

No. _____

In The
Supreme Court of the United States

**FARUQ ROSE,
A/K/A FARUQ UTHMAN ROSE,**
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Whether the majority opinion of the United States Fourth Circuit Court of Appeals, which held that the petitioner had no reasonable expectation of privacy to object to an unlawful, warrantless search, contravenes rights guaranteed by the Fourth Amendment?

LIST OF THE PARTIES

Faruq Rose, Petitioner;

United States of America, Respondent

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Farug Rose (hereinafter “Petitioner”) respectfully prays for a Writ of Certiorari to review the decision and judgment of the United States Court of Appeals for the Fourth Circuit.

OPINION BELOW

The published opinion of the Fourth Circuit is reported at *United States of America v. Faruq Rose* (4th Cir. 19-4755), and attached below in the appendix to this petition.

JURISDICTION

The United States Court of Appeals for the Fourth Circuit decided this case on July 9, 2021, with a subsequent petition for rehearing *en banc* having been denied on August 6, 2021, and mandate issued on August 16, 2021. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1), and this Petition is timely filed within ninety days of the underlying Judgment of the Fourth Circuit pursuant to United States Supreme Court Rule 13(1) and 28 U.S.C. § 2101.

CONSTITUTIONAL PROVISIONS INVOLVED

“The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated...” U.S. Const. amend IV.

STATEMENT OF THE CASE¹

A. Procedural History

Mr. Rose was named in a two-count bill of indictment, the same having been issued in the Eastern District of North Carolina on or about June 26, 2017, and was charged with: 1. possession with intent to distribute 5 kilograms or more of cocaine in violation of 21 U.S.C. §§ 846, 841(a)(1); and 2. possession with intent to distribute 500 grams or more of cocaine in violation of 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(B). JA 16-20.

The petitioner pleaded not guilty and filed a motion to suppress, which is the subject of this petition, the same having been denied after hearing by the Hon. James C. Dever, III, U.S. District Court Judge Presiding, on August 17, 2018. After denial of said motion, the petitioner's trial began on February 25, 2019, also before Judge Dever, and he was convicted the following day on both counts. JA 430-31. On October 1, 2019, a sentencing hearing was held before Judge Dever and a sentence of 420 months of imprisonment was imposed. JA 524-531.

The Fourth Circuit Court of Appeals heard oral argument in his direct appeal on January 9, 2021 and affirmed his conviction and sentence in an opinion filed July 9, 2021. App.A 2-17. Chief Judge Roger Gregory dissented from the majority opinion (App.A. 18-36), however a petition for rehearing *en banc* was denied on August 6, 2021. App.C.

¹ Citations to the record are taken from the joint appendix filed in the Fourth Circuit Court of Appeals, Case number 19-4755

B. Statement of Facts

On October 21, 2016, while conducting drug interdiction at the FedEx hub in Greensboro, N.C., DEA officers opened two packages that were found to contain 3.996.3 grams of cocaine and scheduled to be delivered to an address in Wallace, N.C. These packages were addressed to a Ronald West, later determined to be the deceased brother of Donald West, who was the occupant of the home where a controlled delivery subsequently occurred. DEA Officer and Guilford County Sheriff's Deputy Kevin Cornell testified that the first package, which was opened without a warrant by FedEx Manager Jay Williams with the assistance of Deputy Thomas Gordy, was suspiciously packaged. Although a K-9 was available to officers, they only utilized the "dog sniff" on the second package. This "sniff" led to issuance of a warrant for the second package, but no warrant was ever applied for with respect to the search of the first. JA 52-80, 95-97, 540.

After discovering cocaine in both boxes, they were each repackaged and a controlled delivery was arranged to the Wallace address where Donald West resided. Detective Mobley of the Duplin County Sheriff's Department observed the defendant and another individual arrive, take some bags into the residence, but then leave the premises. After Donald West arrived, the defendant and the third party returned, retrieved the packages, and "sped" off with the defendant driving. West, who had been told by the defendant not to touch the packages, later stated to law enforcement that he was paid by Mr. Rose to allow for their delivery, which had happened as well on prior occasions when his name had also been used as the

recipient for packages intended for Mr. Rose. After a brief vehicle chase, Mr. Rose was arrested and confessed to law enforcement. At all times he claimed ownership of the packages, yet the majority opinion deemed that he had no reasonable expectation of privacy in either of the boxes as they were addressed to a false name. JA 102-111, 119-126, 203-210.

REASONS CERTIORARI SHOULD BE GRANTED

The defendant/appellant respectfully requests that this Court grant his petition since the majority opinion in the Fourth Circuit overlooked relevant factual and legal matters, conflicts with previous decisions of the court which were not fully addressed, and involves a question of exceptional importance, that being the constitutional right of an individual to have a privacy interest in mail wherein they are the intended recipient. This request is specifically related to the defendant's argument that his motion to suppress should have been granted by the district court.

A. The majority opinion overlooked material factual and legal matters, and conflicts with prior decisions of this Court.

The majority based its decision in large part on the case of *United States v. Givens*, 733 F.3d 339 (4th Cir. 1984), where cocaine was discovered in a video cassette that was addressed to an actual, legitimate third-party intermediary, that being "Midwest Corporation" and an individual named "Debbie Starks." The defendants in *Givens* were, in contrast to the case at bar, the intended recipients of the contents of the package as opposed to the package itself. There is a fundamental difference between using an alias to receive a package versus using

the identity of another altogether, a fact not addressed by the majority. *See United States v. Johnson*, 584 F.3d 995, 1002 (10th Cir. 2009).

In their reliance on *Givens* to be controlling, the majority emphasized that an inability to show objective indicia of ownership and exclude others from taking possession counted against privacy expectation, however the mailing at issue in *Givens* was sent to someone other than the party asserting a privacy interest. In the matter at bar, the evidence was clear that the packages were sent to Mr. Rose, who always claimed ownership and never relinquished control of the same to a third party. Although he disguised his true identity by using an alias (the same used on at least three prior occasions), he controlled the delivery of the packages by choosing their destination, excluded others from taking possession, and always maintained they they belonged to him alone. These common law-related concepts of ownership assist in showing that Mr. Rose had an objectively reasonable expectation of privacy in the packages, an interest that was never relinquished from the time that they were placed in transit.

The case at bar offers a distinct fact situation and presents this Court with an opportunity to clarify the issue of standing that was set forth in *United States v. Castellanos*, 716 F.3d 828, 834 (4th Cir. 2013), which stands for the proposition that a defendant can assert a privacy interest in a package that belonged to him although such was sent using a fictitious name. There is no legal basis for the rule adopted by the district court and endorsed by the majority that requires a defendant to demonstrate use of an alias being “established”, “used regularly”, or “commonly known.”

The majority further relied on *United States v. Villarreal*, 963 F.2d 770 (5th Cir. 1992), quoted in the *Castellanos* opinion, which held that two defendants had a legitimate expectation of privacy as the intended recipients of two drums that concealed a shipment of marijuana. A fictitious name was used to ship the drums, a name that the defendants had never used before. As the recipients, the court resolved any uncertainty about standing in favor of an individual's privacy interest, thus reliance on *Villarreal* is likewise misplaced.

Finally, *United States v. Hurley*, 182 Fed.Appx. 142, 145 (4th Cir. 2006), further supports the privacy interest of Mr. Rose. In *Hurley*, wherein an expectation of privacy claim was rejected, facts showed that the defendant did not know the person who resided at the address to which the subject package was delivered and failed to establish that he was in fact the designated recipient. As stated in *Hurley*, however, as a general rule, both the sender and designated recipient of a package sent by mail or other carrier have a legitimate expectation of privacy in the contents of that package, and a defendant has standing to contest a search if he can show that he was the designated recipient.

B. This case involves a question of exceptional importance in that it significantly impacts the rights of an individual under the Fourth Amendment.

As paraphrased from Judge Gregory's dissent, when facts are against you, hammer the law; when law is against you, hammer the facts; when both are against you, hammer the table and yell. Thinking back to law school, a similar analogy would be that "hard cases make bad law." There is no question that Mr. Rose had contraband in his packages, however, as noted in *United States v. Pitts*, 322 F.3d

449, 458-59 (7th Cir. 2003), the illegality of contents cannot be used to serve as an after-the-fact justification for a search.

This case presents a distinct fact situation that has not been clearly addressed by appellate courts, although it would seem that personal property would generally qualify for Fourth Amendment protection when considering that which our constitutional framers envisioned historically. Certainly there was a common law understanding to limit police power and frown upon exceptions that are created to lessen privacy protections for individuals. The 10th Circuit echoed this concern when examining privacy protection as it related to the search of digital property. When considering the warrantless opening of private email correspondence, the court noted that such clearly qualified as the type of trespass to chattels that the framers sought to prevent when they adopted the Fourth Amendment. *See United States v. Ackerman*, 831 F.3d 1292 (10th Cir. 2016).

The majority's analysis in the matter at bar could undermine the Fourth Amendment privacy rights of many law-abiding citizens and such is the greater harm. As noted in *Katz v. United States*, 389 U.S. 347 (1967), what one seeks to preserve as private, if reasonable, should be constitutionally protected. By offering such protection only to established aliases that are objectively recognizable, privacy rights are weakened for those who may send or receive mail using a name other than their own for legitimate reasons. Many examples abound, including an official who wants to remain anonymous for security reasons, a friend or relative who wants to send a surprise gift without revealing identifying information, the

neighbors who have a package delivered next door since they anticipate being out of town upon its arrival, etc. Society should not be prepared to extinguish the objective reasonableness of a person's undisputed expectation of privacy simply because they use an alias when sending a package.

Accordingly, this case is of exceptional importance. The officers had a drug dog available and could have followed proper procedure with the first package. Their unexplained failure to do so is exactly the type of misconduct that the Fourth Amendment is intended to deter. The exclusionary rule is designed to safeguard through its deterrent effect, to compel respect for constitutional guarantees, and to prevent violation of the same. *See Elkins v. United States*, 364 U.S. 206, 217 (1960), also *United States v. Calandra*, 414 U.S. 338, 347 (1974).

CONCLUSION

Based on the foregoing arguments, the defendant/appellant respectfully requests that this Court grant his Petition for Writ of Certiorari, ultimately reverse the denial of his motion to suppress and grant such further relief deemed to be necessary and proper.

Respectfully submitted, this the 2nd day of November, 2021.

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