

No. 1-10-1490

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 08 CR 9799
)	
SHAHPUR MAHMOUDI,)	Honorable
)	Jorge Luis Alonso,
Defendant-Appellant.)	Judge Presiding.

JUSTICE QUINN delivered the judgment of the court.
Presiding Justice Harris and Justice Connors concurred in the judgment.

ORDER

- ¶ 1 *Held:* Judgment entered on defendant's narcotics convictions affirmed over his contention that the court erred in denying his motion to quash arrest and suppress evidence; mittimus amended to reflect correct offense.
- ¶ 2 Following a bench trial, defendant Shahpur Mahmoudi was convicted of possession of methamphetamine and possession of methamphetamine with intent to deliver, then sentenced to concurrent, respective terms of 2 and 12 years' imprisonment. On appeal, he maintains that the trial court erred in denying his motion to quash arrest and suppress evidence where police did not have reasonable suspicion to believe that the package seized from the Federal Express facility

contained illegal narcotics. He also requests that his mittimus be corrected to reflect the offense of which he was convicted.

¶ 3 Defendant was charged with possession of methamphetamine and possession of methamphetamine with intent to deliver based on circumstances that developed after police removed a package from a Skokie Federal Express facility in May 2008. The package, which was identified by a canine unit as containing narcotics and tested positive for methamphetamine, was transported to defendant in an undercover delivery. Defendant was then searched and found to have additional methamphetamine on his person.

¶ 4 Prior to trial, defendant filed a motion to quash arrest and suppress evidence alleging that police did not have reasonable suspicion to remove the parcel in question from the mail stream, and that the seizure, canine sniff, further investigation of the package and the search of defendant's person were unlawful. He maintained that because there was no reasonable suspicion for the initial intrusion, the products of the subsequent searches were "tainted."

¶ 5 At the suppression hearing, Chicago police officer Jeffrey Show testified that he had attended at least 10 training seminars in identifying suspicious packages, and had been doing narcotics package interception work at the Skokie Federal Express facility for nine years. His duties included observing packages moving on a conveyer belt and looking for certain criteria to identify suspicious packages. Officer Show testified that the conveyer belt, on which he observed the packages at the facility in question, moved "[e]xtremely slow."

¶ 6 On May 1, 2008, he was working at the Skokie Federal Express facility when he observed a package addressed to Prince Auto Repair at 5510 North Western Avenue in Chicago. The package had several narcotics package "indicators," including the fact that it was heavily taped, it came from a "source state," California, had a handwritten label which showed that it was paid for in cash, was shipped by the Priority Overnight method, and did not require a signature.

¶ 7 Officer Show explained that a source state is one identified by the Drug Enforcement and Administration Department (DEA) as a location where narcotics are shipped from, and that Illinois is a distribution source state. He also explained that handwritten labels are suspicious because drug traffickers prepare them in advance of going to a shipping store so they are only in the facility a limited amount of time. Officer Show testified that based on the "indicators," and his years of experience in intercepting packages, he found that the package at bar was "[h]ighly suspicious" for containing contraband.

¶ 8 Officer Show noted that the package presented in court was the package he observed on the conveyor belt, but that it was not in the same condition as it had since been opened twice and resealed once after he removed it from the Federal Express facility. Officer Show testified that it was fair to say that the package presented in court was heavily taped, that there was tape all over it, including the ends where the flaps come together, the cracks and, essentially, any open spots. He also noted that the package was self-adhesive, but that he could not tell that from just looking at the package. Officer Show further explained that drug traffickers use tape to try to "defeat narcotics canines by containing the odor inside the package," that they use Priority Overnight shipping to ensure that the package is in the system for the least amount of time, they use cash to avoid any trail to their bank accounts, and require no signature in order for the package to be left at the door of a building or residence without contacting the other party.

¶ 9 Officer Show further testified that he had no idea how many packages left California on a monthly basis via Federal Express or how many boxes are shipped through Federal Express. In response to defense counsel's question, he stated that he could not give a percentage of how many boxes have been taped shut, and that his job was, rather, to determine if boxes had certain indicators.

¶ 10 Officer Show testified that the package in question showed that it was from Auto Works, Incorporated. After he removed the package from the conveyor belt, one of his analysts determined that Auto Works, Incorporated, did not exist.

¶ 11 Officer Show also testified that he brought the package to the police station and placed it next to a row of five similarly sized parcels for a canine to sniff. The dog went directly to the package the officer had removed from the Skokie Federal Express facility, and Officer Show then obtained a search warrant to open the package.

¶ 12 Based on this evidence, the trial court denied the motion to quash and suppress finding that the officer testified "credibly," "truthfully," and "was corroborated by the evidence in front of [the court]." The court noted that the box had been taped more than once, and "the question is was it taped, was it heavily taped when the officer saw it? He says it was, and I believe him." The court also noted that when the officer said heavily taped, it "expected more," but the officer testified that there was a "lot of tape, under the circumstances." The court acknowledged that none of the factors in and of themselves was sufficient, but taken together, they were more than enough to find that the police had reasonable suspicion to believe that the package contained illicit narcotics.

¶ 13 At trial, Officer Show testified consistently with his testimony at the suppression hearing, and further, that a search warrant was obtained to open the package after the canine sniff. Inside, he found a speaker with suspect narcotics in it, and the subsequent testing of this material proved positive for methamphetamine. The officer then obtained a search warrant for a controlled delivery of the package to the Prince Auto Repair shop, equipped with a device that would alert police when it was opened.

¶ 14 Officer Show further testified that Officer Nick Lympers posed as the undercover Federal Express delivery man. Shortly after the officer delivered the package the monitoring

device alerted Officer Show that the package had been opened. He then entered the repair shop with Officer Dennis O'Shea, and went to the office where defendant was located. Officer Show recovered the package, which was on the ground in the doorway between the office and the adjacent storeroom, and found that it had been opened, but that the speaker inside had not. Defendant was immediately taken into custody and in the attendant search, Officer O'Shea found a green tinted zip-lock bag containing methamphetamine in defendant's pants pocket.

¶ 15 Officers Show and O'Shea testified that defendant told them that the package opened when he threw it to the ground, that a friend told him a box was going to be delivered, that he knew it contained methamphetamine, and that he had been using that drug for two years. Defendant also told them that no one else who worked at the repair shop knew about the narcotics. Officer Show recalled defendant's further statement that his friend related the method of delivery and that he should sign for it.

¶ 16 Chicago police officer Nick Lympers testified that the package in question contained a plastic bag with 590 grams of suspect methamphetamine, and he had a wire filament placed in it to alert police when it was opened. Officer Lympers posed as an undercover Federal Express deliveryman and went to Prince Auto Repair with the package in question on May 1, 2008. Officer Show set up a surveillance outside, and Officer Lympers went into the office of the auto repair shop and announced that he had a parcel for the shop. Defendant, who was at the desk, told Officer Lympers that the box was for him and to leave it on top of his desk. Officer Lympers then gave defendant the signature log to sign for the package, defendant did so, and the officer left the premises.

¶ 17 The parties then stipulated to the scientific testimony concerning the suspect narcotics. They agreed that the narcotics recovered on defendant's person tested positive for .1 gram of methamphetamine, and those in the package tested positive for 576 grams of methamphetamine.

¶ 18 Defendant testified that a Federal Express delivery man came in with a package on May 1, 2008, and he signed for it. After he placed the package on the floor in the next room by the doorway, police came in, took him into custody, and asked him several questions. Defendant told them that he used methamphetamine, but denied saying that he knew what was in the package or that the package was opened before police arrived. Defendant testified that he thought the package only contained speakers.

¶ 19 During the trial, defense counsel filed a "renewed motion and memorandum supporting quashal [*sic*] and suppression of evidence," which the court considered as a motion to reconsider the denial of his motion to quash and suppress evidence. In this motion, counsel alleged that the criteria listed by Officer Show as the basis for stopping the package were all innocent factors that people do every day in large numbers, and that without information to quantify how frequently drug traffickers do these things in comparison to how frequently they are done by innocent people, there is no basis to conclude that these criteria do not also characterize a large category of presumably innocent citizens. He noted the court's acknowledgment that the package did not appear to be the most heavily taped "in comparison with expectations." Counsel then argued that although Officer Show testified to factors that made him stop the package, he could not testify to his "particularized knowledge" as to why those factors would have been relevant.

¶ 20 The court denied the motion. Based on the totality of the circumstances, and taking all of the indicators into account, the court found there was enough evidence for the officer to remove the package from the mail stream and obtain a series of warrants.

¶ 21 At the close of evidence, the court found defendant guilty beyond a reasonable doubt of possession of methamphetamine and possession of methamphetamine with intent to deliver. In doing so, the court stated that it did not believe that the officers were lying about defendant's statements to them, and that it found that they "testified credibly."

¶ 22 Defendant filed a motion for a new trial in which he alleged, *inter alia*, that he was renewing and incorporating all previous written and oral motions that were denied, including the motion to quash and suppress evidence and the motion to reconsider the denial of that motion. The court denied defendant's motion for a new trial, and sentenced him as described above.

¶ 23 On appeal, defendant contends that the trial court erred in denying his motion to quash arrest and suppress evidence. He maintains that police had no reasonable suspicion to believe that the package seized from the Federal Express facility contained illegal narcotics, noting that the box had no outward signs of criminal activity and was being sent from an auto parts dealer to an auto repair business through a commonly used method of packing and transport.

¶ 24 On review of a trial court's ruling on a motion to suppress, great deference is accorded the trial court's factual findings and credibility determinations, and the reviewing court will reverse those findings only if they are against the manifest weight of the evidence. *People v. Sorenson*, 196 Ill. 2d 425, 431 (2001). However, we review *de novo* the legal challenge to the denial of the motion to suppress. *Sorenson*, 196 Ill. 2d at 431.

¶ 25 The standard to be applied to the seizure of a package in the mail system is whether authorities had a reasonable suspicion, based upon articulable facts, that the package might contain illicit narcotics. *People v. Shapiro*, 283 Ill. App. 3d 343, 349 (1996). In making that determination, characteristics that are otherwise consistent with innocent use of the mail can, "when taken together," give rise to a reasonable suspicion that a crime is being committed. *People v. Tyus*, 2011 IL App (4th) 100168, ¶66.

¶ 26 In determining whether there was reasonable suspicion in this case, we find *Shapiro* and *Tyus* instructive. In *Shapiro*, the reviewing court looked to the Postal Service drug package profile which consists of various criteria developed by the Postal Service that may indicate the presence of contraband. *Shapiro*, 283 Ill. App. 3d at 344. These criteria include: 1) heavy brown

paper wrapping, 2) heavily taped seams, 3) a handwritten address label, 4) transmitted from one individual to another, 5) mailed from a zip code different than the return address, and 6) a fictitious return address. *Shapiro*, 283 Ill. App. 3d at 344. In *Shapiro*, 283 Ill. App. 3d at 351-52, the fictitious return address was not initially known, and the state shipped from was not a source state, but the court nonetheless found that the express mailed package met four of the drug profile characteristics of the Postal Service, which were sufficient to provide reasonable suspicion to remove it from the mail stream.

¶ 27 In *Tyus*, ¶¶9-10, 66, the reviewing court found reasonable suspicion where the police officer seized a package which was taped on all edges and seams, and being shipped overnight from individual to individual, with the recipient's name fictitious, from a source city to a user city. In that case, the officer explained that drug traffickers often attempt to avoid detection by sealing edges and seams of packages to prevent odors from escaping and shipping overnight. *Tyus*, ¶10.

¶ 28 Here, the package was heavily taped, including all seams and cracks, and sent from a source state to a distribution state overnight with a handwritten label. It was also paid for in cash and required no signature by the recipient. As in the cases cited, we find that these otherwise innocent characteristics, *taken together*, establish reasonable suspicion that the package contained illicit narcotics. (Emphasis added.) *Tyus*, ¶66, and cases cited therein. In addition, the canine sniff itself was not a search subject to the fourth amendment. *People v. Bartelt*, 241 Ill. 2d 217, 226-27 (2011), citing *Illinois v. Caballes*, 543 U.S. 405, 408-10 (2005). The fact that the canine alerted on the package provided further support for the issuance of the search warrant. Accordingly, we find no error by the trial court in denying defendant's motion to quash arrest and suppress evidence where the facts and reasonable inferences therefrom, created a reasonable suspicion that the package contained illegal narcotics, and was subject to detention.

¶ 29 In reaching this conclusion, we find defendant's reliance on *People v. McPhee*, 256 Ill. App. 3d 102 (1993), misplaced. In *McPhee*, an officer at a Federal Express facility in the Los Angeles International Airport seized an envelope being sent to Illinois after he noticed the following characteristics: it was paid for in cash, had a handwritten airbill, was going from one individual to another, and was not delivered by truck or courier. *McPhee*, 256 Ill. App. 3d at 111. On appeal, this court held that detention of the envelope was unreasonable because the stated characteristics, without more, were insufficient to support a reasonable, *articulable* suspicion that the envelope contained contraband. (Emphasis added.) *McPhee*, 256 Ill. App. 3d at 112. We note, however, as did the court in *People v. Shapiro*, 283 Ill. App. 3d 343, 350 (1996), that *McPhee* did not discuss the Postal Service drug package profile, there did not appear to be any testimony at the suppression hearing concerning such a profile, and the officer's reasons for determining which packages might contain contraband were not revealed in the opinion. Because *McPhee* did not address the Postal Service drug package profile, it provides no assistance to defendant. *Shapiro*, 283 Ill. App. 3d at 350. Moreover, as set forth above, the officer in this case, unlike the one in *McPhee*, provided an explanation for how he determines which packages might contain contraband, and the indicia in this case which led him to remove the package from the mail stream.

¶ 30 Defendant further claims that Officer Show failed to provide any statistical or other foundational information to support a finding of reasonable suspicion of his observations of the indicators he identified. He also claims that the record does not show that the indicators relied upon by officer Show are or should be commonly accepted standards for the seizure of packages. In his reply brief, he adds that "general anecdotal observations, without a statistical foundation, simply do not show that a reasonable officer would have his suspicions aroused." Defendant, however, has provided no supporting authority for his assertions, and we thus rely on the

previously cited case law in concluding that the officer's testimony in this case was sufficient to establish reasonable suspicion under the identified factors to warrant seizure of the package in the Federal Express mail system. *Tyus*, ¶68; *Shapiro*, 283 Ill. App. 3d at 349, 351-52.

Accordingly, we find no basis for reversing the trial court's denial of defendant's motion to quash and suppress the evidence.

¶ 31 Defendant finally contends, and the State concedes, that the mittimus should be corrected to reflect his conviction for possession of methamphetamine with intent to deliver instead of delivery of methamphetamine. We agree.

¶ 32 The indictment shows that defendant was charged, in relevant part, with methamphetamine possession with intent to deliver, under section 646 of the Methamphetamine Control and Community Protection Act (Act) (720 ILCS 646/55(a)(1)(e) (West 2010)). The title of this section of the Act is "Methamphetamine delivery." However, the actual offenses described in that section include not just delivery, but also possession with intent to deliver. 720 ILCS 646/55 (West 2010). We, therefore, order the clerk of the circuit court to correct the mittimus to accurately reflect that defendant was convicted of possession of methamphetamine with intent to deliver (Count 1) (*People v. McCray*, 273 Ill. App. 3d 396, 403 (1995)), in addition to his conviction for possession of methamphetamine (Count 2).

¶ 33 In light of the foregoing, we affirm the judgment of the circuit court of Cook County, and order the mittimus corrected.

¶ 34 Affirmed; mittimus corrected.