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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

UNITED STATES OF AMERICA,  
  
vs.  
  
\$20,000 IN U.S. CURRENCY,  
  
Defendant.

CASE NO. 14cv1341-LAB (JLB)

**TENTATIVE RULING ON CLAIMANT  
THOMAS YANKLE'S MOTION TO  
SUPPRESS AND MOTION FOR  
SUMMARY JUDGMENT**

Currently on calendar for Monday, August 17, 2015 at 11:15 a.m. is a hearing on Claimant Thomas Yankle's motion to suppress evidence and motion for summary judgment. The briefing on both motions is now complete and this order represents the Court's tentative ruling. Counsel should appear for the hearing — but at **12:15**, not 11:15 — prepared to focus discussion on this proposed ruling. If Yankle doesn't wish to contest the tentative ruling, he should file a notice of non-opposition to the entry of a final order on these motions.

This ruling is tentative; the final ruling will include more detailed reasoning and citations to authority.

**Tentative Ruling**

**Background**

On February 18, 2014, the Government applied for a warrant to search a particular Express Mail Parcel. See 14mj647-NLS-1, *USA v. Express Mail Parcel #EF085568537US*.

1 The application identified the object of the search as: evidence of a crime; contraband or  
2 fruits of a crime; and property used, intended for use, or designed for use in committing a  
3 crime. It was supported by two affidavits, one from postal inspector Gary Arias and one from  
4 police investigator and canine handler Patrick Estrada, whose trained canine partner Chewy  
5 had alerted to the parcel.

6 Arias' affidavit explained that he encountered the parcel on February 11, 2014 while  
7 conducting routine interdiction of inbound parcels. The parcel was hand-addressed, sent  
8 from an entity called "Stank Properties" in Massillon, Ohio and sent to "TJY, Inc." in San  
9 Diego. Arias investigated and determined that there were no entities by those names at those  
10 addresses. The affidavit explained that the size and characteristics of the parcel were  
11 consistent in Arias' experience with proceeds from drug trafficking, and gave specific reasons  
12 for those conclusions.

13 The affidavit related that Arias went to the residence the parcel was addressed to and  
14 left a delivery notice with a request for a call. Thomas Yankle returned the call. He told Arias  
15 he was expecting a parcel containing an unknown amount of money, and refused to give  
16 Arias permission to open it. Yankle said he was flying to Chicago the next morning and  
17 needed the money for his trip, though he said he did not know who had sent him the money.

18 Officer Estrada's affidavit sets forth, among other things, his background and training  
19 in narcotics detection, as well as the training and experience of Chewy. As one of Estrada's  
20 and Chewy's qualifications, the affidavit says that in December of 2013, both successfully  
21 completed a course on narcotic odor detection and were certified by the California Narcotic  
22 Canine Association (CNCA). Since that time, the affidavit said, both had over a dozen hours  
23 of training time and that Chewy had correctly alerted, resulting in the seizure of narcotics and  
24 narcotics proceeds.

25 Magistrate Judge Nita Stormes issued the warrant on February 18. The warrant said  
26 the parcel was believed to contain controlled substances, and materials and documents  
27 reflecting the distribution of controlled substances, including money paid for controlled  
28 substances. The \$20,000 at stake in this case was found when the parcel was opened.

1 On May 28, 2014, a state judge issued a search warrant authorizing the search of  
2 Yankle's residence. (See Docket no. 41-2 (state search warrant and application therefor).)  
3 The suppression motion represents that probable cause for this warrant was based primarily  
4 on the fruits of the federal search warrant. Yankle argues that because the federal warrant  
5 was issued without probable cause, its fruits should be suppressed, and evidence discovered  
6 as a result of execution of the state warrant should also be suppressed.

7 Arias found items in Yankle's trash can that provided a secondary basis for the state  
8 warrant. On May 27, a day when garbage trucks collected the local trash, Arias looked in  
9 a trash can near Yankle's garage. He found several items with Yankle's name on them, and  
10 various items suggestive of drug distribution. Among the items were two boxes that had  
11 contained heat-sealed vacuum sealing bags, a portion of a vacuum sealed plastic bag, a  
12 printed receipt for UPS shipping, a birthday card to "Tom" saying the sender had sent \$3500  
13 and would send \$1500 more within the week, three coffee filters with an unknown residue,  
14 a receipt for three boxes, and two bank receipts for deposits. On May 28, Arias conducted  
15 a presumptive field test on one of the coffee filters and it tested positive for amphetamine.  
16 A later test showed the filters did not contain controlled substance residues, and Yankle cites  
17 the later test in support of his contention that probable cause was lacking. Yankle also  
18 speculates that a neighbor likely threw the drug-related garbage into his trash can, in order  
19 for the neighbor to avoid incriminating himself. Finally, he also speculates that the coffee  
20 filters were likely the result of cleaning a coffee-maker with a vinegar solution.

21 Officers executing the state search warrant found about 38 pounds of marijuana in  
22 Yankle's garage.

### 23 **Motions**

24 Yankle, as the party seeking summary judgment, bears the burden of showing there  
25 is no genuine issue of material fact and he is entitled to judgment as a matter of law. *Celotex*  
26 *Corp. v. Catrett*, 477 U.S. 317, 323 (1986); Fed. R. Civ. P. 56(a). His sole argument in favor  
27 of summary judgment is that, assuming the motion to suppress is granted, there is no  
28 evidence linking the Defendant currency to the distribution of drugs. If the motion to suppress

1 fails, Yankle has not met his burden.

2       The motion to suppress the fruits of the federal search is based on an alleged lack of  
3 probable cause. Yankle maintains that if the fruits of the federal search are suppressed, then  
4 evidence seized pursuant to the state search warrant must also be suppressed. On the other  
5 hand, if the federal warrant was properly issued, Yankle's challenge to the state warrant  
6 necessarily fails.

7       With regard to the federal warrant, Yankle's sole argument is that it was invalid  
8 because the warrant application failed to establish probable cause. *See United States v.*  
9 *Harris*, 403 U.S. 573 (1971); *United States v. Miller*, 753 F.2d 1475, 1479 (9<sup>th</sup> Cir. 1985)  
10 (magistrate must determine whether there is a "fair probability" that contraband or evidence  
11 of a crime will be found, before issuing warrant). *See also Illinois v. Gates*, 462 U.S. 213, 238  
12 (1983) (magistrate's task in deciding whether to issue a warrant is to make a "practical,  
13 common-sense decision").

14       His first challenge is to show that the dog alert did not establish probable cause. Yet  
15 the affidavit said that both Officer Arias and Chewy had been properly trained in the detection  
16 of narcotics. Chewy's alert, standing alone, would therefore ordinarily amount to probable  
17 cause. *See Florida v. Harris*, 133 S.Ct. 1050, 1057 (2013) ("If a bona fide organization has  
18 certified a dog after testing his reliability in a controlled setting, a court can presume (subject  
19 to any conflicting evidence offered) that the dog's alert provides probable cause to search.")  
20 The only evidence Yankle cites to challenge the reliability of Chewy's alert is his own  
21 statistical analysis of search warrants for Express Mail packages coming into San Diego  
22 between January 1, 2009 and February 18, 2014. (Mot. to Suppress, at 5:22–6.) In each of  
23 the 77 cases, Yankle argues, a canine alerted to a package. Drugs were found in five of  
24 those packages. Yankle concludes from this "that Inspector Arias knew there was a 93%  
25 probability that the package did not contain drugs." (*Id.* at 6:8–9.) But his analysis is heavily  
26 flawed, and does not withstand scrutiny.

27       To begin with, the search warrant and the application for it were directed not just at  
28 drugs, but also the proceeds from drugs, such as currency. Because drug dealers handle

1 both drugs and money and often store the two near each other, money can be tainted with  
2 drug residue, leading a canine to alert. (Arias Affidavit in Supp. of Fed'l Warrant Application,  
3 at ¶ 4(a).) According to Yankle's own analysis, either currency or a detectable amount of  
4 drugs was found in 61 of the 77 packages in cases he analyzed. As for the remaining 16  
5 packages, Yankle does not attempt to show they contained no drug residue; he has merely  
6 offered his own conclusions in cases where warrants were issued.

7         Second, the Supreme Court has cautioned that field results — like the ones Yankle  
8 points to — are a poor indicator of a narcotics dog's reliability, partly because they are prone  
9 to "markedly overstate a dog's real false positives":

10             if the dog alerts to a car in which the officer finds no narcotics, the dog may  
11             not have made a mistake at all. The dog may have detected substances that  
12             were too well hidden or present in quantities too small for the officer to locate.  
              Or the dog may have smelled the residual odor of drugs previously in the  
              vehicle or on the driver's person.

13 *Harris*, 133 S.Ct. at 1057. See also *id.* at 1056 n.2 (citing authority). In the survey Yankle  
14 conducted, the failure of authorities to find detectable quantities of drugs in the packages  
15 cannot be said to be a failure on the dogs' part, nor can it be said that probable cause was  
16 lacking. What is more likely is that most or all of the packages in which no drugs were found  
17 contained items (such as currency) with drug residue on them, or else had been packed,  
18 handled, or stored near drugs, leaving a residual odor. "In the usual case, the mere chance  
19 that the substance might no longer be at the location [to be searched] does not matter; a  
20 well-trained dog's alert establishes a fair probability—all that is required for probable  
21 cause—that either drugs or evidence of a drug crime . . . will be found." *Id.* at 1056 n.2.

22         What's more, Yankle hasn't focused on Chewy's field results, but instead has blended  
23 the results of all dogs' alerts that resulted in issuance of warrants by this Court. In effect,  
24 Yankle's argument is that Chewy's alert was unreliable because (he thinks) other dogs have  
25 falsely alerted. This is illogical and inconsistent with binding precedent.

26         By itself, the alert to the package by a trained narcotics canine was enough to  
27 establish probable cause for issuance of the federal warrant, and both motions fail for that  
28 reason. The Court likewise rejects Yankle's subsidiary arguments. Inconsistencies between

1 Arias' affidavit and his deposition testimony are minor, and explained by facts in the record;  
2 there are no indicia of mendacity. Besides, even if the federal warrant were suppressed,  
3 Arias' search of the trash can<sup>1</sup> uncovered enough evidence to establish probable cause for  
4 issuance of the state warrant.

5 **Conclusion and Order**

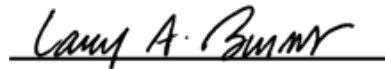
6 Yankle has pointed to no persuasive reasons why either of the warrants should be  
7 suppressed, and there is therefore no basis on which to grant summary judgment in his  
8 favor. The Court tentatively rules that Yankle's motions should be denied.

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10 **IT IS SO ORDERED.**

11 DATED: August 13, 2015

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**HONORABLE LARRY ALAN BURNS**  
United States District Judge

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26 <sup>1</sup> Arias permissibly searched the trash can without a warrant. See *California v.*  
27 *Greenwood*, 486 U.S. 35, 39–43 (1988). The items he found suggest drug dealing and are  
28 connected to Yankle. The fact that a laboratory test later uncovered no drug residues in the  
coffee filters is immaterial, since the field test Arias relied on suggested the filters did have  
drug residue on them. See *Illinois v. Rodriguez*, 497 U.S. 177, 184 (1990) (warrant's validity  
is not impaired if it is based on apparently reliable information, even if that information is later  
found to be erroneous).