

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

UNITED STATES OF AMERICA, :
 :
 Plaintiff, :
 :
 v. : Criminal Action No. 02-113-JJF
 :
SURINDRA PERSAUD, :
 :
 Defendant. :

Colm F. Connolly, Esquire, United States Attorney, and Adam Safwat, Esquire, Assistant United States Attorney, UNITED STATES ATTORNEY'S OFFICE, DISTRICT OF DELAWARE, Wilmington, Delaware. Attorneys for Plaintiff.

Raymond M. Radulski, Esquire, of RAYMOND M. RADULSKI, ESQUIRE, Wilmington, Delaware. Attorney for Defendant.

MEMORANDUM OPINION

July 3, 2003
Wilmington, Delaware

FARNAN, District Judge.

Presently before the Court is Defendant Surindra Persaud's Motion to Suppress Evidence (D.I. 16). For the reasons discussed below, the Motion (D.I. 16) will be denied.

INTRODUCTION

Mr. Persaud has been charged with one count of possession with intent to distribute cocaine base and one count of distribution of cocaine base, both in violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(c). Mr. Persaud now moves, pursuant to the Fourth Amendment of the United States Constitution and Federal Rules of Criminal Procedure 12(b)(3) and 41(f), to suppress any evidence directly or indirectly derived from the search and seizure of Mr. Persaud on July 31, 2002.

The Court held an evidentiary hearing on the Motion to Suppress Evidence (D.I. 16), and this Memorandum Opinion sets forth the Court's findings of fact and conclusions of law regarding the instant Motion (D.I. 16).

FINDINGS OF FACT

1. Corporal ("Cpl.") Michael F. Rodriguez was assigned to the Wilmington Police Department's Drug, Organized Crime, and Vice Division (the "Vice Division") at all times relevant to this Motion. Tr. 3.¹ Cpl. Rodriguez has been a member of the Vice

¹ "Tr. ___" refers to the Transcript of the February 27, 2003, Suppression Hearing (D.I. 22).

Division for eight years and, during that time, has participated in at least one hundred undercover investigations involving street surveillance. Tr. 3.

2. On July 31, 2002, Cpl. Rodriguez and his partner, Detective ("Det.") Hildago, were conducting video surveillance of the area at North Tatnall and Seventh Street, Wilmington, Delaware, from approximately 6:30 p.m. until approximately 7:30 p.m. Tr. 3-4.

3. Cpl. Rodriguez testified that they were conducting surveillance in the area of North Tatnall and Seventh Street because it is a high narcotics area. Tr. 4.

4. Cpl. Rodriguez and Det. Hildago (the "Officers") were conducting video surveillance from two different locations on Seventh Street; thus, they had two different perspectives on the events at issue here, which occurred in the 300 block of Seventh Street. Tr. 5-7.

5. The Officers observed Mr. Persaud, who was wearing a red tank top, reach in his buttock area and remove a small object. Tr. 9. Cpl. Rodriguez testified that street-level drug dealers often conceal small amounts of drugs in their buttock area. Tr. 10.

6. The Officers viewed a white male enter the block and talk with a black male wearing blue polka dot shorts ("Mr. Blue"). Tr. 11. The white male sat down on a set of steps with

Mr. Blue, and Mr. Persaud walked up the street to confer with Mr. Blue, who was now standing. Tr. 11. Mr. Persaud handed Mr. Blue a small object, and Mr. Blue sat down next to the white male. Tr. 11. Right after Mr. Blue sat down, the white male left the area. Tr. 12.

7. Cpl. Rodriguez testified that based on his experience, the transaction between the white male and Mr. Blue was consistent with a drug sale. Tr. 12. Cpl. Rodriguez also testified that persons who sell drugs often have one person hold the money and another hold the drugs to prevent both the money and the drugs from being lost due to an arrest. Tr. 14.

8. The Officers next observed a black female, Mary Williams, withdraw paper currency from her purse as she approached Mr. Blue and Mr. Persaud. Tr. 13. Ms. Williams then handed the currency to Mr. Blue, and in return, Mr. Blue handed currency back to Ms. Williams. Tr. 13. At that point, Mr. Persaud made a gesture towards Ms. Williams. Tr. 13. Ms. Williams then left the area immediately. Tr. 13. Mr. Persaud walked around the back of his vehicle towards the driver's side and entered his vehicle. Tr. 13.

9. After Ms. Williams left the scene of the sale, she was stopped by Det. Richard Armor, who asked her if she possessed any drugs. Tr. 14. Det. Armor stopped Ms. Williams in the 100 block of Seventh Street, approximately two blocks from her exchange

with Mr. Persaud and Mr. Blue. Tr. 20. Ms. Williams admitted to possessing drugs and handed Det. Armor three small, black-tinted plastic bags, each containing one-tenth of a gram of a chunky, off-white substance that was later determined to be cocaine. Tr. 14. Ms. Williams told Det. Armor that she had just purchased the drugs up the street. Tr. 16.

10. Shortly after Ms. Williams left the scene of the sale, Mr. Persaud drove out of the area. Tr. 15. The police followed Mr. Persaud as he drove out of the area and right back into the area, where he parked and was arrested. Tr. 15. Police searched Mr. Persaud's vehicle and discovered a ziplock bag which contained two wrapped-up pieces of white plastic in the change compartment. Tr. 15. Inside each piece of white plastic were ten black-tinted plastic bags that each contained an off-white, chunky substance that was later determined to be cocaine. Tr. 15.

CONCLUSIONS OF LAW

1. The Fourth Amendment provides that the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated...." U.S. Const. amend. IV.

2. "Law enforcement authorities do not need a warrant to arrest an individual in a public place as long as they have probable cause to believe that person has committed a felony."

United States v. Burton, 288 F.3d 91, 98 (3d Cir. 2002) (quoting United States v. McGlory, 968 F.2d 309, 342 (3d Cir. 1992)); see also United States v. Watson, 423 U.S. 411, 421 (1976).

3. "Probable cause exists where the facts and circumstances within the arresting officer's knowledge are sufficient to warrant a reasonable person to believe an offense had been committed." McGlory, 968 F.2d at 342; see also Beck v. Ohio, 379 U.S. 89, 91 (1964) (an arrest is constitutional if "at the moment the arrest was made, the officers had probable cause to make it--whether at that moment the facts and circumstances within their knowledge and of which they had reasonably trustworthy information were sufficient to warrant a prudent man in believing that the petitioner had committed or was committing an offense.").

4. Probable cause is a "fluid concept--turning on the assessment of probabilities in particular factual contexts--not readily, or even usefully, reduced to a neat set of legal rules." Illinois v. Gates, 462 U.S. 213, 232 (1983).

5. Probable cause "is to be viewed from the vantage point of a prudent, reasonable, cautious police officer on the scene at the time of the arrest guided by his experience and training." United States v. Davis, 458 F.2d 819, 821 (D.C. Cir. 1972).

6. Whether the police have probable cause is determined from the totality of the circumstances. Gates, 462 U.S. at 230-

32.

7. In the instant case, the Court concludes, based on the totality of the circumstances, the police had probable cause to arrest Mr. Persaud. Cpl. Rodriguez, an experienced vice squad officer, twice observed Mr. Persaud participate in a surreptitious passing of a small package in an area of the City of Wilmington known for drug activity. Thereafter, the police stopped Ms. Williams two blocks from where she was observed making an exchange involving currency with Mr. Blue and Mr. Persaud. When stopped, Ms. Williams admitted that she possessed cocaine and that she had bought it up the street. In the Court's view, these facts were sufficient to warrant a reasonable person to believe an offense had been committed by Mr. Persaud, to wit, the distribution of cocaine.

8. In reaching its conclusion, the Court has relied on four factors. First, the Court has relied on the experience of Cpl. Rodriguez. Cpl. Rodriguez is an eight-year veteran of the Vice Division who has participated in over one hundred street surveillance operations. The individual experience of an arresting officer is a relevant factor for evaluation by the court because "conduct innocent in the eyes of the untrained may carry entirely different messages to the experienced or trained observer." Davis, 458 F.2d at 822. Thus, in the Court's view, Cpl. Rodriguez's observations about the transactions he witnessed

carry additional weight because of his experience.

9. Second, the Court has relied on the videotape of and testimony regarding the exchanges between Mr. Persaud, Mr. Blue, the unidentified white male, and Ms. Williams. "Surreptitious passing of a package has been recognized as a possible element in establishing the probable cause mix." Davis, 458 F.2d at 822; see also United States v. Taylor, 997 F.2d 1551, 1553 (D.C. Cir. 1993) (holding police had probable cause to arrest after observing suspect exchange cash for small object from brown paper bag); United States v. Orozco, 982 F.2d 152, 154 (5th Cir. 1993) (holding veteran police officer patrolling in high narcotics area had probable cause to arrest after observing suspect engage in three exchanges of cash for a small object taken from his mouth); United States v. White, 655 F.2d 1302, 1303-04 (D.C. Cir. 1981) (per curiam) (holding police had probable cause to arrest after observing suspect exchange currency for small object); United States v. Davis, 561 F.2d 1014, 1016-17 (D.C. Cir. 1977) (holding police had probable cause to arrest after observing suspect engage in three identical suspicious currency and packet exchanges in high narcotics area). The filmed transactions were surreptitious, and Mr. Williams' transaction clearly involved currency. See Gov. Ex. 2. The nature of the filmed transactions and Cpl. Rodriguez's testimony regarding their suspicious nature is one factor that leads the Court to

conclude the police officers had probable cause to arrest Mr. Persaud.

10. The third factor considered by the Court in its probable cause analysis is the geographical area of the crime. "Although no presumption of guilt arises from the activities of inhabitants of an area in which the police know that narcotic offenses frequently occur, the syndrome of criminality in those areas cannot realistically go unnoticed by the judiciary." Davis, 458 F.2d at 822. When coupled with other suspicious circumstances, the geographical area in which an event occurs can help support a finding of probable cause. Here, Cpl. Rodriguez testified that the surveillance was set up at Seventh Street and North Tatnall because it is known to be an area with a high amount of drug activity. Cpl. Rodriguez's experience lends credence to his testimony regarding the area at issue, and the character of the neighborhood makes the filmed transactions more suspicious than they otherwise would be.

11. The fourth and most significant factor the Court relies on regarding the probable cause for the arrest is the confirmation provided by Ms. Williams regarding the nature of the filmed transactions. Prior to the stop of Ms. Williams, the probable cause consisted of experienced officers witnessing suspicious exchanges in a high drug neighborhood. However, upon questioning Ms. Williams, the police confirmed that the

suspicious exchanges they observed probably, if not certainly, involved cocaine. Based on their observation of the exchange involving Mr. Blue, Mr. Persaud, and Ms. Williams and on Ms. Williams statements, the police officers reasonably concluded that Ms. Williams obtained the cocaine from Mr. Persaud.

12. Viewing the totality of the circumstances established by the Government's evidence in light of the officers' experience and training, the Court concludes there was a reasonable basis for the officers to believe that Mr. Persaud was committing a crime. Thus, the Court concludes that the police had probable cause to arrest Mr. Persaud. Accordingly, any evidence obtained as result of that arrest, including evidence from the search of Mr. Persaud's car incident to the arrest, is admissible.

CONCLUSION

For the reasons discussed, Mr. Persaud's Motion to Suppress Evidence (D.I. 16) will be denied.

An appropriate Order will be entered.

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FOR THE DISTRICT OF DELAWARE

UNITED STATES OF AMERICA,	:	
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Plaintiff,	:	
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v.	:	Criminal Action No. 02-113-JJF
	:	
SURINDRA PERSAUD,	:	
	:	
Defendant.	:	

ORDER

At Wilmington this 3rd day of July 2003, for the
reasons set forth in the Memorandum Opinion issued this date;

IT IS HEREBY ORDERED that Defendant Surindra Persaud's
Motion to Suppress Evidence (D.I. 16) is **DENIED**.

JOSEPH J. FARNAN, JR.
UNITED STATES DISTRICT JUDGE