

Thursday, April 26, 2007

A facially defective warrant amounts to no warrant at all.

The Bill of Rights. (From the public domain.)[^] This follows up on my April 24 and 25 discussions of searches and search warrants. In 2004, the Supreme Court (1) confirmed that a facially invalid search warrant means the search was warrantless and (2) applied the same standard as would be applied where a warrant had never been sought nor obtained in the first place (in this instance, the Supreme Court invalidated the real property search conducted pursuant to this facially invalid warrant). *Groh v. Ramirez*, 540 U.S. 551, 563 (2004). [^] In *Groh*, although the application for the search warrant specified the items to be searched and seized, the four corners of the warrant itself were silent on that matter. thus making the warrant facially and effectively invalid. *Groh*, 540 U.S. at 563. A search warrant application is completed and signed by a law enforcement officer and then submitted to a judicial officer with a proposed search warrant.[^] The search warrant[^] application is separate and distinct from the warrant itself, which is signed by a judicial officer after reviewing the warrant application and taking any testimony (if at all)[^] beyond the contents of the warrant application. Consequently, the Supreme Court held that the warrant in *Groh* was facially invalid.[^] Dissenting Justices[^] Thomas, joined by Justice Scalia, argued that even without a valid warrant, the search in *Groh* was lawful as having been a reasonable search. *Groh*, 540 U.S. at 577 (Thomas, J., dissenting). Fortunately, the opposite view prevailed. This is another example of why our votes for president are so critical, because the president decides whom to nominate to fill Supreme Court vacancies, which are lifetime positions.[^] Jon Katz.

Posted by Jon Katz in Criminal Defense at 00:00