

Anticipatory Search Warrant: United States v. Grubbs

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United States v. Grubb, 547 U.S. ____, slip op. 04-1414 (3/21/06).

Anticipatory Search Warrant Valid Though Triggering Event Not Included in Warrant

The United States Supreme Court held that an anticipatory search warrant, that described the triggering event for execution in the affidavit, but not the warrant or the attached schedules that were given to the suspect at the residence, still met the particularity requirement of the 4th Amendment.

United States v. Grubbs involved a controlled delivery of a videotape containing child pornography to Grubbs. Grubbs had ordered the videotape off an internet site run by a postal inspector for purposes of investigating child pornography. Based on Grubb's order, a search warrant and affidavit was prepared. The affidavit described the triggering event for executing this anticipatory warrant. The triggering event was described as the delivery of the video to a person at the residence and the taking of the video into the residence. The warrant itself did not list the triggering event, nor did two schedules that were attached to the warrant.

The videotape was delivered to the residence. The tape was accepted by Jeffrey Grubbs' wife and taken into the house. Jeffrey Grubbs was detained when he left the house a short time later and the search warrant was executed. Mr. Grubbs was given a copy of the warrant as well as copies of the attached schedules. He was not given a copy of the affidavit. Following his indictment, Jeffrey Grubbs sought suppression of the evidence found in his home arguing that the warrant and schedules, which did not contain the triggering information for this anticipatory warrant did not meet the 4th Amendment's particularity requirement. The United States Court of Appeal for the 9th Circuit agreed with Grubbs, which led to the appeal before the United States Supreme Court.

The United States Supreme Court overturned the decision of the 9th Circuit in ruling that the search warrant at issue met the particularity requirement of the 4th Amendment. At the outset, the Court held that anticipatory search warrants are Constitutional under the 4th Amendment.

In the opinion, the Court pointed out that the 4th Amendment does not have some general particularity requirement for warrants. The particularity requirement is very specific. Law enforcement must particularly describe the place they are seeking to search and they must particularly describe the items they are seeking to seize. The Court concluded that there is no requirement in the constitution that the "condition precedent" or the "triggering event" of an anticipatory warrant, be particularly described in the warrant itself.

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