Reasonable Expectation of Privacy and Packages

Description

Surviving a pandemic has caused a shift in how we get the things our families need, meaning more people buy things online and get them delivered versus going out to shop for them. Today's case out of the Fourth Circuit highlights suspicious packages and the reasonable expectation of privacy when it comes to handling shipments.

When it comes to shipments, the reasonable expectation of privacy under the Fourth Amendment is as follows: both senders and recipients of letters and other sealed packages have a legitimate expectation of privacy in those items even after they have been placed in the mail. However, when a sealed package is addressed to a party other than the intended recipient, that recipient does not have a legitimate expectation of privacy in the package unless he can establish "other indicia of ownership, possession, or control" of the package at the time of the search. This proof of ownership, possession, or control can be shown if a defendant can verify that a fictitious name is an established alias. This idea will become more important later as we examine the case.

FACTS

In October 2016, drug task force agents were screening packages at a FedEx facility when they noticed a suspicious package. The package attracted the officers' attention because of the type of box, the heavy taping used, and the sender's location in Chandler, Arizona, which was a known "source city" for narcotics. The package was addressed to Ronald West and listed a phone number on the label. After checking a law enforcement database, the officers verified that neither the phone number nor the address was registered to a person named Ronald West. The officers alerted the FedEx facility's manager to the suspicious package, which the manager opened. The package contained about two kilograms of cocaine.

Several minutes later, officers saw a second package with similar characteristics, which also was addressed to Ronald West and had been shipped from Chandler, Arizona. The officers then had a dog trained in narcotics detection approach the package and the dog signaled an "alert." Based on this alert, the officers obtained a search warrant, opened the package, and found two more kilograms of cocaine.

Following these discoveries, law enforcement officers coordinated a controlled delivery of both packages to West's residence and conducted surveillance of the home. After the packages were delivered, officers observed Faruq Rose and another man, LaVonne Murray, arrive at West's residence in a silver car and enter the home, before leaving shortly thereafter. However, while at the house, neither Rose nor Murray touched the packages that had been left on the front porch. When West later arrived at his residence, he entered but also did not touch the packages on the porch. Later that day, Rose and Murray returned to the residence, retrieved the packages, and departed in the silver car. The officers ultimately stopped the vehicle and arrested Rose.

The officers discovered that Rose paid his friend, Donald West, to allow the packages, which were addressed to West's deceased brother, Ronald West, to be delivered to West's house in Wallace, North

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Carolina. Rose did not live at West's residence. Under the delivery arrangement with Donald West, and before delivery of the packages in this case, Rose successfully had obtained multiple packages addressed to Ronald West that had been delivered to the residence. Law enforcement was not aware of these prior deliveries.

Before trial, Rose filed a motion to suppress evidence of the cocaine found in the two searches conducted at the FedEx facility. Rose argued that although he was neither the sender of, nor the named recipient on, the packages, he nonetheless had a reasonable expectation of privacy in those packages because he was their intended recipient. The district court rejected Rose's argument and denied his motion to suppress the evidence. Rose appealed.

FOURTH CIRCUIT COURT OPINION

In this case, the court held that Rose did not have a reasonable expectation of privacy in the packages addressed to Ronald West because, at the time of the searches, there was no proof that Rose owned, possessed, or exercised control over the packages. Specifically, the court found that nothing about the packages, including the sender's name, the named recipient, the address, or the phone number listed on the packages indicated that Rose had an interest in the packages. The packages were addressed to a deceased individual at a residence lacking any established connection to Rose. In addition, at the time of the searches, Rose had not taken possession of the packages.

The court further held that its holding was not altered by the fact that Rose previously had collected from West's home multiple packages addressed to Ronald West using the same delivery scheme. The court held that Rose's limited use of this deceased, third party's name did not establish that Rose used "Ronald West" as an alias or was commonly known by that name. The court added there was no evidence that anyone recognized Rose by the name Ronald West, nor did any evidence show that Rose used the name Ronald West regularly under different circumstances. Consequently, the court found that the district court did not err in denying the motion to suppress because Rose failed to establish an expectation of privacy in the two packages at issue.

TAKEAWAYS

With our communities ordering and distributing more packages than ever, it is important to be aware that there is a reasonable expectation of privacy when it comes to packages. However, we should also be aware that it is becoming more and more popular to distribute illegal substances through packages, using tricks just like the one Mr. Rose used. Be vigilant and stay up to date on hot spots of drug use in your jurisdiction. If you begin noticing more and more deliveries to a certain address it may be time to check in the receiver of those packages. Part of these legal updates are just making you aware of new and improved ways to commit crimes.

United States v. Rose, 3 F.4th 722 (4th Cir. 2021)

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