UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 4:02 CR 351 CAS DDN
	)	
ROBERT LOGAN, JR.,	)	
	)	
Defendant.	)	

REPORT AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE

This action is before the Court upon the pretrial motions of the parties which were referred to the undersigned United States Magistrate Judge pursuant to 28 U.S.C. § 636(b). An evidentiary hearing was held on March 13, 2003.

Defendant Robert Logan, Jr., has moved to suppress evidence (Doc. No. 43). From the evidence adduced at the hearing, the undersigned makes the following findings of fact and conclusions of law:

FACTS

First package in California

1. On July 18, 2000, Los Angeles, California, Police Narcotics Detective James Flynn was on duty. On that day his supervisor received a telephone call from a commercial shipping company, Mail Box Service Plus, located at 14431 Ventura Blvd., in Sherman Oaks. The call reported a suspicious parcel left there for shipping. His supervisor dispatched Det. Flynn to that location. Since early 2000, Det. Flynn had been trained in the profiling of parcels and packages suspected of being involved in drug trafficking. When Det. Flynn arrived, a clerk pointed out the suspicious parcel to him.

2. After viewing the package, Det. Flynn applied to a California state court for a search warrant to open it. In support of his application, Det. Flynn submitted his written, sworn affidavit, Government Exhibit 1. In his affidavit he described his extensive experience and training in the investigation of narcotics cases and the fact that he had been trained in and experienced in parcel profiling. With respect to the parcel then under investigation, he stated that 14431 Ventura Blvd., in Sherman Oaks, California, is the location of Mail Box Service Plus, a commercial mailing and shipping establishment. Such a business is known to law enforcement as a Commercial Mail Receiving Agency (CMRA). The affidavit stated that, in his experience and training, the use of a CMRA allows people who ship parcels to do so via United Parcel Service or Federal Express, or other shipping companies, without having an account with that company, and it allows the shipper to show the address of the CMRA as the return address, instead of the shipper's true return address. Id. at 2-3. When Det. Flynn first viewed the parcel, he knew that, if a sender uses a direct shipping company, such as United Parcel Service, the direct shipping company requires the sender to disclose the sender's address, which drug traffickers wish to avoid.

3. The affidavit described the circumstances of Det. Flynn's examination of the subject parcel. It had been tendered by Mail Box Service Plus at 14431 Ventura Blvd. for shipment through Federal Express. The sender of this parcel purchased second day air delivery service and the parcel bore airbill number 8203 3484 1653. It was addressed to Sound Masters, 6614 Clayton Road, St. Louis, Missouri 63117.[1] In his affidavit, Det. Flynn stated what

[1]Det. Flynn saw that the airbill bore the typewritten name and address of Mail Box Service Plus as the sender and in handwriting the name and address of Sound Masters as the consignee. See Def. Ex. B. Det. Flynn knew that drug traffickers prefer handwritten (continued...)

he knew when he first saw the parcel: (1) it was addressed to a "target city" (St. Louis) to which narcotics are frequently shipped from Los Angeles; (2) the parcel was shipped through a CMRA, a procedure frequently used by narcotics traffickers to conceal their identities from law enforcement; (3) the parcel was sent second day air shipment, which narcotics traffickers use for rapid, reliable delivery and to shorten the time the parcels may be exposed to law enforcement personnel; and (4) the physical address to which the parcel was being shipped belongs to Mail Boxes Etc., a CMRA; narcotics traffickers use CMRAs to maintain the anonymity of the person receiving the parcel. Id. at 3-4.

4. The affidavit further stated that, based upon this information, he secured the services of a narcotics trained[2] canine unit. The dog, Zack, alerted to the scent of controlled substances in the subject parcel. Id. at 4. This investigation, including the dog sniffing, occurred on the premises of the CMRA soon after Det. Flynn first saw the parcel. The length of the investigation was not such that, had Zack not sensed the odor of the drugs, the package would have been delayed in the shipment to its destination.

5. The affidavit further stated that the police intended to remove part of any contraband that was found and conduct a controlled delivery of the remainder in the parcel. Id.

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[1](...continued)
labels because they can be made up at any time, including while the trafficker is in the customer line at the shipping company office, all in an effort to avoid the possibility of detection until the last moment before the package is given over for shipment.

[2]The affidavit included as an attachment the unsigned statement by Detective Randy Ryan, identified by police number, which states that he had been trained in narcotics investigation and that after he had been assigned to train and work with canine Zack in 1995, Zack had received over 1,100 hours in training and found over 3,000 narcotics training aids of actual controlled substances. See Gov. Ex. 1 at 5.

6. Based upon this affidavit, the California state court issued its search warrant on July 18, 2000, at 4:10 p.m. See Gov. Ex. 1 at 1. After receiving the search warrant, Det. Flynn executed it by opening the parcel. Inside he found a stereo speaker. Inside the stereo speaker he found and seized two packages of cocaine hydrochloride. With this information, Det. Flynn contacted Metropolitan St. Louis Police Det. Larry Davis who agreed to participate in the investigation of the parcel. Det. Flynn then resealed the package and sent it on to Det. Davis.

The St. Louis package

7. On July 20, 2000, St. Louis Police Det. Larry Davis applied for a search warrant from United States Magistrate Judge Lawrence O. Davis[3] for the Federal Express Mail Package bearing tracking number 820417507671. In support of his application, Det. Davis submitted his written, sworn affidavit, Government Exhibit 3. In his affidavit, Det. Davis described his extensive law enforcement and narcotics training and experience. He described extensive law enforcement information about the practices of narcotics traffickers, especially regarding the shipping of controlled substances and the proceeds of narcotics sales. The affidavit also described the profile of characteristics of shipped packages that contain narcotics or the proceeds of drug trafficking. Id. at 2-4.

8. Regarding the parcel under investigation, the affidavit stated that on July 18, 2000, Det. Davis was contacted by Los Angeles Police Det. Jim Flynn who reported about the interdiction of a Federal Express package destined for St. Louis, bearing Federal Express tracking number 820334841653, addressed to Sound Masters, 6614 Clayton, St. Louis, Missouri 63117. The package bore

[3]Det. Davis testified at the hearing that he and Judge Davis are not related.

the return address of Mail Box Service Plus, 14431 Ventura Blvd., Sherman Oaks, California 91423. The affidavit also stated that narcotics trained canine Zack alerted to the odor of a controlled substance inside the package. The affidavit described the package size (18" X 12" X 10"), type (cardboard), weight (approximately 12 pounds), label (handwritten), and origin (a known narcotic source area). The affidavit also stated that the return address was a Commercial Mail Receiving Agency (CMRA), that Sound Masters was a fictitious business unknown in the St. Louis area, and that 6614 Clayton Rd. was the address of a CMRA from whom Sound Masters did not rent a mail box. The affidavit further stated that narcotics investigation experience had determined that the use of CMRAs and the use of fictitious addressee names are indicators of parcels that carry controlled substances or the proceeds of the sales of controlled substances. Det. Davis's affidavit further stated that Det. Flynn obtained a state search warrant for that package, executed the warrant on July 18, and found approximately one kilogram of a substance that tested positive for cocaine. The package was then forwarded to Det. Davis for further investigation. Id. at 4-6.

9. Det. Davis's affidavit further stated that on July 20, while preparing to conduct a controlled delivery of the parcel received from Det. Flynn, Davis discovered another package that bore Federal Express tracking number 820417507671, which was addressed to Sound Master, 6614 Clayton Rd., St. Louis, MO 63117, and which bore the return address of Shan Stroud, Mail Boxes, Etc., 14622 Ventura, Blvd., Suite 102, Sherman Oaks, California 91403. The affidavit recounted the information that Det. Davis learned when he first saw the second package. That package was a large cardboard box, weighing approximately 12 pounds. Det. Davis's affidavit further stated that, on July 20, 2000, law enforcement conducted a controlled delivery of the two packages at 6614 Clayton

Rd. The person who received the packages was identified as Wendy Hull who was arrested and stated she knew there was cocaine in both packages. The second package, the subject of Det. Davis's affidavit, was described by its size, type, and weight, and Det. Davis stated that all of the circumstances and experience were consistent with this package containing narcotics or the proceeds of narcotics trafficking. Id. at 6. When Det. Davis first saw the second package, he observed that it was a brown cardboard box, wrapped as was the first one.

10. Further, his affidavit stated that this package was subjected to the sniffing of narcotic trained canine Kelly:

> 12. On July 20, 2000, I placed this package in an area not known to have been previously contaminated by a narcotic odor. My narcotic trained canine "Kelly" searched this area. Upon arriving at Federal Express package 820417507671 Kelly reacted in a positive manner, indicating the presence of a narcotic odor.

Id. at 6-7. Kelly had been extensively trained, had been frequently used to test parcels, and was certified as a trained narcotics dog. Further, before Kelly was exposed to the second package and sniffed it, that package had not been placed near the first package and was not contaminated by it.

11. On July 20, 2000, at 5:24 p.m., based upon this information, Magistrate Judge Davis issued a search warrant for the Federal Express Package bearing tracking number 820417507671. See Gov. Ex. 4. Thereafter, Det. Davis executed the warrant and searched the package. Inside he found a speaker and inside the speaker he found and seized 2 and ½ kilograms of cocaine.

The second California package

12. On July 20, 2000, Det. Flynn interdicted another parcel in Los Angeles and sought a search warrant to open it. In support of his application for the warrant he submitted his sworn, written

affidavit, Government Exhibit 2. In his affidavit, he described his extensive training and experience in investigating narcotics shipped through the United States mail and by private companies, including United Parcel Service and Federal Express. Id. at 2.

13. The affidavit recounted the information set forth in the affidavit for the first California parcel, which bore airbill number 8203 3484 1653. The affidavit also stated that a search of that parcel yielded 1033.5 grams of a substance that tested positive for cocaine. That parcel was sent on to St. Louis Police Det. Larry Davis. Det. Davis conducted a controlled delivery of that parcel to the destination CMRA. While at that CMRA, Det. Davis observed another parcel which was being held for the same St. Louis consignee and which was of the same size, weight, and label as the parcel being delivered by Det. Davis. Det. Flynn's affidavit stated that the second parcel bore an origination address of a CMRA located at 14622 Ventura Blvd. in Sherman Oaks, which is approximately two blocks away from Mail Box Service Plus at 14431 Ventura Blvd. Det. Flynn stated that, because of these facts, Det. Davis was then seeking a search warrant for the other package. Det. Flynn's affidavit also stated that the controlled delivery of the first parcel was made by Det. Davis to a woman who was then arrested for transportation of cocaine. Following her arrest, a shipping receipt was seized from her person. This receipt had been issued for a Federal Express parcel bearing airbill number 8201 0077 2200. The parcel's label bore the handwritten sender's name and address: Renee Taylor, 6219 Julian Ave., St. Louis, MO 63123, and the handwritten name and address of the destination: Video Marketing, 13659 Victory Blvd. #523, Van Nuys, California 91401.[4] Det. Flynn stated that this address belonged to West Coast Mail

[4] See Def. Ex. E.

Centers, a CMRA. Det. Flynn went there and located such a parcel with that airbill number.[5] Id. at 3-5.

14. Det. Davis's affidavit further stated that this parcel exhibited characteristics common to parcels that had contained narcotics or the proceeds from narcotics: (1) the label was handwritten, which allows the sender to make up the label immediately before shipping and to use any available carrier; and (2) the parcel was sent by next day overnight delivery, which provides narcotics traffickers reliable, albeit costly, delivery that minimizes exposure to law enforcement. Det. Flynn stated that the shippers of controlled substances ship the proceeds of the sales of these substances via the same carriers. Upon these facts, Det. Flynn stated he believed this parcel contained proceeds from the sale of narcotics. Id. at 5-6.

15. Upon this information, the California state court issued its search warrant for the parcel bearing airbill 8201 0077 2200. Id. at 1. Det. Flynn executed this warrant and found $19,050 in currency inside it.[6]

DISCUSSION

Search of first California package

Defendant Logan seeks the suppression of the contents of the packages searched pursuant to the warrants. He argues that the individual factors[7] relied on by Det. Flynn in his affidavit for

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[5] See Def. Ex. C.

[6] See Def. Ex. D.

[7] Defendant identifies these factors as (1) the parcel's being addressed to a "target city," (2) the shipment through a CMRA, using a fictitious name and address to conceal the identity of the sender, (3) the use of second day delivery service, and (4) the use of a CMRA to receive the package, without the need for a physical address for receipt and without the need for the actual recipient (continued...)

the package bearing airbill number 8203 3484 1653, were legitimate and innocent in themselves, and insufficient to establish a reasonable suspicion of wrongdoing as a basis to detain the package for the subsequent canine examination, citing United States v. Johnson, 171 F.3d 601, 603-04 (8th Cir. 1999), and United States v. Vasquez, 213 F.3d 425, 426 (8th Cir. 2000). He also argues that Det. Flynn had intended to submit the package to a narcotics trained dog, irrespective of any suspicious factors.

The government argues that, Det. Flynn's examination of the first package in California at the CMRA was not a seizure under the Fourth Amendment, citing United States v. Gomez, 312 F.3d 920, 923 (8th Cir. 2002). The government also argues that defendant had no legitimate expectation of privacy in the exterior of the package, because he had placed it in the custody of a third party, and that the dog sniff was constitutional, citing United States v. Demoss, 279 F.3d 632, 635-36 (8th Cir. 2002).

The proper analysis is fact intensive and requires a careful consideration of the historical facts in the totality of the relevant circumstances. Demoss, 279 F.3d at 636. The cardinal issues the court must address are whether and when the parcel was "seized" or detained for further investigation under the Fourth Amendment and whether that seizure was supported by "a reasonable suspicion based on articulable, objective facts that [the] package contain[ed] contraband." Id. at 637 (Hanson, J., concurring).

In the Eighth Circuit, a Fourth Amendment seizure occurs "when there is some meaningful interference with an individual's possessory interests in that property." Id. at 635 (quoting United States v. Jacobsen, 466 U.S. 109, 113 (1984)); Gomez, 312 F.3d at 923, 925. Under relevant constitutional precepts, when a sender

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[7](...continued)
to sign for the package.

delivers a parcel to a third party for shipping, the sender's possessory interests become limited; they do not include an expectation that the package would not be handled by third parties, including law enforcement officials, or that the parcel's exterior physical characteristics and attributes would not be observed. United States v. Terriques, 319 F.3d 1051, 1055-56 (8th Cir. 2003); Demoss, 279 F.3d at 635-36; Gomez, 312 F.3d at 923.

A seizure in the constitutional sense does not occur until law enforcement personnel exert dominion and control over the parcel for law enforcement purposes. Terriques, 319 F.3d at 1056. There is no bright line for determining when the passage of time causes the actions of law enforcement to become a "seizure." Gomez, 312 F.3d at 925. Rather, "the length of the detention must be considered in light of the amount of time reasonably required for a diligent inspector to complete an investigation into the package being held, . . ., and that will vary with each case." Id.

Concomitantly, a seizure might not occur until the parcel's handling by law enforcement, even being taken off the shipping company's conveyor belt and moved to a law enforcement location within the usual shipment processing facility, for close inspection, interrupts or meaningfully interferes with its otherwise expected progress in the stream of movement by the shipping company or the mail. Gomez, 312 F.3d at 924; Demoss, 279 F.3d at 637-38; United States v. Harvey, 961 F.3d 1361, 1363-64 (8th Cir.), cert. denied, 506 U.S. 883 (1992). Such a seizure can occur when the police secure a package for further investigation or in order to obtain a search warrant. Terriques, 319 F.3d at 1056 (detention for search warrant application); Vasquez, 213 F.3d at 426 (detention for further investigation).

The "seizure" or detention of a package for further investigation by a law enforcement official must be supported by a reasonable suspicion, based on articulable, objective facts, that

the package contains contraband. Demoss, 279 F.3d at 636; United States v. Sundby, 186 F.3d 873, 874 (8th Cir. 1999).

The Eighth Circuit has considered several cases that involved drug package profiling factors. Recently, in Terriques, the court concluded that the law enforcement officials "possessed a particularized and objective basis for suspecting the package contained contraband." 319 F.3d at 1056. The factors and the law enforcement assessment that led to this conclusion were (1) the postal inspectors' training and experience which allowed them to draw inferences and deductions that an untrained person could not make; (2) the parcel's seams were heavily taped, which is a technique used by drug traffickers to mask the odor of drugs; (3) the proven accuracy of the shipping company employee who alerted the inspectors; (4) the return address was fictitious; (5) the return address was located in a high crime area; (6) the mailing label showed an individual's name, but the address was in a business area; and (7) the package was mailed at a postal facility some distance away from the return address. Id.

In Demoss, the Eighth Circuit concluded that the following factors, when examined through the lens of the investigator's training and experience, were sufficient to sustain the officer's securing the package for a dog sniff: (1) the package exuded a heavy perfume smell and was excessively taped, which was believed intended to mask the smell of narcotics; (2) the airbill contained no telephone numbers for the sender and the recipient, making identifying them more difficult; and (3) the sender purchased priority overnight service. Demoss, 279 F.3d at 636. As the Eighth Circuit stated,

> [c]onsidered alone, each of the features [the officer] noted is innocuous. But "[c]haracteristics consistent with innocent use of the mail can, when taken together, give rise to reasonable suspicion." Taking into account [the officer's] experience in the interdiction of packages containing illegal drugs, his collective

> observations of the . . . package amounted to a sufficient basis for the objectively reasonable, articulable suspicion necessary to seize the package and conduct a canine sniff.

Id. (internal citation omitted).

In Gomez, the Eighth Circuit found the following factors would be legally sufficient to support a reasonable suspicion when considered in the context of the officer's knowledge and experience: (1) the sender purchased next-day noon delivery; (2) the package's size (14 inches square and weighing 12 pounds) was unusually large for person-to-person mail; (3) the mailing label was handwritten; (4) the cost of the mailing ($37.55) was relatively expensive; (5) the package was sent on Friday for Saturday delivery, when drug traffickers speculated there were fewer drug interdiction efforts; (6) the package was mailed from a drug source city (Los Angeles); (7) the package was heavily taped, possibly to thwart a drug dog; (8) the package bore a "FRAGILE" stamp and the sender and receiver had the same surname, all of which appeared to be an attempt to legitimize the package; and (9) the sender's first name on the mailing label appeared to be misspelled. Gomez, 312 F.3d at 922.

In the case at bar, as soon as he examined the package, Det. Flynn observed articulable, objective facts that caused him to suspect that the package contained either drugs or drug trafficking proceeds: (1) the sender used a commercial mail receiving agency (CMRA) to ship the package, (2) the sender purchased second day air delivery service, (3) the addressee's name and address were handwritten on the airbill, (4) the package was addressed to a drug trafficking target city, (5) it was being sent from a drug trafficking source city, and (6) the physical address to which the package was being shipped was another CMRA. The record before this court includes Det. Flynn's assessment of these profiling factors. With his training and experience, Det. Flynn knew that drug

traffickers seek the anonymity that using CMRAs allow. The use of handwritten destination addresses on the shipping labels allows drug traffickers an opportunity to avoid detection until the last moment before the package is given over for shipment. The use of second day air delivery shortens the time contraband shipments may be exposed to law enforcement.

Whether a seizure in the constitutional sense occurred when the shipping clerk first pointed out the package to Det. Flynn and he took it into his hands for examination, or when he secured the package for the dog sniff, the factors described above, when considered in the context of the officer's expert assessment, supported by his training and experience, were legally sufficient to establish a reasonable suspicion of wrongdoing.

As in Terriques, defendant invokes the holding of United States v. Johnson, 171 F.3d 601 (8th Cir. 1999), and argues that the profile factors are consistent with innocent activity. In Johnson, the postal inspectors relied on the following factors to detain a package for a trained narcotics dog sniff: (1) the return address and the destination labels were hand-written; (2) the package was mailed from on individual to another individual at the same address; (3) the package was mailed from a narcotics source state; and (4) the return address zip code was different from the accepting zip code (sender used the post office at the Los Angeles International Airport). 171 F.3d at 602. The Court of Appeals held that these factors, individually or in combination, "do not support a finding of reasonable suspicion of criminal activity to warrant the interception of the package." Id. at 604.

Contrary to defendant's argument, the Court in Johnson did not hold that the identified factors could never support a constitutionally reasonable suspicion of criminal activity. Rather, the Court went to some substantial lengths to explain that the record before it did not include "a description of [the

inspector's] inferences, or deductions from his experience, that the factors . . . are consistent with characteristics of packages found to contain contraband, and that the package in question might contain contraband." Id. The Court went on,

> Law enforcement officers are permitted to draw "inferences and deductions that might well elude an untrained person." Nevertheless, those inferences and deductions must be *explained.* Specifically, the Fourth Amendment requires an officer to explain *why* the officer's knowledge of particular criminal practices gives special significance to the apparently innocent facts observed.

Id. (internal citations omitted). The Court stated that nothing was in the record about the inspector's experience handling profiled packages or his assessment of profile factors; all the Court had were the profile factors. Id. The Court then stated that Johnson's case was in "stark contrast" with the record before it with that of United States v. Dennis, 115 F.3d 524 (7th Cir. 1997). In Dennis the record included the postal inspector's expert assessment of why the use of costly, speedy, reliable Express Mail for personal correspondence, plus other profile factors, indicated the presence of drugs.

In Terriques, the Eighth Circuit made the same assessment of Johnson: It wasn't the lack of profile factors that caused the reversal; it was the government's failure to provide the inspector's expert assessment of these factors that resulted in the lack of a reasonable suspicion. 319 F.3d at 1057. At the initial stage of an investigation of a profiled package, law enforcement may determine that the perceived conduct was in fact innocent; thus, that possibility does not constitutionally demean the officer's nevertheless reasonable suspicion. Id.

United States v. Vasquez, also invoked by defendant, is inapposite to the case at bar. In Vasquez, the Court of Appeals, citing Johnson, merely stated that the several profiling factors

presented in that case were insufficient to establish a reasonable suspicion the package contained contraband. 213 F.3d at 426. The Court did not at all discuss the presence or absence of law enforcement experience in assessing the factors and the conviction was nevertheless affirmed because the positive dog sniff occurred without the normal processing of the package having been delayed or interfered with. Id.

For these reasons, the submission of the package to the test by trained narcotic canine Zack was constitutional.

The issuance of the California state court search warrant to open the package was lawful under the Fourth Amendment. When reviewing the constitutionality of the issuance of a search warrant, the reviewing court considers "only whether the [issuing] judge had a substantial basis for finding probable cause." Sundby, 186 F.3d at 875. "Probable cause to issue a search warrant exists when the supporting affidavit sets forth sufficient facts to lead a prudent person to believe that 'there is a fair probability that contraband or evidence of a crime will be found in a particular place.'" Id. at 876 (quoting United States v. Johnson, 64 F.3d 1120, 1126 (8th Cir. 1995).

In this case, the affidavit submitted to the California judge included the profiling factors, Det. Flynn's assessment of them, and the fact that a trained narcotics canine alerted to the package. "A dog's positive indication alone is enough to establish probable cause for the presence of a controlled substance if the dog is reliable." Id. "To establish the dog's reliability, the affidavit need only state the dog has been trained and certified to detect drugs. An affidavit need not give a detailed account of the dog's track record or education." Id.

Det. Flynn's July 18 affidavit includes as an attachment the unsigned statement by Detective Randy Ryan, identified by police number, which states that he had been trained in narcotics

investigation and that after he had been assigned to train and work with canine Zack in 1995, Zack had received over 1,100 hours in training and found over 3,000 narcotics training aids of actual controlled substances. See Gov. Ex. 1. Such training and experience are sufficient to establish Zack's reliability when he alerted to the first package in California.

For these reasons, the search warrant for the first California parcel was lawful and the items seized from the parcel should not be suppressed.

Defendant's argument that Det. Flynn intended to submit the package to canine examination, with or without legal authority, is without merit. In determining whether or not an officer's actions comport with the Fourth Amendment, his intention is irrelevant; rather, the court must consider the objective reasonableness of his action under the Constitution. Whren v. United States, 517 U.S. 806, 813 (1996); United States v. Roggeman, 279 F.3d 573, 581-84 (8th Cir. 2001), cert. denied, 123 S. Ct. 79 (2002).

Search of the St. Louis package

Defendant argues that the evidence seized from the Federal Express Mail Package bearing tracking number 820417507671 should be suppressed, because (1) the supporting affidavit contained information tainted by the illegal search of the first package in California; (2) the suspicious factors involving the second package were only its being mailed from a source city and its being wrapped in brown paper; (3) the supporting affidavit was incorrect when it stated that Wendy Hull admitted knowing there was cocaine in both packages, because the police report contains no such statement; (4) the canine's alert on the second package could have been triggered by the second package having been close to the first package which had been opened and searched by the police, as indicated by the affidavit; and (5) Det. Davis's affidavit fails to describe the

training, certification, or other reliability of canine Kelly. The government argues that the facts and circumstances set out in Det. Davis's affidavit were sufficient to establish probable cause to search the second package in St. Louis.

Defendant's arguments are without merit. First, as demonstrated above, the search of the first package in California was not unconstitutional.

Second, when Det. Davis first saw the St. Louis package, he observed the following profiling factors: (1) the St. Louis package was addressed also to Sound Masters at 6614 Clayton Rd., the same address to which the package known to contain narcotics was being sent; (2) the package came from the same source city not far from the return address of the first California package; (3) the package was large; and (4) the package was wrapped similarly to the first California package. From his training and experience, Det. Davis knew the significance of drug package profile factors and he knew the information provided by Det. Flynn in Los Angeles. The physical similarity of the packages, the fact that they were addressed to the same entity, and the fact that it had been sent from near where the first had been sent, were articulable, objective facts which were sufficient to support a reasonable suspicion that the package was involved in drug trafficking.

Third, the undersigned credits the testimony of Det. Davis that Wendy Hull said that both packages contained narcotics. Defendant's argument that this statement was not included in the police report is without merit. The report states, "On 07/20/2000, S/A Kelly Keieghbaum detained Wendy HULL after HULL took delivery of two boxes containing two kilograms of cocaine. HULL advised that she picked the cocaine up at the direction of Robert LOGAN and was to deliver the cocaine to him." Def. Ex. F at 1. Although the report did not state in so many words that Hull said both packages

contained narcotics, its language is not inconsistent with the officer's testimony, but clearly corroborates it.

Fourth, the undersigned credits Det. Davis's testimony that the first California package did not contaminate the St. Louis package and thus render Kelly's alert unreliable.

Fifth, regarding the argument by defendant that the positive alert by canine Kelly was not shown by Det. Davis's affidavit to have been reliable, the court notes that the affidavit states the following:

> 12. On July 20, 2000, I placed this package in an area not known to have been previously contaminated by a narcotic odor. My narcotic trained canine "Kelly" searched this area. Upon arriving at Federal Express package 820417507671 Kelly reacted in a positive manner, indicating the presence of a narcotic odor.

See Gov. Ex. 3 at 6-7. Thus, the affidavit provided Judge Davis with the information that Kelly was a trained narcotics canine, that the affiant was Kelly's handler who interpreted the alert, and that the test occurred in a location not known to have been previously contaminated by a narcotic odor. This information, plus the stated facts that Wendy Hull had said there was cocaine in this package, as well as in the other package she received, was sufficient to corroborate and establish the reliability of Kelly's alert.

Det. Davis's probable cause affidavit, described above, was a sufficient basis for Judge Davis's finding of probable cause and his issuance of the search warrant. The evidence seized from the search of the St. Louis package should not be suppressed.

Search of the second California package

Defendant argues that the second California state court search warrant was not supported by probable cause, because the supporting affidavit included only two factors which indicated criminality,

i.e., the label was handwritten and the package was shipped for overnight delivery. These factors, he argues, are insufficient to support probable cause. The undersigned disagrees. The second California package involved not only those two factors, but also the earlier investigation of the previous two packages, because a copy of the airbill for the second California package was found on the person of admitted drug trafficker Wendy Hull in St. Louis. Further, the destination of the package was for a CMRA, the sender purchased next day overnight service, and the sender used the same carrier as the other narcotics packages. These facts were constitutionally sufficient to support the issuance of the search warrant for the second California package.

For these reasons, the contents of the second California package should not be suppressed.

Whereupon,

IT IS HEREBY RECOMMENDED that the motion of defendant to suppress evidence (Doc. No. 43) be denied.

The parties are advised they have until noon on April 1, 2003, to file written objections to this Report and Recommendation. The failure to file objections may result in a waiver of the right to appeal issues of fact.

DAVID D. NOCE
UNITED STATES MAGISTRATE JUDGE

Signed this _____ day of March, 2003.