



LEGAL UPDATE

ANTICIPATORY WARRANT VOID IF TRIGGERING EVENT DOES NOT OCCUR

Commonwealth v. Mercedes, 496 Mass. 164 (2025).

RELEVANT FACTS:

Between October 2021 – March 2022, local, State and federal agencies were involved in a joint investigation involving 21 suspicious packages that had been sent from Puerto Rico to the greater Lynn areas using the United States Postal Service (USPS). On six occasions between January and March the defendant was involved in picking up those packages and bringing them to his apartment in Salem.

On March 4, 2022, the USPS notified a Lynn detective that another suspicious package had been shipped from Puerto Rico to a three-family home in Lynn. When the post office intercepted the package on March 7, 2022, a canine alerted to the presence of narcotics.

On March 8, 2022, the Lynn detective applied for anticipatory search warrants for the defendant's apartment in Salem, his motor vehicle, and the three-family home in Lynn for narcotics and other evidence of drug trafficking. The triggering event was described as follows:

The triggering event for the execution of these search warrants will be the retrieval of package 22 from the Lynn three-family by the defendant or any cohort. Upon retrieving package 22, a search of the defendant or any cohort and/or any package in their possession will be conducted. Upon finding the defendant or any cohort in possession of narcotics, the Search Warrant of the vehicle and other locations will be executed. p. 166.

For specific guidance on the application of this case or any law, please consult your supervisor or your department's legal advisor.

The anticipatory warrants issued. The package was delivered at 11 AM; however, surveillance officers did not see anyone retrieve the package. They reported they “just looked up, and the package was no longer on the front porch.” p. 166.

After realizing the package was gone, officers breached the door and searched one of the apartments. Officers located package 22 and other boxes. Large amounts of cocaine were recovered. Over two kilograms of cocaine and a large amount of money were seized during the search of the defendant’s Salem apartment.

The defendant was indicted for trafficking 200 grams or more of cocaine. A motion to suppress was filed, arguing that the warrant was void because the triggering event never occurred. The motion was allowed. The Commonwealth appealed.

DISCUSSION

An anticipatory warrant is based upon an affidavit showing probable cause that at some future time (but not presently) certain evidence of crime will be located at a specific place. p. 168.

The affidavit must describe the triggering event and it must be “clearly and narrowly defined.”

It is undisputed that the triggering event did not occur in this case. The issue was whether this fact made the warrant void. If the warrant established probable cause to search even without the occurrence of the triggering event, was the execution of the warrant lawful? The court concluded that the answer to that question was “no.”

We hold that art. 14 of the Massachusetts Declaration of Rights prohibits the police from executing an anticipatory search warrant absent compliance or equivalent compliance with the future triggering event, regardless of whether the factual allegations in the warrant affidavit independently give rise to probable cause to search. p. 165.

The motion to suppress was properly allowed.