



## DPS TRAINING BULLETIN



LEGAL BULLETIN NO. 376  
September 8, 2015

### INVESTIGATORY SEIZURE OF PACKAGE BASED ON REASONABLE SUSPICION TO CONDUCT CANINE SNIFF TEST

**Reference:** Vladimir A. Bochkovsky Alaska Court of Appeals  
Opinion No. A-11100  
v. August 28, 2015  
State of Alaska

#### **FACTS:**

Trooper Mike Ingram responded to a request from the FedEx Manager in Wasilla concerning a suspicious package. Trooper Ingram was assigned to the Mat-Su narcotics unit and had also been trained in "drug interdiction via commercial modes of transportation" which included identifying "key indicators" on packages that have a "high probability of having drugs." Trooper Ingram brought a trained drug-sniffing canine with him.

The suspicious package was a cardboard box supplied by FedEx. It was taped up, but not all the seams were sealed. A FedEx air bill was taped to the top indicating that the recipient was Mikey Sheeby of 341 East Heather Way, Apartment 1, Wasilla. The sender's name was Mark Vu of 3111 132ns St. SE Apartment A104, Everett, WA. The air bill was filled out by hand and the sender had paid \$67.98 for next-day delivery. Trooper Ingram found the packaging, and cash payment for overnight service significant and suspected the package may contain drugs.

Before subjecting the package to a canine sniff test Trooper Ingram did the following: He checked the Alaska Public Safety Information Network (APSIN) which contains over two million names in the system, and he searched the "Mat-Com" database. He found no one named Mikey, Mike, or Michael Sheeby in any of these systems and concluded that this was a fictitious name.

Trooper Ingram could find no Mark Vu in Everett, WA but found the listing of a Mark Tu Vu listed in Bellevue, WA

Trooper Ingram decided that these factors, taken together, justified subjecting the package to a canine sniff. The package was placed on the floor at the FedEx facility, along with a number of other packages and the canine alerted on the suspect package for the presence of drugs.

A warrant was issued and upon execution the package was found to contain 129 OxyContin pills disguised as rolls of candy inside a cellophane bag. The package was repackaged with just one of the pills and the candy, and delivered. Law enforcement inserted an electronic device that would emit a signal when the package was opened. A second warrant was issued for the residence to which the package was delivered. Shortly after delivery, the electronic signal was heard alerting police the package had been opened.

Bochkovsky was arrested and convicted of drug related offenses and received a six year sentence. He appealed his conviction on several grounds, including the seizure of the package and subsequent canine sniff.

**ISSUE:**

Did Trooper Ingram have reasonable suspicion to seize, and later subject the package to a canine sniff?

**HELD:**

Yes. The physical details of the mailing of the package - mainly the handwritten label, the next-day delivery, and the payment in cash - would not have sufficed, standing alone, to distinguish the package from an innocent package shipped from one individual to another. But in this case, Trooper Ingram bolstered the suspicion by determining that the package had been addressed to a fictitious person.

**REASONING:**

1. Under Alaska case law, police are required to have reasonable suspicion that a package contains illegal drugs before they may temporarily detain it or subject it to sniffing by a drug detection dog.
2. Trooper Ingram conducted an inquiry with both APSIN and the Mat-Com databases, and determined that the package was being shipped to a fictitious person.
3. The package was not subjected to a canine sniff until after Trooper Ingram conducted his investigation regarding the recipient of the package.

**NOTES:**

You should compare and contrast this case with McGee v State (Legal bulletin no. 257). In the McGee case, a police officer took it upon himself to go to the FedEx in Fairbanks and "look over packages" during which time he pulled one from the line because it was hand printed and had a name the officer thought was "comical or strange" and subjected the package to an itemizer sniff. That seizure and subsequent search were ruled illegal. In this case, Trooper Ingram was called to FedEx by a suspicious manager and did not subject the package to any testing until after he had developed his reasonable suspicion.

Also review Gibson v State (Legal Bulletin no. 98). Temporary detention of package justified by reasonable suspicion; and Pooley v State (Legal Bulletin No.96) Dog sniff of luggage justified by reasonable suspicion.

**NOTE TO SUBSCRIBERS TO THE ALASKA LEGAL BRIEF MANUAL:**

File Legal Bulletin no. 376 numerically under Section R of the manual