

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

UNITED STATES OF AMERICA,            )  
  )  
          Plaintiff,                    )  
  )  
                  v.                    ) Criminal Action No. 01-71-SLR  
  )  
LAVERN MOORER,                        )  
  )  
                  Defendant.            )

**MEMORANDUM ORDER**

**I. INTRODUCTION**

By indictment returned by the federal grand jury for the District of Delaware, defendant Lavern Moorer ("Moorer") has been charged<sup>1</sup> with, inter alia, intent to distribute more than 500 grams of cocaine. Moorer moves to suppress evidence obtained when the government detained his mail without a warrant and without a reasonable, articulable suspicion that the mail contained contraband. (D.I. 25) Moorer further contends the government infringed upon his Fourth Amendment rights by

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<sup>1</sup>Moorer was charged with knowing possession with intent to distribute more than five hundred grams of cocaine in violation of 21 U.S.C. § 841(a)(1) and (b)(1)(B)(ii)(II); intentionally using the United States mail to commit the act of possession with intent to distribute in violation of 21 U.S.C. § 843(b); conspiracy to distribute and possess over five hundred grams of a schedule II narcotic controlled substance in violation of 21 U.S.C. 841(a)(1) and (b)(1)(B)(ii)(II) and 21 U.S.C. § 846; possession of a firearm in furtherance of a drug trafficking crime in violation of 18 U.S.C. § 924(c); and possession of a handgun which had moved in interstate commerce by a convicted felon in violation of 18 U.S.C. § 922(g)(1). (D.I. 10)

violating the integrity of the package and conducting a warrantless search while the package was detained. As a result of these violations, Moorer argues that all physical evidence and statements obtained should be suppressed. An evidentiary hearing was conducted on the motion to suppress on January 14, 2002.

(D.I. 19) The only witness testifying was Postal Inspector Thomas Henderson.<sup>2</sup> (D.I. 20) Briefing on the motions is complete. For the reasons that follow, the motion to suppress shall be denied.

## II. FACTS

On Monday, August 20, 2001, a package was placed in the federal mail designated as "Express Mail"<sup>3</sup> to be delivered the following day, August 21, 2001. (Id. at 6; Ex. 1) The package<sup>4</sup> was addressed to "Sarah Tate, 315 Wren Court, Newark, Delaware 19702" with a return address of "The Book Store, 4230 N.7 ave [sic], Phoenix, Az 85040." (Ex. 1) Both the address and return

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<sup>2</sup>According to his affidavit submitted in support of a search warrant, Thomas Henderson has been employed as a United States Postal Inspector for two years and prior to that served in the Indiana Air National Guard and was assigned to the Postal Inspection Team for six years. He is now assigned to the Philadelphia, Pennsylvania High Intensity Drug Trafficking Area Parcel Squad which "investigates the use of the U.S. Mails and other overnight delivery services to transport controlled substances" in violation of federal laws. (Ex. 6)

<sup>3</sup>Express mail is considered overnight mail. (D.I. 20 at 22-23)

<sup>4</sup>This address is the home of Sharon Tate who, at the time, was the girlfriend of Moorer. (Ex. 5 at 5)

address were typewritten on the package label.

On August 20, 2001 postal inspectors were conducting a review of express mail labels. (D.I. 20 at 8) An analyst from the National Guard brought two labels to the attention of Postal Inspector Thomas Henderson. (D.I. 20 at 8) The packages had been delivered previously to 315 Wren Court, Newark, Delaware. (Id.) Both express mail labels indicated that a signature for delivery was unnecessary. (Ex. 2, 3) Both signatures on the signature requirement section appeared similar. One label was addressed to "Sarah Tate" and was from "The Book Store, 4230 N. 7 Ave, Phoenix, Az 85040." (Ex. 2). This package was mailed on Monday, August 6, 2001 and delivered the next day. (D.I. 20 at 10-11) It weighed 3 pounds 6.6 ounces. (Id. at 10) The second label was addressed to "Sarah Bullock" at the Wren Court address and was from "North Mountain Books 9226 N. 7 St Phoenix, Az 85040." (Ex. 3) This package was mailed on Monday, August 13, 2001 and delivered the next day. (Id. at 10-11) It weighed 5 pounds 15 ounces. (Id. 20 at 11)

Although the analyst was in the process of determining whether the return addresses<sup>5</sup> were fictitious, Henderson checked on the computer himself to determine the veracity of the addresses. (Id. at 10) He found both return addresses were

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<sup>5</sup>During the hearing, defense counsel represented that he had contacted the two addresses and found each was in fact an operating business. (D.I. 20 at 18-19, 27; D.I 25, Ex. I)

fictitious. Henderson also found the Phoenix Arizona return address significant because this is a source city for drugs. According to Henderson, "Phoenix is one area that we call a source city. It's an area where narcotics is often mailed to other areas throughout the country. During our source of interdiction through the mail, a certain percentage of narcotics is mailed out of Phoenix, Arizona." (Id. at 14)

Based on an apparent pattern of Monday mailings from Arizona to a Tuesday delivery at Wren Court in Newark, Delaware, Henderson traveled to the air mail facility in Philadelphia, Pennsylvania in search of a third package. (Id. at 11) The air mail facility is where all the mail for the Newark, Delaware area comes in, is sorted and then is sent out to the Wilmington and Newark areas. (Id. at 12) There, Henderson discovered a package addressed to 315 Wren Court, Newark, Delaware from Phoenix, Arizona, located in a hamper containing mail going to the 19702 zip code. (Id. at 13) Henderson testified that the package was about 15 inches long. It appeared to be a standard-size express mail box. (Id. at 24, 26) The address and return address were typewritten on the label in a manner similar to the other two package labels.

Henderson removed the package from the air mail facility,

placed it in a plastic bag and transported<sup>6</sup> it to his office at the 30<sup>th</sup> Street Post Office in Philadelphia. (Id. at 14, 28) Upon arrival, Henderson contacted the state police K-9 unit. (Id. at 28) A state police narcotics detection canine subsequently arrived and alerted positive to the presence of controlled substances in the package. (Ex. 6) Henderson removed the package to Delaware when he traveled to apply for a search warrant. (D.I. 20 at 30) Upon issuance of the warrant, the package was opened in Delaware<sup>7</sup> and field-tested positive for cocaine. Henderson prepared for a controlled delivery of the package to be done the following day. (Id. at 36) Except for trace levels, the cocaine was removed and substituted with other material as well as a device enabling investigators to monitor when the package was opened. (Id.) After receiving an anticipatory search warrant<sup>8</sup> for the premises at 315 Wren Court, Newark, Delaware, a postal inspector posing as a mail carrier knocked on the door, which was answered by Karen Tate. Although scheduled to work, Karen Tate was home sick from work that day.

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<sup>6</sup>The drive to Henderson's office from the Philadelphia Airport took about 30 minutes. (D.I. 20 at 28)

<sup>7</sup>Moorer argues that Henderson's testimony is contradictory. At the preliminary hearing Henderson testified that it was opened and field tested in Philadelphia, before the warrant was issued. At the suppression hearing, he testified that it was opened and field tested in Delaware.

<sup>8</sup>Moorer does not challenge this search warrant. (D.I. 20 at 42)

(Ex. 5 at 10) She answered the door and signed for the package in her name not the name of the addressee, Sarah Tate. (Ex. 5 at 12) She brought the package inside and did not open it.

Although she had been expecting a package, she did not feel well enough to open it immediately. (Ex. 5 at 27) A few hours later, Moorers<sup>9</sup> arrived and entered the residence. He was arrested with the express mail package in hand when he exited the residence.

(Ex. 5 at 13-14)

### **III. DISCUSSION**

#### **A. Standing**

The government asserts Moorers has no standing to challenge the search of the express mail package because he lacked any reasonable expectation of privacy in the package. (D.I. 26) Since Moorers has failed to demonstrate that prior to the search of the package he made arrangements with Karen Tate regarding the delivery of the package, security against opening and subsequent transfer of the package, the government contends Moorers cannot object to the search.

Moorers argues that although the package was addressed to a fictitious individual, it was in fact intended to be delivered to him. (D.I. 25) As such, a defendant can have a legitimate expectation of privacy where a package is addressed to a

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<sup>9</sup>Moorers did not use his key, instead Karen Tate opened the door for him. (Ex. 5 at 13)

fictitious person but intended for delivery to him. See United States v. Villarreal, 963 F.2d 770., 74-75 (5th Cir. 1992).

The protection afforded by the Fourth Amendment extends only to a person who has a privacy interest in the area searched. Rawlings v. Kentucky, 448 U.S. 98 (1978). Fourth Amendment rights are personal in nature and may not be asserted vicariously. Rakas v. Illinois, 439 U.S. 128, 133-34 (1978). However, the issue of standing to object is no longer conducted as a separate inquiry. Id. at 139. Rather, the focus is whether the individual had a legitimate expectation of privacy in the area searched. Id. at 143.

Considering all the circumstances, the court finds Moorer had a legitimate expectation of privacy in the package and thus has standing to contest the search. The record reflects Moorer had a key to the house, kept clothing and a computer there and received various mailings at the residence. (D.I. 20 at 53-54) Of further significance are the first two packages. The two packages were mailed on consecutive Mondays and then delivered the following day, Tuesday. Given the stipulation that the third package was intended for Moorer, it is reasonable to conclude the other two packages were likewise for him. Karen Tate testified before the federal grand jury that she always worked Monday through Friday. (Ex. 5 at 22-23) She was unaware of any other packages being delivered on those Tuesdays when she was not at

home. However, she did not make any arrangements with Moorer regarding the packages. (Id. at 19; 17-18) Nonetheless, it is reasonable to conclude that the recipient<sup>10</sup> of those earlier packages expected to receive a package on that Tuesday when no one was home; when it did not arrive, Moorer returned the next day and was likely surprised to see Karen Tate at the residence.<sup>11</sup> The limited purpose of his visit to collect the package is further evidenced by the nature and duration of his visit with Karen Tate. She testified that Moorer was on his cell phone the entire time he was there and only stayed for 15 minutes. (Ex. 5 at 13)

#### **B. Seizure and Reasonable Suspicion**

Historically, it has been held that "first class mail such as letter and sealed packages subject to letter postage - as distinguished from newspapers, magazines, pamphlets, and other printed matter - is free from inspection by postal authorities, except in the manner provided by the Fourth Amendment." United States v. Van Leeuwen, 397 U.S. 249, 251 (1970); see also Ex parte Jackson, 96 U.S. 727 (1877); United States v. Jacobsen, 466

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<sup>10</sup>The government argues that Moorer's conduct on Wednesday, the day the package arrived, is irrelevant as the focus should be on his legitimate expectation of privacy at the time of the search. However, since Moorer could not have known of the search, his conduct on the day of delivery illuminates the nature of his relationship to the package.

<sup>11</sup>One of the empty packages was found in the basement. (Ex. 5 at 20-21)

U.S. 109 (1984). The Supreme Court outlined the conditions required for inspection by law enforcement officers to detain and open packages sent in the mail in Van Leeuwen, 397 U.S. 249 (1970). Certain suspicious circumstances can justify detention without a warrant while an investigation is made. Id. at 252. Further, the Court concluded that detention of mail for a short duration, awaiting an investigation, is not a seizure. Id. According to the Court,

[t]he only thing done here on the basis of suspicion was detention of the packages. There was at that point no possible invasion of the right "to be secure" in the "persons, houses, papers and affect" protected by the Fourth Amendment against "unreasonable searches and seizure." Theoretically - and it is theory only that respondent has on his side - detention of mail could at some point become an unreasonable seizure.

Id. at 252.

The Court found the 29 hour delay between the mailings and the service of the warrant was not unreasonable within the meaning of the Fourth Amendment. In so doing, the Court emphasized that its finding was fact specific and limited to the particulars of that case. According to the Court,

[t]he nature and weight of the packages, the fictitious return address, and the British Columbia license plates of respondent who made the mailings in this border

town certainly justified detention, without a warrant, while an investigation was made. The 'protective search for weapons' of a suspect which the Court approved in Terry v. Ohio, 392 U.S. 1 (1968), even when probable cause for an arrest did not exist, went further than we need go here.

Id. at 252.

Along these lines, the circuit courts have concluded that for a detention to be valid, the law enforcement officer must have reasonably suspected that the parcel contained contraband and the duration of the detention must be reasonable. United States v. Evans, 282 F.3d 451, 454 (7<sup>th</sup> Cir. 2002); see also United States v. Aldaz, 921 F. 2d 227 (9<sup>th</sup> Cir. 1990) (search warrant obtained three days after detention not unreasonable under Fourth Amendment); United States v. Dass, 849 F.2d 414 (9<sup>th</sup> Cir. 1988) (detention ranging from seven to twenty-three days was unreasonable under the Fourth Amendment); United States v. Gill, 280 F.3d 923 (9<sup>th</sup> Cir. 2002) (delay of six days between mailing of package and opening of package pursuant to a warrant was not unreasonable).

Moorer asserts that Henderson lacked reasonable, articulable suspicion when he seized the package in Philadelphia without a warrant. The government counters that the package was detained only for 3 hours and 50 minutes after the contracted delivery time of noon on Tuesday and this detention was justified by the

probable cause established when the canine alerted to the package. Further, the government asserts that even assuming the package was seized when removed by Henderson, his conduct is supported by reasonable suspicion.

When Henderson removed the package from the mail hamper, it was before the contracted delivery time of noon of that day. It was based on his belief that there was a pattern of mailings from a source state for drugs from fictitious senders to the same address, but different named addressees. Although these alone might appear innocuous, in light of his extensive experience with drug and mail interdiction, the court finds there was sufficient reasonable suspicion to warrant the removal of the package. Moreover, the delay between the canine's alert to the package for drugs and the issuance of the warrant was reasonable. See Van Leeuwen, 397 U.S. at 251-252.

Likewise, the court is unpersuaded that Henderson knew that one of the return addresses was not fictitious at the time he removed the package from the mail hamper. Although Henderson did not personally check the addresses on the computer as was originally stated (compare D.I. 20 at 10 with D.I. 25, Ex. H), it has not been established that Henderson knew that one of the addresses was not false. Indeed a letter from the government demonstrates that a computer search to validate addresses would reflect problems in matching the addresses to true business

ventures.<sup>12</sup>

### C. Warrantless Search

Moorer asserts that Henderson admitted during the preliminary hearing that he opened the package to conduct a field test in Philadelphia prior to having a warrant. (D.I. 25) This statement constitutes a judicial admission that is a binding and conclusive fact that a warrantless search occurred. Glick v. White Motor Co., 458 F.2d 1287 (3d Cir. 1972) (to be binding judicial admissions must be unequivocal).

A comparison of Henderson's testimony from the preliminary hearing with the suppression hearing does not yield the result argued by Moorer. Rather, it is evident that during cross examination, there are a series of questions related to "a chain of custody issue" (D.I. 21 at 9), where Henderson agrees with the attorney that the package had been opened in Philadelphia and field tested there. During direct examination, Henderson had stated that the cocaine had been field tested but did not

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<sup>12</sup>By letter dated March 4, 2001 (sic), the government informed Moorer that a clerk performed the address search and verbally advised him that the addresses were fictitious. When Henderson performed a computer search of the addresses more "recently" he discovered on two different data bases that there was "no match" for 9226 N 7 St, 85040 and a rejection. (D.I. 25 Ex. H) For the 4230 N 7 Ave, 85040 there was "no match", but a match under a different zip code. Henderson then had the locations visited and found a business operating as the Bookstore at 4230 N. 7<sup>th</sup> Avenue in Phoenix but the zip code is 85013 not 85040. There is also a business operating as North Mountain Books at 9226C N. 7<sup>th</sup> Street in Phoenix; however this also has a different zip code than listed on the return label.

indicate where this occurred. At the suppression hearing, when asked about the field testing and confronted with his previous testimony, Henderson stated he must have misunderstood the questioning at the preliminary hearing. Henderson insisted the package was field tested in Delaware after a warrant was obtained.

While Moorer argues that this inconsistency is an admission that is binding, the court finds the testimony only relevant for impeachment purposes as to Henderson's credibility. Assessing Henderson's testimony at the suppression hearing with the other evidence presented, the court finds him credible and his suppression hearing testimony a reflection of the events as they occurred.

#### **IV. CONCLUSION**

For the reasons stated, at Wilmington this 10th day of May, 2002;

IT IS ORDERED that defendant's motion to suppress is denied.

(D.I. 16)

Sue L. Robinson  
United States District Judge