

SUPERIOR COURT  
OF THE  
STATE OF DELAWARE

WILLIAM C. CARPENTER, JR.  
JUDGE

NEW CASTLE COUNTY COURTHOUSE  
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November 26, 2012

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RE: State of Delaware v. Ying X. Lu  
ID No. 1203000650

Submitted: November 2, 2012

Decided: November 26, 2012

On Defendant's Motion to Suppress – **DENIED**

Dear Counsel:

The Court has before it a motion to suppress the search of the defendant's business address and a related customs search at the San Francisco International Airport. The parties contend that the issue before this Court is whether Lu has standing to contest the search and seizure of four parcels that were discovered to contain multiple kilograms of khat, a controlled substance classified as cathinone. However, this issue must be bifurcated because the parcels were ultimately seized from Lu's Delaware business address but were initially searched by Customs and Border Protection ("CBP") officers at the San Francisco International Airport. Before Lu's motion to suppress can be decided, therefore, the Court must determine: 1) whether Lu has a reasonable expectation of privacy regarding

the search of her Delaware business, which resulted in the seizure of the four parcels; and 2) whether Lu has a reasonable expectation of privacy regarding the search and seizure of the four parcels in the San Francisco International Airport, which provided the basis of the search warrant for Lu's Delaware business.

The facts are undisputed. On February 28, 2012, CBP officers at the San Francisco International Airport intercepted four suspicious parcels that originated in Hong Kong and were addressed to Lu at her business address at 1 Brookside Drive in Wilmington, Delaware. Upon inspecting the parcels, the CBP officers noted that the parcels contained a disproportionate weight for the alleged contents of tea and tools. As a result, the CBP officers opened the parcels and discovered that they contained multiple kilograms of khat, a controlled substance classified as cathinone. After alerting the Drug Enforcement Administration, the CBP officers re-sealed the parcels and sent the parcels to be delivered to the intended address in Delaware. On March 1, 2012, Lu accepted delivery of the parcels at her Delaware business address.

Before Lu received the parcels, DEA investigators obtained a search warrant from Justice of the Peace Court 20 to search Lu's business address and the surrounding curtilage. The probable cause affidavit was based upon information developed by the CBP officers in San Francisco; specifically, the CBP officers' initial suspicions regarding the weight of the parcels were confirmed after opening the parcels and discovering that the parcels' contents did not correlate with the stated contents of tea and tools and, instead, contained multiple kilograms of cathinone. After the parcels were delivered to Lu's business address, DEA investigators entered the business, recovered the parcels, and took Lu into custody. Although the Lu was the addressee of the parcels and the parcels were delivered to her business address, Lu denied ownership of the parcels or any knowledge of their origin.

Subsequently, Lu filed a motion challenging the search and seizure of the parcels that were delivered to her business address. Specifically, Lu moved to suppress all evidence, reasoning that the parcels were intercepted by Federal agents and searched without probable cause. The Court reads Lu's suppression motion as an indirect challenge regarding the search and seizure of the parcels in San Francisco rather than a direct challenge concerning the search and seizure effectuated at her business address.

Therefore, the Court will address Lu’s standing in both contexts in order to provide a framework for its decision to deny Lu’s suppression motion.

Generally, to determine whether a defendant’s Fourth Amendment rights have been violated by a search, courts determine whether the defendant has a legitimate expectation of privacy in the area or package searched.<sup>1</sup> “A determination of whether a legitimate expectation of privacy exists involves a two-part inquiry. ‘First, we ask whether the individual, by conduct, has exhibited an actual expectation of privacy; that is, whether he has shown that he sought to preserve something as private . . . Second, we inquire whether the individual’s expectation of privacy is one that society is prepared to recognize as reasonable.’”<sup>2</sup> “Whether a legitimate expectation of privacy exists in a particular place or time is a determination to be made on a case-by-case basis.”<sup>3</sup> As previously mentioned, this analysis is further complicated here because a search and seizure was first conducted in San Francisco, which was then used as the basis to secure a search warrant for Lu’s business in Wilmington. Therefore, the Court will first address Lu’s standing regarding the search and seizure of the parcels at her business address.

The Fourth Amendment generally recognizes “the right of people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures . . . .”<sup>4</sup> The meaning of “house” within the Fourth Amendment, however, is not limited to one’s residence; “house” may be interpreted to include a business office, store, hotel room, apartment, automobile, or occupied taxicab.<sup>5</sup> Further, “Fourth Amendment protection of privacy interests in business premises ‘is . . . based upon societal expectations that have deep roots in the history of the Amendment.’”<sup>6</sup> Although precedent dictates that “[t]he businessman, like the occupant of a residence, has a constitutional right to go about his business free from unreasonable official entries upon his private property,” Delaware courts have previously held that one must also be an owner or occupier of the

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<sup>1</sup> *Rakas v. Illinois*, 439 U.S. 128, 143 (1978).

<sup>2</sup> *United States v. King*, 227 F.3d 732, 743 (6<sup>th</sup> Cir. 2000) (citing *Bond v. United States*, 739 U.S. 334, 338 (2000)).

<sup>3</sup> *Id.* at 744 (citing *United States v. Brown*, 635 F.2d 1207, 1211 (6<sup>th</sup> Cir. 1980)).

<sup>4</sup> U.S. CONST. amend. IV.

<sup>5</sup> *Lanza v. State of N.Y.*, 370 U.S. 139, 143 (1962).

<sup>6</sup> *Dow Chem Co. v. United States*, 476 U.S. 227, 245 (1986) (citing *Oliver v. United States*, 466 U.S. 170, 178 n. 8 (1984)).

premises in order to assert standing.<sup>7</sup> Due to the historical basis for business establishments enjoying certain Fourth Amendment protections and Lu's status as the leaseholder and possessor of the business premises where the search and seizure was effectuated, the Court finds Lu had an actual expectation of privacy in her business location. Additionally, the Court finds that this expectation is one that society is willing to recognize as reasonable. Therefore, Lu has standing to challenge the search and seizure that occurred at her business address. Unfortunately, the inquiry does not end here. There is no question that, on its face, the search warrant executed by the DEA at Lu's business address was based upon sufficient probable cause. Specifically, the DEA investigators knew: 1) the parcels contained an illegal substance; 2) the parcels were addressed to Lu; and 3) Lu received and was in possession of the parcels at her business address. Therefore, even though Lu has standing to challenge the Wilmington search and seizure, this challenge would fail as the search warrant was supported by sufficient probable cause.

As a result, Lu's suppression motion can only be granted if she can successfully challenge the search and seizure by the CBP officials at the San Francisco International Airport, which provided the probable cause basis of the search warrant for Lu's business address. In addressing Lu's standing to challenge the San Francisco search and seizure, the Court will focus on Lu's expectation of privacy in the parcels, which were searched and seized after the CBP officials suspected that they did not contain tea and tools as represented. The Court acknowledges that "[t]he Supreme Court has long recognized that '[l]etters and other sealed packages are in the general class of effects in which the public at large has a legitimate expectation of privacy.'"<sup>8</sup> Specifically, "individuals do not surrender their expectations of privacy in packages when they send [or receive] them by mail or common carrier."<sup>9</sup> Stated alternatively, "[b]oth senders and addressees of packages or other closed containers can reasonably expect that the government will not open them."<sup>10</sup> Because the "sender or addressee of a package . . . presumptively possesses a legitimate expectation of privacy in the contents of the package," therefore, the Court generally "need not undertake the traditional analysis . . . to determine whether the individual challenging the

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<sup>7</sup> See *v. City of Seattle*, 387 U.S. 541, 543 (1967); *Pitts v. State*, 549 A.2d 699, at \*2 (Del. 1988) (citing *Thomas v. State of*, 467 A.2d 954, 957 (Del. 1983)).

<sup>8</sup> *United States v. Sanchez*, 1999 WL 33657684, at \*4 (N.D. Iowa Feb. 23, 1999), *aff'd*, 205 F.3d 1349 (8th Cir. 1999), (citing *United States v. Jacobsen*, 466 U.S. 109, 114 (1984)).

<sup>9</sup> *Id.* at \*4.

<sup>10</sup> *Id.* at \*4 (citation omitted).

investigative activity had a subjective expectation of privacy and whether society was prepared to recognize that expectation of privacy as objectively reasonable.”<sup>11</sup> However, the Court will inquire into an individual’s reasonable expectation of privacy if there is evidence to overcome this presumption.

Here, the facts indicate that the four parcels were addressed to Lu and delivered to Lu at her business address. However, neither party disputes that Lu denied any ownership interest in the parcels or any knowledge of their origin when questioned by the police. Further, there is no evidence that Lu has attempted to assert any privacy interest in the parcels other than that they were searched and seized at her business address.<sup>12</sup> As a result, the Court finds that Lu essentially “abandoned” whatever expectation of privacy she may have had in the parcels due to her status as the parcels’ addressee. “Abandoned property is a term of art in Fourth Amendment jurisprudence.”<sup>13</sup> Specifically, “[d]iscarding something while fleeing, tossing something in the trash, or *denying ownership* are all ways that a person may be found to have ‘abandoned’ property so as to relinquish a reasonable expectation of privacy in it.”<sup>14</sup> Lu’s denial regarding ownership of the parcels or knowledge of their origin reflects a conscious desire to publicly disavow any potential subjective expectation of privacy in the parcels.<sup>15</sup> As such, the Court finds that society would not be prepared to recognize Lu’s expectation of privacy in the parcels as reasonable where she has not legitimately manifested to society that she is entitled to such privacy. Therefore, Lu does not have standing to challenge the search and seizure of the parcels that occurred in San Francisco.

Although the Court finds that Lu has standing to challenge the search and seizure that occurred at her business address, Lu does not have standing to challenge the search and seizure that occurred in San Francisco for the reasons stated above. Without standing to challenge the San Francisco

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<sup>11</sup> *United States v. Ghali*, 317 F. Supp. 2d 708, 712 (N.D. Tex. 2004), *aff’d*, 184 F. App’x 391 (5<sup>th</sup> Cir. 2006).

<sup>12</sup> *See United States v. Carlisle*, 614 F.3d 750, 759-60 (7th Cir. 2010) (finding that defendant’s lack of testimony regarding any subjective expectation of privacy coupled with defendant’s disclaimed ownership of package and denied knowledge of its contents provided basis to determine that defendant did not have reasonable expectation of privacy in property sufficient to allow defendant to challenge search of property).

<sup>13</sup> *United States v. Rock*, 2011 WL 2945801 (E.D. Wis. May 26, 2011) (citing *Unites States v. Basinski*, 226 F.3d 829, 837 (7th Cir. 2000)).

<sup>14</sup> *Id.* (emphasis added).

<sup>15</sup> Different facts may have produced a different result. For example, if Lu had claimed an ownership interest in the parcels or even refrained from denying an interest in them, then it would be less likely that Lu would have been deemed to have abandoned her subjective expectation of privacy in the parcels.

search and seizure, the Court finds that Lu's motion to suppress as written must be DENIED.

IT IS SO ORDERED.

/s/ William C. Carpenter, Jr.  
Judge William C. Carpenter, Jr.