

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

<b>UNITED STATES OF AMERICA</b>	:	<b>CRIMINAL ACTION</b>
	:	
<b>vs.</b>	:	
	:	
<b>MICHAEL GONZALEZ</b>	:	<b>NO. 02-446-01</b>
<b>FRANCISCO ZAVALA,</b>	:	<b>-02</b>
<b>a/k/a “Francisco Zavala Mendoza”</b>	:	
<b>JOSE ZAVALA,</b>	:	<b>-03</b>
<b>a/k/a “Anthony Zavala”</b>	:	

**MEMORANDUM AND ORDER**

**ORDER**

**AND NOW**, this 20<sup>th</sup> day of February, 2003, upon consideration of the Motion to Suppress Physical Evidence and Statements (Document No. 113, filed January 13, 2003), filed by defendant, Jose Zavala, a/k/a “Anthony Zavala,” joined in by defendant, Francisco Zavala, a/k/a “Francisco Zavala Mendoza,” Government’s Response to Defendants’ Motion to Suppress Physical Evidence (Document No. 116, filed January 17, 2003), and Defendants’ Reply to the Government’s Response, following an evidentiary hearing on February 13, 2003, **IT IS ORDERED** that, for reasons set forth in open court, all of which are incorporated herein by reference, and as set forth below, the Motion to Suppress Physical Evidence and Statements is **DENIED**.

**MEMORANDUM**

**I. BACKGROUND**

This case arises out the alleged mailing of a United States Postal Service Express Mail package containing methamphetamine by defendant Jose Zavala, a/k/a “Anthony Zavala,” at the Airport Post Office, Los Angeles, California, on June 25, 2002. The package was addressed to Monica Flores, 13061 Dorothy Dr., Philadelphia, PA 19116. The sender was identified as David

Martin, 7013 Glasgow Ave., Los Angeles, CA 90045.

A United States Postal Police Officer in Los Angeles, California, suspicious that the package contained contraband, marked the package for inspection upon its arrival in Philadelphia, Pennsylvania and notified the postal authorities in Philadelphia. As a result, the package was interdicted and inspected by United States Postal Inspector M. Juanita Waters (“Waters”) at the Air Mail Facility in Tinicum, Pennsylvania on June 26, 2002, at approximately 8:00am. At that time, based on the suspicions of the Postal Police Officer in Los Angeles and observations consistent with a narcotics shipment – package taped on its seams to mask odor; fictitious return name on label; package mailed from a common “drug source” locale; Express Mail label handwritten and sent person-to-person; and package sent via Express Mail – Waters transported the package to the United States Post Office in Philadelphia in order to subject it to a canine-sniff.

The canine examination of the package took place on June 26, 2002, at approximately 8:50am. At that time, the canine alerted to the presence of a controlled substance. Immediately thereafter, Waters prepared an affidavit of probable cause for a search warrant and a search warrant was subsequently approved by United States Magistrate Judge Jacob P. Hart on June 26, 2002 at 12:25pm. The package was then opened by Waters on June 26, 2002 at approximately 1:00pm and three pounds of methamphetamine was recovered.

## **II. DISCUSSION**

### **A. Defendants Lack Standing**

The Government argues that defendants lack standing under the Fourth Amendment to challenge the search and seizure of the package; the Court agrees with that argument.

The Fourth Amendment protects people, not places. Katz v. United States, 389 U.S. 347,

353 (1967). Defendants may assert a Fourth Amendment claim only if they have a legitimate expectation of privacy in the searched package. Rakas v. Illinois, 439 U.S. 128, 143 (1978).

Whether defendants possessed such a legitimate expectation of privacy involves a two-part inquiry: (1) did defendants demonstrate a subjective expectation that the contents of the package would remain free from public intrusion; and (2) is defendants' subjective expectation of privacy one that society is prepared to recognize as reasonable and legitimate. Id. at 143 n.12.

In the instant case, defendants' names were not set forth on the package. Although it is arguable whether defendants have demonstrated a subjective expectation of privacy in the package, because they failed to disclose their identities on the package, whatever expectation of privacy they had is not one that society would accept as reasonable and legitimate. See United States v. DiMaggio, 744 F. Supp. 43, 46 (N.D.N.Y. 1990); United States v. Daniel, 982 F.2d 146, 149 (5th Cir. 1993); United States v. Lewis, 738 F.2d 916, 919-920 n.20 (8th Cir. 1984); United States v. Walker, 20 F. Supp. 2d 971, 974 (S.D.W.Va. 1998). Defendants' alleged conduct – in failing to disclose their identities on the package – “reflects a conscious desire on their part to avoid public disclosure of their subjective expectations for purposes of violating the law. The Fourth Amendment does not extend its protections to such conduct.” DiMaggio, 744 F. Supp. at 46; see also Walker, 20 F. Supp. at 974 (“[Defendant] is not entitled to Fourth Amendment protection when he has apparently employed the use of an alias [as the addressee in a mailed package containing methamphetamine] in furtherance of his criminal scheme.”).

#### **B. There Was No Seizure of the Package Before the Canine-Sniff**

Even if defendants had Fourth Amendment standing, the Court concludes that there was no seizure of the package prior to the canine-sniff. A seizure of property occurs when there is some meaningful interference with an individual's possessory interests in that property. United

States v. Jacobsen, 466 U.S. 109, 113 (1984). Absent such interference, there is no seizure.

The interdiction of the package by Waters, and the transportation of the package to another location for a canine-sniff, did not create a meaningful interference with defendants' possessory interests in the package. See United States v. Caldwell, 229 F.3d 1154 (6th Cir. 2000). That conclusion is based on the evidence that had the canine not alerted to the presence of narcotics, the package would have been delivered by 3:00 P.M., on June 26, 2002, the contracted for delivery time. See United States v. England, 971 F.2d 419, 421 (9th Cir. 1992) (holding no seizure of Express Mail package because it "could easily have been placed on its regularly scheduled flight had no cocaine been discovered"); United States v. Pono, 746 F. Supp. 220, 222 (D. Me. 1990) (holding that detention of defendant's Express Mail parcel "did not intrude on his possessory interest to any cognizable extent" because the package would have been delivered on time had no narcotics been discovered).

**C. Assuming Arguendo that the Package was Seized, the Postal Inspector had Reasonable Suspicion to Do So and the Package was not Held for an Unreasonable Period of Time**

The temporary detention of packages for purposes of investigation is not an "unreasonable seizure" in violation of the Fourth Amendment, provided (1) authorities have a reasonable suspicion of criminal activity; and (2) the package is not detained for an unreasonable length of time. United States v. Van Leeuwen, 397 U.S. 249, 251 (1970). In order to determine whether reasonable suspicion exists, the Court must examine the "totality of the circumstances" and decide whether the detaining officer has a "particularized and objective basis" for suspecting wrongdoing. United States v. Arvizu, 534 U.S. 266, 273 (2002).

Waters testified that she seized the package because: (1) California postal authorities marked the package for inspection in Philadelphia; and (2) Waters' observations of the package –

package taped on its seams to mask odor; fictitious return name on label; package originated from a common “drug source” locale; Express Mail label handwritten and sent person-to-person; and package sent via Express Mail – were all consistent with narcotics trafficking. See United States v. Hernandez, 313 F.3d 1206, 1208 (9th Cir. 2002). Although each factor viewed in isolation may be susceptible to an “innocent explanation,” in evaluating the totality of the circumstances, there was reasonable suspicion for Waters to detain the package for a canine sniff. See Arvizu, 534 U.S. at 277-78; United States v. Demoss, 279 F.3d 632, 636 (8th Cir. 2002) (“Characteristics consistent with innocent use can, when taken together, give rise to reasonable suspicion.”).

The Court concludes that the actions of the California postal authorities and Waters’ observations of the package gave Waters reasonable suspicion to seize the package upon its arrival in Philadelphia and detain it for a canine sniff. See United States v. Lopez-Trejo, 01-55089, 2002 WL 1143403, \*1 (9th Cir. May 29, 2002). The Court next turns to the question whether the detention of the package was unreasonably long.

Even if the initial seizure of the package was based on reasonable suspicion, a prolonged detention of the package would be unreasonable under the Fourth Amendment. Van Leeuwen, 397 U.S. at 252. Defendants’ argue that the detention was prolonged. The Court disagrees.

Although defendants contend that the package was delayed for 19 hours from its intended arrival, the Court concludes that it is only the time the package was detained before the canine-sniff that is relevant. Based on Waters’ testimony, that time period – the time between the initial interdiction of the package by Waters and the canine-sniff – was less than one hour. Clearly, the length of detention was not unreasonable under the circumstances. See id. at 253 (holding 29-hour delay not unreasonable); United States v. Aldaz, 921 F.2d 227 (9th Cir. 1990) (3-5 day

detention of package not unreasonable under the circumstances), cert. denied, 501 U.S. 1207 (1991); United States v. Lux, 905 F.2d 1379 (10th Cir. 1990) (detention of Express Mail packages for 1½ days, including a Sunday, not unreasonable); United States v. Mayomi, 873 F.2d 1049, 1054 (7th Cir. 1989) (detention of envelopes for 2 days pending a canine drug sniff not unreasonable where envelopes arrived on a Saturday and were subjected to sniff the next Monday); United States v. Martinez, 869 F. Supp. 202, 207 (S.D.N.Y. 1994) (opening of package pursuant to warrant 22 hours after the initial seizure not unreasonable detention); United States v. Gill, 280 F.3d 923, 929 (9th Cir. 2002) (6-day detention not unreasonable because investigation not conducted at a “leisurely pace” and it was not “insignificant that the investigation began the end of one week and was completed at the beginning of the following week”).

#### **D. There was Probable Cause for the Issuance of the Search Warrant**

A district court exercises only a “deferential review” of the initial probable cause determination made by the magistrate judge. Illinois v. Gates, 462 U.S. 213, 236 (1983); United States v. Hodge, 246 F.3d 301, 305 (3d Cir. 2001); United States v. Loy, 191 F.3d 360, 365 (3d Cir. 1999). The duty of the reviewing court is simply to ensure that the magistrate judge had a “substantial basis” for concluding that probable cause existed. Gates, 462 U.S. at 238. “The Court need not determine whether probable cause actually existed, but only whether there was a substantial basis for finding probable cause.” Hodge, 246 F.3d at 305. In making this “substantial basis” determination, the reviewing court confines itself to the facts that were before the magistrate judge, i.e., the four-corners of the affidavit, and does not consider information from other portions of the record. United States v. Jones, 994 F.2d 1051, 1055 (3d Cir. 1993).

In this case, the magistrate judge clearly had a substantial basis for concluding that probable cause existed based on the following information set forth in the affidavit: (a) the

narcotics trafficking experience of Waters; (b) characteristics of the package which collectively conformed to a drug shipping profile; and (c) the positive reaction by a canine trained in detecting the presence of narcotics.<sup>1</sup> See, e.g., Daniel, 982 F.2d at 151-52 (finding similar information “clearly constitut[ing] a substantial basis for issuing a warrant”).

Defendants contend that the affidavit was incomplete because it did not mention the role of the California postal officers in marking the package for inspection by postal authorities upon its arrival in Philadelphia. That argument requires the Court to analyze Franks v. Delaware, 438 U.S. 154 (1978).

The Franks Court held that “where the defendant makes a substantial preliminary showing that a false statement knowingly and intentionally, or with reckless disregard for the truth, was included by the affiant in the warrant affidavit, and if the allegedly false statement is necessary to the finding of probable cause, the Fourth Amendment requires that a hearing be held at the defendant’s request.” 438 U.S. at 155. Defendants have made no showing that Waters knowingly and intentionally, or with reckless disregard for the truth, included a false statement in her affidavit that was necessary to the finding of probable cause.

The Third Circuit has also applied Franks to situations where affiants have intentionally omitted information from the affidavit. See United States v. Calisto, 838 F.2d 711 (3d Cir. 1988); Rivera v. United States, 928 F.2d 592, 604 (2d Cir. 1991) (holding that intentional or reckless omissions of material information, as well as false statements, may serve as a basis for a Franks challenge). In Calisto, the Third Circuit held that where an omission, rather than a

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<sup>1</sup> A positive reaction by a properly trained narcotics canine itself can establish probable cause for the presence of controlled substances. See United States v. Berry, 90 F.3d 148, 153 (6th Cir. 1996); Demoss, 279 F.3d at 637; United States v. Glover, 957 F.2d 1004, 1013 (2d Cir. 1992); United States v. Sundby, 186 F.3d 873, 876 (8th Cir. 1999); United States v. Scarborough, 128 F.3d 1373, 1378 (10th Cir. 1997).

misrepresentation, is the basis for a challenge of the affidavit, a court should ask whether the affidavit would have provided probable cause if it had contained a disclosure of the omitted information. Calisto, 838 F.2d at 715; see also United States v. Frost, 999 F.2d 737, 743 (3d Cir. 1993) (stating same).

Clearly, had the Waters' affidavit included the role of the California postal officers in singling out the package for inspection and notifying Philadelphia postal authorities to detain the package for inspection, the magistrate judge's determination of probable cause would not have been undermined. Rather, the suspicions of the California postal authorities would have bolstered the magistrate judge's conclusion that probable cause existed. Thus, the fact that the affidavit for the search warrant did not mention the role of the California postal authorities is of no legal significance in this case.

**E. The Postal Inspector Was Entitled to Rely on the Good Faith Exception to the Exclusionary Rule**

Even if a substantial basis for finding probable cause was lacking, the evidence obtained through Waters' search of the package would be admissible under the good faith exception to the exclusionary rule. See United States v. Leon, 468 U.S. 897 (1984). The good faith exception provides that suppression of evidence "is inappropriate when an officer executes a search in objectively reasonable reliance on a warrant's authority." United States v. Williams, 3 F.3d 69, 74 (3d Cir. 1993). "The test for whether the good faith exception applies is 'whether a reasonably well trained officer would have known that the search was illegal despite the magistrate [judge's] authorization.'" Loy, 191 F.3d at 367 (quoting Leon, 468 U.S. at 922 n.23).

The mere existence of an warrant typically suffices to prove that an officer conducted a search in good faith and justifies application of the good faith exception. See Leon, 468 U.S. at

922; Williams, 3 F.3d at 74. There are, however, situations in which an officer's reliance on a warrant would not be reasonable and would not trigger the exception. Leon, 468 U.S. at 922-23. The Third Circuit has identified four such situations: (1) when the magistrate judge issued the warrant in reliance on a deliberately or recklessly false affidavit; (2) when the magistrate judge abandoned his judicial role and failed to perform his neutral and detached function; (3) when the warrant was based on an affidavit 'so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable'; or (4) when the warrant was so facially deficient that it failed to particularized the place to be searched or the things to be seized. See Hodge, 246 F.3d at 308; Williams, 3 F.3d at 74 n.4. None of those situations apply in this case. Accordingly, the Court concludes that Waters was entitled to rely in good faith on the search warrant.

**BY THE COURT:**

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**JAN E. DUBOIS**