

**Legal Research & Writing
Fall Term 2008
Final Memo Assignment**

MEMORANDUM

To: Judicial Extern
From: United States District Judge Rachel Dawes
Date: October 16, 2008
Re: United States v. Thorne, No. CR-08-1113-RD
Motion to Suppress Evidence

Please prepare a research memorandum regarding the merits of defendant Phoebe Thorne's motion to suppress evidence. Your memorandum should be seven to ten pages long. I would like to have a draft of your memorandum by Tuesday, October 28. Your final draft is due on Tuesday, November 11.

Because this is your first assignment for my chambers, I have prepared the following summary of the procedural posture of the case:

The United States Attorney indicted Thorne for possession with intent to distribute heroin, in violation of 21 U.S.C. § 841(a). Thorne moved to suppress the heroin, claiming: (1) customs inspectors improperly examined the electronic

contents of her laptop computer; (2) customs inspectors lacked the minimal suspicion required to conduct a pat-down search; (3) customs inspectors lacked reasonable suspicion to detain her for a monitored bowel movement; and (4) the length of her detention was unreasonable. If I grant the motion, the government will be required to dismiss the indictment against Thorne because the heroin is the only evidence against her. If I deny the motion, Thorne will enter a conditional guilty plea and receive a ten-year sentence.

A hearing on Fisher's motion to suppress the heroin is scheduled for Thursday, November 13, at 4:00 p.m. The parties filed a stipulated statement of facts, which I have attached for your reference in preparing your research memorandum.

The parties also submitted short legal memoranda regarding the motion to suppress the heroin, but I am unsatisfied with both parties' inadequate research of the applicable law regarding the level of suspicion required to justify the lengthy detention of a suspected drug smuggler pending a bowel movement, as well as with their analysis of the facts of this case in light of existing case law.

Please conduct an independent examination of this case and prepare a research memorandum focusing on the relevant facts and the applicable law in this circuit. I need your objective analysis of both parties' possible arguments, as well

as your recommendation regarding whether I should grant the motion. My law clerk has prepared a list of suggestions to assist you in your research.

MEMORANDUM

To: Student Extern
From: Chelsea Cooper, Law Clerk to Judge Dawes
Date: October 16, 2008
Re: Research Suggestions

Here are a few suggestions to help you research your memorandum regarding Phoebe Thorne's motion to suppress evidence:

1. Research federal authorities exclusively. Judge Dawes will not consider any state court cases in ruling on Thorne's motion.
2. Focus your analysis on the Fourth Amendment right to be free from unreasonable searches and seizures. Judge Dawes will not consider other laws or statutes in ruling on the motion to suppress.
3. Consult federal practice treatises for general background on search and seizure law. I prefer *Search and Seizure: A Treatise on the Fourth Amendment* by Walter R. LaFare, which contains a useful discussion of border searches. Note, however, that Judge Dawes does not allow us to cite treatises, textbooks, hornbooks, or encyclopedias in our memoranda.
4. Focus your legal research on binding precedent. Judge Dawes prefers that we cite non-binding precedent sparingly, if at all.

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

PHOEBE THORNE,

Defendant.

No. CR-08-1113-RD

MOTION TO SUPPRESS

Phoebe Thorne hereby moves to suppress evidence of the heroin seized from her person on the following grounds: customs inspectors improperly examined the contents of her laptop computer, customs inspectors lacked minimal suspicion to conduct a pat-down search, customs inspectors lacked reasonable suspicion to detain Thorne for a monitored bowel movement, and the length of Thorne's detention was unreasonable.

Respectfully submitted:

Arthur Dent, Esq.
Counsel for Phoebe Thorne

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

PHOEBE THORNE,

Defendant.

No. CR-08-1113-RD

**STIPULATED
STATEMENT OF FACTS**

On June 26, 2008, at 10:30 a.m., Phoebe Thorne exited United Airlines Flight 916, arriving at San Francisco International Airport from Bogotá, Colombia. After retrieving her luggage and waiting in a lengthy line, Thorne arrived at the primary customs inspection area, where United States Customs Inspector James Bronson asked Thorne a series of routine questions about her occupation, the duration and purpose of her visit, and where she would be staying. As they were speaking, Bronson saw that Thorne appeared nervous, and that her hands were shaking. Bronson examined Thorne's travel documents and noticed that she had purchased her airline ticket for cash one week before the flight. He also noticed that her customs declaration stated that her intended destination was "Hilton Hotel" with no address specified. Thorne's passport indicated that recently she had taken

multiple trips to the United States from Colombia.

Bronson referred Thorne to a secondary customs inspection area because she arrived from Colombia, a narcotics source country; she frequently traveled from Colombia to the United States; she had purchased a ticket for cash only one week prior to her flight; and she appeared nervous. Although Bronson was a new customs inspector without any previous experience in identifying drug couriers, he believed that Thorne fit the profile of a drug courier.

Thorne arrived at the secondary inspection station of Customs Inspector Alexa Cloma at 11:30 a.m. Inspector Cloma was unable to recall whether Thorne was nervous or whether her hands were shaking. Consistent with routine procedure, Cloma asked Thorne for her customs declaration, passport, and airline ticket. As Thorne took these items out of her purse, Cloma examined the contents of Thorne's luggage, which contained a laptop computer.

Cloma asked Thorne to turn on her computer. Its desktop displayed several icons and folders, one of which was labeled, "sf.6.26.2008." Cloma gave the laptop to Bronson, who clicked on the folder, opening a document titled, "Checklist for SF Trip." One entry on the checklist stated, "Get anti-diarrhea meds."

Meanwhile, Cloma asked Thorne about her travel plans. Thorne responded that she had come from Colombia, volunteered that she was here on business, and

retrieved an employment identification card from her purse. Thorne stated that she was an architect and had come to San Francisco to meet with American architects. She planned to be in San Francisco for one week.

Upon examining Thorne's passport, Cloma noticed that Thorne had traveled from Bogotá to San Diego on February 15, 2008. Cloma asked Thorne for the date of her first trip to the United States during 2008. Thorne responded that she had visited Los Angeles in February. Cloma asked Thorne if she had also flown into San Diego this year and Thorne responded that perhaps she had but could not recall the date.

Inspector Cloma asked Thorne where she would be staying. Thorne answered that she planned to stay at the "Hilton Hotel" but Thorne did not appear to know which Hilton Hotel—there are hotels near San Francisco International Airport and in downtown San Francisco. Thorne also admitted she did not have a reservation, stating that she assumed her American architect colleagues had made a reservation for her. Thorne also stated she did not have friends or family in the United States.

Inspector Cloma asked Thorne for further details about her business in San Francisco. Thorne responded she planned to attend an architectural convention hosted by the International Architectural Society at the Moscone Center. Thorne

also provided the names and addresses of several prominent San Francisco Bay Area architecture firms with business ties to South America.

Although Thorne did not appear nervous and was pleasant during the questioning, Inspector Cloma felt that further inspection was necessary. Cloma escorted Thorne to an enclosed room and conducted a pat-down search, which revealed that Thorne was carrying a granola bar, a receipt for ear plugs, and a printout of an undated receipt for prescription anti-diarrhea medication. The search revealed no contraband.

Cloma then asked Thorne to raise her skirt and lower her underwear for a visual inspection. Thorne reluctantly complied. The visual inspection established Thorne was not carrying any contraband externally.

Inspector Cloma reported the inconclusive results to Senior Inspector Susan Foster, who decided to re-interview Thorne. At 2:00 p.m., Foster asked Thorne about her previous trips to San Diego and Los Angeles. Thorne responded that she had visited San Diego and Los Angeles to confer with other architects but could not remember their names, stating that the inspector's questioning made her nervous and forgetful. Foster examined Thorne's passport and asked Thorne about her lack of friends or contacts in the United States, her cash purchase of the airline ticket, and her possession of a receipt for anti-diarrhea medication. Thorne

responded that she had not committed any crime.

Senior Inspector Foster then explained to Thorne that she believed Thorne was smuggling contraband in her alimentary canal, and asked if Thorne would consent to an X-ray. After reading the consent form, Thorne stated that she was confused why Foster wanted an X-ray, but that she would agree if necessary. Cloma stated that an X-ray would indicate whether Thorne was carrying contraband. Thorne then asked what would occur if she refused to sign the consent form. Foster responded that Thorne would be detained until she had a bowel movement. Thorne became visibly agitated and stated that she would not consent to an X-ray.

At 3:25 p.m., Senior Inspector Foster escorted Thorne to San Mateo County Hospital for monitored bowel movements, and remained with Thorne. Approximately three hours later, Thorne stated that she could not agree to an X-ray because she believed that she might be pregnant. Foster offered to schedule a pregnancy test, but Thorne declined.

At 9:00 p.m., Thorne informed Foster that she would like to have a pregnancy test. Dr. Nina Gray administered the pregnancy test in the presence of Foster. The results were negative, but Thorne stated that she would not consent to an X-ray because she was concerned about possible health risks. Thorne also

advised Foster and Dr. Gray that she felt extremely ill.

At 9:45 a.m. the following morning, Thorne passed a pellet containing 5 grams of heroin, which was wrapped in the finger of a latex glove. Senior Inspector Foster placed Thorne under arrest. During the afternoon, Thorne passed a total of 40 pellets containing approximately 200 grams of heroin.

Respectfully submitted:

Arthur Dent, Esq.
Counsel for Phoebe Thorne

Tara Greene, Esq.
Assistant United States Attorney