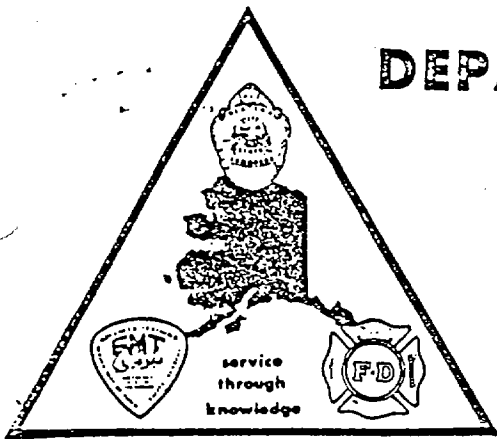


DEPARTMENT OF PUBLIC SAFETY  
TRAINING ACADEMY



LEGAL BULLETIN NO. 40  
October 8, 1980

THE ANTICIPATORY SEARCH WARRANT

Reference: Pia JOHNSON  
v.  
State of Alaska

Alaska Supreme Court  
File No. 3527  
617 P2d 1117  
September 19, 1980

FACTS:

A Juneau police officer received information from an informant that Pia JOHNSON was going to ship her husband, Raymond, some drugs from Seattle. The drugs were to be shipped on Alaska Airlines via their "Gold Streak" service. The officer contacted Seattle authorities who learned that Pia JOHNSON had sent a package to Sherry Peters in Juneau. Peters is Raymond JOHNSON's sister.

After learning that the package was enroute to Juneau, the officer contacted a magistrate and requested he meet him near the airport. The officer had prepared an affidavit in support of a search warrant for the residence of Raymond JOHNSON. The officer had been to the JOHNSON residence on prior occasions and had been investigating JOHNSON for a number of years regarding drug activities. The officer told the magistrate that he was positive the drugs would be taken to the JOHNSON residence. The magistrate signed the warrant which authorized the officer to conduct the search either during the daytime or nighttime.

Peters picked the package up at Alaska Airlines. After dropping a person off in downtown Juneau, she went to the JOHNSON residence. Shortly thereafter, officers entered the residence and discovered Peters and JOHNSON diluting and packaging the drugs. Both heroin and cocaine were seized as a result of the search.

ISSUE:

Was the magistrate authorized to sign the warrant based upon an affidavit showing probable cause that at some future time---but not presently--- certain evidence (the drugs) will be at a location set forth in the warrant?

HELD: Yes.

REASONING:

1. State Statute AS 12.35.020(3) requires only reasonable belief of possession of the item for issuance of the warrant, without specifying that possession must be contemporaneous with the issuance, as distinct from the execution, of the warrant.

2. For an anticipatory warrant to be valid, there must be probable cause to believe that the items to be seized will be at the place to be searched at the time the warrant is executed or, in other words, that the warrant will not be prematurely executed. (emphasis added)

3. Service of an anticipatory search warrant should be contingent upon the happening of an event and the magistrate should place such a directive in the warrant rather than directing that the warrant be executed immediat

NOTES:

This case could be entitled, "Everything you always wanted to know about a search warrant---almost". Besides the anticipatory aspect of the warrant several other issues were resolved---all in favor of the State. These other issues were:

1. Positive proof standard for a nighttime search warrant; the court feels "postive" really means "reasonably certain".
2. Reliability of the informant court-held standard met and cited Keller v. State (see Legal Bulletin No. 11).
3. Particularly describing the premises to be searched---here the color of the cabin was in error on the warrant; however, the officer had been to the residence before and could identify the residence (a cabin) and its owner (JOHNSON).
4. Neutral and detached magistrate---even though the magistrate left his office and met the officer at the airport, in light of the exigencies of the situation, it was not improper for him to do so.

You should be certain that the magistrate who issues the anticipatory warrant stipulates that service cannot be executed unless the items have arrived at the place to be searched (see No. 3 under Reasoning, above).