In the
COURT OF APPEALS
FOR THE SIXTH CIRCUIT
Fall Term 2002
No. 02-00140

UNITED STATES OF AMERICA
Appellee

v.

JENNIFER HANSEL
Appellant

Appeal from the United States District Court
for the Southern District of Ohio
to the United States Court of Appeals
for the Sixth Circuit

BRIEF FOR THE APPELLEE

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STATEMENT OF JURISDICTION

This is an appeal to affirm the United States District Court for the Southern District of Ohio's decision to deny the Defendant's motion to suppress. The United States District Court for the Southern District of Ohio had proper jurisdiction over this case pursuant to 18 U.S.C. § 3231. 18 U.S.C. § 3231 (West 2001). Section 3231 grants the District Courts of the United States original jurisdiction over all offenses. *Id*. Defendant, Jennifer Hansel, was arrested and indicted on one (1) count of possession with intent to distribute methamphetamines according to 18 U.S.C. § 841. 18 U.S.C. § 841 (West 2001). The Defendant's offense falls under United States law, and thus falls under the jurisdiction of the District Court.

The United States Court of Appeals for the Sixth Circuit has proper jurisdiction to hear the current appeal from the United States District Court for the Southern District of Ohio. The Court of Appeals has jurisdiction to hear appeals stemming from final decisions of any District Court of the United States according to 28 U.S.C. § 1291. 28 U.S.C. § 1291 (West 2001). The United States Court of Appeals for the Sixth Circuit has jurisdiction due to the fact that the appeal stems from a District Court decision. The District Court entered a final judgment denying Defendant's motion to suppress on July 29, 2002. The timely final notice of appeal was filed on August 5, 2002.

STANDARD OF REVIEW

The appeal from the United States District Court for the Southern District of Ohio's decision to deny the Defendant's motion to suppress is reviewed by a *de novo* standard. *U.S. v. Miggins*, 2002 WL 1877151 (6th Cir. 2002). Reviewing a denial of a motion to suppress, the court must review questions of law *de novo*. *U.S. v. Murphy*, 241 F.3d 447, 456 (6th Cir. 2000). Any question of fact is review for clear error by the district court. *Id*. "Evidence must be viewed in a light most favorable to the government." *Id*.

REPRODUCTION OF RELEVANT STATUTES

This action was brought under 18 U.S.C. § 841, which states it is illegal to possess any illegal substances with the intent to distribute. *18 U.S.C. § 841*. The Defendant states that her Fourth Amendment rights were violated by the DEA's limited search of her workplace. The Fourth Amendment states:

> "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."
>
> *U.S. Const. Amend. IV*

ISSUES PRESENTED FOR REVIEW

1. Whether, under the Fourth Amendment of the Constitution of the United States, an individual has a subjective and objective expectation of privacy within their public office space?

2. Whether, under the Fourth Amendment of the Constitution of the United States, an officer has probable cause to believe methamphetamines are present in a public office space based on a tip from a highly reliable and known informant?

3. Whether, under the Fourth Amendment of the Constitution of the United States, exigent circumstances are present based on an officer's reasonable belief that the loss of the evidence is imminent because of a forthcoming sale of the methamphetamines pills to students?

STATEMENT OF THE CASE

On April 30, 2002, at 5:00 a.m., DEA Agent Kandaras ("Kandaras") carried out a limited warrantless search of Jennifer Hansel's ("Defendant") workplace. U.S. v. Hansel, No. 02-00140 at 3. Kandaras seized 55 methamphetamine pills in little baggies from the Defendant's unlocked file cabinet drawer. *Id*. The Defendant was indicted on one (1) count of possession with intent to distribute a controlled substance, pursuant to 18 U.S.C. § 841. *18 U.S.C. § 841*. This section makes it illegal to possess a controlled substances. *Hansel* slip op. at 1. The Defendant filed a motion to suppress the evidence seized by the Government in the United States District Court for the Southern District of Ohio. *Id*. The Defendant's claim was that the search of her office, and the evidence obtained therein, violated her Fourth Amendment rights because Kandaras failed to obtain a search warrant to videotape her office, and there were no exigent circumstances present. *Id*., U.S. Const. Amend. IV.

On July 15, 2002, the District Court denied the Defendant's motion to suppress. *Id*. The court stated that the warrantless search did not violate the Defendant's Fourth Amendment rights because she did not have an expectation of privacy in her public workplace, there was probable cause, and exigent circumstances present that supported a reasonable belief that a crime was being or about to be committed. *Id*.

On July 29, 2002, the Defendant pled guilty to one (1) count of possession of a controlled substances with the intent to distribute, but reserved the right to appeal. U.S. v. Hansel, Judgm. Case No. 02-00140 (July 29, 2002). On August 5, 2002, the Defendant appealed to the United State Court of Appeals for the Sixth Circuit from the judgment entered against her by the District Court. Notice of Appeal (Aug. 5, 2002).

STATEMENT OF FACTS

The Defendant, Jennifer Hansel, ("Defendant"), was a faculty secretary at Ohio Southern University College of Law. *U.S. v. Hansel*, Judgm. Case No. 02-00140 (July 29, 2002). The Defendant shared an office on the fourth floor with the senior secretary, Nancy Matlock. Id. They worked in an open, public office that had no inherent expectation of privacy due to the fact that it was accessible to faculty, staff, and students alike. Id. The Defendant is appealing a ruling by the United States District Court for the Southern District of Ohio dismissing her motion to suppress. Id.

On the afternoon of April 29, 2002, Ms. Matlock was in the faculty secretary's office preparing a letter of recommendation for a student. Id. at 2. The Defendant was out to lunch when Ms. Matlock finished the letter. Id. When Ms. Matlock attempted to print the letter, she discovered that the community laser printer was busy and her printer was not working. Id. It was imperative that this letter be mailed as quickly as possible. Id. It was an everyday occurrence for Ms. Matlock and the Defendant to enter each other's work area to conduct business, so Ms. Matlock sent the document to the Defendant's printer. Id. It was then that Ms. Matlock noticed the Defendant's printer was low on toner. Id.

Ms. Matlock decided to help the Defendant and replace the toner for her. Id. Thinking the Defendant kept extra office supplies in her file cabinet, Ms. Matlock opened the unlocked drawer to retrieve replacement toner. Id. Along with finding additional office supplies, Ms. Matlock discovered several tiny plastic baggies containing little while pills. Id.

Each bag was labeled. Id. Seeing the top bag, Ms. Matlock recognized the name of a first year student at the school. Id. Attached to the file cabinet drawer was a post-it note with "5:00 4/30" written lightly in pencil. Id. Replacing the toner quickly, Ms. Matlock left for lunch without waiting for the Defendant to return. Id. Ms. Matlock worked the rest of the day without speaking to the Defendant, and then went home. Id.

Ms. Matlock recognized the pills because of her experience with these drugs. Ex. C. Ms. Matlock recognized these pills as methamphetamines, the same ones her brother took for ADD. Id. Worried about the effects her brother could suffer later in life, Ms. Matlock has kept abreast of the latest medical new concerning methamphetamines. Id.

Ms. Matlock was concerned for the health of the students considering it was finals, and worried that the pills would be dispensed the next morning. *Hansel*, slip op. at 3. She was afraid that the Defendant would discover the new toner cartridge knowing her printer had been low. Id. Thus, there was a chance that the Defendant would figure out that someone replaced it, and saw the drugs. Id. Ms. Matlock feared the Defendant would dispose of the pills before she had the chance to report them. Id. At 1:00 a.m., Ms. Matlock contacted the Dean to report what she had seen. Id. The Dean quickly notified the Drug Enforcement Agency (DEA). Id.

At 2:00 a.m., the DEA arrived with video surveillance equipment. Agent Kandaras installed a camera behind the clock and pointed it toward the Defendant's desk. Id. A process

that usually takes a full workday to complete was finished by 4:30 that morning. Id. Worried that the drugs would be sold before the designated time, Agent Kandaras did not obtain a warrant in order to catch the sale on tape. Id. Recording without sound from 4:30 a.m. on, the Agents were able to see the Defendant enter the office a few minutes after 5:00 a.m. Id. The Agents watched as the Defendant dispensed the while pills to several students that entered the office. Id. The Defendant was then arrested and charged with possession with intent to distribute methamphetamines. Id. at 1. It was later confirmed that the pills in question were in fact methamphetamines. Id. at 3.

SUMMARY OF THE ARGUMENT

Agent Kandaras' limited search of the Defendant's public work area did not violate the Fourth Amendment. To invoke the protections of the Fourth Amendment, the Defendant must display a subjective and objective expectation of privacy. The Defendant did not have nor did she display a belief that she had a subjective expectation of privacy in her public office area because she did not take any affirmative steps to exhibit that belief. She did not lock the cabinet drawers, which she had keys to, where she hid the methamphetamines knowing it was a public office space. Even if she did have a subjective expectation of privacy, she does not have an objective expectation of privacy. Society is not willing to recognize an expectation that a secretary has the right to hide illegal substances in her public work area. Thus, the protections of the Fourth Amendment were not invoked because the Defendant did not have a subjective or an objective expectation of privacy within her public workplace.

Aside from there being no expectation of privacy, there was probable cause that justified the limited warrantless search. First, Agent Kandaras had a highly detailed tip from a very

reliable source, Ms. Matlock, informing him of the presence of drugs in the Defendant's public office area. Matlock shared the public office area with the Defendant, and is the individual that saw the drugs in the unlocked drawer. Second, Kandaras' reasonable suspicion that illegal activity was occurring was based on this reasonable tip from Ms. Matlock.

Along with probable cause, there were exigent circumstances that justified the limited warrantless search of the Defendant's office area. The court may look at three conditions to determine if there were exigent circumstances present to justify a warrantless search. The Government was able to show all three. The Government was first able to show that there was insufficient time for Agent Kandaras to obtain a warrant based on the circumstances. Second, there was a distinct possibility that the evidence would be lost or destroyed due to the imminent sale or that the Defendant would destroy them once she realized her toner had been replaced. Third, the seriousness of the crime justified the limited warrantless search. As a result, exigent circumstances existed that justified the limited warrantless search of the defendant's public workplace.

ARGUMENT

The decision of the District Court for the Southern District of Ohio to deny the Defendant's motion to suppress should be affirmed because the Defendant's Fourth Amendment rights were never violated. First, the Defendant did not have a reasonable expectation of privacy, either objective or subjective, in her public workplace. *O'Connor v. Ortega*, 480 U.S. 709, 715 (1987). Second, there was probable cause for Agent Kandaras to suspect illegal acts were being or about to be committed. *U.S. v. Padro*, 52 F.3d 120, 123 (6th Cir. 1995). Third, there were exigent circumstances present that justified the limited warrantless search. *U.S. v. Sangineto-Miranda*, 859 F.2d 1501, 1512 (6th Cir. 1988). Thus, the decision of the District Court to deny the motion to suppress should be affirmed.

I. THE FOURTH AMENDMENT WAS NOT VIOLATED BY AGENT KANDARAS' LIMITED SEARCH OF THE DEFENDANT'S PUBLIC WORKPLACE BECAUSE SHE DID NOT HAVE A REASONABLE EXPECTATION OF PRIVACY.

Agent Kandaras's limited search of the Defendant's public work area was constitutional under the Fourth Amendment based on the fact that she had no expectation of privacy. The Fourth Amendment allows for reasonable searches and seizures. *U.S. Const. Amend. IV*. Rights under the Fourth Amendment can only be invoked if the conduct of the officials violated an expectation of privacy of the defendant that society would consider reasonable. *O'Connor* at 715. Thus, under the Fourth Amendment, to challenge a search, a defendant must show, in the area searched, that there was a legitimate expectation of privacy. *Rakas v. Illinois*, 99 U.S. 421, 430 (1978). "Obviously, a 'legitimate' expectation of privacy by definition means more than a subjective expectation of not being discovered." *U.S. v. Bailey*, 628 F.2d 938, 941 (6th Cir. 1980). To have a legitimate expectation of privacy, there has to be a source outside the Fourth Amendment, such as a real or personal property right. *Id*.

The court may look at two factors in determining whether the defendant had a reasonable expectation of privacy. *Sangineto-Miranda* at1510. The court may first consider whether the defendant had a subjective expectation of privacy. *Bond v. U.S.*, 120 S.Ct. 1462, 1465 (2000). Second, if there is a subjective expectation of privacy, is it one that society would recognize as reasonable. *Sangineto-Miranda* at 1510. A few factors the court can look to are whether the defendant had the right to keep people from the location, and whether the defendant took steps to preserve his privacy. *U.S. v. King*, 227 F.3d 732, 744 (6th Cir. 2000). Determining whether there is a legitimate expectation is considered on a case-by-case basis. *U.S. v. Brown*, 635 F.2d 1207, 1211 (6th Cir. 1980). The Government showed that the Defendant did not have a reasonable expectation of privacy. Thus, the court should affirm the decision of the District Court and hold that the Defendant did not have a reasonable expectation of privacy.

A. The Defendant's actions did not reflect a belief that she had a subjective expectation of privacy in her public workplace.

The Defendant may claim to have a subjective expectation of privacy, but her actions indicated otherwise. The court may look to "whether the defendant has shown that he [sought] to preserve [something] as private." *Bond* at 1465. The defendant must take affirmative steps to maintain their privacy that exhibit a belief that there is an expectation of privacy. *See Id*. The courts consider whether the defendant took adequate safety measures to maintain this privacy, and whether the defendant could prohibit individuals from entering the location searched. *King* at 744. "A subjective expectation of keeping incriminating evidence hidden is insufficient to establish a reasonable expectation of privacy." *U.S. v. Wright*, D.N.H. 2000 at 2 (2000). "Employees expectation of privacy in their offices, desks, and file cabinets may be reduced by virtue of actual office practice."[1] *O'Connor*, 107 S.Ct. at 1497. This expectation of privacy is based on, in part, the openness of the office to other employees and to the public. *Id*. at 1498. "A defendant who knowingly leaves his property in a place lawfully accessible to the public has exhibited no subjective expectation of privacy." *Bailey* at 942.[2] . The expectation in the workplace is determined on a case-by-case basis. *O'Connor* at 1498. The court should reverse the decision of the District Court, and hold that the Defendant did not have a subjective expectation of privacy in her public workplace. *Id*.

In *U.S. v. Blanco*, the defendant Spinola rented a car and loaned it to defendant Fresneda, who in turn, drove it from Florida to Ohio. *U.S. v. Blanco*, 844 F.2d 344, 346 (6th Cir. 1988).

[1] The court has recognized that an employee has a reasonable expectation of privacy against intrusion by the police in the workplace. *Id*. at 1497.
[2] Holding that beepers placed on objects in areas lawfully accessible to government agents are not a violation of reasonable expectation of privacy.

The police discover defendant Fresneda and another defendant Blanco, and searched their hotel room and rental car. *Id*. at 348. Spinola was the one that rented the car, but did nothing to exhibit an expectation of privacy. *Id*. at 349. The court held that defendant Spinola and Blanco did not have a subjective expectation of privacy in the rental car. *Id*.

In *U.S. v. Elmore*, the defendant had six (6) kilograms of cocaine hidden in the trunk of his car. *U.S. v. Elmore*, 2002 WL 31055399, 2 (6th Cir. 2002). The police searched his car after smelling burnt marijuana in the car. *Id*. The defendant argued that his windows were tinted and thus, he displayed a subjective expectation of privacy. *Id*. The court that the defendant's behavior could not be considered preventative measures to protect his privacy, and thus that he had no subjective expectation of privacy.

In *Bond v. U.S.*, the defendant hid a brick of methamphetamines in his luggage while riding a bus. *Bond* at 1464. He had covered the brick in duck tape, and then rolled it in his jeans. *Id*. He then placed the brick in his luggage, and stored it in the overhead compartment. *Id*. The court held that the defendant did have a subjective expectation of privacy. *Id*. The defendant has exhibited behavior that sought to protect his privacy. *Id*.

In *O'Connor v. Ortega*, the defendant's office was searched by hospital officials looking for incriminating evidence. *O'Connor* at 713. The court held that the defendant did have a subjective expectation of privacy in his office. *Id*. at 718. The court found that the defendant did not share his office space, desk or drawers with anyone else. *Id*. The office was his private office, and thus he had a reasonable subjective expectation of privacy. *Id*.

Unlike *O'Connor*, the Defendant's office was considered a public area. *U.S. v. Hansel*, No. 02-00140 (S.D. Ohio July 15, 2002). It was common practice for the secretaries to enter

each other's work area for work related business. (Id.) Matlock entered the Defendant's work area to conduct normal work related business because her printer was not working. (Id.) Seeing that the Defendant's printer was low on toner, Matlock took it upon herself to replace the toner cartridge. (Id.) Expecting to find office supplies in the unlocked file cabinet drawer, Matlock opened the drawer only to discover illegal drugs. (Id.) The unlocked drawer contained 55 methamphetamine pills in little baggies displaying student's names. (Id.)

Similar to *Blanco* and *Elmore* but unlike *O'Connor* and *Bond*, the Defendant's actions did nothing to preserve her privacy against a search. She made no attempt to hide or disguise the pills within the drawer that usually held office supplies. (Id.) She made no effort to lock the drawer, which she held the keys to, in the likely event that someone opened it or searched it. (Id.) She put the pills in see through plastic bags. (Id.) Knowing that the office was a public area where the secretaries entered each other's work space, and students and faculty came in and out, the Defendant should have taken affirmative steps to protect her privacy against any kind of search or intrusion. (Id.) Looking at the facts of similar cases such as *Blanco* and *Elmore*, the court should hold that the Defendant did not have a subjective expectation of privacy.

B. Even if the court holds that the Defendant had a subjective expectation of privacy, it is not one that society recognizes as reasonable.

Even if the court holds that the Defendant had a subjective expectation of privacy in her public workplace, this expectation is not one that society recognizes as reasonable. For a defendant to have an objective expectation of privacy, society has to be willing to recognize that expectation as reasonable. *Bond* at 1465. "An actual expectation of privacy is entitled to Fourth Amendment protection if it is an expectation that society recognizes as 'reasonable'." *U.S. v.*

Katz, 389 U.S. 347, 361 (1967). The court notes that while a defendant must show a subjective expectation of privacy, the reasonableness of that expectation is what matters. *U.S. v. White*, 401 U.S. 745, 751 (1971). "Even where an individual has exhibited a subjective expectation that certain information will remain private, the fourth amendment will not apply unless society is willing to recognize that expectation as legitimate." *Bailey* at 941. It is irrelevant the extent to which a defendant may have relied on this expectation in a situation if it is not constitutionally justified. *Id*. "What a person knowingly exposes to the public, even in his own home or office, is not a subject of fourth amendment protection." *Cowles v. Alaska*, 23 P.3d 1168, 1171 (Alaska, 2001). Activities that the public is able to scrutinize do not generally fall under the Fourth Amendment. *Id*. The Government showed that, even if the Defendant had a subjective expectation of privacy, it is not one that society is willing to recognize. Thus, the court should affirm the District Court's decision that if the Defendant had an expectation of privacy, it was not reasonable.

In *Blanco*, the defendant Spinola loaned his rental car to defendant Fresneda who drove it from Florida to Ohio. *Blanco* at 346. Defendant Fresneda concealed three (3) kilograms of cocaine in wedge shaped packages, wrapped in tape in the door panel of the rental car. *Id*. at 348. The court held that the defendant did not have a reasonable expectation of privacy inside the door panel that society was willing to recognize. *Id*. at 349.

In *Elmore*, the defendant was pulled over for driving without visible rear license plates. *Elmore* at 1. When the police officer approached the car, he smelled burnt marijuana coming from inside, and made the decision to search it. *Id*. The police discovered six (6) kilograms of

cocaine hidden in the trunk. *Id*. The court held that the defendant's expectation of privacy in his trunk was not reasonable because it was not one society recognizes. *Id*. at 4.

In *Cowles*, the defendant worked in a ticket booth selling tickets for the University. *Cowles* at 1169. She was videotaped stealing money from the ticket sales. *Id*. The court first determined that the ticket booth was a public area because other employees and the public could see it. *Id*. at 1171. The court then determined that since the ticket booth was open to other employees and to the view of the public, that she did not have a reasonable expectation of privacy. *Id*.

Similar to *Cowles*, the Defendant's office is a public area. *Hansel* slip op. at 4. The office is accessible to other faculty members, staff, and students. (Id.) It was normal for the secretaries to enter each other's work area throughout the day to conduct everyday business dealings. (Id.) The door to the office was normally left open to the public as well. (Id.) Because the Defendant shared an office that was accessible to the faculty, staff, and students, it was viewed as public. (Id.) Another member of the faculty or staff could just have easily come to work early the morning of the sale, and observed the Defendants activities.

Looking at the individuals in *Blanco* and *Elmore*, the activities of the Defendant are similar regarding the possession of illegal substances. She placed the drugs in an area that she had control over, but failed to secure. (Id.) She put the methamphetamines in an unlocked drawer, which she had the keys to, which was accessible to Matlock. (Id.) She did not try to cover up the pills or conceal them in anyway. (See Id.) Courts in these cases have held that, regardless of the defendant's actions, there was no reasonable expectation of privacy that society recognizes. *See Blanco and Elmore*. Looking at *Elmore*, *Blanco* and *Cowles*, the court should

sustain the District Court's decision that the Defendant did not have a reasonable expectation of privacy.

Looking at the facts of this case, the Government showed that the Defendant did not have a reasonable expectation of privacy. The Defendant did not have a subjective expectation of privacy in her public office area because her actions did not reflect that belief. Even if the court holds that she did have a subjective expectation of privacy, the Government showed it was not one society would recognize as reasonable. Thus, the court should affirm the District Court's ruling that the Defendant did not have a reasonable expectation of privacy in her public work area.

II. DEA AGENT KANDARAS' LIMITED SEARCH OF THE DEFENDANT'S WORKPLACE WAS CONSTITUTIONAL BECAUSE PROBABLE CAUSE EXISTED BASED ON FACTS OBTAINED FROM MATLOCK THAT METHAMPHETAMINES WERE PRESENT.

DEA Agent Kandaras' limited search of the Defendant's public workplace was justified because probable cause did existed. The Fourth Amendment of the Constitution allows for reasonable searches and seizures. *U.S. Const. Amend. IV*. The Fourth Amendment is not violated just because there is no warrant. *U.S. v. Worley,* 193 F.3d 380, 385 (6th Cir. 1999). There are exceptions to the warrant requirement. *Illinois v. McArthur,* 121 S.Ct. 946, 949 (2001). The Supreme Court insists upon a minimum requirement of probable cause for a search to fall under the Constitution. *Chambers v. Maroney,* 90 S.Ct. 1975, 1981 (1970). Probable cause is a reasonable belief that is based on more than a mere suspicion. *Padro* at 123. "Probable cause exists where the 'facts and the circumstances within (the arresting officers') knowledge and of which they had reasonable trustworthy information (are) sufficient in

themselves to warrant a man of reasonable caution in that belief that an 'offense has been or is being committed'." *U.S. v Blanton*, 520 F.2d 907, 911 (6th Cir. 1975). The "'totality-of-the-circumstances' and a practical, common sense review of the facts available to the officer at the time of the search," will determine whether probable cause existed. *Padro* at 123. Probable cause does not require a showing that the belief of the officer is "correct or more likely true than false." *U.S. v. Pasquarille*, 20 F.3d 682, 686 (6th Cir. 1994). To establish probable cause, there must only be a "probability or substantial chance of criminal activity, not an actual showing of such activity." *U.S. v. Ogbuh*, 982 F.2d 1000, 1002 (6th Cir. 1993).

The court may first look to the information available to the officer at the time the search was conducted to determine if there was probable cause. *U.S. v. Craemer*, 555 F.2d 594, 596 (6th Cir. 1977). Second, the court may consider the reasonable suspicion of the officer at the time of the search. *U.S. v. Miggins*, 2002 WL 1877151, 2 (6th Cir. 2002). The court should sustain the District Court's ruling that there was probable cause to conduct a limited warrantless search based on the fact that the Government was able to show both conditions.

A. DEA Agent Kandaras had probable cause to search the Defendant's public workplace based on highly detailed information obtained from Matlock.

Agent Kandaras had probable cause to conduct a limited warrantless search of the Defendant's public workplace based on highly detailed information given to him by Matlock. The court must look to the information that the agent had at the time of the search to determine whether there was probable cause existed. *Craemer* at 596. "Probable cause exists when the facts and circumstances within the agents' knowledge and of which they had reasonably trustworthy information are sufficient in themselves to warrant a man of reasonable caution to

believe that an offense is being or has been committed." *Id.* "An informant's tip to police about an individual's criminal activity can be enough to induce reasonable suspicion." *U.S. v. Witherow*, 95 F.3d 1153, 2 (6th Cir. 1996). The Government showed that the information obtained from Matlock was detailed enough to establish a basis for probable cause.

In *U.S. v. Pasquarille*, the police relied on a highly detailed informant's tip to establish probable cause. *Pasquarille* at 687. The police received a tip from "someone transporting prisoners" that he had observed a drug sale. *Id*. at 684. The informant was able to provided highly detailed information regarding the vehicle involved in the sale, but did not provide a name. *Id*. The court held that the officer's had probable cause, based on the highly detailed information provided by the informant, regardless of his anonymity, that the vehicle contained evidence of a crime. *Id*. at 687.

In *Draper v. U.S.*, the police received a highly detailed tip from an informant regarding the defendant and his drug sale activity. *Draper v. U.S.*, 358 U.S. 307, 309 (6th Cir. 1959). The informant was able to relay a description of the defendant, his clothing, the way he walked, and the drugs he would be carrying. *Id*. The court held that the detailed tip by the informant established a basis for probable cause. *Id*. at 314.

Similar to *Pasquarille* and *Draper*, Matlock was able to provide highly detailed information to the Dean, who made the final decision to call the DEA. *Hansel*, slip op. at 2-3. Matlock knew the time of the sale, what was to be sold, who it was to be sold to, and the current location of the narcotics. (Id.) Matlock is also a highly respected and trusted member of the faculty. (Id.)

Ms. Matlock's experience with narcotics of this type, though she is not an expert, enabled her to relay detailed information regarding the pills to the DEA. (Ex. C) Everyday for two years, she helped her brother sort the methamphetamine pills he took for ADD. (Id.) She was able to identified the pills in the bags as the same ones her brother took. (Id.) Her experience is not strictly limited to sorting pills. (Id.) Worried about the long-term effects of methamphetamines, she closely has followed medical reports that have appeared in the media regarding the drug. (Id.) The court should hold that the highly detailed information obtained from Matlock provided an adequate basis for probable cause.

B. DEA Agent Kandaras had probable cause based upon a reasonable suspicion that evidence of a crime was present in the Defendant's public work area.

Agent Kandaras had probable cause to search the Defendant's public work area based on a reasonable suspicion that a crime was being or about to be committed. The court must next look to the reasonable suspicion of the officer to determine if there was probable cause. *Padro* at 123. The basis for probable cause is "whether there is a fair probability that contraband or evidence of a crime will be found in a particular place." *U.S. v. Murphy*, 241 F.3d 447, 457 (6th Cir. 2001). The concept of probable cause deals with probabilities. *Brinegar v. U.S.*, 338 U.S. 160, 175 (1949). To establish probable cause, there must only be a "probability or substantial chance of criminal activity, not an actual showing of such activity." *Ogbuh* at 1002. It does not have to be certain that incriminating physical evidence will be found. *Id.* "An informant's tip to police about an individual's criminal activity can be enough to induce reasonable suspicion." *Witherow* at 2. The Government showed that the Agent Kandaras had a justified, reasonable, suspicion that evidence of a crime was present, thus establishing probable cause.

In *U.S. v. Sangineto-Miranda*, the police were informed by a highly reliable source of a drug sale. *Sangineto-Miranda* at 1508. They knew the type of drug to be sold, the location of the sale, and who was to sell it. *Id*. The court held that there was probable cause because the facts obtained would convince a reasonable person that a crime was being committed. *Id*.

In *Draper v. U.S.*, the police received a extremely detailed tip from an informant regarding the defendant. *Draper* at 310. The informant described the dress, mannerisms, type of narcotics the defendant would be carrying, and on what day he would be carrying them. *Id*. The court held that the officer involved had probable cause to believe the defendant was committing a crime. *Id*. at 314.

Similar to *Sangineto-Miranda* and *Draper*, the DEA was informed of the presence of narcotics by Matlock, a highly respected member of the academic community. *Hansel*, slip op. at 3. The DEA was notified that methamphetamines were found in the faculty secretary's office at Ohio Southern University College of Law. (Id.) Agent Kandaras was informed of the time of the sale, and what was to be sold. (Id.) Agent Kandaras' reasonable suspicion that methamphetamines were present, and were to be sold, was reasonably based on the knowledge obtained from Matlock. (Id.) Thus, the court should hold that Agent Kandaras' belief that there were methamphetamines present was reasonable based on the information he had at the time.

Looking at the facts of this case, and similar cases, the Government showed that there was adequate information to justify probable cause, and thus the limited warrantless search of the Defendant's public work area. The Government was able to show that the information gained from Ms. Matlock was highly detailed and reliable. The Government also showed that the suspicion of Agent Kandaras was reasonable under the circumstances. Thus, the court should

affirm the decision of the District Court, and hold that there was ample probable cause to conduct a limited warrantless search of the Defendant's public workplace.

III. AGENT KANDARAS' LIMITED WARRANTLESS SEARCH OF THE DEFENDANT'S PUBLIC WORKPLACE WAS CONSTITUTIONAL BASED ON EXIGENT CIRCUMSTANCES THAT WERE PRESENT.

Agent Kandaras' limited search of the Defendant's public workplace did not require a warrant based on the presence of exigent circumstances along with probable cause. Under the Fourth Amendment, reasonable searches are permissible. *U.S. Const. Amend. IV*. The courts have recognized that situations where exigent circumstances exist justify warrantless searches. *Sangineto-Miranda*, at 1512. "The exigent circumstances exception is based on the premise that the existence of an emergency situation, demanding urgent police action, may excuse the failure to procure a search warrant." *U.S. v. Apple*, 2000 U.S. App. Lexis 15729, 9 (6th Cir. 2000). "Warrantless entry will be sustained when the circumstances then extant were such as to lead a person of reasonable caution to conclude that evidence of a federal crime would probably be found on the premises and that such evidence would probably be destroyed within the time necessary to obtain a search warrant. *U.S. v. Radka*, 904 F.2d 357, 361 (6th Cir. 1990). Exigent circumstances are present when there is a risk that evidence will be lost or destroyed. *Id.* "Exigent circumstances permitting police to enter a structure without a warrant may arise when evidence of drug crimes is in danger of destruction." *U.S. v. Elkins*, 2002 U.S. App. LEXIS 15471, 41 (6th Cir. 2002). If an officer has a reasonable belief that evidence will be lost or destroyed while obtaining a warrant, a warrantless entry is validated. *Id.* at 633.

Three conditions may be looked at in determining whether exigent circumstances were present. First, the court may look to whether there was sufficient time to obtain a warrant. *U.S.*

v. Marshall, 744 F.2d 1215, 1222 (6th Cir. 1984). Second, the court will look to the likelihood that evidence would be lost or destroyed. *Sangineto* at 1511. Third, the court will look to whether the seriousness of the crime excused the need for a warrant. *Id*. The Government showed all three conditions, and thus the court should uphold the decision of the District Court that exigent circumstances were present.

A. There was insufficient time to procure a warrant to search the Defendant's public work area due to the fact that the methamphetamines would be sold to students by 5:00 a.m.

The belief that there was insufficient time to procure a warrant to search the Defendant's public work area was justified based on facts obtained from Matlock that the evidence was to be sold within three (3) hours of the DEA's arrival. When considering whether circumstances are exigent, the amount of time necessary to obtain a warrant is a factor. *U.S. v. Morgan*, 743 F.2d 1158,1222 (6th Cir. 1984). Officers must have a reasonable belief that the time available was insufficient to obtain a warrant. *See Generally U.S. v. Campbell*, 261 F.3d 628, 633 (6th Cir. 2001). If an officer has a reasonable belief that evidence will be lost or destroyed while obtaining a warrant, a warrantless entry is validated. *Id*. Though it may later be discovered that there was sufficient time to obtain a warrant, it is not necessary to obtain one if it appears that, at the time, there was insufficient time. *U.S. v. Thomas*, 319 F.2d 486, 488 (6th Cir. 1963). The Government is able to prove that there was insufficient time to obtain a warrant, and thus the court should affirm the District Courts ruling.

In *U.S. v. Johns Et Al*[3], the police seized several packages from the defendants, but did not obtain a warrant to search them. *U.S. v. Johns Et Al*, 469 U.S. 478, 481 (1985). The DEA Agent's left the packages in the DEA warehouse for three (3) days before searching them, and

[3] *Johns Et Al* involves the warrantless search and seizure of a truck and it's contents based on probable cause.

still failed to obtain a warrant. *Id*. The Supreme Court held that the warrantless search of the packages was reasonable even thought three (3) days had elapsed. *Id*. at 486.

In *U.S. v. Apple*, the police had over 6 hours to procure a warrant, but did not. *See Apple*. The police were informed at 9:40 a.m. that a drug sale was to occur. *Id*. at 2. At 4:15 p.m., the officers were informed of the location of the deal. *Id*. at 4. At 4:45 p.m., the officers entered the defendant's home, without knocking or a search warrant. *Id*. at 5. The court held that there would have been an unreasonable risk in trying to secure a warrant. *Id*.

Similar to the situation in *Apple*, the DEA had insufficient time to obtain a warrant. Agent Kandaras learned, shortly after 1:00 a.m., that methamphetamines were to be sold out of the secretary's office at the Ohio Southern University College of Law at 5:00 a.m. that morning. *Hansel*, slip op. at 3. Upon the DEA's arrival at 2:00 a.m., the decision was made, based on Kandaras' reasonable belief, that there was insufficient time to obtain a warrant. (Id.) The Agents knew that setting up their equipment could take an entire workday. (Ex. D) Agent Kandaras and his partner had to spend every possible minute setting up the equipment before the sale was to occur. (Id.)

The situation in *Johns Et Al* reiterates that each situation must be viewed on a case-by-case basis. Hindsight may reveal that there was adequate time to procure a warrant, but the court must look at the belief of the officers at the time the search was conducted. *See Thomas*. Agent Kandaras reasonably believed that there was insufficient time to obtain a warrant based on the information obtained from Matlock and his experience setting up video surveillance equipment. *See Hansel* slip op. at 3. Though no court has set a specific amount of time that is sufficient to obtain a warrant, the courts have held that the belief of the officer at the time of the search

determines sufficiency. *See Thomas*. Looking that the facts of this case and the situations *Apple* and *Johns Et Al*, the Government showed that there was insufficient time to obtain a warrant.

B. Agent Kandaras' belief that there were exigent circumstances to conduce a limited search of the Defendant's public work area was justified based on facts obtained from Matlock that the evidence would be lost or destroyed.

Agent Kandaras' belief that evidence would be lost or destroyed was based on facts obtained from Matlock that the drugs were to be sold at 5:00 a.m. "Exigent circumstances will be present when there is an urgent need to prevent evidence from being lost or destroyed." *Sangineto-Miranda* at 1511. The possibility that evidence will be destroyed does not justify a warrantless search. *Radka* at 362. The loss of evidence has to be imminent for an officer to reasonably believe that there are exigent circumstances present. *Sangineto-Miranda* at 1512. When narcotics are involved, the chance that they will be lost or destroyed is particularly compelling. *Id*. at 1511. It is very easy to destroy narcotics during a search. *Id*. There also has to be someone present that is able to destroy the evidence in question. *Id*. at 1512. The Government showed that the loss or destruction of evidence was imminent, and thus the court should affirm the District Court's ruling.

In *U.S. v. Elkins*, the police received a tip that marijuana was being grown in a building owned by the defendant. *Elkins* at 642. In the course of the police's investigation, they detained an acquaintance of the defendant to question him regarding plants. *Id*. at 645. The defendant saw him being detained, and retreated into his house where the plants were located. *Id*. at 646. The police feared that since the defendant had seen his friend being detained, he would destroy the evidence in question. *Id*. The court held that the possibility that the defendant would destroy the evidence was imminent, and created a reasonable basis for exigency. *Id*. at 657.

In *U.S. v. Sangineto-Miranda*, DEA Agents were involved in an undercover operation to catch a drug dealer. *Sangineto-Miranda* at 1504. Through out the investigation, the DEA remained in contact with several individuals concerning the sale, and arrested two (2) individuals for possession of cocaine. *Id*. The DEA was afraid the dealer would get suspicious since the "money man" had not shown and destroy the evidence. *Id*. at 1511. The court held that there was a reasonable belief that the loss or destruction of evidence was imminent. *Id*. at 1512.

Similar to *Elkins* and *Sangineto-Miranda*, Agent Kandaras was afraid the Defendant would get suspicious of the new toner in her printer, realize the drugs had been seen, and destroy the evidence in her office. (Ex. D). The Agent Kandaras was informed around 1:00 a.m. that the Defendant was in possession of methamphetamines, and was planning to sell them to students in the early morning hours of April 30, 2002. *Hansel*, slip op. at 3. Thus, the DEA had less than three hours once they arrived to get into her offices and set up their surveillance equipment. (Id.) If they were unable to get set up in time, the Defendant could sell the pills and the DEA would have nothing to show for it. (Id.) Thus, the evidence of a federal crime would be lost. (Id.) If the Defendant, realizing her toner had been replaced and that the drugs had been seen, could come and destroy the evidence before the DEA had a chance to complete their search. (Ex. D). Both were imminent possibilities that the DEA was working against when setting up their surveillance equipment. (Id.) Looking at the circumstances of this case, the court should hold that the destruction or loss of evidence by the Defendant was imminent.

C. The gravity of the crime justified Agent Kandaras' belief that there were exigent circumstances to conduct a limited search of the Defendant's public work area.

Agent Kandaras was justified in his belief that there were exigent circumstances based on the severity of the crime. A factor in determining whether there are exigent circumstances is to consider the gravity of the offense. *Welsh v. Wisconsin*, 466 U.S. 740, 753 (1984). The gravity of the crime must be severe enough to justify a reasonable belief of exigent circumstances. *See Id*. According to 21 U.S.C. § 841(a)(1), it is unlawful to possess a controlled substance with the intent to distribute. *21 U.S.C. § 841(a)(1) (West 2001)*. Thus, the Government was able to show that the severity of the crime justified the exigent circumstances.

The gravity of the Defendant's crime was severe enough to validate a belief that exigent circumstances were present. The pills being kept in her unlocked file cabinet drawer were methamphetamines. *Hansel*, slip op. at 3. These pills were to be sold the morning of April 30, 2002 at 5:00 a.m. (Id.) Possession with intent to distribute violates a federal statute, making this a felony offense. (Id.) Thus, the court should find that the gravity of the crime did justify a belief that there were exigent circumstances.

In looking at whether there were exigent circumstances necessarily to justify a limited warrantless search, the Government proved that there was insufficient time to procure a warrant. Next, that the possibility that evidence would be lost or destroyed was imminent. Finally, that the gravity of the crime justified Agent Kandaras' belief that exigent circumstances were present. Thus, the court should affirm the District Court's holding that exigent circumstances were present to conduct a limited search of the Defendant's public workplace.

CONCLUSION

The Government showed that the Defendant did not have a reasonable expectation of privacy in her work area, that there was probable cause, and that there were exigent circumstances present to justify a limited warrantless search of the Defendant's public workplace.

Respectfully submitted,

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