



POLICE / PROSECUTOR UPDATE

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A recent court of appeals case offers an excellent discussion of certain aspects of the law of search and seizure. The court framed one of the issues as whether the **search warrant for a package addressed to the defendant** lacked probable cause because it was detained for a canine sniff without reasonable suspicion that the package contained contraband.

Before looking at the facts of the case, it is well worth noting a statement by the court indicating the importance of obtaining a search warrant if at all practical to do so. The court stated that a reviewing court (either the trial court in ruling on a motion to suppress or an appellate court reviewing that decision) is to focus on whether a "substantial basis" existed for a warrant authorizing a search or seizure, and *doubtful cases are to be resolved in favor of upholding the warrant*. "A presumption of validity of the search warrant exists, and the burden is upon the defendant to overturn that presumption."

The facts are that a police officer was examining packages at a private shipping company when one addressed to the defendant caught his eye. He felt it was suspicious because it had a handwritten label, was sent next day air, was paid for in cash, smelled like dryer sheets, and came from a source area for the distribution of narcotics. The package was then placed with at least three other packages at the shipping company and was subjected to a sniff test by a trained narcotics canine. The dog alerted to the defendant's package.

On the basis of the canine alert and the officer's observations, a magistrate signed a search warrant at 8:45 a.m. to open the package, which appeared to contain cocaine when opened at 8:55 a.m. Some of the cocaine was then repackaged, and the officer applied for an anticipatory search warrant for the premises where the package was to be delivered and the person who accepted that package. This warrant was executed at 11:45 a.m.

The question whether there was probable cause for the first warrant to open the package was easily disposed of. The alert of a dog trained to detect narcotics is by itself sufficient to provide the probable cause necessary to obtain a search warrant to open a package. Also, since smell testing by a trained dog is not a search, no level of suspicion is required to justify the canine sniff of the defendant's package.

However, the defendant also claimed that the package addressed to him could not even be set aside and subjected to a canine sniff without some reasonable suspicion for doing so. The court of appeals also rejected this argument. There is no seizure of a mailed package within the meaning of the Fourth Amendment when it is *briefly detained* for further law enforcement investigation *and* its delivery is not substantially delayed. Because there is no seizure, law enforcement officials need not possess "reasonable suspicion" before briefly detaining a package.

Yet another point had to be addressed. It is an accepted legal proposition that a seizure of property occurs when there is some meaningful interference with an individual's possessory interest in that property. In the court's view, though, briefly setting aside a mailed package for further investigation is not "meaningful interference" with the recipient's possessory interests in the package *where ultimate delivery* of the package is not substantially delayed. In this case, the police acted expeditiously. There was no indication of substantial delay caused by detaining the package for the canine sniff, which supplied the necessary probable cause for the search warrant. In fact both warrants were obtained and executed within about 3 hours.

Rios v. State, 762 N.E.2d 153 (Ind. App. 2002).