



DPS TRAINING BULLETIN

LEGAL BULLETIN NO. 307

March 27, 2006

ANTICIPATORY SEARCH WARRANTS DO NOT VIOLATE FOURTH AMENDMENT

Reference: United States v. Jeffrey Grubbs United States Supreme Court No. 04-1414 _____ U.S. _____
March 21, 2006

FACTS:

Grubbs purchased a videotape containing child pornography from a Web site operated by an undercover postal inspector. A postal inspector applied for a warrant to search Grubbs' residence. The inspector stated in the affidavit that, "Execution of this search warrant will not occur unless and until the parcel has been received by a person(s) and has been physically taken into the residence."

Two days after the warrant was issued, an undercover postal inspector delivered the package. Grubbs' wife signed for it and took the unopened package inside. A few minutes later, the search warrant was served. Grubbs consented to interrogation by the postal inspectors and admitted ordering the videotape. The videotape and various other items were seized.

Grubbs argued the validity of the warrant. The Ninth Circuit Court of Appeals agreed with Grubbs and the U.S. appealed their decision to the U.S. Supreme Court.

ISSUE:

Are anticipatory search warrants categorically unconstitutional?

HELD: No--so long as there is probable cause to believe that it (the thing to be seized) will be there when the search warrant is executed.

REASONING:

1. Anticipatory warrants are no different in principle from ordinary warrants. They require the magistrate to determine (a) that it is now probable that (b) contraband, evidence of a crime, or a fugitive will be on the described premises (c) when the warrant is executed. (emphasis added)

2. In this case, the occurrence of the triggering condition--successful delivery of the videotape to Grubbs' residence--would plainly establish probable cause for the search.

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