes, that's the same

1 source. It's still no good, in your view?

2 MR. REILLEY: I suppose that second case we'd
3 be back here again discussing it.

4 (Laughter.)

5 I would have to say, Your Honor, in all
6 fairness and in all candor that that sounds to me like
7 it's bordering on reliability. But I still cannot state
8 to you in response to your question that that would do
9 anything to establish the basis of the knowledge that
10 the letter writer is talking about. Maybe you can get
11 lucky twice.

12 If he doesn't say how he knew it under the
13 standards of this Court, then that's not sufficient.
14 Unless, of course, the detail is verified under the
15 Spinelli rationale. And I fully agree, as Justice
16 O'Connor asked me, that theory is viable and I believe
17 that that is correct. But under the postulate that the
18 Court has, I don't believe that's proper. It's still
19 anonymous.

20 QUESTION: Mr. Reilley, may I ask you a
21 question that may be relevant to the issue of
22 self-verification. Do you see anything unusual at all
23 about a man flying 1000 miles, of all places, to Palm
24 Beach, arriving at 8:00 o'clock at night and leaving at
25 5:00 the next morning? Palm Beach?

1 (Laughter.)

2 MR. REILLEY: Do I see anything unusual about
3 it?

4 QUESTION: The only suggestion you've made, as
5 I recall, is that he may have made up with his wife. I
6 would have thought if he'd made up with his wife he
7 would have wanted to stay at Palm Beach.

8 (Laughter.)

9 MR. REILLEY: Your Honor, my answer to your
10 question, without being facetious, is that it was May in
11 Chicago and the weather was warm up north, also.

12 Certainly, it might arouse some suspicions but
13 I can't say that that fact in and of itself is
14 criminality. And I do not concede that it does. What
15 one does that is innocent and what someone else would
16 do, you can't -- just because I would do it different
17 than Your Honor might do it or someone else might do it
18 doesn't necessarily make it criminal.

19 Maybe -- who knows what the reasons for it,
20 but if there were several options available, if there
21 were several choices we can't say well, let's pick the
22 criminal choice because that's the one we want to pick
23 because the letter writer said there are drugs there.
24 If there are five options we can't just pick one. There
25 must be some basis to pick it. That would be my answer

1 to your question.

2 QUESTION: Mr. Reilley, under Illinois law, do
3 you happen to know if the law allows you to put a
4 license plate on a car if you are not -- if the license
5 is issued for car A, may you put it on car B?

6 MR. REILLEY: You may not. Unless --

7 QUESTION: So on its face, at least, that was
8 an illegal activity.

9 MR. REILLEY: No. Let me again -- you may
10 not, except if you file a form with the Secretary of
11 State's office transferring the plate from car A to car
12 B, the same plate is transferred and the form goes to
13 Springfield and registers that plate to a new vehicle.
14 That is proper, and you can do that. And you can put it
15 on the car with a tag showing that the registration has
16 been transferred, and the computer will catch up to it
17 whenever that happens. That is perfectly valid and
18 legal.

19 QUESTION: What does the record show in this
20 case about the improper vehicle license?

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1 MR. REILLEY: There was no hearing, Your
2 Honor, at the trial court. It was strictly an
3 evidentiary, legal argument. The record is blank as to
4 that information. The only statement is in the
5 affidavit stating that the plate itself was registered
6 on May 3, 1978, to a different car. That's the only
7 thing in the record. There is nothing beyond that.

8 I would like to conclude by saying that I feel
9 that under the analysis this Court has prescribed, which
10 we have attempted to follow, and the facts of this case
11 and the lack of facts in the letter, certainly the
12 police did what they could have done, but it certainly
13 was not enough in order to make this case probable
14 cause.

15 What they found cannot justify the existence
16 of what I believe still to be the viable two-sided test
17 of Aguilar: a basis for the knowledge of the speaker,
18 and a basis for the credibility of the person or the
19 reliability of the information. It's my belief that you
20 can't cross one to the other, that self-verifying detail
21 can only assist, as this Court said in Spinelli, in
22 basis of knowledge. As in Draper, corroboration can
23 only attempt to cure the veracity or truthfulness test.

24 I believe both of them are lacking, and I
25 would ask this Court respectfully to affirm the judgment

1 of the Illinois Supreme Court.

2 Unless there are any further questions, thank
3 you very much.

4 CHIEF JUSTICE BURGER: Do you have anything
5 further, Mr. Biebel?

6 REBUTTAL ARGUMENT OF PAUL P. BIEBEL, JR.

7 ON BEHALF OF PETITIONER

8 MR. BIEBEL: Very briefly, Your Honor.

9 To clarify what Mr. Justice Stevens and Mr.
10 Justice White asked me when I was up the last time, that
11 is, we agree with Nathanson that the conclusory
12 assertion standing alone of criminal activity is not
13 enough.

14 But here, as I've pointed out, there's been
15 much more than that. The type of detail that is in this
16 letter, indicating specifically that Susan Gates would
17 leave on May 3rd, that Lance Gates would leave a couple
18 days later, which proved to be true, indicated that the
19 information had to come from somebody who was intimately
20 connected with this criminal enterprise, as this Court
21 said in Spinelli.

22 QUESTION: Mr. Biebel, may I ask you another
23 question about the possible distinction between the car
24 and the premises. In your brief you made the point that
25 one of the corroborating circumstances tending to

1 support the conclusion that the drugs might have been in
2 the apartment was the fact that the informant said that
3 the woman would go to Florida and leave the car and come
4 back before the husband left, so that the apartment
5 would not be unattended for a long period of time,
6 indicating probably concern about what was in the
7 apartment.

8 But yet, when they verified the facts, that
9 scenario did not take place. Instead, she stayed in
10 Florida until he came down there and they did in fact
11 leave the apartment unattended, which would seem to
12 undermine the basis for the suspicion that goods were in
13 the apartment during that interval.

14 So I would think there would be less basis for
15 your conclusion.

16 MR. BIEBEL: In that instance I would say,
17 Your Honor, that that's true, that Susan Gates
18 apparently came back with Lance. But there was only a
19 two-day stretch that the apartment was left unattended
20 --

21 QUESTION: But there was a two-day stretch,
22 which would have been consistent with the notion that
23 they were getting drugs which might eventually be placed
24 in the apartment, but there might not have been drugs in
25 the apartment during their absence.

1 MR. BIEBEL: If that theory is accepted, yes.

2 QUESTION: And I notice in that connection
3 that the officers, although they had a warrant to search
4 the apartment, did not do so until they searched the
5 car.

6 MR. BIEBEL: It appears that that's the
7 way --

8 QUESTION: But under your view of the law,
9 supposing the car had oranges in the trunk or something
10 other than what they expected. Would they have
11 nevertheless had the authority under your view to enter
12 the apartment, or did their entry in the apartment
13 depend on their finding drugs in the car?

14 MR. BIEBEL: I think you've got to look, as I
15 said earlier, at the totality of the circumstances.

16 QUESTION: Well, we've got all the
17 circumstances before us. Do you think that totality
18 would justify an entry into the apartment if they had
19 not found drugs in the car?

20 MR. BIEBEL: I would have difficulties
21 entering the apartment, because the veracity of the
22 informant has not been shown, because there are oranges
23 in the car.

24 QUESTION: Then you are relying on what they
25 uncovered in the search of the car to justify the entry

1 to the apartment.

2 MR. BIEBEL: I'm simply saying that there was
3 more evidence for the automobile than there was for the
4 apartment.

5 QUESTION: But are you still taking the
6 position there was enough to enter the apartment?

7 MR. BIEBEL: I am taking the position it was
8 enough to enter the apartment.

9 CHIEF JUSTICE BURGER: Thank you, gentlemen.
10 The case is submitted.

11 (Whereupon, at 11:03 a.m., the case in the
12 above-entitled matter was submitted.)

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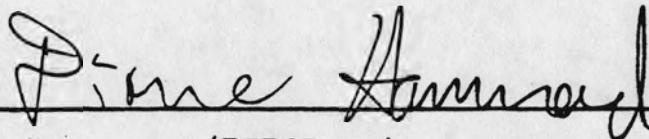
CERTIFICATION

Alderson Reporting Company, Inc., hereby certifies that the attached pages represent an accurate transcription of electronic sound recording of the oral argument before the Supreme Court of the United States in the Matter of:

Illinois, Petitioner v. Lance Gates Et Ux. NO. 81-430

and that these attached pages constitute the original transcript of the proceedings for the records of the court.

BY

A handwritten signature in cursive script, appearing to read "P. H. Hunsaid", is written over a horizontal line.

(REPORTER)