

Search & Seizure (Anticipatory)

Court Upholds Anticipatory Search Warrant Whose Execution Was Contingent on Confidential Informant, Who Was Working Under Officers' Directions, To Give Prearranged Signal to Officers After Informant Entered Residence and Purchased Marijuana There

State v. Stallings, 189 N.C. App. 376, 657 S.E.2d 915 (18 March 2008).

The court, relying on *State v. Falbo*, 526 N.W.2d 814 (Wisc. Ct. App. 1994), and *State v. Smith*, 124 N.C. App. 565 (1996), upheld an anticipatory search warrant whose execution was contingent on a confidential informant, who was working under officers' directions, to give a prearranged signal to the officers after the informant entered a residence and purchased marijuana there. The confidential informant during a prior one year period had purchased marijuana from the defendant at his residence. Based on the Falbo and Smith rulings, the court set out a test to consider the legality of this anticipatory search warrant and concluded that the warrant satisfied the test.

1) Anticipatory Search Warrants Do Not Categorically Violate Fourth Amendment

United States v. Grubbs, (21 March 2006) US Sup Ct

2) Fourth Amendment Does Not Require Conditions Precedent to Execution of Anticipatory Search Warrant Be Set Out in Warrant Itself

United States v. Grubbs, (21 March 2006) US Sup Ct

Federal postal inspectors planned a controlled delivery of a child pornography videotape purchased by the defendant for delivery at his home. They obtained a search warrant to search the defendant's home contingent on the delivery of the videotape and its being taken into the residence. The contingency language was contained in the affidavit to the search warrant, but the affidavit was not incorporated into the search warrant. [Author's note: North Carolina's search warrant form, AOC-CR-119, incorporates the application for a search warrant, which includes the affidavit. See *State v. Carrillo*, 164 N.C. App. 204, 595 S.E.2d 219 (2004) (anticipatory search warrant was valid under Fourth Amendment when contingency language for executing the search warrant was set out in affidavit and warrant incorporated the affidavit by reference).] 1) The Court ruled that anticipatory search warrants do not categorically violate the Fourth Amendment. Two prerequisites must be satisfied, however. There is a fair probability (probable cause) that

contraband or evidence of a crime will be found in a particular place, and probable cause to believe that the triggering condition will occur. 2) The Court also ruled that the Fourth Amendment does not require that the conditions precedent to the execution of an anticipatory search warrant must be set out in the warrant itself. In this case, the conditions precedent to the warrant's execution were set out in the affidavit to the search warrant. [Author's note: For a discussion of anticipatory search warrants under North Carolina case law, see page 140 of Robert L. Farb, *Arrest, Search, and Investigation in North Carolina* (3d ed. 2003), and the Carrillo ruling, discussed above, that was decided after the book's publication.]

1) Searches and Seizures--Anticipatory warrant--Description of triggering event--Sufficient

State v. Carrillo, 164 N.C. App. 204 (2004)

An anticipatory search warrant was valid in a cocaine case where the warrant sufficiently incorporated the supporting affidavit, and the affidavit identified both the event which would trigger execution of the warrant (acceptance of a package) and the condition upon which the warrant would not be executed (refusal of the package).

2) Search and Seizure--Motion to suppress--Drugs--Anticipatory search warrant

State v. Baldwin, 161 N.C. App. 382 (2003)

The trial court did not err in a trafficking in cocaine by possession, trafficking in cocaine by transportation, conspiracy to traffic in cocaine, possession with intent to sell or deliver marijuana, and maintaining a dwelling for the purpose of keeping or selling controlled substances case by denying defendant's motion to suppress evidence seized pursuant to an anticipatory search warrant, because: 1) although defendant contends findings of fact were required for denying the motion to suppress, there was no dispute regarding the events of the search or the items seized; and 2) the anticipatory search warrant met the three requirements of *State v. Smith, 124 N.C. App. 565 (1996)*.

Search and Seizure--Anticipatory search warrant--Tripartite test--Motion to suppress drugs

State v. Phillips, 160 N.C. App. 549 (2003)

The trial court did not err in a trafficking in cocaine and maintaining a

dwelling for the keeping of a controlled substance case by denying defendant's motion to suppress evidence seized pursuant to an anticipatory search warrant, because the warrant met the tripartite test including: 1) the triggering event for execution of the warrant was the successful controlled delivery of a Federal Express package to the listed address, and a magistrate is not required to set forth the precise time following the occurrence of the triggering event when an officer must execute the warrant; 2) the warrant precluded delegation of power to the executing officer to find probable cause and ensured the contraband was present at the time of the warrant's execution when the execution of the warrant was contingent on delivery of the package to the listed address; and 3) it is undisputed that the package was delivered and taken into the listed address prior to the execution of the search warrant, and defendant failed to cite any authority for his proposition that a valid and correct address not contained in a city directory would be deficient as a means of establishing with reasonable certainty the premises to be searched.

Searches and Seizures §§ 118, 85 (NCI4th) anticipatory search warrants requirements

State v. Smith, 124 N.C. App. 565 , 478 S.E.2d 237 (1996)

The trial court erred in a prosecution for conspiracy to traffic in cocaine and trafficking in cocaine by denying defendant's motion to suppress evidence obtained through an anticipatory search warrant. Although anticipatory warrants are constitutionally permissible under both the North Carolina and federal constitutions, this warrant is defective under the North Carolina Constitution because the ultimate locus of the contraband could have been anywhere; there were no conditions governing execution of the warrant, so that the investigators rather than the issuing judge totally controlled the events giving rise to probable cause; the warrant was overly broad in that it did not ensure that the cocaine was on a sure course to the enumerated premises; and the warrant draws no nexus between the criminal activity, the circumstances of the intended seizure, and the premises. Anticipatory warrants must set out on their face explicit, clear, and narrowly drawn triggering events which must occur before execution may take place; those triggering events must be ascertainable and preordained (meaning that the property is on a sure and irreversible course to its destination); and no search may occur unless and until the property does in fact arrive at that destination. N.C. Const. art. I, § 20.