

No. 20- \_\_\_\_\_

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IN THE

# Supreme Court of the United States

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STEVEN BAXTER,  
Petitioner,

v.

UNITED STATES OF AMERICA,  
Respondent.

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On Petition for a Writ of Certiorari  
to the United States Court of Appeals  
for the Third Circuit

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**APPENDIX**  
**Vol 2.**  
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APPENDIX E —  
Transcript of Suppression Hearing, June 4, 2018

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS  
DIVISION OF ST. THOMAS AND ST. JOHN

4 UNITED STATES OF AMERICA, )  
5 Plaintiff, )  
6 vs. ) No. 2017-CR-26  
7 STEVEN BAXTER, )  
8 Defendant. )

## SUPPRESSION HEARING

11 BEFORE: Honorable Curtis V. Gomez, Presiding  
12 DATE: June 4, 2018  
13 PLACE: District Court of the Virgin Islands  
St. Thomas, Virgin Islands 00803  
14 TIME: 9:06 a.m. - 11:35 a.m.

**14** On behalf of the United States Attorney:

18 On behalf of the Defendant:

19 Edgar L. Sanchez-Mercado, Esq.  
San Juan, Puerto Rico

**24** REPORTED BY: Desiree D. Hill, RMR

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## PROCEEDINGS

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3 MR. SANCHEZ-MERCADO: United States of  
4 America versus Steven Baxter.

5 MS. VLASOVA: Good morning, Your Honor.  
6 Anna Vlasova on behalf of the United States.  
7 With me at counsel table is the case agent,  
8 Alicia Blyden, of HSI.

9 THE COURT: Good morning, Attorney  
10 Vlasova.

11 MR. SANCHEZ-MERCADO: Good morning,  
12 Your Honor. Sanchez-Mercado. I am here on  
13 behalf of Mr. Steven Baxter. He is here on my  
14 right side, Your Honor.

22 Attorney Sanchez-Mercado, you want to be  
23 heard?

24 MR. SANCHEZ-MERCADO: Yes, Your Honor.  
25 THE COURT: Don't you have a motion

1 pending?

2 MR. SANCHEZ-MERCADO: Yes. We started  
3 a hearing, a suppression hearing.

4 THE COURT: Well, if you've got motions  
5 pending, why wouldn't the clock have stopped?

6 MR. SANCHEZ-MERCADO: Regarding the  
7 speedy trial?

8 THE COURT: Yes, that's the order which  
9 we're taking.

10 MR. SANCHEZ-MERCADO: Yes, Your Honor,  
11 and they filed the superceding indictment, so  
12 basically we started once again. So I believe  
13 that we on pretrial conference that we had, the  
14 status conference with Magistrate Judge Miller,  
15 I think we withdrew that issue, Your Honor.

16 THE COURT: Oh, you did withdraw it.  
17 Okay.

18 MR. SANCHEZ-MERCADO: I withdrew the  
19 issue of the speedy trial. The change of  
20 venue, Your Honor, regarding the change of  
21 venue, I believe this case, if allegations are  
22 from the Government are true and accurate, this  
23 case, it's related to the District Court in  
24 Atlanta, Your Honor.

25 THE COURT: Where?

1 MR. SANCHEZ-MERCADO: South Carolina.

2 Charleston, South Carolina.

3 THE COURT: Why is it that you think  
4 the venue is proper there?

5 MR. SANCHEZ-MERCADO: Allegedly all of  
6 the packages that were sent were sent from that  
7 state to the Virgin Islands and --

8 THE COURT: So why wouldn't the crime  
9 or the essential acts constituting the crime,  
10 the receipt of the package, the delivery of the  
11 package, the recipient destination of the  
12 package be the Virgin Islands and the Virgin  
13 Islands be the proper venue?

14 MR. SANCHEZ-MERCADO: We believe that  
15 the package never entered the Virgin Islands.  
16 The package was intervened back to a government  
17 agency. There was no delivery of the package.  
18 What was delivered was fake weapons to the  
19 alleged recipient of the package, Your Honor,  
20 so --

21 THE COURT: But the intended  
22 destination was the Virgin Islands, wasn't it?

23 MR. SANCHEZ-MERCADO: It was.

24 THE COURT: So, are you saying that if  
25 we had a drug trafficking offense and someone

1                   intended to send drugs from South Carolina to  
2                   the Virgin Islands you couldn't prosecute them  
3                   in the Virgin Islands?

4                   MR. SANCHEZ-MERCADO: You could, but --

5                   THE COURT: Why could you, then? You  
6                   just said you could, right?

7                   MR. SANCHEZ-MERCADO: Yes, I did.

8                   THE COURT: Why?

9                   MR. SANCHEZ-MERCADO: The venue, it's a  
10                  matter of where its most related to. However,  
11                  in this case it never made it. So, most of --

12                  THE COURT: You are saying if the drugs  
13                  were intercepted in South Carolina and they  
14                  were intended for the Virgin Islands you  
15                  couldn't prosecute in the Virgin Islands with  
16                  drugs?

17                  MR. SANCHEZ-MERCADO: We believe that  
18                  the main venue would be South Carolina, Your  
19                  Honor.

20                  THE COURT: You said the main venue.  
21                  Do you mean that you could prosecute in the  
22                  Virgin Islands or in South Carolina?

23                  MR. SANCHEZ-MERCADO: Yes.

24                  THE COURT: Why can't you do that with  
25                  these guns?

1 MR. SANCHEZ-MERCADO: In this case,  
2 Your Honor, we believe that most -- basically  
3 80 percent of what happened in this case --

10 THE COURT: What authority supports  
11 your point? Let me hear from the Government.  
12 Attorney Vlasova.

13 MS. VLASOVA: Yes, Your Honor. The  
14 Government --

15 THE COURT: You would yield the lector,  
16 Attorney Sanchez-Mercado, so your sister could  
17 argue. I'll hear her argument. Go ahead.

**18** MR. SANCHEZ-MERCADO: Yes, Your Honor.

19 MS. VLASOVA: Your Honor, the  
20 Government's position is that the venue is  
21 proper in St. Thomas. Defendant's conduct  
22 involved mailing of a firearm from South  
23 Carolina to St. Thomas. That is fairly --

24 THE COURT: I know what the facts are.  
25 Why is -- your brother is saying that there is

1 authority that supports his position that it  
2 has to be in South Carolina. Why do you say it  
3 can be done here?

4 MS. VLASOVA: Yes, Your Honor. Because  
5 under Title 18, United States Rule Section  
6 3237, prosecution may take place in the  
7 district where conduct began.

8 THE COURT: Isn't that for mail crimes,  
9 though?

10 MS. VLASOVA: Your Honor, this is for  
11 --

12 THE COURT: This is a 922 crime, right?

13 MS. VLASOVA: Yes, Your Honor, but that  
14 section provides for a proper venue where a  
15 case may be prosecuted. In addition to that --

16 THE COURT: That section, what section?

17 MS. VLASOVA: 3237.

18 THE COURT: But 3237 is with respect to  
19 what sorts of crimes?

20 MS. VLASOVA: Your Honor --

21 THE COURT: Aren't those for Customs  
22 crimes and crimes involving the mails?

23 MS. VLASOVA: Your Honor, that section  
24 applies to where an offense may be prosecuted,  
25 an offense of a federal -- violation of a

1                   federal law may be prosecuted. And in addition  
2                   to that, it is the burden -- the burden is on  
3                   the defendant to show why the jurisdiction and  
4                   the venue should be moved and I would submit  
5                   that the defense has not met that burden. The  
6                   defendant's conduct was completed in the Virgin  
7                   Islands which would allow for the Government to  
8                   prosecute a defendant in this district.

9                   THE COURT: Okay, but 3237, what sort  
10                  of offense is contemplated in 3237?

11                  MS. VLASOVA: That will be any offense  
12                  against the United States in violation of the  
13                  federal crime, and specifically as to mail  
14                  transportation and interstate and foreign  
15                  commerce.

16                  Under subsection (a) of that section  
17                  would indicate that a crime where mail was  
18                  involved may be prosecuted, and included into the  
19                  district into which such commerce, mail or matter  
20                  was imported, which would indicate this crime  
21                  could be prosecuted in this district.

22                  THE COURT: All right. And are you  
23                  aware of any situation where 3237 has been used  
24                  outside of a mail, an offense involving the use  
25                  of the mails?

1 MS. VLASOVA: Your Honor, I don't have  
2 case law for that. The Government rests on its  
3 submission involving mail.

4 THE COURT: All right. Has the  
5 Government reviewed the D.C. Circuit, United  
6 States versus Morgan?

7 MS. VLASOVA: Your Honor, I am not  
8 aware of that case.

9 THE COURT: All right, thank you.  
10 Attorney Sanchez-Mercado, I will give you the  
11 last word.

12 MR. SANCHEZ-MERCADO: To be honest with  
13 you, I don't see the motion that I filed. I am  
14 looking on my computer to bring the authority  
15 that I brought on the motion, so as of now I  
16 cannot argue.

17 THE COURT: Attorney Sanchez-Mercado,  
18 wouldn't the general venue statute give this  
19 Court or suggest that venue is proper here?  
20 That is the locus delicti, where is the crime,  
21 the elements or completion of the crime?

22 MR. SANCHEZ-MERCADO: That's the thing,  
23 Your Honor.

24 THE COURT: That is whether 3237 is  
25 circumscribed to deal with mail offense crimes

1 or not, it seems that the general venue, it  
2 says the Court needs to focus at the location  
3 of the crime where the acts constituting the  
4 crime, and it seems to me at one point you're  
5 suggesting that if this were drugs, you could  
6 prosecute here or in South Carolina but because  
7 it's guns, you can't. I haven't heard a  
8 logical reason for your distinction.

9 MR. SANCHEZ-MERCADO: If it is a single  
10 defendant in a case apparently trying to do  
11 something, but we don't know exactly, and the  
12 way the indictment has been drafted, it's a  
13 single defendant that apparently somewhere in  
14 South Carolina something happened.

15 THE COURT: All right.

16 MR. SANCHEZ-MERCADO: That it was  
17 addressed to the Virgin Islands. I have to be  
18 honest with that, it's a single defendant. It  
19 is not a conspiracy. There is nothing saying  
20 that someone on the other side was going to  
21 receive the package and that it was -- and what  
22 the package was, Your Honor.

23 THE COURT: All right. I think I  
24 understand your position. I am not persuaded  
25 by it. So with respect to the venue motion,

1 that's denied. The Court finds the venue is  
2 proper here. And with respect to the motion to  
3 dismiss for speedy trial, you said you're not  
4 proceeding on that, so the Court finds that to  
5 be moot. All right. There is a motion to  
6 suppress. Tell me what is the thing and what  
7 are the things you seek to suppress.

8 MR. SANCHEZ-MERCADO: We want to  
9 suppress the two packages that were sent. We  
10 started the hearing -- last time, Your Honor,  
11 we started the hearing, it is based on an  
12 illegal search and there was no probable cause  
13 to open and inspect the packages. One, the  
14 package that initiates everything was  
15 completely illegally intervened and searched.

16 The second package was intervened because  
17 of what happened with that first package. It  
18 wasn't a random search.

19 THE COURT: So tell me what is the  
20 thing you seek to suppress.

21 MR. SANCHEZ-MERCADO: Two weapons that  
22 were intervened by agents in this case, Your  
23 Honor.

24 THE COURT: Okay, good. All right.  
25 Defense motion. Government's burden. Ready to

1 proceed, Attorney Vlasova?

2 MS. VLASOVA: Yes, Your Honor. The  
3 Government calls its first witness, CBP Officer  
4 Lopez.

5 **JOSEPH LOPEZ,**

6 called as a witness, having been first duly sworn,  
7 testified on his oath as follows:

8 **DIRECT EXAMINATION**

9 **BY MS. VLASOVA:**

10 Q. Good morning. Please state and spell your  
11 name for the record.

12 A. My name is Joseph Lopez, J-o-s-e-p-h  
13 L-o-p-e-z.

14 Q. How are you employed?

15 A. I am employed with U.S. Customs and Border  
16 Protection as a K-9 officer.

17 Q. And where is that located?

18 A. Here in the Virgin Islands.

19 Q. How long have you been so employed?

20 A. I've been an employee since July of 2007  
21 and I've been a K-9 officer since June of 2014.

22 Q. Since June of 2014, were you employed in  
23 St. Thomas since then?

24 A. No. Since 2007, since July, and I became  
25 a K-9 officer since June, June of 2014.

1 Q. And that is in St. Thomas?

2 A. Yes.

3 Q. Where are you employed right now?

4 A. I am right now working in Puerto Rico.

5 After Hurricane Irma, I was displaced and sent to  
6 work in San Juan.

7 Q. When did you relocate to San Juan?

8 A. September 17, 2017.

9 Q. What are your duties and responsibilities  
10 in your position as a K-9 officer with CBP?

11 A. I'm sorry?

12 Q. What are your duties and responsibilities  
13 in your position as a K-9 officer with CBP?

14 A. As a K-9 with CBP, I do K-9 inspections to  
15 bags, passengers, I check cargo, mail, vehicles. All  
16 kinds of inspection with the dog if needed.

17 Q. Do you conduct those inspections with your  
18 K-9?

19 A. Yes.

20 Q. Have you received any training with respect  
21 to executing those duties?

22 A. Yes, I received training. I spent seven  
23 weeks in Front Royal, Virginia where I became a K-9  
24 officer and I was assigned to work all that time with  
25 the K-9 dog named Bo.

1 Q. What is his name?

2 A. Bo.

3 Q. Did Bo stay with you in the entire  
4 seven-week training program?

5 A. Yes. He participated with me in those  
6 seven weeks.

7 Q. And are you the only K-9 handler that Bo  
8 has?

9 A. Yes.

10 Q. Had you been working since Bo, since your  
11 initial training in Virginia?

12 A. Yes.

13 Q. Could you briefly describe the nature of  
14 the seven-week training that you had undergone in  
15 Virginia?

16 A. I spent the first two weeks in the  
17 classroom learning about everything related to the  
18 K-9, the dogs, how they work, and that's the first  
19 week in the classroom. The second week I getting  
20 used to the dog, plus still spending more time in the  
21 classroom, and the last five weeks I go get training  
22 in different areas like warehouses, buildings, open  
23 fields, vehicles, airport. And at the end of that  
24 five weeks, last five weeks, I get a battery of tests  
25 which I have to pass by a different -- by a board of

1       instructors so I could get certified to work as a K-9  
2       officer.

3           Q.     Could you describe the series of testing  
4       you said that you had undergone?

5           A.     I go to the airport and they put like --  
6       they hide concealed drugs in different areas with  
7       passengers with luggage. So I have to check the dog,  
8       passing close to the passengers, I have to pass close  
9       to the luggage. I go to warehouses. They hide drugs  
10      in different areas in the warehouses so the dog can  
11      find it. They hide -- we go to different areas with  
12      vehicles that's been seized. So they check all those  
13      vehicles and hide drugs again and I have to run the  
14      dog and do all the kinds of exercise until he pass.

15           Q.     And when you just "refer to the dog," what  
16      dog were you referring to?

17           A.     I refer to Bo.

18           Q.     Did Bo and you successfully complete the  
19      program in Virginia?

20           A.     Yes, we did.

21           Q.     Had you received any additional training  
22      since the initial seven-week training in Virginia?

23           A.     After that training, I have to do  
24      training -- I have to do training with the dog every  
25      day at least -- I have to put two training for him

1 every day, and after that certification I got in  
2 Virginia, every year I have to get recertified. So  
3 an instructor came and do a battery of tests and I  
4 get recertified every year.

5 Q. When you say that you have to get  
6 recertified every year, do you get recertified with Bo  
7 every year?

8 A. Yes.

9 Q. And could you describe the nature of the  
10 tests or training that you have to undergo to receive  
11 the annual certification?

12 A. I have to go about the same kind of  
13 training that I took first in Virginia. I have to go  
14 to warehouses, to luggage, passengers, vehicle and  
15 open field.

16 Q. And do you go to that certification alone?

17 A. Yes. I go through that certification  
18 every year.

19 Q. Does Bo come with you to that  
20 certification?

21 A. Yes, Bo is -- Bo and me, we are a team and  
22 we are -- the K-9, Bo, is only assigned to work with  
23 me and nobody else.

24 Q. So when you refer to passing trainings and  
25 passing your certifications, does that happen? Do you

1 participate in all of those with Bo?

2 A. Yes.

3 Q. So is Bo certified?

4 A. Yes, he is.

5 Q. And what is he certified for?

6 A. It's a narcotic human -- consumer human  
7 detection dog.

8 Q. Was he so certified in March and April of  
9 2017.

10 A. Yes, he was.

11 Q. Have you had a chance to review his  
12 certification?

13 A. Yes, I have reviewed his certification.

14 The last one is valid until June of this year.

15 Q. Have you had a chance to review Bo's  
16 certification as it pertains to March and April 2017?

17 A. Yes.

18 Q. I am going to show you Government's Exhibit  
19 1A. You recognize this document?

20 A. Yes, I do.

21 MR. SANCHEZ-MERCADO: I have no  
22 objection to the document, Your Honor.

23 Q. Could you describe what the document is?

24 A. This certification is -- the certification  
25 was the one that I go around June 20, 2017. That's

1 good for a year. That was good until June of the  
2 2017.

3 Q. And who that certification is for?

4 A. That's for Bo and me, that certification.

5 Q. And who issued the certification?

6 A. Supervisor Melvin Figueroa. He's a K-9  
7 supervisor and an instructor for U.S. Customs and  
8 Border Protection for the K-9 program.

9 Q. And what does the certification represent?

10 A. That represents that I'm good to work as  
11 per the agency policy, that I comply with everything  
12 needed to work as a K-9, and that's what that  
13 represent.

14 Q. And what does that certification represent  
15 as it's relevant to Bo?

16 A. That means that the agency found that he's  
17 suitable for work for doing what he's been trained  
18 for, finding narcotics on concealed humans for  
19 another year.

20 Q. And when does the period of time begin and  
21 end for this certification?

22 A. On June 28. So it will finish on June 27.  
23 It is good for a year, so --

24 Q. Of what year?

25 A. That will be good until June 27th of 2017.

1 Q. And I am showing you Government's Exhibit

2 1B. Do you recognize this document?

3 A. Yes. That's my course certification.

4 That's the one that I got on June 21st of 2017. That  
5 is good until June of 2018.

6 Q. And who does this -- who is the  
7 certification for?

8 A. That certification is for Bo and me to  
9 work as a team. That means that we passed all of the  
10 battery of exercises. So the agency found that it is  
11 good to work for another year as a K-9 team.

12 Q. And based on the certification I just  
13 showed you in Government's Exhibit 1A and 1B, what is  
14 Bo certified to detect?

15 A. He is certified to detect narcotics on  
16 concealed humans.

17 Q. What kind of narcotics?

18 A. It could be marijuana, cocaine, ecstasy,  
19 all kinds of narcotics.

20 Q. Are you familiar with Bo's alert?

21 A. Yes, I am.

22 Q. Could you describe what that is?

23 A. When Bo is working, he would just go  
24 sniffing around, and he will bring the nose close to  
25 the source, wherever he has been trained to find the

1 scent of narcotics and then he will sit.

2 Q. Has Bo ever been wrong in the alert that he  
3 had provided?

4 A. I don't think Bo is wrong. I think I may  
5 do a wrong interpretation.

6 Q. What does that mean?

7 A. With the alert that means that I can see  
8 that he changed his behavior, like something calls  
9 his attention that I can believe is an alert, and I  
10 do a wrong call, maybe, but I don't see that Bo has  
11 been wrong. He has been really reliable for the  
12 agency finding narcotics.

13 MS. VLASOVA: The Government moves  
14 Exhibits 1A and 1B into evidence.

15 MR. SANCHEZ-MERCADO: No objection,  
16 Your Honor.

17 THE COURT: 1A and 1B are admitted.

18 Q. (By Ms. Vlasova:) Were you employed as a  
19 K-9 officer with CBP on March 31, 2017?

20 A. Yes, I was.

21 Q. And where were you so employed?

22 A. I was employed at the airport.

23 Q. And what were you doing that day in the  
24 course of executing your official duties?

25 A. I was checking -- I was doing K-9

1       inspection to all of the mail coming into the Virgin  
2 Islands.

3           Q.     Is that something that you routinely do as  
4 part of your duties for CBP?

5           A.     Yes, that's something we do every day.

6           Q.     And when you say that you're engaged in  
7 this routine, what exactly were you doing with the  
8 mail?

9           A.     I bring the dog into the cargo planes.  
10          So, I brought him so he could smell all the boxes  
11          with the cargo inside the plane, so that way I could  
12          check all of the cargo.

13          Q.     And is this a routine procedure?

14          A.     Yes.

15          Q.     Did anything significant happen on that  
16          day?

17          A.     Yes. On that day while I was doing the  
18          K-9 inspection, Bo alerted to a box and I referred it  
19          to Officer Kouns, and my dog just -- Bo stayed  
20          watching to the box and I was watching where Officer  
21          Kouns opened the box. He bring out a sweater, and he  
22          said I don't see drugs, but it smell like marijuana,  
23          and when he was about to place the sweater back into  
24          the box, a magazine and a round fell on the floor  
25          from that sweater.

1 Q. Let me back up a little bit. How did Bo  
2 alert you to this package?

3 A. He was alerting to the box. When I was  
4 checking that column of cargo, he went and just go  
5 straight to one box and just sit. So I bring the box  
6 out. The dog just followed when I would give it to  
7 Kouns and he just keep looking. So at that moment, I  
8 start walking because Bo was just watching that box,  
9 because when I train him, we reward him from the  
10 source. So he's looking for that box expecting to  
11 get his toy, because he believes where there's drugs,  
12 that's where his toy is at. So he was looking there.  
13 I just pay attention when Bo -- when Officer Kouns  
14 opened the box, and that's when we saw the magazine  
15 falling and one single round.

16 Q. And how far --

17 THE COURT: Officer Lopez, you said  
18 that this search is done with the K-9. How  
19 often is that?

20 THE WITNESS: We do that almost every  
21 day, Sir.

22 THE COURT: All right. Go ahead.

23 Q. (By Ms. Vlasova:) How far away from the  
24 box were you when Officer Kouns opened it?

25 A. Three, 4 feet away.

1 Q. Were you able to clearly observe what was  
2 going on with the box?

3 A. Yes.

4 Q. Was there anything that you observed about  
5 the odor of that box?

6 A. When I passed, you can smell like what I  
7 believe is the scent of marijuana, and Bo was  
8 alerting to him. He has been trained for finding  
9 that odor. So that's why I was looking. When Kouns  
10 opened it, the sweater inside, it smelled like  
11 marijuana. You can smell that odor. And when Kouns  
12 opened it, that's when the round of the magazine  
13 fell. I saw when Officer Kouns just opened -- do a  
14 hundred percent check on that sweater, and then all  
15 the parts for a weapon came out of that sweater.

16 Q. Did you observe him --

17 THE COURT: When you say "all the  
18 parts," what parts are you referring to?

19 THE WITNESS: I mean the handle, the  
20 assembly for the weapon. I saw the bottom, and  
21 the slide on the top, and the spring coming  
22 from -- if you could put it all together, you  
23 have a whole weapon.

24 THE COURT: And when is it that you  
25 observed this?

1 THE WITNESS: When Officer Kouns  
2 opened -- when Kouns was putting the sweater  
3 back in the box, the magazine and the round  
4 fell. So he just decided to open completely  
5 the shirt and then he found all the parts for  
6 the weapon inside the sweater.

7 Q. (By Ms. Vlasova:) Did you observe him pull  
8 out all the parts of the weapon that you just referred  
9 to?

10 A. Yes.

Q. And what happened with the box after that?

12                   A.        After that, Kouns took the box into the  
13                    office and he took care of the administrative  
14                    procedure for seizing the pistol or finding out if  
15                    there was a permit.  So he called everybody that he  
16                    needed to contact.

17 MS. VLASOVA: Court's indulgence.

18 THE COURT: Yes.

19 Q. Going back to the last certification that  
20 Bo received, could you tell me when that certification  
21 expires?

22                   A.        The certification expires in June. It was  
23                   issued June 22nd and it would expire on June 21st of  
24                   2018.

25 Q. So, is Bo currently certified?

1 A. Yes.

2 Q. And he was so certified in March and April  
3 2017?

4 A. Yes.

5 MS. VLASOVA: No further questions.

6 THE COURT: Attorney Sanchez-Mercado?

7 MR. SANCHEZ-MERCADO: Yes, Your Honor.

8 **CROSS-EXAMINATION**

9 **BY MR. SANCHEZ-MERCADO:**

10 Q. Good morning.

11 A. Morning, Sir.

12 Q. This is Attorney Sanchez and I represent  
13 Mr. Steven Baxter who is here today.

14 Going back starting from the end of the  
15 question that the prosecutor gave you, the  
16 certification of Bo and you is valid until  
17 June 21st, 2018, correct?

18 A. That's correct.

19 Q. As of now, have you taken any test of  
20 certification to recertify because it is two weeks  
21 from now?

22 A. No, because I am resigning the K-9  
23 position. I just got transferred to New Orleans and  
24 I'm going as a regular officer.

25 Q. So, can you give us, again, the date that

1 you worked with Bo at the airport?

2 A. I can't recall the exact date. In March  
3 of 2017.

4 Q. March 31st would be the date, if you  
5 remember?

6 A. I can't tell the exact date right now. I  
7 remember working at the airport when I found that  
8 box.

9 Q. You made any report regarding what happened  
10 that day?

11 A. Sorry, sir?

12 Q. Did you make any report of what happened  
13 that day?

14 A. I submitted a statement about that.

15 Officer Kouns was the one who work doing the  
16 administrative proceedings.

17 Q. Do you recall if that box had a number?

18 A. Yes, it had a number.

19 Q. You remember the number of the box?

20 A. Not by memory, Sir.

21 Q. You prepared a report with the number of  
22 the box?

23 A. I put the number of the box in my  
24 statement, Sir.

25 Q. If I can show you a document, refresh your

1           recollection of the date and the number of the box.

2           A.       If it -- yes.

3           THE COURT:   Put it on the Elmo so we  
4           could all see.  Attorney Sanchez-Mecardo, put  
5           it on the Elmo.

6           MR. SANCHEZ-MERCADO:  Wish that it be  
7           published.

8           A.       Yes, I am seeing it.

9           Q.       Is this your signature?

10          A.       Yes, Sir.

11          Q.       Is this your name?

12          A.       That's my name.

13          Q.       You remember preparing this statement?

14          A.       Yes, I do remember.

15          Q.       Okay.  Can you tell me the date of the  
16          event, when that happened?

17          A.       I say it's Friday, March 31st, 2017.

18          Q.       And do you remember the number of the box  
19          now?  Could you please tell us the number of the  
20          package?

21          A.       It looks a little bit blurry here but it  
22          says 9505 -- 9505510427837088052979.

23          Q.       To prepare this report, you must have  
24          prepared some additional notes, correct?

25          A.       I just did that -- I didn't have to do all

1 the notes for report because that's what Officer  
2 Kouns did. He took care of doing all the reports for  
3 the seizing procedure. I do the K-9. I do the K-9  
4 sniff. I defer to other officers so they do  
5 secondary inspection and do all the administrative  
6 proceedings so I can be available to other  
7 inspections.

8 Q. That number that you have here is  
9 because -- you remember that number or because that  
10 number was given to you?

11 A. I saw that day, I saw the box, and I saw  
12 the photo that Kouns got that day and everything. So  
13 I remember that. And that's why I took it because I  
14 have the box available that day.

15 Q. But that report is June 7, 2017, correct?

16 A. Yes, but I saw the photos that we have at  
17 the moment.

18 Q. When?

19 A. When I did the report in June.

20 Q. So, this package, 9505510427837088052979  
21 was the package that you checked with Bo on March 31,  
22 2017?

23 A. Yes, Sir.

24 Q. And that was in St. Thomas, correct?

25 A. Yes, Sir.

1 Q. Wasn't in Puerto Rico?

2 A. No.

3 Q. Wasn't in South Carolina?

4 A. No, Sir.

5 Q. It was in St. Thomas.

6 A. St. Thomas.

7 Q. It was at the airport.

8 A. Yes, Sir.

9 Q. Okay. And this is inside a plane. The  
10 package when you first saw it, it was inside the  
11 plane?

12 A. When I first saw the package was inside  
13 the airplane, cargo. When I gave it to Kouns, he did  
14 the inspection and then I see it again when he have  
15 it in the office.

16 Q. And Bo sniffed and he marked --

17 A. Alerted to the box.

18 Q. Alerted to the box. And the box never  
19 contained any marijuana in it?

20 A. There was no drugs inside there.

21 Q. Bo certified at some point in time for  
22 weapons.

23 A. No, Sir.

24 Q. Metals.

25 A. No, Sir.

1 Q. Any type of oil.

2 A. No, Sir.

3 Q. Compound.

4 A. No, Sir.

5 Q. And you've said before that Bo has not been  
6 wrong but you have been wrong before.

7 A. Yes, Sir.

8 Q. Okay. And so some alerts that Bo has given  
9 has led to nothing.

10 A. Some alerts that I believe that Bo given  
11 alert to went to nothing.

12 Q. So it's not only what the dog do, the alert  
13 of the dog, it's your interpretation of what the dog  
14 says.

15 A. Yes, Sir.

16 Q. Because you don't have training to the  
17 smell of marijuana.

18 A. I don't have training for that, Sir, but I  
19 deal with that almost every day and I can smell like  
20 when you pass, you could smell the sweater that was  
21 in there, smell like whoever was wearing it and using  
22 it was smoking marijuana, so you can smell it.

23 Q. And this was an open space in St. Thomas,  
24 correct?

25 A. Yes, Sir.

1 Q. The airport?

2 A. Yes, Sir.

3 Q. Was wind around?

4 A. Yes, Sir.

5 Q. And also that package was marked on the  
6 plane. It never reached an administrative office  
7 before the alert of Bo, correct?

8 A. It was inside the plane.

9 Q. It was inside the plane. So it wasn't  
10 inside the offices of CBP or the airport or nothing.  
11 It was just in the tarmac?

12 A. Yes, Sir.

13 Q. So what would be the procedure if inside  
14 the plane entering the U.S. Virgin Islands, just not a  
15 state, correct?

16 A. Not a state.

17 Q. A territory?

18 A. Yes, Sir.

19 Q. So, you went inside the plane, you checked.  
20 Were you doing border search or you were doing any  
21 type of regular search?

22 A. Considered a border search.

23 Q. Considered a border search. Were you  
24 authorized --

25 THE COURT: Don't go into the legal

1 with the witness. Ask the witness -- your  
2 witness is a fact witness. I'll decide whether  
3 it was a border search or not. Let us deal  
4 with the facts.

5 Q. (By Mr. Sanchez-Mercado:) You have a plan  
6 to inspect that plane on that day?

7 A. Yes, Sir.

8 Q. Who gave you those instructions?

9 A. We have instruction by the supervisors and  
10 we have been doing that for a couple years since 2012  
11 or '13. That's when we started checking the mail.  
12 So we do that on a routine basis every day.

13 THE COURT: Officer Lopez, when you say  
14 "checking the mail," you mean having -- what do  
15 you mean by that?

16 THE WITNESS: Checking the cargo, the  
17 boxes, the cargo, because we're not allowed to  
18 go to the letter. We cannot touch the letter  
19 mail. So we check all of the cargo coming into  
20 the Virgin Islands.

21 Q. (By Mr. Sanchez:) Why can't you get to the  
22 letter, to the mail?

23 A. Those are the rules that we were  
24 explained, we cannot touch the letter. Unless we get  
25 a search warrant, we can't touch that.

1 THE COURT: When you say "Check the  
2 package," what do you mean "check the package?"

3 THE WITNESS: K-9, I pass the dog. We  
4 check all the boxes. So we can check cargo  
5 boxes coming in. Because we got the K-9 alert,  
6 that's when we checked -- we opened the box.

10 THE WITNESS: No, I just pass it to the  
11 other officers so they could do the search.

12 THE COURT: Okay, go ahead.

13 Q. (By Mr. Sanchez:) And what did the other  
14 officer do?

15 A. I'm sorry.

16 Q. The other officer, when you do it, it would  
17 be a secondary inspection is what they say?

18 A. Yes, Sir.

19 Q. So the first inspection was done by you?

20 A. By the K-9 team, yes.

**21** Q. But you didn't open the package?

22 A. No. I passed it to the other officer so I  
23 could keep checking.

24 Q. So, the first time that the package is  
25 opened is in the secondary inspection?

1 A. Yes, by the other officer.

2 Q. But you already had some reason to believe  
3 that there is -- there might be something illegal  
4 inside?

5 A. Yes, Sir.

6 Q. Why you didn't get a search warrant to open  
7 it?

8 A. Because we don't need it because we have  
9 border search authority. We, the Virgin Islands, is  
10 outside of the U.S. Customs zone. So, it is like  
11 considered outbound. So we just check it.

12 Q. You have instructions that you can go all  
13 the way straight to the plane to check on the cargo?

14 A. Yes, Sir.

15 Q. It doesn't matter if it is commercial or if  
16 it's only a mail?

17 A. Yes, Sir.

18 Q. Okay. You said Officer Kouns opened the  
19 box, saw marijuana and he was about to put the sweater  
20 back and close it, right?

21 A. When he was looking for the drugs, he said  
22 I don't see no drugs. So we was placing back the  
23 sweater, that's when the maga -- the round and the  
24 magazine fell on the floor there. So he just opened  
25 it because he can smell it too. He said I don't see

1 nothing here.

2 Q. Well, the inspection and the alert and your  
3 interpretation of the alert of what the package had  
4 inside was wrong, correct?

5 A. No, the alert, because you can smell like  
6 that's what it was, contaminated. You can smell like  
7 marijuana odor. So that's why.

8 Q. Do you know -- do you know the other agent,  
9 Agent Kouns, conducted any inspection, any test  
10 regarding those substances to that sweater?

11 A. I can't answer that question. I don't  
12 know what Kouns --

13 Q. You know if Agent Kouns did any paperwork  
14 regarding that package?

15 A. Yes, Sir.

16 Q. You did any additional investigation  
17 concerning the origin of the package on when it was  
18 checked?

19 MS. VLASOVA: Objection.

20 Q. Do you know?

21 THE COURT: Overruled.

22 A. I know that Officer Kouns did the  
23 administrative proceeding. He seized the weapon and  
24 he passed the information to HSI agent.

25 MR. SANCHEZ-MERCADO: Court's

1 indulgence, Your Honor.

2 THE COURT: Yes.

3 Q. (By Mr. Sanchez-Mercado:) You said that  
4 you saw all of the parts of a weapon and it could be  
5 assembled to constitute a whole weapon, correct?

6 A. Yes, Sir.

7 Q. Did you assemble it?

8 A. No, I didn't assemble it.

9 Q. Did you make -- did you check all of the  
10 parts?

11 A. I saw the slide, I saw the bottle, I saw  
12 the spring, I saw the lower receiver, I saw a  
13 magazine with rounds and an extra round was there,  
14 and in my experience of firearm instruction for  
15 Customs and as an officer carrying a weapon, I know  
16 that's all the parts for assembling a whole weapon.

17 Q. But you didn't know if it worked or not or  
18 you don't know if the parts fit?

19 A. I just saw the parts. Other than  
20 assembling the weapon, no, I didn't assemble the  
21 weapon.

22 MR. SANCHEZ-MERCADO: I have no further  
23 questions, Your Honor.

24 THE COURT: Any redirect?

25 MS. VLASOVA: Yes, Your Honor.

1                   **REDIRECT-EXAMINATION**2                   **BY MS. VLASOVA:**

3                   Q.       Officer Lopez, you testified that there  
4        were instances where Bo alerted to the package but  
5        there were no drugs found in that particular package.  
6        Is that what you testified to?

7                   A.       Correct.

8                   Q.       Could you explain how that would happen?

9                   A.       That could happen if somebody was in  
10        contact with drugs and whatever they packed in those  
11        boxes had been contaminated, or if I do a wrong call  
12        for what I believe is the alert from the dog.

13                  Q.       And on March 31st 2017 after Bo alerted to  
14        the package, did you make physical contact with that  
15        particular box?

16                  A.       I had physical contact, yes. When I  
17        passed it to Kouns and when I went to the office to  
18        see what Kouns was assisting with the contents  
19        inside.

20                  Q.       When the box was still opened, were you  
21        able to observe anything about the scent of that box?

22                  A.       Just the sweater. You could smell like  
23        the scent -- what I believe was the scent of  
24        marijuana was coming out of that sweater, a really  
25        strong odor.

1 MS. VLASOVA: No further questions.

2 THE COURT: Officer Lopez, thank you  
3 for your testimony. You may step down.

4 Next witness.

5 MS. VLASOVA: Government calls Officer  
6 Kouns.

7 **RICHARD KOUNS**,  
8 called as a witness, having been first duly sworn,  
9 testified on his oath as follows:

10 **DIRECT EXAMINATION**

11 **BY MS. VLASOVA:**

12 Q. Good morning. Please state and spell your  
13 name for the record.

14 A. Richard Kouns, R-i-c-h-a-r-d K-o-u-n-s.

15 Q. And how are you employed?

16 A. I am employed with Customs and Border  
17 Protection as an officer.

18 Q. Were you so employed in March and April of  
19 2017?

20 A. Yes.

21 Q. And where was your duty station?

22 A. Charlotte Amalie, St. Thomas.

23 Q. And what is your title at CBP?

24 A. Officer.

25 Q. How long have you been employed as an

1                   officer with CBP?

2                   A.        Almost five years now.

3                   Q.        And what are your duties and  
4 responsibilities in this position?

5                   A.        My duties are on the enforcement team  
6 which we look for contraband, money and guns and  
7 currency.

8                   Q.        When you say you look for contraband, where  
9 does that happen?

10                  A.        It could happen in the mail, it could  
11 happen in cargo environment, it could happen on  
12 passenger vessels coming from foreign.

13                  Q.        Have you received any training with respect  
14 to executing your official duties as a CBP officer?

15                  A.        Yes.

16                  Q.        Could you briefly describe the nature of  
17 that training?

18                  A.        We go through an academy that's based out  
19 of Brunswick, Georgia, five and a half months of  
20 training sometimes. That's just our job.

21                  Q.        Did you complete your training at the  
22 academy?

23                  A.        Yes.

24                  Q.        When did you complete it?

25                  A.        May of 2014.

1 Q. Had you received any training since?

2 A. Yes.

3 Q. Could you briefly describe the additional  
4 trainings that you received?

5 A. Confined spaces. I have gone through just  
6 basically four trainings, kind of show us how to do  
7 our job here.

8 Q. Were you employed as a CBP officer in  
9 March 31, 2017?

10 A. Yes.

11 Q. What was your duty location on that day?

12 A. Charlotte Amalie, St. Thomas.

13 Q. Where on St. Thomas?

14 A. We're based out at the airport.

15 Q. And what were you doing in the course of  
16 executing your official duties on that day?

17 A. On that day, we were scanning mail  
18 packages with K-9.

19 Q. And did anything significant happen on that  
20 day?

21 A. Yes. Our K-9 officer handed me a box that  
22 his dog had alerted to. I opened it up and it had a  
23 very strong smell of marijuana coming from it. As I  
24 was going through the package looking for what was  
25 inside of it, a magazine fell out of the jacket that

1 was in the package and loose round of ammunition. As  
2 I continued to search, there was a handle of a pistol  
3 in one pocket and a slide slash barrel combination in  
4 the other pocket. And there was also a small package  
5 of a retaining clip in the bottom of the box.

6 Q. Did you take any pictures of the package?

7 A. Yes.

8 Q. I'm showing you Government's Exhibit 2A.

9 Do you recognize this document?

10 A. Yes.

11 Q. How do you recognize it?

12 A. It's the box that was pulled from the  
13 plane that contained a weapon.

14 Q. Did you take this photograph?

15 A. Yes.

16 Q. I am going to show you Government's Exhibit  
17 2B through to F, and review all of them and then let  
18 me know if you recognize those documents.

19 A. That will be the tracking number of the  
20 package.

21 Q. Can you tell me what that tracking number  
22 is?

23 A. 9505510427837088052979.

24 Q. And is this the package that Officer Lopez,  
25 the tracking number for the package that Officer Lopez

1 gave you on that day?

2 A. Yes.

3 Q. And from Exhibit 2B, are you able to  
4 determine the weight of this package?

5 A. Yes.

6 Q. What is the weight of this package?

7 A. 3-pounds 2.2-ounces.

8 Q. And -- I'm sorry. Going back to  
9 Government's Exhibit 2A, are you able to determine if  
10 this was mailed as a first class mail?

11 A. It was mailed as a priority mail.

12 Q. What does that mean in terms of whether or  
13 not it is a first class mail?

14 A. First class mail must always have a stamp  
15 on it that states "first class mail" unless there is  
16 some separate identify that clearly defines it as  
17 first class.

18 Q. Do you recognize anything on this document  
19 that would indicate that this was a first class mail?

20 A. No, I do not.

21 Q. Can you tell who this package was mailed  
22 from and to whom?

23 A. It was mailed from Jason Price, 108  
24 Belinger Lane, Orangebury, South Carolina to Makilia  
25 Meade, 2622 Gamble here in St. Thomas.

1 Q. What did you do after Officer Lopez handed  
2 you the package?

3 A. After Officer Lopez handed me the package,  
4 I took it away from the airplane. I opened it up and  
5 proceeded to find the weapon. After I located the  
6 weapon, we took it inside for further processing,  
7 taking the pictures, preserving the evidence, and I  
8 contacted HSI for further guidance.

9 Q. Did you take any pictures of what was  
10 inside the package?

11 A. Yes.

12 Q. I am going to show you Government's Exhibit  
13 2C.

14 A. That is when I opened the package, yes.

15 Q. 2D.

16 A. That was the contents of the sweater.

17 Q. 2E.

18 A. Serial number of the gun.

19 Q. And 2F?

20 A. The sweater that was used to conceal it.

21 Q. Did you take all those pictures?

22 A. Yes.

23 MS. VLASOVA: Government's Exhibit 2A  
24 through 2F into evidence.

25 MR. SANCHEZ-MERCADO: No objection,

1 Your Honor.

2 THE COURT: Yes, 2A through 2F are  
3 admitted.

4 MS. VLASOVA: Through 2F, yes?

5 THE COURT: 2A through 2F are admitted.

6 Officer Kouns, you said you opened the  
7 package. Under what circumstances do you open  
8 packages?

9 THE WITNESS: Usually we have to have  
10 some sort of reasonable cause to believe that  
11 there is something inside of it. In this  
12 particular case, it was a name. However, if  
13 something looks suspicious or it ties into  
14 something that we previously run across, we  
15 will open the package, make sure it is not  
16 contraband.

17 THE COURT: Go ahead.

18 Q. (By Ms. Vlasova:) The package that I just  
19 showed you, did Bo alert you to the package?

20 A. Yes.

21 Q. Was that the cause for you to open the  
22 package?

23 A. Yes.

24 Q. Is that a routine procedure?

25 A. Yes. If K-9 alert to a package, we will

1 examine it accordingly.

2 Q. I'm sorry, going back to the odor, when the  
3 package was given to you, were you able to observe  
4 anything about the odor when you -- before you opened  
5 the package?

6 A. Before I opened the package, I could not  
7 tell. I was outside in the breeze.

8 Q. What about it when you opened it?

9 A. When I opened the package, it was a very  
10 obvious odor of marijuana.

11 Q. Were you also employed as a CBP officer on  
12 April 3rd, 2017?

13 A. Yes.

14 Q. Did anything significant happen that day?

15 A. Yes.

16 Q. What happened?

17 A. Postal inspector had contacted us for  
18 assistance regarding the package with the same names,  
19 addresses of the individual from the previous  
20 package. Myself and Officer Lopez responded to the  
21 post office to examine the packages, and on this  
22 package, there was another pistol. However, leading  
23 up to it, he handed me a package. We went and  
24 x-rayed it. In that x-ray --

25 THE COURT: Back up. Officer Kouns,

1 you said in this package there was another  
2 what?

3 THE WITNESS: There was a second  
4 package on that day, yes.

5 THE COURT: Now, on April 3rd you  
6 responded to a call, correct?

7 THE WITNESS: Correct.

8 THE COURT: Okay. And did you say  
9 there was something in another package?

10 THE WITNESS: Yes, Sir.

11 THE COURT: Okay. And how were you  
12 aware that there was something in another  
13 package and what was the thing?

14 THE WITNESS: In this package, it was a  
15 strong odor of marijuana, and when we opened it  
16 up, there was a -- I believe it was a purse or  
17 item of that nature and a very small amount of  
18 marijuana in it. And as we were there, there  
19 was a third package with the name, and on that  
20 time is when we took that package through an  
21 x-ray machine and the x-ray revealed there was  
22 likely a pistol and what looked to be  
23 ammunition inside that package.

24 THE COURT: Just so I'm clear, you are  
25 saying on April 3rd there were two packages?

1 THE WITNESS: Yes.

2 THE COURT: Go ahead.

3 Q. (By Ms. Vlasova:) Now, let me direct your  
4 attention to the package that you took to the x-ray.

5 Did you take any pictures of that package?

6 A. Yes.

7 Q. Would you be able to recognize them?

8 A. Yes.

9 THE COURT: Officer Kouns, why did you  
10 x-ray the package that you x-rayed on  
11 April 3rd?

12 THE WITNESS: It felt as if it was a  
13 heavy item, and again it had the same address.  
14 This one was a heavy enough item. I was  
15 concerned it might be another weapon.

16 THE COURT: Officer Kouns, if you could  
17 slow it down just a little bit.

18 So, explain to me why you x-rayed the  
19 package that you x-rayed on April 3rd, 2017.

20 THE WITNESS: That package felt heavy  
21 and it was kind of odd. When you moved it, it  
22 was very odd. So it felt like there was a  
23 heavy metallic object inside of it or something  
24 of, you know, weight. So instead of just  
25 opening it up on the spot, we decided to take

1                   it to the X-ray, verify what was inside of it  
2                   in a non-intrusive manner. As we x-rayed it,  
3                   that's when it became apparent there was a  
4                   pistol inside of it, and we continued to open  
5                   it from there.

6                   THE COURT: Go ahead.

7                   Q.        (By Ms. Vlasova:) Was there anything you  
8                   observed about --

9                   THE COURT: Did I understand you to say  
10                  that -- you said instead of opening it, you  
11                  decided to x-ray it. Is it your understanding  
12                  that you would just routinely open it under  
13                  those circumstances?

14                  THE WITNESS: We could have, yes.

15                  THE COURT: All right, go ahead.

16                  Q.        (By Ms. Vlasova:) Was there anything you  
17                  were able to observe about who that package was coming  
18                  from and to whom?

19                  A.        Yes. It was the same name and address of  
20                  the previous seizure where there was a pistol  
21                  involved.

22                  Q.        And does Government's Exhibit 3A accurately  
23                  represent a photograph of that package?

24                  THE COURT: Mr. Kouns, what is Exhibit  
25                  3A?

## RICHARD KOUNS - DIRECT

50

1 THE WITNESS: Exhibit 3A is the  
2 priority mail, what you fill out when you go to  
3 mail the package. It is the name and address  
4 of the individuals that are shipping and  
5 receiving.

6 Q. (By Ms. Vlasova:) Is this a photograph --

9           A.     It's the same individuals from the first  
10           package where there is a pistol found, same  
11           individual and same address.

12 Q. Is this the photograph of that package?

13 A. Yes.

**14** Q. Did you take this photograph?

15 A. Yes.

**16** Q. Has it been changed or altered in any way?

17 A. No.

18 Q. Does it accurately represent the way that  
19 the package looked on April 3rd, 2017?

20 A. Yes.

21 Q. And are you able to determine anything  
22 regarding -- are you able to determine whether or not  
23 this is a first class mail item?

24                   A.     Again, this is not a first class mail  
25                   item. There is no stamping or anything representing

1 first class.

2 Q. Showing you Government's Exhibit 3B, do you  
3 recognize this item?

4 A. Yes. That will be the tracking number  
5 from the package.

6 Q. Is this a photograph of the package?

7 A. Yes.

8 Q. Who took this photograph?

9 A. Myself.

10 Q. And can you tell me what the tracking  
11 number on that item?

12 A. Tracking number is

13 9505510427847090057888 -- 86, sorry. 057688.

14 Q. After you arrived at the post office and  
15 you were given this item, you testified that you took  
16 it to the X-ray machine?

17 A. Correct.

18 Q. What were you able to determine from using  
19 the X-ray machine on this package?

20 A. As it went through the X-ray machine, the  
21 package came through and there was an obvious pistol  
22 inside of the package. There was the shape of a  
23 pistol, and part of the metallic object based on  
24 experience, it was a pistol. And also in that  
25 package you could see what was being used as

1 ammunition tucked in kind of a corner. So using  
2 that, we opened the package.

3 Q. When you say "we," did you open the  
4 package?

5 A. Myself, yes.

6 Q. Did you take any photographs of the items  
7 that were found inside of the package?

8 A. Yes.

9 Q. Going to show you Government's Exhibits 3C,  
10 3D and 3E. Do you recognize those items?

11 A. Yes.

12 Q. And how do you recognize them?

13 A. Those would be the contents of the package  
14 as 3A. It was --

15 THE COURT: Are they the contents,  
16 Officer Kouns, or are they a representation of  
17 the contents? What are they?

18 THE WITNESS: That is what was inside  
19 of that package.

20 THE COURT: Are they photographs?

21 THE WITNESS: Photographs, yes.

22 Q. (By Ms. Vlasova:) And who took those  
23 photographs?

24 A. Myself.

25 Q. And what did you do with the package after

1 you opened it?

2 A. After I opened the package, we processed  
3 the evidence accordingly and contacted HSI for  
4 further assistance.

5 Q. Were you able to determine anything about  
6 the weight of this package?

7 A. Can you clarify?

8 Q. Did this package, based on your physical  
9 contact, weigh more than 13-ounces?

10 A. Yes.

11 Q. Have you had a chance to examine the  
12 tracking information for this package?

13 A. Yes.

14 Q. Showing you Government's Exhibit 3F, have  
15 you preview this document before?

16 A. Yes.

17 THE COURT: Are you asking the witness  
18 about things he did prior to the search?

19 MS. VLASOVA: No, Your Honor.

20 THE COURT: All right, let's move on.

21 MS. VLASOVA: The Government moves  
22 Exhibits 3A through 3E into evidence.

23 MR. SANCHEZ-MERCADO: No objection,  
24 Your Honor.

25 THE COURT: 3A through 3E are admitted.

1 MS. VLASOVA: Court's indulgence?

2 THE COURT: Yes.

3 MS. VLASOVA: No further questions.

4 THE COURT: Attorney Sanchez-Mercado.

5 MR. SANCHEZ-MERCADO: Are there any  
6 Jencks regarding this witness? And I didn't  
7 request Jencks from the other witness.

8 THE COURT: The Government knows it  
9 obligation. Any Jencks?

10 MS. VLASOVA: I'm sorry, I didn't  
11 understand the question.

12 THE COURT: Any Jencks?

13 MS. VLASOVA: Oh, oh, Jencks has been  
14 provided.

15 THE COURT: All right.

16 **CROSS-EXAMINATION**

17 **BY MR. SANCHEZ-MERCADO:**

18 Q Mr. Kouns, morning. My name is Edgar  
19 Sanchez and I represent Steven Baxter. You said that  
20 on March 31st you were at the airport scanning  
21 packages. What does that mean?

22 A. We were on the plane, Officer Lopez was  
23 running his dog on the contents of the plane.

24 Q. You were scanning packages?

25 A. I was assisting.

1 Q. What is the meaning of scanning?

2 A. The K-9. So, we use the K-9 to scan the  
3 package, Bo's nose.

4 Q. So you work together with Officer Lopez.

5 A. Right. We're working side by side,  
6 correct.

7 Q. And Bo?

8 A. Yes.

9 Q. So when Officer Lopez found the package,  
10 you were there present.

11 A. I was standing just on the outside of the  
12 plane. He was in the plane.

13 Q. So you were quite close to him?

14 A. Very close, yes.

15 Q. You weren't in an office on the other side?

16 A. No.

17 Q. Okay. So when Officer Lopez -- when Bo  
18 sniffed the box, what happened afterwards?

19 A. I was handed the box from K-9 Officer  
20 Lopez where I took it just a few steps away from the  
21 plane and searched the box.

22 Q. You searched the box in an office or you  
23 just did it on the tarmac?

24 A. I did it right there on the tarmac.

25 Q. You have X-ray machines in your office

1 there in the airport?

2 A. We have a mobile X-ray vehicle that we  
3 routinely employ. On that particular day, we did  
4 not.

5 Q. Did you notice anything strange on the box,  
6 any weight on the box?

7 A. It was fairly heavy. I mean, consistent  
8 with many other seizures I've ever done.

9 Q. And you did the secondary inspection right  
10 there in the port, I believe.

11 A. Right, yes.

12 Q. You didn't have a table. You didn't have  
13 something to write on what was going on?

14 A. No.

15 Q. You remember the number of the package?

16 A. Right off-hand? No.

17 Q. No. Handing you Exhibit 2B. Government's  
18 Exhibit 2B, is that a package that you did a secondary  
19 inspection at the airport of the Virgin Islands on  
20 March 31st, 2017?

21 A. Yes.

22 Q. You were the one that took that picture?

23 A. Yes.

24 Q. Okay. That's the one that ends in 052979,  
25 correct?

1 A. Correct.

2 Q. So afterwards, you did a secondary  
3 inspection. What did you do afterwards? Did you  
4 prepare a report on that?

5 A. Yes. After I saw what was inside of it on  
6 the tarmac, I took it inside to my actual office  
7 where I did all the processing and the evidence and  
8 the taking the pictures.

9 Q. What else did you do in the processing?  
10 What process did you do in the process?

11 A. Create a report. I write a narrative for  
12 that report and I take the pictures and put all of  
13 the evidence in bags.

14 Q. And those reports, did you put a number on  
15 of the package involved in your investigation?

16 A. Yes.

17 Q. On the second package that you found on the  
18 postal office that you x-rayed, do you remember the  
19 number of that package?

20 A. No, not off the top of my head.

21 Q. Do you remember preparing a report on the  
22 numbers in those packages?

23 A. For the individual seizure, yes.

24 Q. If I could show you a document, would it  
25 refresh your recollection of those numbers in your

1 report?

2 A. Yes.

3 Q. Before that, how many reports did you do?

4 A. One for each package.

5 Q. One for each package. Okay.

6 MR. SANCHEZ-MERCADO: Court's

7 indulgence.

8 Q. You remember -- when did you do the report  
9 on the first package?

10 A. Same day, immediately.

11 Q. If I tell you that's May 11th, would that  
12 be an accurate date?

13 A. I cannot tell you off the top of my head.

14 MR. SANCHEZ-MERCADO: Permission to  
15 publish, Your Honor.

16 THE COURT: You can publish. There is  
17 no jury here.

18 Q. You remember that report?

19 A. Yes.

20 Q. What date is it written?

21 A. Yes, May 11th.

22 Q. So it is not the same day the event  
23 happened?

24 A. This is the subsequent statement.

25 Q. Quite a few weeks after. So you did

1 another report before this one?

2 A. The seizure report.

3 Q. The seizure report?

4 A. Yes.

5 Q. And in this report that you made, did you  
6 put the tracking number of the package?

7 A. There is no tracking number on this.

8 Q. This is your report?

9 A. Yes.

10 Q. And what happened with that seizure report?

11 Who did you give the seizure report?

12 A. That is the internal agency seizure  
13 report. I mean, we finish it, it goes to our  
14 supervisors and I do not know where it goes after  
15 that.

16 Q. So basically those are your notes?

17 A. As far as I know.

18 Q. And do you have a copy of them?

19 A. I do not.

20 Q. Who has a copy of them?

21 A. It's in the -- it's on our computer  
22 system. I could have access to it and get a copy of  
23 it.

24 MR. SANCHEZ-MERCADO: Your Honor, for  
25 the record, we don't have that seizure report.

1 It hasn't been disclosed. That's why we were  
2 asking for Jencks.

3 THE COURT: Are you saying that there  
4 is some Jencks material that you wish to get  
5 that you believe you haven't received? Is  
6 there some utterance of this witness that was  
7 reduced to a writing?

8 MR. SANCHEZ-MERCADO: Definitely, Your  
9 Honor. It's the agency's, Your Honor.

10 THE COURT: The Government said that  
11 she's produced --

12 MR. SANCHEZ-MERCADO: At least that  
13 report -- the seizure report was not produced,  
14 Your Honor. The only thing that we have --

15 THE COURT: Is that something that you  
16 authored, Officer Kouns?

17 THE WITNESS: The seizure report, yes.

18 THE COURT: All right. Is that  
19 something that the Government turned over?

20 MR. SANCHEZ-MERCADO: I believe not,  
21 Your Honor.

22 THE COURT: I am asking Attorney  
23 Vlasova.

24 MS. VLASOVA: Your Honor, the  
25 Government turned over the two items that would

1 be Mr. --

2 THE COURT: Let me just see if I could  
3 focus this. There is reference to a seizure  
4 report that this witness says he authored. Has  
5 that seizure report, whatever it is, been  
6 turned over?

7 MS. VLASOVA: No, Your Honor.

8 THE COURT: All right. Let's proceed  
9 and we will deal with that shortly.

10 MR. SANCHEZ-MERCADO: May I ask, Your  
11 Honor, also?

12 Q. (By Mr. Sanchez-Mercado:) If on the second  
13 report that you made, the second inspection that you  
14 did at the post office in the second package, did you  
15 do a seizure report also?

16 A. Yes, there is one for each package.

17 Q. There is one for each package? In addition  
18 of this memorandum here, correct?

19 A. Correct.

20 Q. Okay. I am going to show you another  
21 report. What date is it?

22 A. May 11, 2017.

23 Q. So, does that report by itself contain the  
24 tracking number of the packages that you opened?

25 A. There are no tracking numbers on that

1 report.

2 Q. And you said that you x-rayed that second  
3 package because it seemed heavy?

4 A. Eh-hmm.

5 Q. I asked you if you printed an image of --  
6 did the X-ray machine that you used have the ability  
7 to print images?

8 A. That particular one does not.

9 Q. You took a picture of what was depicted in  
10 the screen when you --

11 A. There was no picture.

12 Q. -- entered the baggage?

13 A. There was no picture taken as far as I'm  
14 aware.

15 Q. Was the weapon in parts or was it -- when  
16 you say you saw a weapon, you saw parts of it, or what  
17 you saw?

18 A. In that case, it looked like a full  
19 pistol.

20 Q. Looked like a full pistol?

21 A. Correct.

22 Q. And yet, again, you didn't get a search  
23 warrant. You didn't request a search warrant?

24 A. No.

25 Q. In the first package, you never took a

1 search warrant, never went to ask for a search warrant  
2 on the package?

3 A. No.

4 Q. Once you do your seizure report with the  
5 package number and the tracking, do you do anything  
6 else? Do you investigate where the package came from,  
7 the origin of the package, the timeline of the package  
8 is coming from, from Point A to Point B?

9 A. No. That is all done from different  
10 agency or HSI or postal inspectors.

11 Q. So a postal inspector or Homeland Security  
12 are the ones that perform the investigation?

13 A. Correct.

14 Q. Not you?

15 A. No.

16 Q. And the first package that you picked was  
17 on March 31, 2017, correct?

18 A. Yes.

19 Q. At the airport in the tarmac of St. Thomas  
20 in the Virgin Islands?

21 A. Correct.

22 Q. Wasn't in Puerto Rico?

23 A. No.

24 Q. It wasn't in South Carolina?

25 A. No.

1 Q. It was in St. Thomas?

2 A. Correct.

3 MR. SANCHEZ-MERCADO: No further  
4 questions, Your Honor.

5 THE COURT: Any redirect?

6 MS. VLASOVA: Yes, Your Honor.

7 **REDIRECT-EXAMINATION**

8 **BY MS. VLASOVA:**

9 Q. You just testified that you were assisting  
10 Officer Lopez on March 31, 2017; is that correct?

11 A. Correct.

12 Q. What did you observe -- did you observe Bo  
13 alerting to the package I showed you in Government's  
14 Exhibit 2A?

15 A. I did not observe the direct alert, no.

16 Q. Did you observe Officer Lopez handing you  
17 the package that Bo alerted to?

18 A. Yes.

19 Q. Did you observe the -- I'm going to show  
20 you previously admitted Government's Exhibit 2A. Were  
21 you able to observe the name to whom this package was  
22 addressed to and from?

23 A. Yes.

24 Q. You were previously shown your statement --  
25 two statements on May 11th.

1 A. Correct.

2 Q. What is the subject line of that statement?

3 A. Subject line is SCCY Firearm --

4 THE COURT: All right, let's move on.

5 I've got the document. I don't need to hear  
6 this. This is a suppression, just testing the  
7 constitutionality of the search. Let's go  
8 forward.

9 Q. (By Ms. Vlasova:) The package that you had  
10 contact with at the postal service that you determined  
11 to have a weapon in it, were you able to determine if  
12 that package was coming from and to the same person as  
13 the item in Government's Exhibit 2A?

14 A. Yes.

15 Q. What were you able to determine?

16 A. It was the same shipper, the same  
17 recipient, same address.

18 THE COURT: We've covered this. Let's  
19 try to move on.

20 Q. (By Ms. Vlasova:) Did that give you  
21 reasonable cause to believe that there was contraband  
22 in the item -- in the package that you came in contact  
23 with at the post office?

24 A. Yes.

25 THE COURT: All right, let's move on.

1                   The legal determination is for the Court. He  
2                   could tell us what he did. He's a fact  
3                   witness. Go ahead.

4                   MS. VLASOVA: Court's indulgence.

5                   THE COURT: Agent Kouns, am I to  
6                   understand that other than what you have been  
7                   shown during the course of this proceeding,  
8                   there is another document that you referred to  
9                   as a seizure report that has not been presented  
10                  to you, at least during this hearing?

11                  THE WITNESS: I have not seen it, no.

12                  THE COURT: Okay. But you did author  
13                  it; is that correct?

14                  THE WITNESS: Yes.

15                  THE COURT: All right. Go ahead.

16                  Q.        (By Ms. Vlasova:) Is the content of that  
17                  report substantially the same as your two statements,  
18                  or I'm sorry. Are those two seizures substantially  
19                  the same as the two statements?

20                  MR. SANCHEZ-MERCADO: Objection, Your  
21                  Honor.

22                  THE COURT: It's leading. Sustained.

23                  MS. VLASOVA: No further questions.

24                  THE COURT: Agent Kouns, thank you for  
25                  your testimony. You may step down. Next

1 witness.

2 THE WITNESS: Thank you, Your Honor.

3 MS. VLASOVA: Your Honor, the  
4 Government does not have any further witnesses.

5 THE COURT: All right. Attorney  
6 Sanchez-Mercado, do you have any witnesses?

7 MR. SANCHEZ-MERCADO: Your Honor, we  
8 don't have any witnesses. We would like to  
9 present as evidence a document.

10 THE COURT: You would like to what?

11 MR. SANCHEZ-MERCADO: Present a  
12 document as part of the defense. It's an  
13 exhibit of the defense.

14 THE COURT: You would like to present  
15 documents? What, you wish to move certain  
16 things into evidence for purposes of this  
17 hearing that you previously provided through  
18 the witnesses or you proffered through the  
19 witnesses?

20 MR. SANCHEZ-MERCADO: Were previously  
21 provided by the Government. It's some  
22 self-authenticating evidence. It's logs from  
23 the U.S. Postal Service and it was given by the  
24 Government in discovery. It was part of the  
25 documents proffered that were going to be

1 proffered before this Court by the Government.

2 They are marked as Government's Exhibit 2G. It  
3 is a daily public record. It is, I believe,  
4 under 803(8)(b), I believe. It's a document  
5 that I imagine that the Government would not  
6 oppose, and it can be presented in evidence.

7 MS. VLASOVA: May I view the document?

8 THE COURT: I'm not even sure what  
9 we're talking about. So, other than that  
10 description -- let me ask you, do you have any  
11 witnesses?

12 MR. SANCHEZ-MERCADO: We don't have any  
13 witnesses.

14 THE COURT: You just wish for the Court  
15 to consider some documents that what, you wish  
16 to include by stipulation? The Government  
17 hasn't stipulated to anything. Are you asking  
18 --

19 MR. SANCHEZ-MERCADO: The Government --

20 THE COURT: Typically we do this by  
21 asking your sister, not by asking the Court. I  
22 mean, if she stipulates to certain things for  
23 purposes of this hearing, we're on a different  
24 footing. But typically when the document is  
25 brought in, there is someone who usually

1 authenticates.

2 MS. VLASOVA: Your Honor, there is no  
3 stipulation to this document described that it  
4 was provided in discovery.

5 THE COURT: Speak into the microphone  
6 so we could hear you clearly.

7 MS. VLASOVA: Your Honor, this document  
8 was provided in discovery; however, there is no  
9 stipulation to its authentication as to this  
10 hearing and it has not been introduced by the  
11 Government. There is no stipulation.

12 MR. SANCHEZ-MERCADO: The Government  
13 is not stipulating to the document. I believe  
14 that it was given by them. I still believe  
15 that the rules apply in that.

16 THE COURT: I mean, ordinarily just  
17 because a document is provided to you doesn't  
18 mean that it is what you purport it to be.

19 MR. SANCHEZ-MERCADO: But if we go to  
20 the rule, it's 803, it would be a public  
21 record. It would be a public document in the  
22 ordinary course of business.

23 THE COURT: I haven't even seen the  
24 document here. You're telling me about a  
25 document. You could put it on the Elmo.

1 There's no jury here. You could show us what  
2 it is you're talking about.

3 MR. SANCHEZ-MERCADO: That's the  
4 document, Your Honor, by the U.S. Postal  
5 Service.

6 THE COURT: But is there someone who  
7 says what the thing is?

8 MR. SANCHEZ-MERCADO: The case agent in  
9 the case.

10 THE COURT: Did you ask the case agent?

11 MR. SANCHEZ-MERCADO: I haven't asked  
12 because I will have to do a FOIA request and I  
13 thought that it was going to be brought by the  
14 Government at the moment. So if I could see  
15 the case agent, I could present the document  
16 just with the case agent, Your Honor.

17 THE COURT: If you want to call a  
18 witness, that's why I'm giving you the  
19 opportunity to call any witness but you said  
20 you didn't want to call a witness and you're  
21 presenting a document, the authenticity of  
22 which is not verified. The Government said  
23 there is nothing indicating authenticity and  
24 the Government isn't stipulating to it. Now,  
25 certainly the rules can certainly be waived a

1 bit more, flexibility, but --

2 MR. SANCHEZ-MERCADO: We would like to  
3 request Agent Blyden as a witness, Your Honor.

4 THE COURT: All right. Call your  
5 witness.

6 MR. SANCHEZ-MERCADO: Defense will be  
7 calling Agent Blyden.

8 **ALICIA BLYDEN**,  
9 called as a witness, having been first duly sworn,  
10 testified on her oath as follows:

11 **DIRECT EXAMINATION**

12 **BY MR. SANCHEZ:**

13 Q. Morning, Agent Blyden?

14 A. Morning.

15 MR. SANCHEZ-MERCADO: Your Honor, being  
16 that it's the case agent, we would like to  
17 request permission to be leading in our  
18 questions, Your Honor.

19 THE COURT: All right. Well, let's see  
20 how the questioning goes. Go ahead.

21 MR. SANCHEZ-MERCADO: It won't take  
22 long, Your Honor.

23 Q. (By Mr. Sanchez-Mercado:) Morning. Can  
24 you state your full name and what type of -- line of  
25 work do you do?

1 A. Alicia Blyden, Homeland Security

2 Investigation, special agent.

3 Q. And within your duties as a special agent  
4 for Homeland Security Investigations, what do you do?

5 A. My duties as a special agent with Homeland  
6 Security Investigations, I investigate violations of  
7 the Customs and Immigration laws. Also investigate  
8 money laundering, child pornography and firearms  
9 trafficking.

10 Q. Regarding firearms, what do you do?

11 Regarding firearms, what is your --

12 A. Investigate firearms trafficking and  
13 violations of the firearms laws.

14 Q. Regarding March 31, 2017, did you do any  
15 investigation regarding firearms?

16 A. Yes.

17 Q. Can you please tell us what investigation  
18 did you do.

19 A. On March 31, 2017 I was contacted by CBP  
20 in reference to a firearm that was discovered while  
21 they were conducting inspections.

22 Q. Inspections of what?

23 A. Inspections of the mail coming in from the  
24 Continental United States.

25 Q. You had an opportunity to check that mail

1 that was inspected?

2 A. Yes, I responded to the AT-CET office and  
3 at that point is where I saw the firearm, the box and  
4 the contents that was in there.

5 Q. Did you see the box? Did you take any  
6 pictures of the box?

7 A. I have seen the box.

8 Q. You did any report regarding the box?

9 A. If I did a report? Yes.

10 Q. And I ask if you remember the number of the  
11 box.

12 A. If I remember the number -- the tracking  
13 number of the box?

14 Q. The tracking number of the package.

15 A. Not off-hand, but if I can see it, I  
16 can --

17 MR. SANCHEZ-MERCADO: Court's  
18 indulgence.

19 Q. Government's Exhibit 2B.

20 A. Yes. The tracking number ending in  
21 052979.

22 Q. And did you record that number? You made a  
23 report of that number?

24 A. I made a report on the seizure. So my  
25 report, I don't believe it had in that number but I

1 made a report on that seizure itself and the contents  
2 that was found that day.

3 Q. And regarding the package and the origin of  
4 the package, did you conduct any other investigation  
5 regarding that tracking number?

6 A. I don't understand your question.

7 Q. Regarding that tracking number, did you do  
8 any other investigation regarding from where it came  
9 and the timeline found on the package?

10 MS. VLASOVA: Objection.

11 THE COURT: The Government objects?

12 MS. VLASOVA: Relevance.

13 THE COURT: Sustained.

14 Q. By any chance, did you did an investigation  
15 regarding the tracking number in the U.S. Postal  
16 Office?

17 A. I was assisted by the postal inspector who  
18 did his thing with the postal tracking number, but I  
19 did not, no.

20 MS. VLASOVA: Your Honor, objection.

21 THE COURT: Sustained.

22 Q. Have you ever seen this package before?

23 MS. VLASOVA: Objection.

24 THE COURT: Sustained. Attorney  
25 Sanchez-Mercado, are you getting into things

1 that occurred leading up to the search? That  
2 is, the test in suppression is the  
3 constitutionally permissible conduct that  
4 occurred, or whether there was unconstitutional  
5 conduct that occurred leading up to the search.  
6 It's not a trial. So, is that where you're  
7 headed with this witness?

8 MR. SANCHEZ-MERCADO: Your Honor, it  
9 goes straight to this case, that this was an  
10 illegal search. It goes straight to the  
11 Constitution, and it isn't about guilt or  
12 innocence. It goes straight to the  
13 Constitution, and she is the case agent. She  
14 did all of the investigation, reviewed all of  
15 the documents and this is one of the documents  
16 of that investigation. She just testified --

17 THE COURT: This occurred post-search  
18 or pre-search?

19 THE WITNESS: This document, it's  
20 post-search, but my questions are going  
21 pre-search, Your Honor.

22 THE COURT: All right. Well, go ahead  
23 on your pre-search.

24 Q. (By Ms. Vlasova:) Have you ever seen the  
25 document before?

1 A. Yes.

2 Q. Can you explain to us --

3 THE COURT: Come to sidebar.

4 [Sidebar.]

5 MR. SANCHEZ-MERCADO: Thank you. Edgar  
6 Sanchez for the record. I have to address the  
7 document because it has a specific timeline on  
8 the package. That's what I'm saying, that this  
9 pre -- was searched.

10 THE COURT: Where is the document?

11 MR. SANCHEZ-MERCADO: This is the  
12 document, Your Honor. I don't have my glasses.  
13 I left them, Your Honor.

14 THE COURT: So tell me where you are  
15 going.

16 MR. SANCHEZ-MERCADO: It goes to the  
17 facts on the second page, Your Honor. It goes  
18 to the facts of the case, the day that both  
19 agents are alleging, that the package was in  
20 St. Thomas. This is the tracking confirmed.  
21 This is given by the Government, analyzed by  
22 the case agent. It says that on March 31st the  
23 package was in San Juan, Puerto Rico. That's  
24 what I'm saying, that it goes to -- I was  
25 trying to --

1 [Sidebar ended.]

2 THE COURT: All right, go ahead.

3 Q. So based on your investigation, you were --  
4 under your investigation, that package arrived in  
5 St. Thomas on March 31st, correct?

6 A. The package that you just showed me, yes.

7 Q. And when you were with the postal  
8 inspector, did you check on --

9 A. No, I did not check, sir.

10 Q. Okay. On your investigation to getting  
11 prepared for this case, did you submit it to the  
12 Government, this track and confirm document by the  
13 U.S. Postal Office?

14 A. Can you show the whole --

15 Q. We just marked it as Government's Exhibit  
16 3G in preparation for this hearing, correct?

17 A. Okay, repeat your question.

18 Q. In preparation for this hearing, did you  
19 examine that document?

20 A. Prior to the -- before this hearing?

21 Q. Yes.

22 A. Yes.

23 Q. And can you please tell us on page two,  
24 where was -- on the 31st of March, where was the  
25 package?

1           A.        Okay.  On the 31st of March, again, that's  
2        an internal system.  It shows Cataño, Puerto Rico,  
3        but how do I explain it because it's internal.

4           Q.        Says location and then it says event time  
5        and event date.

6           A.        Okay.

7           Q.        We were conducting a controlled delivery.  
8        So the information might be -- in there might be  
9        different from what actually -- have so that the  
10      person --

11           THE COURT:  Am I to understand that by  
12        this document defense has just put up that the  
13        item that was -- that I believe you testified  
14        was in St. Thomas on March 31st --

15           THE WITNESS:  Correct.

16           THE COURT:  -- is not in St. Thomas on  
17        March 31st?

18           THE WITNESS:  The system is showing  
19        that --

20           THE COURT:  My question is just a yes  
21        or no:  Is it in St. Thomas or not?

22           THE WITNESS:  The package was in  
23        St. Thomas, but in the system, in order for us  
24        to do our control delivery, the system showed a  
25        different location.

1 Q. (By Mr. Sanchez-Mercado:) You did a  
2 control delivery on the first package?

3 A. We did a control delivery on both packages  
4 at the same time and the control delivery was done on  
5 the 5th of April. So we physically have the package  
6 and we were working with U.S. Postal Inspection. So,  
7 if the target --

8 THE COURT: When you say a control  
9 delivery, it was done on the 5th of April, what  
10 does that mean?

11 THE WITNESS: When I say a control  
12 delivery was done, we were monitoring the  
13 packages. After the package was seized on the  
14 31st, Postal was alerted to it. So we knew  
15 that someone will be coming to pick up that  
16 package. So the information in the system is  
17 what the target will see. So we took that  
18 package, we got a warrant for a tracker, a GPS  
19 tracker, and with the second package, we placed  
20 it back in. We removed the firearm. We placed  
21 it back in and put it at the post office to see  
22 who would pick up that package on the 5th -- on  
23 the 4th and the 5th. So the system will show  
24 that it's in Puerto Rico, but in actuality, we  
25 had the package here in St. Thomas.

## ALICIA BLYDEN - DIRECT

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1 THE COURT: And when you say "the  
2 package," which package are you referring to?

9 THE COURT: Go ahead

10 Q. (By Mr. Sanchez-Mercado:) Just one  
11 question. You said you got a warrant for a GPS  
12 tracker?

13 A. Yes.

**14** 0. Do you have copies of that warrant?

15 THE COURT: Let's move on.

16 MR. SANCHEZ-MERCADO: I have no further  
17 questions, Your Honor.

**18** THE COURT: Any cross?

19 MR. SANCHEZ-MERCADO: It said  
20 Government's Exhibit 3G to be present  
21 defense exhibit.

**22** THE COURT: Well, we use numbers.

23 Attorney Vlasova.

24 MS. VLASOVA: Your Honor, we object to  
25 that.

1 THE COURT: You want to cross examine  
2 the witness?

3 MS. VLASOVA: Yes.

## **CROSS-EXAMINATION**

5 BY MS. VLASOVA:

6 Q. Agent Blyden, you were just shown a  
7 document with the tracking information for a package;  
8 is that correct?

9 A. Correct.

**10** THE COURT: Then refer to the document.

**11** It's 2G.

12 A. 2G.

13 Q. Do you see the column titled "Input  
14 Method?"

15 MR. SANCHEZ-MERCADO: Objection, Your  
16 Honor. Beyond the scope.

17 THE COURT: Overruled.

**18** Q. Do you see the column titled --

**19** A. Yes, I do.

20 Q. And are you able to determine how  
21 information is uploaded in the system through -- which  
22 input standards?

23 A. I'm sorry?

24 Q. Are you able to determine from that column  
25 how information is uploaded in the system?

1           A.     It shows stamps from it scanned, and this  
2     is not my system.  This is Postal system.  So I'm not  
3     sure how, you know, how their system is, but I could  
4     say from what I'm seeing.

5           THE COURT:  Don't guess.  If you don't  
6     know, you don't know.  Move on.  Next question.

7           Q.     (By Ms. Vlasova:)  Let me ask it this way.  
8     What information appears in the system if the package  
9     was not scanned?

10           THE COURT:  You are asking her a  
11     hypothetical.  She just said it's not her  
12     system.  So, let's move on.

13           Q.     Did you scan the item number prior to  
14     conducting the controlled delivery?  Was the item  
15     scanned in the system prior to you conducting  
16     controlled delivery?

17           A.     I did not scan it.  I will have to refer  
18     to the postal inspector.  I can say that I had the  
19     package in my possession on that day.

20           Q.     On what day?

21           A.     On March 31, 2017.

22           Q.     And where was that located?

23           A.     That was at the AT-CET office in CBP.

24           Q.     Is that in St. Thomas?

25           A.     In St. Thomas, yes.

1 MS. VLASOVA: No further questions.

2 THE COURT: Any redirect?

3 MR. SANCHEZ-MERCADO: No, Your Honor,  
4 no further.

5 THE COURT: Agent Blyden, thank you for  
6 your testimony. You may step down.

7 THE WITNESS: Thank you, Your Honor.

8 THE COURT: Any other testimony,  
9 Attorney Sanchez-Mercado?

10 MR. SANCHEZ-MERCADO: No, Your Honor.

11 That would be all of the witnesses that would  
12 be presented.

13 MS. VLASOVA: Your Honor, the  
14 Government wishes to recall Officer Kouns.

15 THE COURT: Does the defense have any  
16 objection to --

17 MR. SANCHEZ-MERCADO: I have an  
18 objection, Your Honor.

19 THE COURT: You what?

20 MR. SANCHEZ-MERCADO: Regarding the  
21 purpose of recalling Agent Kouns.

22 THE COURT: Okay, what prejudice would  
23 you have?

24 MS. VLASOVA: Your Honor, the  
25 Government --

## RICHARD - REDIRECT

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1 THE COURT: No, I'm asking your  
2 brother.

3 MR. SANCHEZ-MERCADO: If the intention  
4 of presenting Officer Kouns is to try to go  
5 back again to that document, he cannot testify  
6 regarding that because he already testified on  
7 all of the documents that he had, and there's  
8 still pending that there is a Jencks issue here  
9 that was not delivered. Now we have a third  
10 issue that there was a GBS warrant for a device  
11 that we don't have in our discovery also, Your  
12 Honor.

16 Agent Kouns, you remain under oath, do  
17 understand?

18 AGENT KOUNS: Yes, Your Honor.

**19** THE COURT: All right. Go ahead.

1 RICHARD KOUNS,  
2 recalled as a witness,  
3 testified on his oath as follows:  
4 **FURTHER REDIRECT EXAMINATION**  
5 **BY MS. VLASOVA:**  
6 MS. VLASOVA: The Court's indulgence.  
7 Q. Officer Kouns, on your direct testimony --  
8 I'm sorry, on cross examination you were asked about a  
9 seizure order that you prepared in response to your  
0 seizure of the two packages that you testified about;  
1 is that correct?  
2 A. Correct.  
3 Q. Would you be able to identify that report?  
4 A. Yes.  
5 Q. I am going to show you Government's  
6 Exhibits 5 and 6. Do you recognize this document?  
7 A. Yes.  
8 Q. Did you prepare this document?  
9 A. Yes.  
10 Q. Could you explain what this document is?  
11 A. This is the narrative to a seizure report  
12 I created after finding the --  
13 THE COURT: Attorney Vlasova, you  
14 referred to two exhibit numbers. You want to  
15 show the witness 5 and 6? What are you showing

1 the witness?

2 MS. VLASOVA: Your Honor, I am showing  
3 Government's Exhibit 5 at the moment.

4 THE COURT: All right.

5 Q. (By Ms. Vlasova:) And again could you  
6 explain what date was the report made and what is the  
7 report referring to?

8 A. This report was made immediately after the  
9 discovery on Friday, March 31st. It contains all the  
10 information regarding the package with the tracking  
11 number, how it was found, the serial numbers, where  
12 it was going, who it was going to, and the listed  
13 contents 0012 through 005, what was found inside that  
14 package.

15 Q. And is this the same information as I was  
16 showing you in Government's Exhibit 2A through F?

17 A. Yes.

18 Q. And could you tell me what the tracking  
19 number is for the item that was seized here?

20 A. This is the package of tracking number  
21 9505510427837088052979.

22 Q. And would you recognize the seizure report  
23 that you prepared in reference to the second package  
24 that I've asked you about on direct?

25 A. Yes.

1 Q. I'm showing you Government's Exhibit 6. Do  
2 you recognize this document?

3 A. Yes.

4 Q. How do you recognize it?

5 A. It is a narrative I typed for a seizure  
6 report with regards to the contraband that was  
7 seized.

8 Q. And what is the date?

9 THE COURT: Seized when?

10 THE WITNESS: On April 3rd, 2017.

11 Q. And what is the item that was seized?

12 A. In this package there was a Bersa firearm  
13 pistol, magazine to go with that pistol, and numerous  
14 amounts of ammunition.

15 Q. Do you see the tracking number for this  
16 package?

17 A. Yes.

18 Q. What is that tracking number?

19 A. 9505510427847090057688.

20 MS. VLASOVA: Court's indulgence?

21 THE COURT: Yes.

22 Q. (By Ms. Vlasova:) I'm sorry. In reference  
23 to Government's Exhibits 5 and 6, did you write those  
24 reports?

25 A. I did write these reports, yes.

Richard Kouns -- FURTHER RECROSS

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1 Q. Are there any additional reports that you  
2 prepared in reference to the seizures that were not  
3 shown in Exhibit A?

4 A. No.

5 MS. VLASOVA: No further questions.

6 THE COURT: Attorney Sanchez-Mercado?

7 **FURTHER RECROSS-EXAMINATION**

8 **BY MR. SANCHEZ:**

9 Q. Also that report doesn't have your  
10 signature there, right?

11 A. No.

12 Q. This is computer-generated?

13 A. Computer-generated, yes.

14 Q. So it has to go to a supervisor of yours?

15 A. Yes.

16 Q. Who was your supervisor at the moment?

17 A. At that particular time it was Chief Alan  
18 Smith.

19 Q. And you also did -- on the date of  
20 March 31, 2017, right?

21 A. Correct.

22 Q. Now, in your other report, it says,  
23 April 3rd, 2017. It says that the package was also  
24 inspected by Bo who alerted to the mail parcel.

25 A. Correct.

1                   Q.     So were you -- on your testimony you said  
2     that you went because it was the same sender and the  
3     same recipient, but you never mentioned that it was  
4     something that Bo alerted.

5                   A.     That's correct.

6                   MR. SANCHEZ-MERCADO: I have no further  
7     questions, Your Honor.

8                   THE COURT: Any redirect?

9                   MS. VLASOVA: Yes, Your Honor.

10                  **FURTHER REDIRECT-EXAMINATION**

11                  **BY MS. VLASOVA:**

12                  THE COURT: Officer Kouns, am I to  
13     understand that -- let me rephrase that  
14     question. Did Bo inspect the package that was  
15     seized on April 3rd, 2017?

16                  THE WITNESS: It is my recollection  
17     that after I discovered what it was --

18                  THE COURT: My question is just a yes  
19     or no.

20                  THE WITNESS: Yes, after the fact.

21                  THE COURT: After what?

22                  THE WITNESS: After the fact, yes.

23                  THE COURT: After what fact?

24                  THE WITNESS: I found after the x-ray  
25     and initial opening of the box.

## Richard Kouns -- FURTHER REDIRECT

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1 THE COURT: So you opened the box,  
2 examined its contents and then had the dog  
3 sniff?

**4** THE WITNESS: Correct.

5 THE COURT: Why?

6 THE WITNESS: It was more of a training  
7 purpose at that time.

8 THE COURT: Go ahead.

9 BY MS. VLASOVA:::

10 Q. In reference to the seizure on April 3rd,  
11 what was the first thing that you did with the box  
12 when you came in contact with it?

13                   A.        The first thing I did was take it to the  
14                   X-ray machine.

15 THE COURT: We've been over this in  
16 your direct.

17 MS. VLASOVA: Yes, Your Honor. I was  
18 simply looking to establish the timeline of the  
19 sniff and the X-ray.

THE COURT: Of the what, the sniff?

**21** MS. VLASOVA: The dog alert, yes.

22 THE COURT: He just said he did it  
23 after the fact.

24 MS. VLASOVA: Yes, Your Honor. I have  
25 no further questions for this witness, Your

1 Honor.

2 THE COURT: Officer Kouns, thank you  
3 for your testimony. You may step -- actually  
4 before you step down, any questions based on my  
5 questions?

6 MR. SANCHEZ-MERCADO: No, Your Honor.

7 THE COURT: All right, thank you for  
8 your testimony. You may step down.

9 THE WITNESS: Thank you, Your Honor.

10 THE COURT: Okay, the Government  
11 burden. You wish to be heard, Attorney  
12 Vlasova?

13 MS. VLASOVA: Yes, Your Honor.

14 Your Honor, all mail that arrive from the  
15 United States into the Virgin Islands that is to  
16 be delivered in the United States Virgin Islands  
17 is subject to Customs examination. Now, an item  
18 that appears to contain more than correspondence,  
19 as in a package as we have in this particular  
20 case, the Customs officer can inspect it and they  
21 can open it if there is a reasonable cause to  
22 suspect that there is contraband or merchandise  
23 in that particular item.

24 THE COURT: What constitutes reasonable  
25 cause?

1 MS. VLASOVA: Yes, Your Honor.

2 Reasonable cause is defined as reasonable cause  
3 to suspect that there's either merchandise or  
4 contraband in the particular package.

5 THE COURT: So, is it the United  
6 States' position that if a Customs officer  
7 feels a package, it's heavy and it has a  
8 destination, an origin that resembles a prior  
9 destination and origin, that Customs can open  
10 the package, examine it?

11 MS. VLASOVA: Your Honor, reasonable  
12 cause can be --

13 THE COURT: Well, that's a yes or no  
14 question. Is that the United States' position?

15 MS. VLASOVA: Yes, Your Honor, that is,  
16 in fact, one of the ways that particular  
17 officer can determine that there is reasonable  
18 cause to open a package.

19 THE COURT: But I listened to the  
20 testimony carefully of Officer Kouns and it  
21 sounds like his position or the position of the  
22 Government was that -- I'm not even sure if  
23 that's needed, according to his position. He  
24 can open the package provided it's not first  
25 class mail. Is that the United States'

1 position?

2 MS. VLASOVA: The reasonable cause can  
3 be --

4 THE COURT: My question is a yes or no.  
5 Then I'm gonna give you time to explain, but is  
6 it the United States position that a Customs  
7 officer can open a package from a United States  
8 origin to United States destination because the  
9 United States destination happens to be the  
10 Virgin Islands?

11 MS. VLASOVA: There has to be  
12 reasonable cause. If there is reasonable cause  
13 to believe that there's contraband or  
14 merchandise in that package, then, yes. The  
15 reasonable cause can be established through  
16 various means, including the dog alert or an  
17 x-ray machine. Also the reasonable cause can  
18 be established through --

19 THE COURT: I was focusing on the  
20 second search, the April 3rd, 2017 search for  
21 the moment, not the March 31st search. And as  
22 I understand the testimony collectively, it  
23 seems that the position is that a parcel that  
24 originates in the United States or city and is  
25 destined for the United States city, St. Thomas

1                   in this case, that because of the destination,  
2                   and not because of the parcel that you can open  
3                   it without much more.

4                   MS. VLASOVA: The section 145.3 of the  
5                   CFR Section 8 indicates that there has to be  
6                   reasonable cause in order to open that package.  
7                   Now, the reasonable cause can come from the  
8                   field or the weight of the item. It can also  
9                   come from a previous source of information that  
10                  would lead an officer to believe that there is  
11                  contraband in the package. However, in  
12                  addition to that, as happened on April 3rd,  
13                  2007, CBP officers may examine the package by  
14                  conducting an x-ray of --

15                  THE COURT: 2007. You said 2007.  
16                  2017.

17                  MS. VLASOVA: Yes, 2017. Now, as I  
18                  said, the CBP officers may examine that package  
19                  by conducting an x-ray of the package. Now,  
20                  when Officer Kouns conducted an x-ray of the  
21                  package that provided him with even additional  
22                  reasonable cause to believe that there was  
23                  contraband as he testified he saw that there  
24                  was a weapon that showed on the X-ray machine  
25                  which led him to open the package.

7 MS. VLASOVA: Well, Your Honor, the  
8 reason that the package was under further  
9 investigation was because the package contained  
10 the same --

11 THE COURT: Let me try it again. My  
12 question is just a yes or no. Is it enough if  
13 you have the same sender and recipient as the  
14 agency has been exposed to and the weight is  
15 heavy, is that enough for the agent to open the  
16 package?

17 MS. VLASOVA: If the weight, feel or  
18 sound indicate that there is merchandise or  
19 contraband that could be in the mail, it could  
20 be -- if that alone could provide reasonable  
21 cause for a CBP agent to open the package;  
22 however, that is not the case in this  
23 particular situation.

24 THE COURT: That's why I want you to  
25 listen to my question. My question was, there

1 are two things that I am pointing out to you.  
2 One is where you have the same sender and  
3 recipient, that's one item; and you have  
4 weight. Is that generally the case that that  
5 is enough to open the package. That's the  
6 United States position?

7 MS. VLASOVA: Your Honor, those are  
8 actually identified as separate avenues to  
9 obtain reasonable --

10 THE COURT: It's not a trick question.  
11 I'm just asking you yes or no because as I  
12 understand, that was the testimony of  
13 Mr. Kouns. I thought he said, one, the sender  
14 and recipient were the same; and two, the  
15 weight was heavy. And I am asking you, is it  
16 the United States position notwithstanding  
17 what the agent did, whether that's the United  
18 States position that that is sufficient to  
19 search and open the package, yes or no?

20 MS. VLASOVA: Yes, Your Honor, because  
21 that would provide reasonable cause to open the  
22 package. The unusual weight and shape or the  
23 feel of the item as Officer Kouns indicated,  
24 that could point to contraband being present is  
25 one of the avenues to obtain reasonable cause.

1           In addition to that information that has shown  
2           to be reliable in the past where the sender and  
3           the receiver was the same where the gun was  
4           found --

5           THE COURT: Is that a universal  
6           position or is that something unique to the  
7           Virgin Islands?

8           MS. VLASOVA: Well, Your Honor --

9           THE COURT: That is, if someone were  
10          mailing the very same package from let's say  
11          New York to Honolulu, Hawaii, could the package  
12          be opened for those reasons?

13          MS. VLASOVA: Your Honor, the --

14          THE COURT: Yes or no, and then you  
15          could explain. Package from New York to  
16          Honolulu, Hawaii, can under these  
17          circumstances, you have the same sender, same  
18          recipient, and it's a heavy package, can the  
19          United States open the package and search it,  
20          yes or no?

21          MS. VLASOVA: Your Honor, I can't  
22          answer that based on the regulations as they  
23          pertain to the Virgin Islands and the U.S.  
24          Customs --

25          THE COURT: That's my question, is it a

1 universal position that you're articulating or  
2 is it something that's unique to packages that  
3 come from a U.S. origin to a Virgin Islands  
4 United States destination. Is it unique or is  
5 it something that is universal?

6 MS. VLASOVA: The regulations that  
7 pertain to the Virgin Islands are unique to the  
8 Virgin Islands. In terms of the standards or a  
9 package being sent from one state to another,  
10 that will be governed by a different set of  
11 regulations.

12 THE COURT: So, it's unique then?

13 MS. VLASOVA: Yes, Your Honor.

14 THE COURT: So your position is a  
15 unique one. That is, you would not take this  
16 position if the package, the very same  
17 circumstances applied and you were going from  
18 New York City to Honolulu, correct?

19 MS. VLASOVA: Well, Your Honor, there  
20 is specific regulations for the U.S. Virgin  
21 Islands.

22 THE COURT: I am aware of that. I'm  
23 just asking if the United States position would  
24 be different if the package were being sent  
25 from New York City to Honolulu, Hawaii.

1 MS. VLASOVA: I don't know.

2 THE COURT: All right. If it were,  
3 would that, assuming for the sake of argument  
4 it were a different position that the United  
5 States would take, would that, then, bring up  
6 the question of whether the constitutional  
7 protection of the Fourth Amendment protection  
8 is something that causes that difference. That  
9 is, as I understand it, you're focusing on a  
10 regulation, but notwithstanding a regulation or  
11 a statute, the job isn't -- let me rephrase  
12 that. If there is something constitutionally  
13 impermissible, is that something that the Court  
14 ought to focus on? Let me see if I could make  
15 this a little clearer. As I understand it,  
16 you're suggesting there is a unique regulation  
17 that applies to the Virgin Islands; is that  
18 correct?

19 MS. VLASOVA: Yes, Your Honor, there is  
20 a regulation that pertains to the Virgin  
21 Islands.

22 THE COURT: All right. That  
23 regulation, it doesn't apply to the package  
24 that is sent from New York City to Honolulu; is  
25 that correct?

1 MS. VLASOVA: That regulation only  
2 applies -- that regulation applies to mail that  
3 is delivered -- that arrived outside of the  
4 Customs territory into the United States  
5 Customs Territory in addition to mail that  
6 arrives from outside of the Virgin Islands that  
7 is to be delivered within the United States  
8 Virgin Islands, and that regulation states that  
9 that mail is subject to Customs.

10 THE COURT: But my question is that it  
11 is a geographic specific regulation to which  
12 you refer?

13 MS. VLASOVA: Your Honor, it would be  
14 Customs --

15 THE COURT: It's not a trick question.  
16 It's just a yes or no. I just want to know, is  
17 it something that's geographically related? Is  
18 that what the regulation to which you refer  
19 deals with?

20 MS. VLASOVA: It has to do with the  
21 Customs territory of the United States.

22 THE COURT: Okay. So then  
23 geographically where the Custom's territory is  
24 included or excluded, we're talking about  
25 certain geographical constraints on the

1 application of the regulation to which you  
2 refer; is that correct?

3 MS. VLASOVA: Yes, Your Honor.

4 THE COURT: Okay. So, if Hawaii, for  
5 instance, is within the Customs territory,  
6 you're saying that the regulation to which you  
7 refer doesn't apply, correct?

8 MS. VLASOVA: This specific one, no.

9 THE COURT: All right. And am I to  
10 understand that the strength or the authority  
11 on which you perceive depends on that  
12 regulation, correct?

13 MS. VLASOVA: Yes, primarily. However,  
14 the Third Circuit did recognize that this is a  
15 unique regulation that pertains to the Virgin  
16 Islands. So, in addition to the regulation --

17 THE COURT: Are you saying that the  
18 circuit -- that our circuit has pronounced on  
19 this question, that is, mail from a United  
20 States origin city to a United States  
21 destination in the Virgin Islands? You talked  
22 about --

23 MS. VLASOVA: No, Your Honor, there is  
24 no authority on this specific question.

25 However, there is a Third Circuit opinion which

1 identifies this regulation as it specifically  
2 pertains to the Virgin Islands in that they are  
3 unique.

4 THE COURT: My question isn't whether  
5 it is unique to the Virgin Islands or  
6 geographic specific. That's why I was asking  
7 you those questions. My question is, because I  
8 thought you were referring to the Third Circuit  
9 suggesting that there might be some authority  
10 there. But as I understand you're saying,  
11 there is no authority from our circuit on this  
12 specific point; is that correct?

13 MS. VLASOVA: No. Simply the  
14 identification of that being unique.

15 THE COURT: So, is the Court to  
16 understand, then, that, again, assuming for the  
17 sake of argument that this regulation or  
18 something like it does not apply for mail from  
19 New York City to Honolulu, Hawaii, that the  
20 Constitution, the Fourth Amendment would be the  
21 protection for the sender and recipient of mail  
22 from New York City to Hawaii, correct?

23 MS. VLASOVA: Yes, Your Honor.

24 THE COURT: Okay. Does the Fourth  
25 Amendment protection apply with equal vigor in

1 the territory, notwithstanding the regulation  
2 to which you refer?

3 MS. VLASOVA: Well, I think it's  
4 important to know that we are outside of the  
5 Customs border and --

6 THE COURT: I'm not asking you that  
7 question. I am positing that the Virgin  
8 Islands is outside of the Customs territory and  
9 Honolulu is within the Customs territory and  
10 Puerto Rico is within the Customs territory,  
11 but my question is a different question. My  
12 question is, I thought that along this line,  
13 the suggestion was that the regulation, the  
14 geographic specific regulation to which you  
15 refer that applies to the Virgin Islands would  
16 not apply to a package from New York City to  
17 Honolulu Hawaii, the Constitution would be one  
18 of the things I suspect that the sender and  
19 recipient would rely on between the package,  
20 that is when there is someone opening the mail  
21 or opening that package between New York and  
22 Hawaii, correct? And my question, is that  
23 correct or --

24 MS. VLASOVA: Well, Your Honor, they  
25 would rely on the Fourth Amendment, yes, within

1 the Customs territory.

2 THE COURT: So my question is that,  
3 does the incident of being outside the Customs  
4 territory means that the vigor of the  
5 Constitution's Fourth Amendment protection does  
6 not apply to those in the Virgin Islands or if  
7 you're sending a package from the United States  
8 mainland to the Virgin Islands.

9 MS. VLASOVA: Well, Your Honor, I think  
10 the requirement of the reasonable cause being  
11 present and determined by the CBP officer is  
12 the response to the Fourth Amendment protection  
13 in the -- for the mail that arrive to the  
14 Virgin Islands.

15 THE COURT: Let me see if I could state  
16 it another way. Is the Fourth Amendment  
17 protection that would apply to the package that  
18 I refer to between New York and Hawaii, is the  
19 Fourth Amendment less vigorous because the  
20 package comes from the mainland to the  
21 territory?

22 MS. VLASOVA: Your Honor, the  
23 Government's argument is based on the case law  
24 and the regulations as it pertains to the U.S.  
25 Virgin Islands.

1 THE COURT: No, no. I can appreciate  
2 that, and I appreciate that you said there's no  
3 Third Circuit authority dealing with this  
4 specific point, but I am asking you if the  
5 United States' position with respect to the  
6 Fourth Amendment means that the Fourth  
7 Amendment has less a vigor with respect to this  
8 question because of the origin and  
9 destination -- not the origin so much but the  
10 destination here than it would if you're going  
11 from New York to Hawaii.

12 MS. VLASOVA: Your Honor, I'm not aware  
13 of any Third Circuit law that drew a comparison  
14 when it came to the Virgin Islands.

19 So, does the notion of *ex proprio vigore*,  
20 does that apply in the Virgin Islands or to  
21 matters raised in the Virgin Islands?

22 MS. VLASOVA: I'm sorry, could you  
23 repeat the question?

24 THE COURT: Does the Constitution  
25 follow the flag to the Virgin Islands with the

1 full force and vigor that it does in any place  
2 where the flag exists?

3 MS. VLASOVA: Like I said, Your Honor,  
4 I am not aware of any case law directly on that  
5 point from the Third Circuit as it relates to  
6 the Virgin Islands.

7 THE COURT: Well, the Supreme Court in  
8 Boumediene certainly recognized that in certain  
9 context, not in this context, certainly not at  
10 all that in a cube, but that there were certain  
11 things, and they said that the flag -- the  
12 Constitution follows the flag to certain  
13 places, and my question is, does that have any  
14 application here?

15 MS. VLASOVA: That I am not aware of  
16 any case law, no.

17 THE COURT: Okay. All right, go ahead.

18 MS. VLASOVA: In reference to -- well,  
19 actually in reference to mail packages,  
20 testimony was presented that they were not  
21 classified as first class mail, which is the  
22 exception that's outlined in Section E of 145.3  
23 in reference to the U.S. Virgin Islands. The  
24 first package that arrived on March 31st, 2017  
25 at the airport was alerted to by K-9 Bo. The

1                   Government produced evidence as to reliability  
2                   of the dog through the certification that the  
3                   dog and the K-9 officer received based on the  
4                   odor that provided probable cause to open the  
5                   package, which the courts have determined that  
6                   reasonable cause to open the mail is a less  
7                   stringent standard than probable cause. In  
8                   this particular case, we did receive -- there  
9                   was probable cause based on the odor that Bo  
10                  did in reference to this particular package.

11                  As a result, the package was inspected. In  
12                  fact, the officer -- CBP officer confirmed that  
13                  there was a strong odor of marijuana when the  
14                  package was --

15                  THE COURT: I am very familiar with the  
16                  facts.

17                  MS. VLASOVA: Yes, Your Honor. The  
18                  officer confirmed that they had probable cause,  
19                  which is the higher standard than reason cause  
20                  to open the package which may have been  
21                  effected. As a result of the search, the first  
22                  weapon was found.

23                  THE COURT: So legally you're arguing  
24                  that there is P.C. on the first search and that  
25                  ought to be sufficient; is that correct?

1 MS. VLASOVA: Yes, Your Honor, the dog  
2 would have provided that.

3 THE COURT: All right. Thank you,  
4 Attorney Vlasova. Attorney Sanchez-Mercado.

5 Attorney Sanchez-Mercado, why isn't the  
6 dog sniff enough for the first search? Do you  
7 have an issue here?

8 MR. SANCHEZ-MERCADO: No.

9 THE COURT: A dog sniff is not a search  
10 in and of itself, correct?

11 MR. SANCHEZ-MERCADO: Yes.

12 THE COURT: It's a nonintrusive  
13 activity and it's an alert, but it certainly  
14 can give rise to P.C., can it not?

15 MR. SANCHEZ-MERCADO: I believe that's  
16 a no, based on the testimony given by the same  
17 agent.

18 THE COURT: My question is a general  
19 one. Can a dog alert, the dog that's trained,  
20 that's certified as has been put on here with  
21 ample evidence, the dog alerts to the presence  
22 of narcotics or some contraband, why isn't that  
23 P.C.?

24 MR. SANCHEZ-MERCADO: Because of the  
25 reliability, Your Honor, it has to meet the

1 burden to be probable cause and we believe  
2 there wasn't probable cause.

3 THE COURT: Assuming for the sake of  
4 argument that there is enough, that this dog  
5 isn't one that's made a lot of errors, that is  
6 uncertified -- in fact, to the contrary, the  
7 agent testified the dog is certified,  
8 recertified and has made no errors, to his  
9 knowledge. There is nothing to contradict  
10 that, correct?

11 MR. SANCHEZ-MERCADO: Correct.

12 THE COURT: All right. Assuming that  
13 that's, in the case of the dog, is reliable, if  
14 I've got a reliable dog who alerts to  
15 narcotics, and in fact he alerted to contraband  
16 here, why wouldn't that present probable cause?

17 MR. SANCHEZ-MERCADO: As you were  
18 saying, the flag applies --

19 THE COURT: The flag in any place, if  
20 you have probable cause, isn't that enough for  
21 a search?

22 MR. SANCHEZ-MERCADO: No.

23 THE COURT: You said no?

24 MR. SANCHEZ-MERCADO: Yes, Your Honor.

25 THE COURT: Well, what's your authority

1 when you have probable cause that you cannot,  
2 assuming for the sake of argument that if  
3 you've got probable cause, then would there be  
4 anything constitutionally infirmed with the  
5 first search? That is, if your case hangs on  
6 whether there's P.C. or not, would there be  
7 anything wrong with the first search?

8 MR. SANCHEZ-MERCADO: There was  
9 anything, Your Honor? Because you have  
10 numerous issues now.

11 THE COURT: The question, I'm focusing  
12 on the March 31st, 2017 search, the dog alerted  
13 to marijuana, they opened the package and found  
14 a gun that was in plain view. If P.C. is the  
15 lynchpin, and there is P.C., is there anything  
16 wrong with that search? I know I am asking you  
17 a hypothetical, but if there is P.C.

18 MR. SANCHEZ-MERCADO: If there is P.C.,  
19 then the search would be legal, Your Honor.

20 THE COURT: All right, let me hear you  
21 on the second search.

22 MR. SANCHEZ-MERCADO: On the second  
23 search, Your Honor, you have to go to the  
24 facts.

25 THE COURT: The Third Circuit hasn't

1                   ruled on this question. So why shouldn't I  
2                   follow the Government's position? They point  
3                   to a regulation. They say they can open the  
4                   package. I think Officer Kouns said it felt  
5                   heavy. It's got the same name -- same names,  
6                   sender or recipient as one that did have  
7                   some --

8                   MR. SANCHEZ-MERCADO: That fact by  
9                   itself --

10                  THE COURT: -- have some contraband.

11                  MR. SANCHEZ-MERCADO: That fact by  
12                  itself, Your Honor, would trigger the request  
13                  of the search warrant.

14                  THE COURT: Well, it's not by itself,  
15                  though. That is, you have sender/recipient,  
16                  that's one. Same sender, same recipient, and  
17                  the second thing you have is this weight. Now,  
18                  taken those two things together, and you're  
19                  sending it the same way, you're sending it by  
20                  priority mail, why wouldn't that be enough?

21                  MR. SANCHEZ-MERCADO: The agent said  
22                  that he was alerted by a postal inspector that  
23                  they had a package that had the same address of  
24                  a previous weapon. It is not like when he  
25                  arrived he picked up the package and he checked

1 and he said, oh, this feels different, no.

2 They were already going straight to that  
3 package, given they -- now we found out that  
4 the dog was doing a training exercise? So they  
5 already have had --

6 THE COURT: Well, the dog only came in  
7 after the fact with the second search. So I'm  
8 talking about the things that led to opening  
9 the package. It sounded like --

10 MR. SANCHEZ-MERCADO: There is  
11 ammunition.

12 THE COURT: What is it?

13 MR. SANCHEZ-MERCADO: From what Agent  
14 Blyden testified, they were doing a control and  
15 delivery. So they already had the first  
16 package within them.

17 THE COURT: Why wouldn't I take Agent  
18 Blyden's testimony as suggesting that having  
19 discovered the contraband, then they undertook  
20 to make a controlled delivery?

21 MR. SANCHEZ-MERCADO: They already had  
22 --

23 THE COURT: That is, it wasn't a  
24 controlled delivery until they discovered they  
25 had contraband, at which point then it

1 became -- then they did what was necessary.

2 MR. SANCHEZ-MERCADO: They were already  
3 setting this up. They already had the first  
4 package, and they had it for quite a while.  
5 You could see they were holding it and they  
6 were waiting for other packages with the same  
7 -- they said that there were two packages. In  
8 their testimony on the second time, there were  
9 two packages. So, I am presenting to the Court  
0 different issues here. The first issue would  
1 be that from the evidence presented before this  
2 Court and the burden is on the Government, that  
3 package was not in St. Thomas. That package  
4 with that number was not in St. Thomas. It was  
5 in Puerto Rico. And it was scanned in Puerto  
6 Rico. Now, there is something --

1 Agent Blyden said that having discovered this  
2 package, they wanted to see who would pick it  
3 up, and so they did some things to make it  
4 appear to the public. Isn't the weight of the  
5 evidence that the package was here, and you're  
6 suggesting that somehow there is a credibility  
7 issue, but isn't the overwhelming weighing of  
8 the evidence on the other side, though, that  
9 the package was here?

10 MR. SANCHEZ-MERCADO: The testimony?

11 Yes. What we presented? No.

12 THE COURT: Well, what you presented  
13 was 2G. That's a document that wasn't authored  
14 by Agent Blyden. She, herself, said it's not  
15 -- she doesn't know that system. It's a postal  
16 system. It's not a Customs system. She is  
17 Customs or -- I'm sorry, HSI agent.

18 MR. SANCHEZ-MERCADO: This is a package  
19 that's coming inbound. If it was going  
20 outbound, the Virgin Islands, everything will  
21 be different but it's coming inbound. They  
22 retained it. They opened the package. They  
23 retained it. They held it until the next two  
24 packages would arrive. Probable cause of a dog  
25 that is not trained for weapons, I believe a

1 search warrant was to be requested at this  
2 point, Your Honor, and that would trigger the  
3 next two packages. One of them was part of  
4 this case, and they hold that firearm enough  
5 time to wait until something else appears and  
6 do a controlled delivery on those. So I think  
7 that they needed a search warrant. I don't  
8 believe that the burden of a probable cause was  
9 met.

10 THE COURT: All right, thank you.

11 Attorney Vlasova, you get the last word.

12 MS. VLASOVA: Your Honor, there is no  
13 warrant requirement. The Government presented  
14 Bo and K-9 Lopez's -- Officer Lopez's  
15 certification where the dog and him were  
16 certified, recertified.

17 THE COURT: Why didn't the Government  
18 just get a search warrant with respect to the  
19 April 3rd, 2017 seizure?

20 MS. VLASOVA: Well, Your Honor, there's  
21 no warrant requirement.

22 THE COURT: That's not my -- my  
23 question isn't what you perceive there to be a  
24 requirement or not. My question is why didn't  
25 the Government get a warrant. That is, there

1                   was a warrant that was obtained for a GPS  
2                   tracking, correct?

3                   MS. VLASOVA: Yes, Your Honor.

4                   THE COURT: So the Government obviously  
5                   saw the utility of getting a warrant in that  
6                   case. So, why didn't the Government just get a  
7                   warrant with respect to the item? It's in the  
8                   Government's possession. They don't have to  
9                   release it. Obviously, they got a warrant for  
10                  a GPS. Why not get a warrant to just search it  
11                  and avoid all of this?

12                  MS. VLASOVA: Your Honor, as law  
13                  enforcement strategy and tactic, there is no  
14                  warrant requirement.

15                  THE COURT: That's not the question. my  
16                  question is really one that really is informed  
17                  by the Constitution. A law enforcement  
18                  strategy might say it's perfect never to get a  
19                  warrant and just open what you choose to, but  
20                  my question has some constitutional dimension  
21                  to it. So, I mean, I hear your answer but I'm  
22                  not so sure that it's something that's  
23                  necessarily informed by the Constitution. Is  
24                  there some constitutional reason that the  
25                  Government wouldn't get a warrant here? I'm

1 not talking about the April 3rd, 2017 matter.

2 MS. VLASOVA: Well, Your Honor, the  
3 reason is that there is no requirement for one  
4 giving reasonable cause to open that package.

5 THE COURT: All right. Go ahead.

6 MS. VLASOVA: Yes, Your Honor. So, in  
7 terms of the first package, the reliability of  
8 the dog was established, there is no evidence  
9 to the contrary that was presented by defense,  
10 and so there's a presumption of reliability.

11 THE COURT: I don't need to hear you on  
12 the first search.

13 MS. VLASOVA: As to findings of the  
14 first search, the sender --

15 THE COURT: I said the first search,  
16 said I don't need to hear you on first search.

17 MS. VLASOVA: Yes, Your Honor, but I am  
18 referring to the second search when I am  
19 arguing that based on the findings from the  
20 first search and the observation of where the  
21 package had originated from and from who and to  
22 whom the package originated to and where, that  
23 in connection with the weight and the feel of  
24 the package and the X-ray that was conducted on  
25 the package, conducted, provided reasonable

1 suspicion that there was contraband in that  
2 particular item at which point the item was  
3 searched. It was a proper search procedure and  
4 the Government's position is that the defense  
5 motion should be denied.

6 THE COURT: All right, thank you. All  
7 right. Before the Court is the defense  
8 petition for suppression of two items, two  
9 firearms obtained, one on March 31st, 2017 and  
10 the other one on April 3rd, 2017. Each item  
11 was seized after a search. The March 31, 2017  
12 item was sent from the mainland to St. Thomas.

13 While at the airport, a K-9 by the name  
14 of Bo alerted to the presence of some contraband.  
15 That K-9 had been certified and repeated received  
16 a second certification in the detection of  
17 contraband, including narcotics, firearms and  
18 humans.

19 That K-9 alerted to the presence of some  
20 contraband in a package. That package was  
21 searched and the package revealed the component  
22 parts of a firearm. Significantly, the dog  
23 alerting is not a search. It's a noninvasive  
24 activity, but it can give rise to probable cause  
25 and here the alert to some contraband.

1 The Court finds that there is sufficient  
2 basis to allow the search of the package, and so  
3 the firearm that was seized on March 31, 2017,  
4 the Court will deny the petition with respect to  
5 that firearm.

With respect to the second firearm, it is unclear based on the testimony in this case that the Government has the view that searches of the mail can occur in a manner that is different from packages that are sent from, for example, New York to Hawaii. And the Government's position is that a regulation would alter the protection from search that may or may not exist with a package from New York to Hawaii, and that that level of protection doesn't seem to apply to packages from the mainland to the U.S. Virgin Islands, and the basis for that is because the Virgin Islands has been placed outside of the Customs zone. The Court is not satisfied that there was a sufficient or a complete answer to the constitutional implications of the search. That is, for instance, the Constitution as far back as 1921, I believe, the Third Circuit has said that there are certain constitutional protections that apply to foreign nationals who were tried in this

1 court, I believe in 1920 or 21, I think it was in  
2 U.S. v Lopez, and the court -- the Third Circuit  
3 then recognized that probably without saying the  
4 words, but I'm not quite sure, the notion of ex  
5 proprio vigorio certainly applies to those  
6 defendants who are tried in this Court, and again  
7 in 1920 or '21, and the Supreme Court in  
8 Boumediene certainly recognized that the  
9 Constitution follows the flag for detainees, I  
10 believe in Cuba. The question is, can, to the  
11 extent the Fourth Amendment protection applies,  
12 is it somehow -- well, let me rephrase that. To  
13 the extent the Fourth Amendment generally  
14 protects those who send and receive packages from  
15 let's say New York to Honolulu, is the Fourth  
16 Amendment less vigorous here because of a  
17 regulation and because the U.S. Virgin Islands  
18 has been drawn outside of the Customs territory,  
19 and it's not clear that the Government was  
20 prepared to answer that question here. So, the  
21 Court will require further briefing on that. I'm  
22 going to give the parties two weeks to brief that  
23 issue, and that's with respect to the second  
24 search. So, as I said, the first search, the  
25 Court doesn't find any grounds for relief. The

1 second search, the Court still has some lingering  
2 questions. So I will give you two weeks. Two  
3 weeks from today is June the 18th by 3:00 p.m.  
4 simultaneous briefs are due.

5 Anything else we need to tend to Attorney  
6 Vlasova?

7 MS. VLASOVA: With the June 18th  
8 deadline, the trial date of June 11th --

9 THE COURT: Well, yeah, it would seem  
10 that it would have to, yes. So we'll have set  
11 a new trial date. Anything else?

12 MS. VLASOVA: Nothing from the  
13 Government.

14 THE COURT: Attorney Sanchez?

15 MR. SANCHEZ-MERCADO: Nothing else,  
16 Your Honor.

17 THE COURT: All right, Counselor, for a  
18 well argued motion.

19 [Adjourned.]

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1 C-E-R-T-I-F-I-C-A-T-E

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3 I, DESIREE D. HILL, REGISTERED MERIT REPORTER,  
4 St. Thomas, U.S. Virgin Islands, do hereby certify that  
5 I did report the foregoing proceedings in Stenotype on  
6 June 4, 2018.

7 That the foregoing pages of the transcript  
8 constitutes a true and accurate transcription of my  
9 Stenotype notes;

10 That I am not counsel to, nor related to any of  
11 the parties involved herein; nor am I otherwise  
12 interested in the outcome of this proceeding.

13 IN WITNESS WHEREOF I have affixed my signature  
14 hereto this 4th day of June 2018.

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18 Desiree D. Smith-Hill, RMR

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