

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

MOHAMMAD ALI MALIK,

Defendant-Appellee.

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UNPUBLISHED

September 28, 2004

No. 247222

Wayne Circuit Court

LC No. 03-000139

Before: Donofrio, P.J., and White and Talbot, JJ.

PER CURIAM.

Plaintiff appeals as of right the circuit court order granting defendant's motion to quash and dismissing charges. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Controlled substance charges were brought against defendant based on evidence seized in a search triggered by an anticipatory search warrant. Postal inspectors had intercepted a package containing steroids that was addressed to defendant. A transmitter that would indicate when the package was opened was placed inside and the package was resealed and delivered. The warrant provided in part:

7. Only if paragraph eight (8) or nine (9) occur, will the Dearborn Heights police execute a search warrant on 6000 Waverly.

8. If the package addressed to Ali Malik at 6000 Waverly containing the schedule III controlled substance steroids are accepted and opened, an alarm will activate alerting officers. If these events occur, the Dearborn Heights Police/U.S. Postal Service will execute a search warrant at 6000 Waverly to retrieve the narcotics.

9. If the package is accepted at 6000 Waverly, Dearborn Heights, MI but it is not opened at that location in a reasonable amount of time, officers from the Dearborn Heights Police Dept will execute a search warrant at 6000 Waverly to retrieve the package only.

When the package was not opened for two hours, police executed the search warrant. The unopened package was in the front of the house when the police entered, and it was

retrieved. The officers asked where defendant was and went to a back bedroom to look for him, where they also saw a syringe and other steroids on a bedroom dresser. The trial court granted the motion to quash, finding that the search exceeded the scope of the original warrant.

To the extent that a lower court's decision on a motion to quash is based on an interpretation of the law, appellate review is de novo. *People v Custer*, 465 Mich 319, 326; 630 NW2d 870 (2001).

An anticipatory search warrant is a warrant based upon an affidavit showing probable cause that at some future time certain evidence of a crime will be located at a specified place. In *People v Kaslowski*, 239 Mich App 320, 323; 608 NW2d 539 (2000), this Court found that anticipatory search warrants may be valid under Michigan law. However, due to potential abuse in issuing a warrant based on what might happen in the future, the Court recognized the need for specific listing of the conditions governing the execution of the warrant. *Id.*, 325.

Officers may properly seize items in plain view if the officers are lawfully in the position from which they view the item and the item's incriminating character is immediately apparent. *People v Champion*, 452 Mich 92, 101; 549 NW2d 849 (1996). No searching, no matter how minimal, may be done under the auspices of the plain view doctrine. *Id.*

Here, because the package was not opened and the alarm was not activated, the scope of the warrant was limited to retrieval of "the package only." The plain view doctrine does not save the search. Although the package was in plain view, the contraband that the officers seized was located in the back bedroom, and was not in plain view of the officers as they entered the house. According to the officers' testimony, they asked where defendant was and went to the back of the house to look for him. Indeed, one officer testified that he believed that the warrant implicitly authorized them to locate and arrest defendant. The police found defendant's brother, instead, leaving the bathroom in a towel, and followed him into a back bedroom. The police were not lawfully in the position from which they viewed the contraband. By the terms of the warrant, police entry into the house was only authorized for the limited purpose of retrieving the parcel. As the circuit court indicated, "the police officers limited themselves when they got a search warrant that said what it did." The circuit court did not err in granting the motion in light of the limits placed on anticipatory warrants.

Affirmed.

/s/ Pat M. Donofrio  
/s/ Helene N. White  
/s/ Michael J. Talbot