

IN THE TERRITORIAL COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX: KINGSHILL

GOVERNMENT OF THE VIRGIN ISLANDS,	)	
	)	
Plaintiff,	)	CRIMINAL NO. 197/1988
	)	
v.	)	
	)	
ALMERIC MESSER,	)	POSSESSION OF A CONTROLLED
	)	SUBSTANCE
Defendant.	)	
	)	

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PETERSEN, Judge

MEMORANDUM OPINION
March 9, 1989

This action is before this Court on Defendant's Motion to Reconsider its February 11, 1989 decision denying Defendant's Motion to Suppress. For the reasons herein stated, Defendant's Motion to Suppress is Denied.

FACTS

On the afternoon of April 9, 1988 at approximately 4:30 p.m., Agent Brann an officer of the Virgin Islands Narcotic

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Strike Force for approximately two and a half years, while patrolling in the vicinity of D. Hamilton Jackson Terrace, a predominantly black area well known to the Agent as a haven for drug dealing, observed the Defendant in the company of a white male and a Hispanic female.

On approaching the trio, Agent Brann observed Defendant, whom he knows from his professional work to be a drug user and dealer, in the process of handing a small tin foil packet to the female member of the party.

Upon observing the Agent, Defendant pulled his hand which contained the tin foil packet away from the female. Agent Brann ordered the three individuals to stop but the white male fled the area. Defendant then dropped the packet to the ground immediately in front of him. The packet was retrieved by Agent Brann shortly thereafter. Upon examining the contents of the packet, the Agent saw what appeared to be the cocaine derivative known as "crack". Defendant and the female were advised of their Miranda Rights and transported to the Marshal Police Station.

At the station, the Agent conducted a further search and found another tin foil packet containing a white rock-hard substance which the Agent also believed to be "crack". A cobalt thiocyanate field test was conducted on the contents of both packets. The contents of the first packet seized from Defen-

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dant gave no chemical reaction to the test and proved not to be "crack". However, the contents of the second packet seized from Defendant while at the Police Station tested positive for cocaine.

DISCUSSION

It is well established that probable cause exists "when, at the time of the arrest, the facts and circumstances within the officer's knowledge are sufficient to warrant a prudent person in believing that the suspect had committed or was committing an offense." United States v. Glaser, 758 F.2d 1197 (3d Cir. 1984) cert. denied 105 S. Ct. 1025.

Agent Brann is a member of the Virgin Islands Narcotic Strike Force for approximately two and a half years and have conducted numerous drug investigations. He noticed Defendant, known to him as a drug dealer, in the process of handing a small tin foil packet to a "Puerto Rican" female in the presence of a white male in a predominantly black low income neighborhood known for its drug transaction.

Through experience gained with the Narcotic Strike Force, the Agent knows that the passing of these tiny tin foil packets is the "hallmark" of a drug transaction. The sighting of the attempted exchange coupled with the Agent's knowledge of the Defendant as a drug dealer was sufficient for the Agent to

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reasonably conclude that the parties were involved in an illegal drug transaction thereby granting the officer the right to conduct an investigatory stop. Terry v. Ohio, 88 S. Ct. 1868 (1968).

It must be noted that the Defendant was not under arrest at the time that the Agent approached him. In order to effectuate a lawful arrest of Defendant, Agent Brann needed probable cause. In Bigford v. Taylor, 834 F.2d 1213 (5th Cir. 1988) (citing Brinegar v. U.S., 69 S.Ct. 1302 (1949) the court stated that probable cause for an arrest exists when the facts and circumstances within the knowledge of the arresting officer and of which he has reasonable trustworthy information are sufficient in themselves to warrant a person of reasonable caution to believe that an offense has been or is being committed.

It is irrelevant that the packet which was retrieved by the Agent contained a substance other than "crack" cocaine. As the court in Bigford, 834 F.2d at 1218 noted, "[w]e are not authorized to second-guess the conduct of the police officer with the benefit of our knowledge, gained from later developments, that the evidence eventually turned out to be unfounded or proved insufficient to show commission of a crime." More importantly, at the time of the Defendant's arrest, the information which Agent Brann had led him to reasonably

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believe that the parties were committing a criminal offense.

The operative words are "reasonable belief," for absolute certainty is not a necessary component of the Agent observation. Texas v. Brown, 460 U.S. 730 (1983). Taken collectively, the fact that Defendant was known to the Agent to be a drug dealer; the fact that through his knowledge and experience the Agent is aware that "crack" cocaine is peddled in small tin foil packets; the fact that on seeing the Agent, Defendant dropped the packet to the ground in an effort at concealing the packet, which upon examination, the Agent found a white rock-hard substance, which he reasonable believed to be "crack" cocaine were sufficient for the Agent to reasonably believe that a crime was being committed and there was probable cause to effectuate a lawful arrest of Defendant.

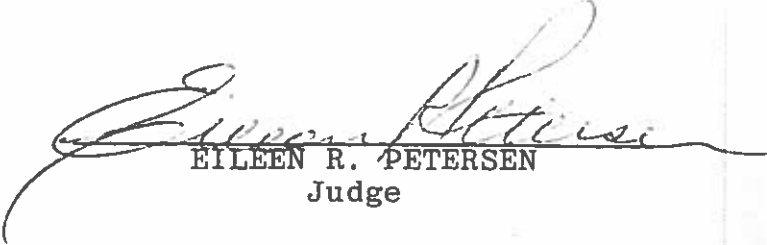
Moreover, contrary to Defendant's assertion, the arresting officer was not required to decide whether or not Defendant was guilty of possession of a controlled substance. The determination of guilt is within the domain of the Court. As the court in Brinegar, 69 S. Ct. at 1309, noted "[T]here is a difference between the two things to be proved (guilt verses probable cause) as well as between the tribunals which determine them, and therefore a like difference in the quanta and modes of proof required to establish them." Agent Brann had a lesser burden of proof and at the time of effectuating the arrest of

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the Defendant was not required to be certain that what Defendant possessed was, in fact, a controlled substance. He merely had to reasonably believe that it was.

Since Agent Brann had probable cause to arrest Defendant, the search of Defendant at the police station was a search incident to a lawful arrest. Thus, the packet taken from Defendant was lawfully seized and not as Defendant contends, the "fruits of the poisonous tree."

For the reasons herein stated, Defendant's Motion to Suppress will be denied.



EILEEN R. PETERSEN
Judge