

TEXAS TECH UNIVERSITY SCHOOL OF LAW  
BOARD OF BARRISTERS  
SPRING 2025 ADVANCED MOOT COURT COMPETITION

No. 25-695

# Supreme Court of the United States

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ELPHABA THROPP,  
Petitioner,

v.

UNITED STATES OF AMERICA,  
Respondent.

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ON WRIT OF CERTIORARI

THE COURT OF APPEALS FOR THE EMERALD CIRCUIT

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RECORD ON APPEAL

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UNITED STATES DISTRICT COURT  
DISTRICT OF OZ

-----X  
UNITED STATES OF AMERICA,

- v. -

ELPHABA THROPP,  
*Defendant.*  
-----X

INDICTMENT  
22-CR-250  
(T. 21, U.S.C. §§ 841(a)(1) and  
(b)(1)(A)(vi); 21 U.S.C. § 853)

COUNT ONE

Possession with Intent to Distribute  
400 Grams or More of the Green Elixir  
(21 U.S.C. §§ 841(a)(1) and (b)(1)(A)(vi))

The Grand Jury charges:

On or about February 14, 2023, in the Emerald City, in the District of Oz, and elsewhere,  
the defendant,

ELPHABA THROPP,

did knowingly and intentionally possess with intent to distribute 400 grams or more of a mixture  
and substance containing a detectable amount of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl]  
propenamide, also known as the green elixir<sup>1</sup>, a Schedule II controlled substance.

All in violation of Title 21, United States Code, Sections 841(a)(1) and (b)(1)(A)(vi).

DRUG FORFEITURE ALLEGATION  
(21 U.S.C. §853)

1. Upon conviction of the offence of Title 21, United States Code, Section 841, set forth in  
Count One, the defendant,

ELPHABA THROPP,

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<sup>1</sup> For the purposes of this problem, the “green elixir” replaces fentanyl in any and all statutory code referenced  
herein and below.

shall forfeit to the United States, pursuant to Title 21, United States Code, Section 853, any property constituting, or derived from, any proceeds obtained, directly or indirectly, as a result of such offense; and any property used, or intended to be used, in any matter or part, to commit or to facilitate the commission of, such offense:

2. If any of the property described in paragraph 1, above, is described as being forfeitable pursuant to Title 21, United States Code, Section 853, as a result of any act or omission of the defendant, that –
  - a. Cannot be located upon the exercise of due diligence;
  - b. Has been transferred or sold to, or deposited with, a third party;
  - c. Has been placed beyond the jurisdiction of the Court;
  - d. Has been substantially diminished in value; or
  - e. Has been comingled with other property which cannot be divided without difficulty;

It is the intention of the United States, pursuant to Title 21, United States Code, Section 853(p), to seek forfeiture of any other property of the defendant up to the value of the property described in Paragraph 1 above.

All pursuant to Title 21, United States Code, Section 853.

A TRUE BILL

**Caleb Kunde**  
FOREPERSON

**Caden Jackson**  
CADEN JACKSON  
ASSISTANT UNITED STATES ATTORNEY  
DISTRICT OF OZ

District of Oz: February 15, 2023  
Returned into the District Court by the Grand Jurors and filed.

**Taylor Terry**  
DEPUTY CLERK



# Shiz Reporter

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*Shiz Reporter*

From: Fabala Green <fabalagreen@gmail.com>  
Sent: Tuesday, October 19, 2022 at 2:47 p.m.  
To: Madam Morrible <mmorrible@shizuniversitypress>  
Subject: Interested in Publishing Novel

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Dear Madam Morrible,

Good afternoon. My name is Fabala Green, and I am reaching out with interest in discussing a publishing contract with Bridgewater Books. I have attached the 75,000-word manuscript for my latest novel, *Wicked*. It is a fast-paced dramatic fantasy about a sickeningly green young witch who discovers that she is the only one who may save Oz from the Wicked Witch of the East. The target audience is both women and men of all ages, but advisedly above the age of 16 who like the work of authors like Gregory Maguire. I think that you will find it to be a riveting potential new addition to your collection of popular publications.

I would appreciate it if you could give my manuscript a read and let me know if you are at all interested in publishing it. If you do not fancy *Wicked*, I have four other completed manuscripts that I would be happy to share with you, titled *The Wizard of Oz*, *Son of a Witch*, *A Lion Among Men*, and *Out of Oz*. They are all dramatic fantasy novels with plenty of suspense, intrigue, and insight.

Thank you so much for your time. I look forward to hearing back from you.

Sincerely,  
Fabala Green



**Elphaba Thropp**

*Open to Work*

Dec. 28, 2022

Hi friends!

I am looking for a new job opportunity! If anyone has any leads let me know. I am an experienced writer and ideally am looking for a role that involves editing, copyediting, or copywriting—maybe even teaching. I am great with people and love to collaborate. Please keep me in mind for any of your writing needs.

I am open to opportunities in other fields as well. I have additional experience as a server, barista, and in childcare. I am also familiar with and have a heart for the animal industry. Tag a friend if you think I would be a great fit for their role! Thanks!



**Nessa Rose**

Animal Handler at Gillikin Animal Hospital

Dec. 28, 2022

It's rough out there, but don't worry. I can help you out with that! Shoot me a message!



**Prince Fiyero**

Dec. 30, 2022

I'll keep you in mind if anything comes up.





## Spell Binding Program Launches in Shiz Elementary Schools

By Madam Morrible

Shiz Unified School District (SUSD) is partnering with the Gillikin Spells Club (GSC) to launch a new spell binding after school program tailored for elementary school-age children. This initiative, set to kick off in the coming weeks, aims to immerse students in the strategic world of spells, offering a myriad of cognitive benefits for young minds.

The carefully crafted curriculum accommodates various skill levels. Everyone who joins will benefit: a child that does not know much about spells will benefit just as much as one who can send a house from Kansas floating through a tornado! The program will ensure an inclusive and enjoyable learning experience for all participants.

Experts from the local spell club have been instrumental in developing the classes, and will be involved in instruction and mentoring students, according to a joint statement issued by SUSD Superintendent Dr. Nikidik and GSC President Miss Coddle. Many parents are enthusiastic about the prospect of their children learning spells at school. Mrs. Shenshen, a parent of a first grader and third grader, said: "We look forward to the day when kids will be talking about sorcery and flying on brooms instead of science in the school hallways."

Spell binding has long been revered for its positive impact on cognitive development, and this program is set to harness those benefits for the benefit of the students. From enhancing memory through the recall of rules and patterns to promoting heightened concentration during spell casting, participating children are expected to develop critical thinking and problem solving skills.

SUSD will be sending further details to parents soon about how their children can participate in the program.



Studies show that children who cast spells regularly improve their concentration and memory.



The xylazine-green elixir mixture has exacerbated the drug problems in Emerald City.

## Animal Sedative Mixed with Green Elixir Gripping Emerald City

By Ama Clutch

*A veterinary tranquilizer called xylazine is infiltrating street drugs, deepening addiction in Emerald City.*

EMERALD CITY – Officially, this new drug is called xylazine and it is used as an animal tranquilizer by veterinarians. But on the street, it has many unofficial names like "tranq," "tranq dope," and "zombie drug." When xylazine is combined with the green elixir, which is already a scourge in Emerald City, it results in potent and deadly new street drug, one with even more devastating consequences.

Emerald city police have long battled the city's growing drug addiction epidemic. This new combination of xylazine and green elixir poses a new kind of threat, one that law enforcement is failing to contain.

The mixture of xylazine and green elixir results in an intense and quickly fading high, leaving users craving more of the drug immediately. Overdose reversal treatments, like naloxone, are not as effective against a xylazine-green elixir mixture because xylazine is a sedative and therefore less responsive to anti-overdose treatments.

Until now, xylazine was considered a harmless Animal tranquilizer. It was not on the radar of federal law enforcement as a drug that had

potential for illicit use. The past few months have certainly changed this calculation for drug enforcement officials.

According to the Emerald City Police Department and local Drug Enforcement Administration officials, there are 35 percent more deadly overdoses in Emerald City in 2023 compared with this time last year.

"The police need to do something about this," said Emerald City resident Pfannee Yang. "My kids walk past people slumped over from using drugs on their way to school. This is not acceptable. Law enforcement has failed our city."

A local Drug Enforcement Administration official, who did not want to be named because he was not authorized to speak with the media, acknowledged the xylazine-green elixir epidemic and said that law enforcement will be cracking down on use and distribution. "If you are selling this dangerous drug, we will find you and do whatever it takes to stop you," the official said.

**Department of Justice**  
U.S. Attorney's Office  
District of Oz

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FOR IMMEDIATE RELEASE  
Thursday, September 21, 2023

**Emerald City Resident Convicted of Possession with Intent to Distribute Deadly Mix of the Green Elixir and Xylazine**

**Elphaba Thropp Found Guilty of Elaborate Scheme to Smuggle Illicit Drugs into the Emerald City**

Wizard of Oz, the United States Attorney for the District of Oz, announced today that ELPHABA THROPP was found guilty by a federal jury for possessing and intending to distribute a deadly combination of green elixir laced with the veterinary tranquilizer xylazine. THROPP imported the illicit fentanyl and xylazine mixture into the Emerald City using the U.S. Postal Service.

U.S. Attorney Wizard of Oz said: "Today's conviction reflects our offices' commitment to ridding the streets of the Emerald City of illicit narcotics. The citizens of the Emerald City have had to live with the harmful and dangerous consequences of illegal narcotics for too long. With this conviction, we can assure the Emerald City citizens that those responsible will be held accountable for their crimes."

According to allegations in the Indictment, other documents filed in federal court, as well as statements made in public court proceedings:

In late 2022 and early 2023, investigators with the Drug Enforcement Administration (DEA) investigated the increasing prevalence of street drug activity in the Emerald City involving the green elixir-xylazine mixture. In February 2023, an Emerald City resident overdosed from the deadly combination. After conducting a thorough search of the scene, DEA investigators uncovered a crucial detail that eventually led them to THROPP when they found a package mailed to the overdosed victim from a purported veterinary pharmaceutical company called "Holistic Animal Care." This company claims to not treat animals but Animals specifically.

Upon this discovery, DEA investigators, working closely with the United States Postal Inspection Service and the Emerald City Post Office, intercepted additional packages from "Holistic Animal Care" addressed to a post office box located at the Emerald City Post Office.

DEA investigators tested the contents of these packages and discovered that the packages together contained 800 grams of xylazine laced with 400 grams of the green elixir. Investigators then traced the packages to THROPP who was duly indicted and arrested.

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THROPP, 25, of Quadlings, Oz, was found guilty of one count of possession with intent to distribute a Schedule II controlled substance, in violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(A)(vi). THROPP faces a minimum sentence of 10 years, and a maximum sentence of life in prison.

THROPP is scheduled to be sentenced on November 10, 2023.

The statutory maximum sentences in this case are prescribed by Congress and are provided here for informational purposes only, as any sentencing of the defendant will be determined by the presiding judge.

U.S. Attorney Wizard of Oz praised the exceptional investigative work of the Drug Enforcement Administration, the U.S. Postal Inspection Service, and the Emerald City Police Department. Wizard of Oz also thanked the Emerald City District Attorney's Office for its assistance in the investigation.

This case is being handled by the Office's Emerald City Division. United States Attorney the Wizard of Oz is prosecuting the case.

Topic(s):  
Controlled substances; Possession and  
Intent to Distribute

Contact:  
Media Relations  
[mediarelations@usdoj.gov](mailto:mediarelations@usdoj.gov)

Component(s):  
USAO – Oz

Press Release Number:  
41-233

Updated September 21, 2023

UNITED STATES DISTRICT COURT  
DISTRICT OF OZ

-----X  
UNITED STATES OF AMERICA,

- v. -

22-CR-250 (ABR)

ELPHABA THROPP,  
*Defendant.*

-----X

**TRANSCRIPT OF HEARING ON MOTION TO SUPPRESS CONTENTS OF SEALED  
PACKAGES**

BEFORE: THE HONORABLE TIN MAN

DATE: August 25, 2023

APPEARANCES:

For the United States of America: Wizard of Oz, AUSA  
Office of the U.S. Attorney  
District of Oz

For Defendant Elphaba Thropp: Glinda Upland, Esq.

Court Reporter: Winged Monkey  
District of Oz  
Court Reporter Services

1 CLERK: This is the matter of the United States of America  
2 against Elphaba Thropp, Case Number 22-CR-250. United States  
3 Attorney, Wizard of Oz, appearing for the Government. Glinda Upland  
4 appearing for the defendant, Elphaba Thropp.

5 COURT: Good morning. I understand today we have a hearing on whether  
6 the contents the DEA seized from the sealed packages on February 14,  
7 2023 should be suppressed pursuant to *Mapp*. The Court will hear  
8 first from Defendant's counsel.

9 GLINDA: May it please the Court. The contents found within the  
10 packages addressed to Elphie, excuse me, Ms. Thropp must be  
11 suppressed under the protections afforded by the Fourth Amendment.

12 COURT: Does the defendant even have a privacy interest here? She  
13 used a fake name. Why should the Fourth Amendment protections apply  
14 if she does not even use her real name on the packages?

15 GLINDA: Your Honor, regardless of the name used, Ms. Thropp had  
16 privacy rights in the packages because the name on the packages  
17 does not dictate the analysis here.

18 COURT: Using one's name is how an individual exerts a privacy  
19 interest, is it not?

20 GLINDA: This is a novel issue in the Emerald Circuit. Other circuit  
21 courts have grappled with the question of whether using a  
22 fictitious name eviscerates someone's expectation of privacy in the  
23 package. Though there is a split in opinion, some courts have  
24 determined that this does not diminish any expectation of privacy.

25 COURT: By that logic, courts would just protect anyone's wanton  
26 wish to remain anonymous?

1 GLINDA: Your Honor, one circuit court has expressly determined that  
2 there is nothing wrong with wanting to remain anonymous while  
3 sending packages, thus the use of a fake name does not affect the  
4 privacy someone enjoys in the package they sent. Ms. Thropp's wish  
5 to remain anonymous, in order to remain free from unfettered  
6 government intrusion, is a desire our nation's Founders surely  
7 would have endorsed. When arranging for the shipping of the packages  
8 at issue here today, Ms. Thropp used a fictitious name. However, she  
9 followed the rules governing our postal service: she paid the  
10 relevant fees and included an address for the packages to be  
11 shipped.

12 COURT: Weren't the packages at issue here in transit when they were  
13 intercepted by the postal service employees?

14 GLINDA: Yes, however, the transitory nature of the packages does  
15 not diminish the privacy the package enjoys. Multiple appellate  
16 courts have emphasized this principle.

17 COURT: At the end of the day, the packages contained illegal  
18 narcotics, correct?

19 GLINDA: Yes, but the packages' contents cannot be used to justify  
20 unconstitutional conduct. Ms. Thropp also ordered face cream from  
21 Amazon. These packages were delivered the same day to the same P.O.  
22 Box as the packages at issue here. Regardless of what was in any of  
23 her packages, Ms. Thropp maintained an expectation of privacy in  
24 the sealed packages from the moment she paid for their contents and  
25 arranged for their shipment.

26 COURT: But the defendant in this case knew she was transporting

1 narcotics through the mail.

2 GLINDA: Ms. Thropp's subjective state of mind is immaterial. To hold  
3 otherwise would open the door to law enforcement officials banging  
4 down any door they desire, looking for narcotics, and justifying  
5 their entrance after-the-fact if drugs were found.

6 COURT: Counsel, you mentioned a circuit split. Why should we give  
7 this defendant a privacy interest in a fictional name when courts  
8 remain undecided about this issue?

9 GLINDA: Even if some courts have not categorically recognized a  
10 privacy interest in a fictional name, the majority of appellate  
11 courts have acknowledged, at least to some extent, that there  
12 might be a privacy interest if a defendant's use of an alias is a  
13 "public use," or the defendant is known by that name.

14 COURT: But Counsel, you just intimated that the defendant used a  
15 fictional name to receive packages because she wished to remain  
16 anonymous. How is this a public use?

17 GLINDA: Even if Ms. Thropp were using the alias for the purpose of  
18 remaining anonymous in this specific situation, she first adopted  
19 the alias for public use. The defendant began using the name  
20 Fabala Green while at university to publish short stories in her  
21 college magazine. She continued to use the name Fabala Green  
22 because she was writing novels under that name and wanted to get  
23 the novels published. She reached out to publishers under that  
24 name, and that name only. She clearly had an existing privacy  
25 interest in her alias. Ms. Thropp's use of the pseudonym to receive  
26 the packages did not alter her inherent expectation of privacy in

1 the packages, and the DEA agents' search of the packages was  
2 unconstitutional.

3 COURT: Very well, Let us now hear from the Government.

4 WIZARD: Your Honor, there is simply no privacy interest in our  
5 present case on which the defense can assert a Fourth Amendment  
6 claim. The defendant has no privacy interest in the packages  
7 addressed to Fabala Green. A person by that name was neither the  
8 sender nor the addressee. Our defendant is not Fabala Green. It is  
9 not Fabala Green against whom the charges were brought, and it is  
10 not Fabala Green who is going to trial. Our defendant is Elphaba  
11 Thropp.

12 COURT: It was Elphaba Thropp, not Fabala Green, who placed the  
13 orders for the items inside the packages. Why wouldn't the  
14 defendant have a privacy interest in the items that she ordered?

15 WIZARD: Your Honor, the packages were not addressed to the  
16 defendant and thus the privacy interest does not extend to her.

17 COURT: Why not? Weren't the packages addressed to and sent to the  
18 defendant's P.O. Box?

19 WIZARD: Your Honor, an address alone is not enough to create a  
20 reasonable expectation of privacy in the packages.

21 COURT: What about the fact that the defendant had her own personal  
22 purchases delivered there, under her actual name?

23 WIZARD: This does not change the analysis, Your Honor. The P.O. Box  
24 was registered under the name Fabala Green. The defendant had no  
25 reasonable expectation of privacy as to the P.O. Box or its  
26 contents.



1 COURT: Not all the courts agree with you here.

2 WIZARD: Your Honor, even in the majority of circuit courts that have  
3 recognized a privacy interest in an alias, the defendant still would  
4 not have a reasonable expectation of privacy in the name Fabala  
5 Green because the defendant's use of the alias does not constitute a  
6 "public use."

7 COURT: Didn't the defendant present herself as Fabala Green when she  
8 ordered packages under the name Fabala Green?

9 WIZARD: The mere fact that the defendant collected packages  
10 addressed to Fabala Green one time from the P.O. Box registered  
11 under that name, is not alone enough to establish that the name  
12 Fabala Green was publicly used by the defendant.

13 COURT: But does this not demonstrate that the defendant intended to  
14 be known by the name Fabala Green?

15 WIZARD: This defendant used her alias to register a P.O. Box and  
16 to receive deliveries, for the sole purpose of ordering and  
17 receiving narcotics. The use of an alias for this purpose does not  
18 merit an expectation of privacy that society is prepared to  
19 recognize as reasonable?

20 COURT: Counsel, what do you have to say in response to the  
21 defendant's proposition that privacy rights are not limited to only  
22 those who engage in innocent conduct?

23 WIZARD: Your Honor, the defendant is ignoring the fact that the  
24 reason the defendant used an alias was to conceal her identity, and  
25 thus her connection to the narcotics that she was ordering. The  
26 defendant clearly has no privacy interest under these

1 circumstances.

2 COURT: Even so, didn't the defendant also write novels under the  
3 name Fabala Green? Isn't that a public use of the alias?

4 WIZARD: Those novels were never published. The Government submits  
5 that this does not constitute a public use.

6 COURT: What about the short stories that the defendant wrote in  
7 college under the name Fabala Green? Those were published.

8 WIZARD: The short stories were published about five to six years  
9 ago. This is not enough to show that the defendant was commonly  
10 known by the name Fabala Green at the time of her arrest.

11 COURT: Thank you. After hearing from both sides, the court finds  
12 that the defendant does not have an expectation of privacy in the  
13 sealed packages given her use of the alias. While some circuits  
14 recognize a privacy interest in wishing to remain anonymous, the  
15 Fourth Amendment cannot be stretched that far. The defendant also  
16 has no privacy interest in the P.O. Box itself since it was  
17 registered under the fictitious name. The court does not find that  
18 defendant's use of the alias "Fabala Green" constitutes public use.

19 The court recognizes that there is a legitimate concern that  
20 government agents might search potentially innocent items, and  
21 then try to justify this after-the-fact if they happen to find  
22 evidence of illegal narcotics. Here, although defendant was engaged  
23 in the facially innocuous activity of receiving packages through  
24 the mail, her use of an alias destroys any expectation of privacy  
25 she had in the packages.

26 Taking into account all of the above considerations, the

1 defendant's motion to suppress the contents of the sealed packages  
2 is denied. Let's take a 15-minute recess before we move on. We are  
3 adjourned.

UNITED STATES DISTRICT COURT  
DISTRICT OF OZ

-----X  
UNITED STATES OF AMERICA,

- v. -

22-CR-250 (ABR)

ELPHABA THROPP,  
*Defendant.*

-----X

**EXCERPT OF JURY TRIAL PROCEEDINGS**  
**IN RE: TESTIMONY OF MISTER BOQ**

BEFORE: THE HONORABLE TIN MAN

DATE: August 12, 2023

APPEARANCES:

For the United States of America: Wizard of Oz, AUSA  
Office of the U.S. Attorney  
District of Oz

For Defendant Elphaba Thropp: Glinda Upland, Esq.

Court Reporter: Winged Monkey  
District of Oz  
Court Reporter Services



1 working for the DEA here.

2 WIZARD: I want to direct your attention to February 12, 2023. What  
3 investigation were you involved in that day?

4 BOQ: Dr. Dillamond, an Emerald city resident and former professor at  
5 Shiz University, died that day from a green elixir overdose. His  
6 body was discovered next to partially used vials and an open package  
7 addressed from a company called Holistic Animal Care. It is a  
8 capital "A" Animal veterinary website, as opposed to simply an  
9 ordinary animal website, where doctors and veterinarians can  
10 purchase supplies.

11 WIZARD: Was an autopsy performed?

12 BOQ: Yes. The autopsy revealed that Dillamond had fatal amounts of  
13 the green elixir in his body at the time of his death. Expedited  
14 lab testing showed that the vials contained a mixture of the green  
15 elixir and the animal tranquilizer xylazine.

16 WIZARD: Holistic Animal Care does not seem like a place where  
17 someone would get the green elixir, does it?

18 BOQ: Definitely not. There has been a spike in green elixir  
19 overdoses over the years. We didn't have an overdoses involving  
20 animal drugs before this incident, but we were seeing more cases  
21 involving sellers cutting the green elixir with animal  
22 tranquilizers.

23 WIZARD: What happened next?

24 BOQ: I contacted Courageous Lion, an Assistant U.S. Attorney I  
25 frequently work with, and told him that our green elixir culprits  
26 might be ordering the drugs from this Holistic Animal Care website.

1 I also alerted the Emerald City Post Office. I know many people  
2 there, including the manager, Imma Scarecrow.

3 WIZARD: How do you know the Postal Service employees?

4 BOQ: I have a lot of experience working with the Postal Service  
5 because many people in the Emerald City use the mail to send and  
6 receive drugs. Especially with the authorities watching out for  
7 the green elixir, people and apparently Animals have been getting  
8 creative.

9 WIZARD: What happened after you contacted the Postal Service?

10 BOQ: I told them to let me know if they see any suspicious,  
11 oddly-shaped, or large packages. Officers with the U.S. Postal  
12 Inspection Service can inspect packages that they think are  
13 carrying narcotics. So I also told them to look out for any  
14 packages being shipped from Animal and/or animal veterinarian  
15 websites or companies since the green elixir is being cut with  
16 animal tranquilizers.

17 WIZARD: The Dillamond overdoes happened February 12. Can you tell  
18 us what happened next?

19 BOQ: On February 14, I received a call from Imma Scarecrow saying  
20 that the post office had received and flagged two packages sent  
21 from Holistic Animal Care. I then drove with my partner, Special  
22 Agent Dorothy Gale, to the post office and picked up the packages.

23 WIZARD: Who were the packages addressed to?

24 BOQ: The name on the packages was Fabala Green.

25 WIZARD: And was there a delivery address on these packages?

26 BOQ: Yes. The delivery address was P.O. Box 9313. When I arrived at

1 the post office, I asked Mr. Scarecrow to look up the name the P.O.  
2 Box was registered under.

3 WIZARD: And what name was that?

4 BOQ: Fabala Green.

5 WIZARD: According to the registration form, what day did Fabala  
6 Green open her P.O. Box?

7 BOQ: The date on the registration form is January 31, 2023.

8 WIZARD: What is that date in relation to the day Imma Scarecrow  
9 flagged the Holistic Animal Care packages?

10 BOQ: January 31, 2023 was about two weeks before the Holistic  
11 Animal Care packages arrived at the post office.

12 WIZARD: Were there any other packages in the P.O. Box other than  
13 the Holistic Animal Care packages?

14 BOQ: Mr. Scarecrow had also put aside the two Amazon packages in  
15 the P.O. Box addressed to Elphaba Thropp.

16 WIZARD: Were you confused when you were informed that the Amazon  
17 packages were addressed to a different name?

18 BOQ: Not really, no. Packages are delivered to the wrong address  
19 all the time. People enter their shipping address wrong or forget  
20 to change their address after closing their P.O. Box. Or maybe they  
21 were two roommates sharing a P.O. Box.

22 WIZARD: So what did you do with the packages?

23 BOQ: We obtained a search warrant for the Holistic Animal Care  
24 packages. Then, Special Agent Gale and I took them to open and  
25 test at our local testing facility. Each package contained one  
26 bottle with the label "Xylazine: For the Animals" on it.



1 WIZARD: What did you do with the bottles?

2 BOQ: We proceeded to test the mixtures in each one.

3 WIZARD: What were the results of each test?

4 BOQ: The mixtures were the same, and each one contained 400 grams of  
5 xylazine and 200 grams of the green elixir. So there was 400 grams  
6 total of green elixir in those packages.

7 WIZARD: What did you do then?

8 BOQ: The following morning, Special Agent Jim and I resealed the  
9 packages and went back to the post office, where we did a controlled  
10 delivery of the packages from the front counter. I asked Mr.  
11 Scarecrow to leave a slip for Fabala Green in P.O. Box 9313  
12 notifying her to pick up the Holistic Animal Care packages from  
13 the counter during normal business hours. The Amazon packages were  
14 also returned to the P.O. Box. Mr. Scarecrow took us to the  
15 employee backroom so we could monitor the security cameras and see  
16 who came to pick up the drugs.

17 WIZARD: What did you see on the security cameras?

18 BOQ: About an hour and a half after we arrived, we saw on the  
19 security cameras a woman - tall, black hair, green skin, wearing  
20 all black and a large pointed black hat. She was around the age of  
21 30. She entered the post office, walked over to P.O. Box 9313, and  
22 unlocked it. She retrieved the two Amazon packages as well as the  
23 slip, read the slip, and walked over to the counter. She handed the  
24 slip to Mr. Scarecrow at the counter. At this point, we could see  
25 the counter from the employee backroom and hear what they were  
26 saying.

1 WIZARD: What did you observe happen at the counter?

2 BOQ: Mr. Scarecrow brought the Holistic Animal Care packages out  
3 from behind the counter and showed them to the woman. He asked her,  
4 "Are these your packages?"

5 WIZARD: And what did she say?

6 BOQ: She said, "Yeah, they're mine."

7 WIZARD: What happened next?

8 BOQ: She took the packages and began to leave. Then, a man came to  
9 the counter with a few small boxes.

10 WIZARD: Did you know who the man was?

11 BOQ: I did not recognize him. But he and the woman appeared to know  
12 each other. The two of them began chatting. After a minute or two,  
13 they hugged each other, and the woman left. The man said, "Bye  
14 Elphaba!"

15 WIZARD: Did you know who Elphaba was, at that time?

16 BOQ: I did not. The man was still paying at the counter. I went up  
17 to the counter and asked him if he knew Fabala Green. The man  
18 responded: "Who? You mean Elphaba? That was Elphaba Thropp."

19 WIZARD: So, which was it? Was she Elphaba Thropp or Fabala Green?

20 BOQ: Apparently, both. The man said that his name was Avaric  
21 Tenmeadows and he had gone to college with Elphaba Thropp. It  
22 appears Ms. Thropp used the name Fabala Green a few times to get  
23 short stories published in their university reporter. We also did a  
24 search online and confirmed that Ms. Thropp used her pseudonym,  
25 Fabala Green, when she published her short stories.

26 WIZARD: What happened next?

1 BOQ: We immediately took this information to AUSA Lion on the same  
2 day, February 15. The empaneled grand jury returned an indictment  
3 and we arrested Thropp later that same evening.

4 WIZARD: Did you do any further investigation?

5 BOQ: I searched Elphaba Thropp's name on social media platforms to  
6 see if I could find any further information that would connect her  
7 to illegal drugs.

8 WIZARD: Did these searches turn up any results?

9 BOQ: I found Ms. Thropp's LinkedIn profile?

10 WIZARD: Did you see anything suspicious on her LinkedIn profile?

11 BOQ: She had posted that she was looking for work about one month  
12 before the date that she opened the P.O. Box. I saw that someone  
13 named Nessa Rose<sup>2</sup> had commented on the post.

14 WIZARD: Did the name Nessa Rose mean anything to you?

15 BOQ: Yes. The DEA had investigated Nessa Rose in the past for drug  
16 dealing, back when she was in school at Shiz University. She had  
17 never been arrested or charged though.

18 WIZARD: What did her comment on Thropp's LinkedIn post say?

19 BOQ: Rose wrote "I can help you out with that! Shoot me a message!"

20 WIZARD: What did you do then?

21 BOQ: I visited Nessa Rose's LinkedIn profile and saw that she  
22 recently started a new job at an Animal hospital. That raised my  
23 suspicions.

24 WIZARD: Did you locate Nessa Rose after that?

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<sup>2</sup> For the purposes of this problem, contrary to the real Wicked characters, Nessa Rose is not Elphaba Thropp's sister—her full name is simply Nessa Rose.

25 BOQ: Special Agent Lion and I tried but we were unable to track  
26 her down.

1 WIZARD: Why not?

2 BOQ: When we were trying to locate her, we discovered she had taken  
3 a one-way flight to Munchkinland on February 14, 2023.

4 WIZARD: That date sounds familiar. What is its significance?

5 BOQ: February 14, 2023 was the day we seized the packages from the  
6 P.O. Box.

7 WIZARD: The very same day. Huh, how interesting.

8 GLINDA: Objection!

9 WIZARD: Withdrawn. Have the authorities been able to locate Rose  
10 since then?

11 BOQ: No. Rose's current whereabouts are unknown.

12 [ . . . ]

13

CROSS-EXAMINATION

14 BY GLINDA UPLAND

15 GLINDA: Mister Boq, you testified on direct that you have worked  
16 for the DEA as a Special Agent for 15 years, correct?

17 BOQ: Yes, that is correct. Fifteen rewarding years.

18 GLINDA: And you like your job?

19 BOQ: I love my job. The Emerald City is pretty dangerous, a lot of  
20 drug activity here. I go to sleep each night with a clear  
21 conscience, knowing I am protecting people here every day.

22 GLINDA: And there is a heavy police presence in the Emerald City?

23 BOQ: Oh, yes. I know some local police officers too and they say  
24 they wanted to come to the Emerald City to stop the crime.

25 GLINDA: So the Emerald City is targeted?

26 BOQ: In a way, yes.

1 GLINDA: On direct, you testified that you work with post office

2 employees frequently, right?

3 BOQ: Yes, that is correct.

4 GLINDA: Do the other DEA agents assigned to the Emerald City also

5 work with the post office employees?

6 BOQ: Yes they do. Postal Service inspectors can flag and open

7 packages if there is a suspicion of drug trafficking, so local

8 police and federal agents work closely with them.

9 GLINDA: How many cases have you worked on with the Post Office?

10 BOQ: I don't know the exact number. Over 100, maybe even up to 200?

11 GLINDA: You have been involved in about 200 federal drug cases

12 involving the mail?

13 BOQ: Yes! Can you believe it? That's why I target the post office

14 during my investigations.

15 GLINDA: So you target the post office, and then you open packages?

16 BOQ: Well, yes. I mean, the Postal Inspection Service inspectors

17 have opened the packages in the past.

18 GLINDA: But in this instance, you opened the packages in question,

19 correct? Not the postal inspectors?

20 BOQ: Yes, I obtained a search warrant to open the packages. Given

21 the very recent overdose involving a xylazine and green elixir

22 mixture, I wanted to take matters into my own hands.

23 GLINDA: Okay. So just to clarify, usually if packages are flagged

24 as potentially containing narcotics, the U.S. Postal Inspectors

25 open the packages. But on this day in question, you took it upon  
26 yourself to investigate the packages?

1 BOQ: Yes.

2 GLINDA: And besides the overdose, you had no other information that  
3 led you to believe there were drugs in the defendant's packages?

4 BOQ: Well, these packages were sent from Holistic Animal Care.

5 GLINDA: But neither you nor the post office employees knew what the  
6 packages contained, and if they contained drugs, until after you  
7 opened them correct?

8 BOQ: Correct.

9 GLINDA: Have there been prior occasions when you have obtained a  
10 warrant and did not find drugs in packages?

11 BOQ: Yes.

12 [ . . . ]

13 GLINDA: Now, turning to February 14, 2023, when you learned there  
14 were packages addressed to both Fabala Green and Elphaba Thropp in  
15 P.O. Box 9313, that didn't give you any reason to pause?

16 BOQ: No. Like I said, there could have been a number of reasons why  
17 packages addressed to a different name wound up there. Besides, the  
18 P.O. Box was registered to Fabala Green, and the suspicious  
19 packages - the ones from Holistic Animal Care - were addressed to  
20 Fabala Green.

21 GLINDA: But you didn't know what, if any, connection Elphaba Thropp  
22 or Fabala Green actually had to green elixir trafficking?

23 BOQ: Not for certain, no. But there had just been an overdose a  
24 couple days before where it looked like green elixir may had been

25 shipped from an animal care company. Stopping the delivery of  
26 deadly narcotics justified the immediate search.

1 GLINDA: But only the packages addressed to Fabala Green were from  
2 Holistic Animal Care?

3 BOQ: That's right.

4 GLINDA: Who were the packages addressed to Elphaba Thropp from?

5 BOQ: They were Amazon packages.

6 GLINDA: Were the size or weight of these Amazon packages  
7 characteristic of drug trafficking packages?

8 BOQ: Well, no. . .

9 GLINDA: Did you learn what the Amazon packages contained?

10 BOQ: After the arrest, we learned these Amazon packages contained  
11 face cream.

12 [. . .]

13

14 [END OF EXCERPTS]

UNITED STATES DISTRICT COURT  
DISTRICT OF OZ

-----X  
UNITED STATES OF AMERICA,

- v. -

22-CR-250 (ABR)

ELPHABA THROPP,  
*Defendant.*

-----X

**DEFENDANT'S EXHIBITS 16 AND 17: TRANSCRIPTS OF AUDIO RECORDING  
OF VOICEMAIL MESSAGES LEFT BY DEFENDANT ELPHABA THROPP ON NESSA  
ROSE'S PHONE**

Defendant's Exhibit 16

Audio Recording Date: February 14, 2023

Audio Recording Time: 1:32 PM

Defendant's Exhibit 17

Audio Recording Date: February 14, 2023

Audio Recording Time: 2:17 PM

Transcription By:

Winged Monkey  
Oz Legal Transcription  
115 Oak Drive, Suite 2100  
Emerald City, Oz 34322  
(290) 536-1877



1 **DEFENDANT'S EXHIBIT 16**

2 OUTGOING NUMBER (THROPP): 290-555-2019

3 INCOMING NUMBER (ROSE): 290-444-2024

4 DATE OF OUTGOING PHONE CALL: February 14, 2023

5 TIME OF OUTGOING PHONE CALL: 1:32 PM

6 THROPP: Nessa, I just got to the Post Office. None of the packages I  
7 was expecting are here, they're missing. I read that article that  
8 xylazine is sometimes mixed with the green elixir. That's not what's  
9 going on here, right? Call me back as soon as you can. I'm getting  
10 worried that you dragged me into something I would never want to be  
11 part of. Plus, you still owe me the money.

12

13

14 **DEFENANT'S EXHIBIT 17**

15 OUTGOING NUMBER (THROPP): 290-555-2019

16 INCOMING NUMBER (ROSE): 290-444-2024

17 DATE OF OUTGOING PHONE CALL: February 14, 2023

18 TIME OF OUTGOING PHONE CALL: 2:17 PM

19 THROPP: It's me again. I talked to the postal workers. They don't  
20 know what is going on with the packages. They said I should come  
21 back tomorrow. Nessa, I'm really getting nervous. Why aren't you  
22 getting back to me? I thought the xylazine was just to help Animals  
23 that are suffering. Why would they want to look at that? Is there  
24 something you aren't telling me? I'm really starting to get  
25 concerned that you involved me in something I had no idea was going  
26 on. Call me back.

UNITED STATES DISTRICT COURT  
DISTRICT OF OZ

-----X  
UNITED STATES OF AMERICA,

- v. -

22-CR-250 (ABR)

ELPHABA THROPP,  
*Defendant.*

-----X

**EXCERPT OF JURY TRIAL PROCEEDINGS**  
**IN RE: TESTIMONY OF ELPHABA THROPP**

BEFORE: THE HONORABLE TIN MAN

DATE: September 14, 2023

APPEARANCES:

For the United States of America: Wizard of Oz, AUSA  
Office of the U.S. Attorney  
District of Oz

For Defendant Elphaba Thropp: Glinda Upland, Esq.

Court Reporter: Winged Monkey  
District of Oz  
Court Reporter Services



1 GLINDA: Why do you use Fabala Green and not your actual name in  
2 your writings?

3 THROPP: My work is very personal. I wanted privacy.

4 GLINDA: Have you used the Fabala Green alias again?

5 THROPP: Yes, I opened a Post Office Box under Fabala Green in  
6 January 2023 to receive my online orders.

7 GLINDA: Why did you use that name and not your given name?

8 THROPP: For the same reason mentioned before. I like having privacy.

9 [. . .]

10 **[Excerpts from direct testimony on voicemail statements]**

11 GLINDA: Do you know why you are on trial today?

12 THROPP: I've been charged with possession of and intent to  
13 distribute green elixir, a controlled substance.

14 GLINDA: Did you in fact intend to distribute the green elixir?

15 THROPP: No.

16 GLINDA: Are you familiar with Nessa Rose?

17 THROPP: Yes.

18 GLINDA: Please describe your relationship with Ms. Rose.

19 THROPP: Nessa was my classmate at Shiz University years ago. She  
20 reached out to me about ordering some Animal tranquilizers near the  
21 end of 2022 and in early 2023.

22 [. . .]

23 GLINDA: Ms. Thropp, please describe how you and Ms. Rose became  
24 reacquainted after years of not having any contact.

25 THROPP: In December 2022, after realizing that my career as a  
26 novelist was not taking off, I made a public post on my LinkedIn

1 that I was "open to work." Nessa commented on my post the same day,  
2 and reached out to me.

3 GLINDA: What happened next?

4 THROPP: We exchanged phone numbers and started talking from time to  
5 time.

6 GLINDA: What did you talk about?

7 WIZARD: Objection, hearsay.

8 GLINDA: Your Honor, this conversation is not being entered for the  
9 truth, but rather to show the effect it had on the defendant.

10 COURT: Overruled. The witness may proceed.

11 THROPP: We were commiserating about our career and financial  
12 struggles. Nessa explained to me that she worked as a handler at  
13 Gillikin Animal Hospital. She didn't make much money at her job,  
14 but truly loved what she did and had devoted herself to the care of  
15 these Animals. I was really impressed by her dedication.

16 GLINDA: And what was your response to Ms. Rose?

17 THROPP: Nessa told me how it broke her heart to watch the Animals  
18 suffer in pain as they got older. She also told me about her plan  
19 to help the Animals with their pain. I was very convinced by what  
20 she was telling me.

21 GLINDA: And what was your understanding as to how Ms. Rose intended  
22 to help the Animals?

23 THROPP: I thought that she planned to administer muscle relaxers to  
24 the Animals to help with their pain.

25 GLINDA: What muscle relaxers specifically?

26 THROPP: Xylazine.

1 GLINDA: How did you react when Ms. Rose told you her plan?

2 THROPP: I was not familiar with that drug, nor its use on Animals.

3 But Nessa and I both grew up without much. I trusted her after she

4 told me the plan, because I knew how much it meant to her to make

5 money and be financially secure. So if she was foregoing that, it

6 must have been an important cause to her.

7 GLINDA: What did you say to Ms. Rose when you realized her plan was

8 to administer xylazine to the Animals?

9 THROPP: I told her that I would help get xylazine for her so that

10 she could help these older Animals that were in pain.

11 GLINDA: What was your understanding as to why Ms. Rose needed your

12 help?

13 THROPP: Because of Nessa's job with the Animal hospital, she could

14 not order the medicine herself.

15 GLINDA: How did you feel about getting involved with this?

16 THROPP: I felt nervous about it because I had never ordered these

17 medicines before. But I knew that if anyone were to find out that

18 Nessa was administering xylazine to the Animals, she could lose her

19 job, and I wanted to support her.

20 [. . .]

21 GLINDA: When did you first start becoming suspicious of your

22 agreement to order xylazine for Ms. Rose?

23 THROPP: I began researching xylazine, just to know what I was

24 ordering and what would be administered to the Animals. One of the

25 first articles that I read online, was a local news article

26 discussing the combination of xylazine and the green elixir being

1 used as a recreational street drug.

2 GLINDA: Are you referring to the February 8, 2023 article in the  
3 Emerald City Gazette? by Ama Clutch?

4 THROPP: Yes.

5 GLINDA: What did you do after you read this news article?

6 THROPP: I called Nessa immediately to ask about it. I was nervous  
7 because I had not heard of the combination of xylazine and the green  
8 elixir before. I was relieved when Nessa assured me she was  
9 obtaining the medicine for the Animals.

10 [. . .]

11 GLINDA: You testified that you received the shipper's delivery  
12 confirmation for the two Holistic Animal Care packages. What did  
13 you do when you realized that your packages from the xylazine  
14 shipment were missing from your P.O. Box?

15 THROPP: I called Nessa and left her a voicemail because she didn't  
16 pick up. Then when she didn't call back, I left her another  
17 voicemail about 45 minutes later.

18 GLINDA: And what did you say in the voicemails?

19 THROPP: I, um. . . there are recordings of that.

20 GLINDA: We would like to admit into evidence Defendant's Exhibits  
21 16 and 17, audio recording transcripts.

22 WIZARD: Objection. Hearsay. Your Honor.

23 GLINDA: These recordings show Ms. Fenty's then-existing mental  
24 state under Rule 803(3).

25 COURT: Counsel, the court will hear your arguments outside the  
26 presence of the jury. Ladies and gentlemen of the jury, let's take

1 a recess.

2 (Whereupon, the jury exited the courtroom and the following  
3 proceedings took place.)

4

5 **[Arguments on whether the voicemail recording transcriptions  
6 qualify as hearsay exceptions under Rule 803(3)]**

7 COURT: Okay, why shouldn't these audio recording transcripts be  
8 admitted into evidence?

9 WIZARD: Your Honor, there is nothing to suggest that Defendant's  
10 statements were made spontaneously. This applies to both voicemail  
11 transcriptions denoted as Defendant's Exhibits 16 and 17. The first  
12 voicemail was left at 1:32 p.m. on February 14, 2023 from the post  
13 office. Approximately 45 minutes after the defendant left the first  
14 voicemail, at 2:17 p.m., she called Rose a second time and left a  
15 second voicemail message. She had plenty of time to reflect before  
16 making these self-serving statements.

17 COURT: Why don't the statements fall under the Rule 803(3)  
18 exception?

19 WIZARD: Rule 803(3) requires that the statements being offered  
20 reflect a then-existing mental state of the declarant. In order for  
21 something to be a true mental state, courts have read into the rule  
22 a spontaneity requirement that the statements be made  
23 contemporaneously and that they not allow time for the declarant to  
24 reflect prior to making the statement. Here, the defendant had time  
25 to reflect before she sent the voicemail messages to Nessa Rose.  
26 She had ample time to contemplate how to frame a response that



1 would show herself in the best light. Unlike a real-time  
2 conversation, she could think about what she planned to say before  
3 she recorded it. This makes it much more likely that the statement  
4 is fabricated and self-serving. Such a statement should not be  
5 admissible because it does not reflect a true, then-existing mental  
6 state.

7 Further, Your Honor, these statements will mislead the jury into  
8 thinking that the defendant truly had no idea that the xylazine was  
9 laced with the green elixir. Defendant placed the order with  
10 Holistic Animal Care. She paid for it with her own money. She was  
11 aware of the scheme the entire time. The Ninth Circuit in the  
12 Ponticelli case held that the probative value of the statement  
13 diminishes as time passes. Plenty of time passed here, so the  
14 probative value is low while the risk of misleading the jury is  
15 incredibly high.

16 In the first voicemail message, the defendant had time to think  
17 about what she wanted to say after realizing that her packages were  
18 missing and that she was likely being investigated. She had time to  
19 think through what she planned to say before she made the call and  
20 recorded her message, claiming she was worried about being dragged  
21 into illegal activity.

22 Similarly, in the second voicemail message, the defendant  
23 explicitly says that she was just helping to order xylazine and  
24 even tries to pin blame on Rose, saying what she does with the  
25 shipment is her own business. Yet, the defendant made that call 45  
26 minutes after the first one, clearly having plenty of time to

1 reflect further on what she wanted to say.

2 COURT: The Court expects Defendant to argue that the text of Rule  
3 803(3) does not contain a spontaneity requirement. How do you  
4 address that argument?

5 WIZARD: Your Honor, while 803(3) does not explicitly state that an  
6 element of spontaneity is required, it cannot be understood outside  
7 of the context in which it was written and adopted. Rule 803(3)  
8 follows Rule 803(1), Present Sense Impressions, and Rule 803(2),  
9 Excited Utterances. Both preceding rules explicitly require an  
10 element of spontaneity in order for a piece of evidence to be  
11 admitted, and 803(3) should not create a broad carveout to the more  
12 narrowly tailored 803(1) and 803(2) exceptions. To interpret 803(3)  
13 in the light that the defendant argues would be to open the door to  
14 admitting vast amounts of evidence far beyond the contemporaneous  
15 and spontaneous limits contemplated by 803(1) and 803(2), simply  
16 because it has some component of a declarant's mental state.

17 The 803 hearsay exceptions were never intended to be all  
18 encompassing, permissive tools, designed to admit vast amounts of  
19 evidence. They were contemplated as specific exceptions to evidence  
20 that would otherwise be excluded as hearsay. The rule against  
21 hearsay itself was designed with the very skepticism in mind that  
22 the defendant will likely ask you to ignore - that out-of-court  
23 statements are extremely difficult to validate. We cannot assume  
24 that the Rule 803 hearsay exceptions, including 803(3), were  
25 written to be so permissive when the rule against hearsay itself  
26 was designed to specifically protect against this harm.

1 COURT: Let's hear Defendant's argument.

2 GLINDA: Ms. Thropp seeks to offer each of the voicemail messages  
3 into evidence as hearsay exceptions under Rule 803(3) as then-  
4 existing mental states. My client agreed to help Nessa Rose, but she  
5 never would have agreed to participate had she been aware of the  
6 illicit substances mixed in the xylazine. Shortly after Ms. Thropp  
7 ordered the xylazine, she began to learn more about deadly street  
8 drugs in the Emerald City and raised concerns to Rose about them.  
9 Soon after, Ms. Thropp left these two voicemail messages for Rose  
10 shortly after this discovery, where she inquired into Rose's  
11 knowledge of the packages. They reflect Ms. Thropp's then-existing  
12 mental state that (1) she was engaged in a legitimate plan to help  
13 Animals, (2) the purchase of the xylazine was legitimate, and (3)  
14 that Ms. Thropp had no idea that she was involved in an illicit  
15 drug scheme.

16 COURT: The Emerald Circuit has yet to address this issue, but other  
17 courts have been reluctant to allow such testimony without a  
18 spontaneity requirement being satisfied. Why should this court  
19 admit this statement into evidence if it lacks spontaneity?

20 GLINDA: Your Honor, the language of Rule 803(3) plainly does not  
21 include a spontaneity requirement. The statements we are offering  
22 here meet the written requirements of the rule because they reflect  
23 Ms. Thropp's then-existing mental state that she was confused about  
24 why packages would be intercepted and that she was unaware that the  
25 xylazine was laced with any illicit substance.

26 COURT: It seems to me that these are self-serving statements.

1 Ms. Thropp only left each voicemail message after she was worried  
2 she was being investigated. Isn't that correct?

3 GLINDA: Your Honor, the issue before us is the admissibility under  
4 Rule 803(3). The Rule does not bar admitting statements even if they  
5 might seem, at first blush, to be self-serving or even fabricated.  
6 The voicemail messages are admissible. It is up to the jury to  
7 determine the credibility of the declarant's statements.

8 Furthermore, Your Honor, under a plain reading of the rule, there is  
9 no spontaneity requirement. If the writers of the rule had intended  
10 to include a spontaneity requirement, they certainly would have  
11 written it into Rule 803(3), like they did for 803(1) and 803(2).

12 COURT: Thank you. The court is ready to rule. The court has  
13 determined that the statements are inadmissible hearsay and they  
14 will not be admitted under Rule 803(3) because they lack  
15 spontaneity. Because of the time that passed between the  
16 defendant's knowledge that her packages had been intercepted and  
17 when the voicemail messages were left, they do not reflect the  
18 then-existing mental state of the defendant. Thus the statements  
19 do not fall within the hearsay exception set forth in Rule 803(3).  
20 [. . .]

21 (Whereupon, the jury entered the courtroom and the following  
22 proceedings took place.)

23 [. . .]

24 COURT: The Government's objection is sustained. Defendant's  
25 Exhibits 16 and 17 will not be admitted into evidence. Counsel,  
26 you may continue.

1 GLINDA: Um. . . Did Ms. Rose respond to your voicemails?

2 THROPP: No, I never heard from her and do not know where she is.

3 [. . .]

4 CROSS EXAMINATION

5 **[Excerpts from cross-examination on use of alias]**

6 WIZARD: You testified that you opened a P.O. Box at the Emerald  
7 City Post Office on January 31, 2023 under the name Fabala Green,  
8 correct?

9 THROPP: Yes.

10 WIZARD: And you placed the order from Holistic Animal Care about  
11 10 days later, right?

12 THROPP: That is correct.

13 WIZARD: Isn't it true that the only reason you opened this P.O.  
14 Box under an alias was to cover up your criminal activity, so that  
15 the illegal drugs wouldn't be linked to Elphaba Thropp.

16 THROPP: No. As I said, I wanted privacy. I had no idea the xylazine  
17 packages had illegal drugs and I also used the P.O. Box for other  
18 mail.

19 WIZARD: But the only packages you received under the name Fabala  
20 Green were the packages from Holistic Animal Care, correct?

21 THROPP: Yes.

22 [. . .]

23 **[Excerpts from cross-examination on voicemail statements]**

24 WIZARD: I'd like to take us back to when you first got in contact  
25 with Nessa Rose in late December 2022. What was your impression of  
26 Nessa Rose back when she reached out to you?

1 THROPP: I thought she was nice. I didn't know her that well.

2 WIZARD: Were you and Ms. Rose friends at that time?

3 THROPP: No. I hadn't seen her or talked to her since university.

4 WIZARD: Were you and Ms. Rose close at university?

5 THROPP: I wouldn't say that we were that close.

6 WIZARD: Were you aware that Ms. Rose had been suspended from Shiz  
7 University for drug possession and distribution activity?

8 THROPP: Yes, I was aware of that.

9 WIZARD: Did it not raise any red flags for you that someone you  
10 hadn't spoken to in years, that you were not close with, and who  
11 had prior drug offenses had reached out and asked you to procure  
12 the drug xylazine?

13 THROPP: Well, I... No. She was very convincing, and I believed her  
14 story. I felt bad for her.

15 [. . .]

16 WIZARD: In your public LinkedIn post dated December 28, 2022, you  
17 said you had experience working with Animals. You were referring to  
18 your work with Animal professors at Shiz?

19 THROPP: Yes. I helped my Animal professors out from time to time.

20 WIZARD: Have you ever spent any time studying veterinary science?

21 THROPP: No.

22 WIZARD: Have you spent time around Animals?

23 THROPP: I have had several Animal professors at Shiz University.

24 WIZARD: Are you familiar with the drugs that Animals are prescribed  
25 for pain medication.

26 THROPP: I can't say that I am.

1 WIZARD: Have you even been to an Animal Hospital?

2 THROPP: No.

3 WIZARD: So, you never visited the Animals at Ms. Rose's hospital?

4 THROPP: I wanted to, but I never did.

5 WIZARD: Prior to your convictions with Ms. Rose, did you know what

6 xylazine was?

7 THROPP: No.

8 WIZARD: But you felt comfortable ordering it for its use on horses

9 that you had not seen and did not have the qualifications to

10 diagnose or treat?

11 THROPP: Well, I just . . . Well. . . I trusted Nessa and what she

12 was saying. I believed she knew best and was doing what was right

13 for the Animals.

14 [. . .]

15 WIZARD: Did you know that, when combined, ingesting a combination

16 of xylazine and green elixir could kill a human?

17 THROPP: I had no idea what xylazine was until recently and I am

18 not familiar with the green elixir myself, despite my green hue.

19 WIZARD: You testified earlier that you read a news article about a

20 deadly combination of xylazine and green elixir that was spreading

21 across the Emerald City, correct?

22 THROPP: Yes, I had never heard of it previously.

23 WIZARD: And the news story concerned you, correct?

24 THROPP: Yes.

25 WIZARD: You were concerned even though you were certain the

26 xylazine you were ordering was for treating the Animals at Nessa

1 Rose's hospital?

2 THROPP: Well, yes. I don't know why it concerned me. It just did.

3 WIZARD: And you still went through with the plan to order the

4 xylazine?

5 THROPP: Yes. I was reassured by Nessa that the xylazine was only

6 going to be used for the Animals.

7 [. . .]

8 WIZARD: You paid Holistic Animal Care \$1,200 dollars for the

9 shipment of xylazine did you not?

10 THROPP: Yes, I did.

11 WIZARD: That is a lot of money for someone who does not have a

12 regular job, wouldn't you agree?

13 THROPP: Yes, but. . .

14 WIZARD: Isn't it true that the only way you were going to recoup

15 your money was by selling the tranq - the green elixir-xylazine

16 mixture?

17 THROPP: Nessa said she would pay me back. She said. . .

18 WIZARD: Objection. The witness's statement about what Nessa Rose

19 supposedly said is hearsay and should be stricken.

20 COURT: Objection is sustained.

21 [. . .]

22 **[Discussion regarding potential redirect questioning]**

23 COURT: Defense counsel, do you have any questions on redirect?

24 GLINDA: I would like to further question the witness about the

25 voicemail messages under Rule 801(d)(1)(B), as prior consistent

26 statements.



1 WIZARD: Objection. That rule does not apply here, and these  
2 statements are hearsay for the reasons already discussed, and which  
3 the court already ruled upon.

4 COURT: I am not going to allow it. Without even getting into Rule  
5 801(d) (1) (B), the witness has given her account and the court rules  
6 that such testimony would be cumulative under Rule 403. Is there  
7 anything else?

8 GLINDA: Um. . . no, nothing further, Your Honor.

9

[END OF EXCERPTS]

23-5071

*Elphaba Thropp v. United States of America*

# **In the United States Court of Appeals for the Emerald Circuit**

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AUGUST TERM 2023

No. 23-5071

ELPHABA THROPP,  
*Defendant-Appellant,*

v.

UNITED STATES OF AMERICA,  
*Appellee.*

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On Appeal from the United States District Court  
For the District of Emerald City

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ARGUED: April 6, 2024

DECIDED: June 15, 2024

Before: PANZER, SUTTON, and ENDSLEY, *Circuit Judges*

**OPINION OF THE COURT**

PANZER, *Circuit Judge*:

Defendant-Appellant Elphaba Thropp (“Defendant”) appeals from a judgment of conviction on September 21, 2023 and a sentence entered on November 10, 2023, by the United States District Court for the District of Emerald City, in connection with possession with intent to distribute a controlled substance (21 U.S.C. § 841(a)(1)). On appeal, Defendant raised two issues challenging her conviction and sentence. For the reasons set forth below, we affirm the rulings of the district court on all issues and hold that (1) the Government’s search of contents found within sealed packages and addressed to Defendant’s alias did not violate the Fourth Amendment, and (2) Defendant’s recorded voicemail statements were properly excluded as not qualifying as hearsay exceptions under Rule 803(3) (“Rule 803(3)”) of the Federal Rules of Evidence.

**FACTS**

At the time of her arrest, Defendant was an unemployed writer and resident of the Emerald City in the state of Oz. In college, Defendant had published two short stories under the pen name “Fabala Green” in her university’s creative writing section of their reporter. Since then, Defendant has written multiple novels although these novels have not been published. Using the name Fabala Green, Defendant reached out to four publishers in October 2022 inquiring about publication, but did not receive any responses from the contacted publishers.

The Emerald City has a high concentration of drug-related crime and federal drug enforcement authorities routinely partner with local police and the U.S. Postal Inspection Service to investigate suspected drug activity. In early 2023, Emerald City newspapers began highlighting the increased prevalence in Emerald City of a street drug created from a combination of an Animal tranquilizer called xylazine and the green elixir. On February 12, 2023, a resident of the Emerald City was found deceased in his apartment and an autopsy confirmed a fatal green elixir overdose. The deceased was found beside partially-used syringes containing a mixture of green elixir and xylazine, and an open box that had been mailed by “Holistic Animal Care.” This incident led the Emerald City DEA office, led by Supervisory Special Agent Mister Boq (“Boq”), to heighten monitoring of the Emerald City post office and to put post office employees on high alert for suspicious packages connected with Animal care.

On February 14, 2023, Special Agent Boq and his partner Special Agent Dorothy Gale (“Dorothy”) seized two packages shipped to P.O. Box 9313 in the Emerald City Main Post Office after obtaining a search warrant. The P.O. Box was registered under the name Fabala Green, and the two seized packages were also addressed to Fabala Green. These packages had been flagged by postal employees because they were addressed from Holistic Animal Care. At the time, two

packages that had been shipped from Amazon and addressed to Elphaba Thropp at the same P.O. Box 9313, had also been set aside by the post office. The DEA agents opened the two Holistic Animal Care packages and tested their contents, discovering that the packages together contained 800 grams of xylazine laced with 400 grams of green elixir. The DEA agents did not search the Amazon packages at the time, but it was later determined that the Amazon packages did not contain narcotics.

On February 15, 2023, the DEA agents resealed the Holistic Animal Care packages and returned them to the post office manager, Imma Scarecrow (“Scarecrow”) for assistance with a controlled delivery. At the direction of Boq, Scarecrow placed a slip inside P.O. Box 9313, notifying Fabala Green to pick up her packages from the front counter. The Amazon packages were also delivered to the P.O. Box. A few hours later, through the post office’s surveillance cameras, Boq and Dorothy observed Defendant enter the post office, unlock P.O. Box 9319, and bring the slip to the counter. Scarecrow handed the Defendant the Holistic Animal Care packages and asked if they belonged to her. Defendant answered affirmatively. As Defendant was leaving the post office, she engaged in a brief conversation with a university classmate, alerting authorities to the fact that Defendant’s real name was Elphaba Thropp.

Following Defendant’s arrest, Boq reviewed Defendant’s public social media accounts and discovered a LinkedIn message from Nessa Rose (“Rose”) dated December 28, 2022. Rose had previously been on the radar of the DEA agents on suspicion of illegal drug distribution but had never been arrested or charged. At the time, Rose was working as an animal handler at an Emerald City animal hospital. Given Rose’s history and her connection to Defendant, the Government obtained an arrest warrant for Rose but subsequently learned she had left the country on February 14, 2023. To date, law enforcement has not been able to locate Rose.

The district court heard an evidentiary motion prior to trial: Defendant moved to suppress evidence obtained from the DEA agents’ search of the sealed Holistic Animal Care packages on the grounds that the search violated her Fourth Amendment rights. This motion to suppress was denied. During trial, the Government sought to exclude the recordings of two voicemail messages left by Defendant on Rose’s phone on February 14, 2023, on the grounds that the voicemail statements were hearsay, and that they failed to qualify as a hearsay exception as statements of a declarant’s then-existing state of mind under Rule 803(3). The court sustained the Government’s objection and the voicemail statements were excluded at trial.

At the conclusion of the jury trial, Defendant was convicted of one count of possession with intent to distribute a controlled substance and was sentenced to 10 years in prison.

## DISCUSSION

### A. Search of the Sealed Packages Under the Fourth Amendment

First, Defendant contends that evidence relating to the contents of the packages Defendant received from Holistic Animal Care should have been suppressed at trial. Defendant argues that the district court erred in concluding that law enforcement's search of the packages addressed to Defendant's alias was permissible under the Fourth Amendment. For the following reasons, this Court affirms the district court's decision.

Defendant did not have a reasonable expectation of privacy in the packages because the packages were not addressed to Defendant. Defendant was neither the sender nor the addressee of the packages. Rather, the addressee was Fabala Green, which is not Defendant's name. There is no reasonable expectation of privacy in packages that are not addressed to a defendant "absent other indicia of ownership, possession, or control of the package. . ." *United States v. Rose*, 3 F.4th 722, 728 (4th Cir. 2021). This court's determination is not swayed by any ownership interest that Defendant may have in the contents of the package itself. *See United States v. Givens*, 733 F.2d 339, 342 (4th Cir. 1984). Further, this Court rejects the notion that "an address alone can create a reasonable expectation of privacy in a parcel." *See United States v. Stokes*, 829 F.3d 47, 53 (1st Cir. 2016).

Next, Defendant had no reasonable expectation of privacy with respect to her P.O. Box because it was not registered under her name. A defendant "lack[s] a legitimate expectation of privacy in a mailbox and its contents" if "no one by that name" reside[s] at the address." *United States v. Lewis*, 738 F.2d 916, 919 n.2 (8th Cir. 1984). The P.O. Box was registered to Fabala Green and the name Elphaba Thropp does not appear anywhere on the P.O. Box registration form.

We recognize that some circuit courts have held that a defendant can have a reasonable expectation of privacy in an alias if the defendant can establish public use of the alias and that the defendant was commonly known by that name, so that the defendant and the alias are essentially the same person. *See United States v. Daniel*, 982 F.2d 146, 149 (5th Cir. 1993). Here, the fact that Defendant collected packages addressed to Fabala Green from the P.O. Box registered under the same name, on one occasion, is not alone enough to establish that Defendant was commonly known as Fabala Green. Additionally, Defendant's prior uses of the name Fabala Green in relation to her writings are either too distant in timing or too tenuous to create a currently existing public use alias. Altogether, Defendant's uses of the name Fabala Green are insufficient to establish that Fabala Green was a public use alias.

Finally, even if the alias were a public use alias, Defendant still would not have a claim "when the use of that alias was obviously part of [her] criminal scheme." *See id.* at 149. Instead, since Defendant "has opted to conceal [her] identity, [she] cannot assert a cognizable Fourth

Amendment interest in the package . . . because [she] has chosen not to announce to society that [she] has a legitimate claim to the sealed contents of the package. *See United States v. DiMaggio*, 744 F. Supp. 43,46 (N.D.N.Y. 1990).

Thus, we find that the district court properly concluded that Defendant did not have an expectation of privacy in the sealed packages given her use of an alias, and that the opening of the packages pursuant to a warrant did not implicate Defendant's Fourth Amendment rights. Therefore, the evidence obtained from the packages was properly admitted at trial.

### **B. Spontaneity Requirement in Rule 803(3).**

Defendant next claims the district court erred in finding that certain statements of Defendant were excluded as inadmissible hearsay and determined to be lacking spontaneity under Rule 803(3). During trial, the Government sought to exclude two separate voicemail messages from Defendant to Rose regarding the intercepted packages from the P.O. Box that contained the xylazine that was laced with green elixir. Relevant to the discussion of the voicemail messages themselves are the circumstances regarding the voicemail recordings. Defendant arrived at her P.O. Box to find that her packages containing the xylazine were missing because they had been flagged by authorities as potentially containing illicit substances, including green elixir. In response to that realization, Defendant called Rose, with whom she had ordered the xylazine, to discuss the missing packages.

In her first voicemail message to Rose, on February 14, 2023 at 1:32 p.m., Defendant stated, "Nessa, I just got to the Post Office. None of the packages I was expecting are here, they're missing. I read that article that xylazine is sometimes mixed with green elixir. That's not what's going on here, right? Call me back as soon as you can. I'm getting worried that you dragged me into something I would never want to be part of. Plus you still owe me the money." Rose never responded to the initial voicemail message that Defendant left for her. Approximately 45 minutes later, at 2:17 p.m., Defendant called Rose a second time and left a second voicemail message, stating: "It's me again. I talked to the postal workers. They don't know what is going on with the packages. They said I should come back tomorrow. Nessa, I'm really getting nervous. Why aren't you getting back to me? I thought the xylazine was just to help Animals that are suffering. Why would they want to look at that? Is there something you aren't telling me? I'm really starting to get concerned that you involved me in something I had no idea was going on. Call me back."

Under Rule 803(3), which lays out the requirements of the hearsay exception for a then-existing, mental, emotional, or physical condition, "[a] statement of the declarant's then-existing state of mind (such as motive, intent, or plan) or emotional, sensory, or physical condition (such as mental feeling, pain, or bodily health), but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the validity or terms of the declarant's

will.” Fed. R. Evid. 803(3). To allow these voicemail statements to be admitted under Rule 803(3), three requirements must be met. *United States v. Jackson*, 780 F.2d 1305, 1315 (7th Cir. 1986). First, the statement must be contemporaneous with the events that Defendant seeks out to prove. Second, the statements must not have allowed the declarant time to reflect, thereby being spontaneous in nature. Third, they must be relevant to the case at hand. *Id.*

The first voicemail message was left in relation to Defendant believing the packages had been intercepted by law enforcement officers. Because of the circumstances, it is clear that the statement was contemporaneous with the events that Defendant seeks to prove, namely that she was unaware of why the packages were being intercepted. Further, the statements are necessarily relevant because they call into question Defendant’s awareness of an illicit drug scheme. Similarly, the second voicemail message was also made in connection with the events relevant to this case. Defendant was still discussing the intercepted packages, and the statements are relevant to determining Defendant’s then-existing mental state and if she had any awareness as to the actual content of the packages. For both voicemail messages, that leaves the issue of prong two, determining whether the statements allowed time for the declarant to reflect, and therefore lack spontaneity.

“The more time that elapses between the declaration and the period about which the declarant is commenting, the less reliable is [her] statement . . . .” *United States v. Ponticelli*, 622 F.2d 985, 991 (9th Cir. 1980). In the statements offered by Defendant, she had the opportunity to reflect prior to her response because these statements were made after she already believed the packages had been intercepted. Further, the second voicemail message was left 45 minutes after the events that she experienced, making it much more likely that it was fabricated.

“Rule 803(3) permits admission of such statements where, among other things, the statements occurred contemporaneous with the event sought to be proved and Defendant did not have a chance to reflect (*i.e.*, Defendant had no time to fabricate or misrepresent [Defendant’s] thoughts).” *United States v. Reyes*, 239 F.3d 722 (5th Cir. 2001). Here, Defendant had time to reflect on her thoughts because of the sheer amount of time that passed. She had ample opportunity to decide how she wished to respond after becoming aware that her packages were missing and believing the packages had been intercepted.

Defendant should not be rewarded for making self-serving statements that may mislead the finders of fact. The district court correctly ruled when it determined that these statements did not meet the hearsay exception requirements of Rule 803(3), and therefore excluded them as inadmissible hearsay.

## CONCLUSION

For the foregoing reasons, the rulings of the district court are affirmed.

SUTTON, *Circuit Judge, dissenting*:

For the reasons stated herein, I disagree with the majority and would reverse the district court's decisions to deny Defendant's motion to suppress evidence obtained from the sealed packages and to exclude the recorded voicemail statements.

### A. Search of the Sealed Packages Under the Fourth Amendment

The Supreme Court has made it clear that the public at large have a legitimate expectation of privacy in letters and other sealed items addressed to them. The use of an alias to ship or receive a package does not eviscerate an individual's expectation of privacy in that package. Unless someone uses a stolen identity to mail a package, the Fourth Amendment's expectation of privacy is untouched. In fact, people have a right to use "false names" in sending and receiving mail because "*there is nothing inherently wrong with a desire to remain anonymous* when sending or receiving a package, and thus the expectation of privacy for a person using an alias in sending or receiving mail is one that society is prepared to recognize as reasonable." *United States v. Pitts*, 322 F.3d 449, 459 (7th Cir. 2003) (emphasis added).

Other circuits have also made a clear distinction between a fictitious name and an *alter ego*, where the latter does not receive privacy rights. See *United States v. Pierce*, 959 F.2d 1297, 1303 (5th Cir. 1992). An *alter ego* typically involves adopting someone else's identity and the use of a real person's name to ship or receive a package. In contrast, a fictitious name is a wholly new name, one not used by any person. Thus, fictitious names enjoy Fourth Amendment protection, whereas *alter egos*, often used in identity fraud, do not.

Defendant's alias was wholly fictitious and not an *alter ego*, and she has never engaged in identity fraud. Further, Defendant sufficiently established public use of her alias. Fabala Green was the name under which defendant published short stories, wrote novels, and communicated with potential publishers. Defendant collected multiple packages addressed to Fabala Green from the post office, and represented herself as Fabala Green when communicating with postal workers. It is immaterial that the novels have yet to find a publisher; what matters is that Defendant took active steps to establish public use of her alias.

Courts have long held that an individual's legitimate expectation of privacy does not depend on the "nature of Defendant's activities [whether] innocent or criminal" *United States v.*



*Fields*, 113 F.3d 313, 321 (2d Cir. 1997) (internal citations omitted). The public health crisis of green elixir overdoses is real, but the Fourth Amendment is not so fragile as to bend to every whim and caprice of law enforcement. The Government cannot point to the discovery of illegal drugs as a post-hoc justification for intruding upon the rights of an individual who clearly desired privacy and anonymity when she established and actively used a fictitious name. In eroding the protections established by the Fourth Amendment; the court sets a dangerous precedent.

### **B. Spontaneity Requirement in Rule 803(3)**

The evidence at issue, the two recorded voicemail messages left by Defendant to Rose, were then-existing statements of mind that satisfied the textual requirements for admissibility under Rule 803(3). The majority improperly concludes that the hearsay exception does not apply by reading a “spontaneity” requirement into the Rule. Yet, there is nothing within the text of Rule 803(3) that requires a statement to be contemporaneous or spontaneous in order to be admissible. We should not read in such a requirement where it does not exist. The majority cites *United States v. Ponticelli*, 622 F.2d 985, 991 (9th Cir. 1980), to support its proposition that the evidence at issue was not reliable because it was not spontaneous. In so doing, the majority is improperly weaponizing Rule 803(3) as a tool to safeguard against admitting fabricated or self-serving statements, when the Rule, by its plain text, was never intended to serve that function.

It is the jury’s role to determine the reliability or validity of the evidence presented, and not the judge’s, even if this means admitting certain statements as hearsay exceptions that on their face appear to have a low degree of trustworthiness. *United States v. DiMaria*, 727 F.2d 265, 271 (2d Cir. 1984). To preemptively restrict probative and material evidence that may carry a risk of untrustworthiness encroaches on the jury’s essential purpose, which is to assess the credibility of admissible evidence. *See United States v. Peak*, 856 F.2d 825 (7th Cir. 1988).

Moreover, there are standalone mechanisms written into the Federal Rules of Evidence that protect against the harm of admitting unfairly prejudicial or misleading evidence. Rule 403 excludes relevant evidence “if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence.” Fed. R. Evid. 403. The exclusion of evidence that evinces a prior motive to fabricate is rooted in Rule 403 rather than in other rules of the Federal Rules of Evidence. *United States v. Miller*, 874 F.2d 1255, 1272 (9th Cir. 1989). At trial, the Government did not raise a Rule 403 issue relating to the voicemail transcriptions, arguing only that these statements did not fall within the ambit of Rule 803(3). Yet, the majority finds that non-spontaneous statements are not highly probative and may mislead the jury, using reasoning similar to the Rule 403 balancing test. By infusing a watered-down balancing test into Rule 803(3), the majority improperly allows trial courts to conduct a less-exacting Rule 403 analysis under a different name.

Both voicemail statements clearly reflect Defendant's state of mind, namely her confusion surrounding why her packages were unavailable for pickup. In each statement, Defendant asks multiple questions and describes her concern after being unable to locate her deliveries. Had Defendant's statements properly been admitted as hearsay exceptions under Rule 803(3), it would have had a material difference on her ability to make a case for her exoneration.

For these reasons, I respectfully dissent from the judgment of the court.

# Supreme Court of the United States

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**ELPHABA THROPP,**  
Petitioner,

v.

**UNITED STATES OF AMERICA,**  
Respondent.

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Date: December 14, 2024

The petition for writ of certiorari to the United States Court of Appeals for the Emerald Circuit is granted, limited to the following questions:

- I. Whether Defendant has a reasonable expectation of privacy under the Fourth Amendment in sealed mail addressed to Defendant's alias.
- II. Whether recorded voicemail statements offered by Defendant show a then-existing mental state can be admitted as hearsay exceptions under Rule 803(3) of the Federal Rules of Evidence if Defendant had time to reflect before making the statements.<sup>3</sup>

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<sup>3</sup> Note to Competitors: As this issue is not on appeal, Competitors are instructed not to address any arguments related to Rule 801(d)(1)(B) in connection with the Second Certified Question.