

No. 20- _____

IN THE

Supreme Court of the United States

-----■-----

STEVEN BAXTER,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

-----■-----

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

-----■-----

APPENDIX
Vol 2.

-----■-----

Joseph A. DiRuzzo, III
Counsel of Record
DIRUZZO & COMPANY
401 East Las Olas Blvd., Suite 1400
Ft. Lauderdale, Florida 33301
Office: (954) 615-1676
Fax: (954) 827-0340
Email: jd@diruzzolaw.com

APPENDIX E —

Transcript of Suppression Hearing, June 4, 2018

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

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.) No. 2017-CR-26
)
 STEVEN BAXTER,)
)
 Defendant.)

SUPPRESSION HEARING

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

On behalf of the United States Attorney:

Anna Vlasova, USA
United States Attorney's Office
St. Thomas, Virgin Islands
For the United States of America

On behalf of the Defendant:

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

REPORTED BY: Desiree D. Hill, RMR

INDEX/EXHIBITS

2

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I-N-D-E-X

WITNESS

Page

JOSEPH LOPEZ,

Direct Examination by Ms. Vlasova 13

Cross Examination by Mr. Sanchez-Mercado 37

Redirect Examination by Ms. Vlasova 37

RICHARD KOUNS,

Direct Examination by Ms. Vlasova 39

Cross Examination by Mr. Sanchez-Mercado 54

Redirect Examination by Ms. Vlasova 63

ALICA BLYDEN,

Direct Examination by Ms. Vlasova 70

Cross Examination by Mr. Sanchez-Mercado 80

RICHARD KOUNS,

Further Redirect Examination Ms. Vlasova 84

Further Recross Examination by Mr. Sanchez 87

Argument by Ms. Vlasova 90

Argument by Mr. Sanchez-Mercado 107

Argument by Ms. Vlasova 116

Court's Findings 118

P R O C E E D I N G S

* * *

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

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

THE COURT: Good morning, Attorney
Vlasova.

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

THE COURT: Good morning, Attorney
Sanchez-Mercado. Okay, we are here for an
omnibus hearing. As I understand it, there are
three motions, one to dismiss for a speedy
trial; the other for change of venue; and the
other for suppression. So we'll take them in
that order.

Attorney Sanchez-Mercado, you want to be
heard?

MR. SANCHEZ-MERCADO: Yes, Your Honor.

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 --

4 THE COURT: Well, I'm aware of what
5 your position is, but tell me what the
6 authority is that says you can't prosecute
7 here.

8 MR. SANCHEZ-MERCADO: I have to go to
9 my motion, Your Honor.

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 gave 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.

11 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 does 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 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.

7 THE COURT: So when you say "check,"
8 you don't mean that you simply open it on your
9 own without a K-9 check.

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.

REDIRECT-EXAMINATION

BY MS. VLASOVA:

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

A. Correct.

Q. Could you explain how that would happen?

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

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

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

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

A. Just the sweater. You could smell like the scent -- what I believe was the scent of marijuana was coming out of that sweater, a really 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?

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 --

7 THE COURT: What does it have to do
8 with this case?

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.

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

3 THE WITNESS: I am talking about the
4 first package that he just showed earlier, the
5 0529, I want to believe 79, we had that package
6 in custody, but in order to effect the control
7 delivery, the system had to -- it's internal.
8 I don't know.

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 Q. 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 presented as a
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.

4 **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 --

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.

13 THE COURT: Well, you will get to cross
14 examine him. All right. You can recall the
15 witness.

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

18 AGENT KOUNS: Yes, Your Honor.

19 THE COURT: All right. Go ahead.
20
21
22
23
24
25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

RICHARD KOUNS,

recalled as a witness,

testified on his oath as follows:

FURTHER REDIRECT EXAMINATION

BY MS. VLASOVA:

MS. VLASOVA: The Court's indulgence.

Q. Officer Kouns, on your direct testimony --
I'm sorry, on cross examination you were asked about a
seizure order that you prepared in response to your
seizure of the two packages that you testified about;
is that correct?

A. Correct.

Q. Would you be able to identify that report?

A. Yes.

Q. I am going to show you Government's
Exhibits 5 and 6. Do you recognize this document?

A. Yes.

Q. Did you prepare this document?

A. Yes.

Q. Could you explain what this document is?

A. This is the narrative to a seizure report
I created after finding the --

THE COURT: Attorney Vlasova, you
referred to two exhibit numbers. You want to
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.

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.

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.

20 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.

1 THE COURT: But is it your position
2 that in this case because the sender and
3 recipient resembled a former sender and
4 recipient with whom the agency had some contact
5 or had some exposure, the weight of the package
6 is enough 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 Forth 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.

15 THE COURT: All right. Okay. All
16 right. I understand that there's no Third
17 Circuit authority directly on that point. All
18 right, go ahead.

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
10 different issues here. The first issue would
11 be that from the evidence presented before this
12 Court and the burden is on the Government, that
13 package was not in St. Thomas. That package
14 with that number was not in St. Thomas. It was
15 in Puerto Rico. And it was scanned in Puerto
16 Rico. Now, there is something --

17 THE COURT: I know you're focusing on I
18 believe it was 2G, which the Court will admit
19 2G, but 2G was a document -- one document that
20 indicates that the package on March 31st was in
21 Contaño, Puerto Rico, but there is testimony
22 from at least two live witnesses who said the
23 package was in St. Thomas on March 31st. The
24 dog, Bo, alerted to it and it was opened and
25 searched then on March 31st in St. Thomas. And

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.

6 With respect to the second firearm, it is
7 unclear based on the testimony in this case that
8 the Government has the view that searches of the
9 mail can occur in a manner that is different from
10 packages that are sent from, for example, New
11 York to Hawaii. And the Government's position is
12 that a regulation would alter the protection from
13 search that may or may not exist with a package
14 from New York to Hawaii, and that that level of
15 protection doesn't seem to apply to packages from
16 the mainland to the U.S. Virgin Islands, and the
17 basis for that is because the Virgin Islands has
18 been placed outside of the Customs zone. The
19 Court is not satisfied that there was a
20 sufficient or a complete answer to the
21 constitutional implications of the search. That
22 is, for instance, the Constitution as far back as
23 1921, I believe, the Third Circuit has said that
24 there are certain constitutional protections that
25 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 vigore 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.]

20 --oOo--

21

22

23

24

25

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

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

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

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

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

Desiree D. Smith-Hill, RMR