

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA

Alexandria Division

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FILED

DEC 31 1980

CLERK, U. S. DISTRICT COURT  
ALEXANDRIA, VIRGINIA

UNITED STATES OF AMERICA :

v. :

REEDO ERIC CORBITT :

CRIMINAL NO. 80-00173-A

MEMORANDUM OPINION

This case came on for hearing on the defendant's, Reedo Eric Corbitt's, Motion to Suppress Evidence seized from his bags after an arrest which occurred on October 24, 1980. At the hearing, the court received evidence and heard the arguments of counsel for the government and for the defendant. At the close of the arguments, the court took the matter under advisement and invited counsel to file supplemental briefs regarding issues raised in oral argument. Counsel for the government moved for leave to file additional affidavits supplementing the testimony at the hearing. The court denies that leave and bases its decision here upon evidence presented at the hearing. For the reasons and upon the findings of fact stated here, the court denies defendant's motion to suppress.

Statement of Facts

During the first week of October, 1980, the Drug Enforcement Administration established a task force at the Dulles and Washington National Airports. This task force was to monitor incoming domestic and international flights for drug couriers. The DEA specifically was observing flights originating from cities believed to be drug distribution centers.

On Friday, October 24, 1980, at approximately 5:00 p.m., DEA Special Agent Robert McCracken and Detective James Edward Bradley, Jr., of the Washington, D.C. Metropolitan Police Department on special assignment to DEA, were present at the Washington National Airport. McCracken and Bradley were in

the area of Gate 18, at which the Eastern Airlines shuttle flight from New York City was arriving. The defendant, Reedo Eric Corbitt, was among the departing passengers from the 5:00 p.m. shuttle on October 24.

Approximately a week to ten days before October 24, 1980, Detective Bradley had been advised by a confidential informant that Reedo Eric Corbitt was carrying large quantities of cocaine to Washington, D.C. from New York City on Thursdays and Fridays. This informant previously had provided information to Detective Bradley in unrelated narcotics investigations which had led to a number of different arrests and indictments.

Detective Bradley personally had contact with Mr. Corbitt before the October 24, 1980 airport meeting. On two occasions in 1979, Detective Bradley, working as an undercover narcotics agent in Maryland, purchased cocaine and heroin in Mr. Corbitt's presence. Furthermore, in September, 1980, after these purchases, Corbitt and Bradley met with the United States Attorney in Maryland. Detective Bradley was present at the meeting and revealed his true identity as a narcotics officer. Bradley also visited Corbitt at his residence and revealed his true identity.

As the defendant Corbitt emerged from the area of Gate 18 on October 24, 1980, he appeared nervous and carried two bags. He spotted Detective Bradley and immediately began to sprint up nearby stairs toward the airport exit doors. Detective Bradley and Agent McCracken ran after him and caught up with him at the doors. Corbitt then went away from the

doors toward an adjacent terminal area. Detective Bradley approached Corbitt and identified himself as a federal narcotics agent, displayed his credentials and requested that Corbitt talk with him. Corbitt stopped in response to the request. Agent McCracken then arrived, identified himself, and advised him of the DEA investigation. Corbitt denied having arrived from the New York flight and denied that he had an airline ticket. The agents stated that they had a reason to believe Corbitt had narcotics in his possession and asked that he consent to a search of his bags. Corbitt would not allow the search. Detective Bradley then advised Corbitt that he was free to leave, but that his bags would be detained until a search warrant could be obtained. Bradley reached out for the bag, which Corbitt refused to release. Corbitt shoved Bradley away from him. McCracken warned Corbitt that he was interfering with an investigation and after Corbitt again shoved Bradley, the officers arrested him for interfering with a federal investigation.

After his arrest, Corbitt was taken to the FAA police office and advised of his Miranda rights. As Corbitt was a special Metro Police Officer and had been trained in arrest procedure, there is no question but that he understood his rights. Corbitt stated that he understood his rights. Corbitt volunteered a vial containing a substance later determined to be cocaine as his personal "stash." He stated that he had left the remainder of his supply of cocaine in a taxi in New York City. He continued to refuse a search of his bags. Detective Bradley departed to obtain a search warrant for the bags. Corbitt then informed DEA Group Supervisor William Logay that since they were going to get a warrant anyway, they could go ahead and search his bags. Corbitt opened his bags in Logay's presence and removed one bag of cocaine and gave it to Logay. The bag then was searched further by Logay with Corbitt's assistance.

Conclusions of Law

The case at bar does not involve a detention or arrest made upon the DEA drug courier profile. It does not involve a detention of a traveler's luggage under a mere reasonable suspicion. Rather, from the moment the defendant spotted Detective Bradley and ran toward the exit, the officers had probable cause to arrest Corbitt for possession of cocaine or heroin.

Probable cause exists when the facts and circumstances known to the officers by means of reasonably trustworthy sources would warrant a person of reasonable caution to believe that an offense is being or has been committed. Carroll v. United States, 267 U.S. 132, 162, 45 S. Ct. 280, 69 L. Ed. 543 (1927). Satisfaction of the drug courier profile alone would not provide probable cause to arrest the defendant. United States v. Craemer, 555 F.2d 594 (6th Cir. 1977); see Reid v. Georgia, U.S. , 100 Sup. Ct. 2752, 65 L. Ed.2d 890 (1980). The officers should be able to point to additional facts indicating the suspect is engaged in criminal activity. United States v. Craemer, supra at 5963.

Here, the officers were informed by a reliable informant that Corbitt brought illegal drugs from New York City to Washington every Thursday and Friday. This tip satisfies the first prong of the Aguilar v. Texas, 378 U.S. 108, 114, 84 S. Ct. 1509, 12 L. Ed.2d 723 (1964) and Spinelli v. United States, 393 U.S. 410, 89 S. Ct. 584, 21 L. Ed.2d 637 (1969) test. There is no indication of the underlying circumstances upon which the informant based his conclusory statement.

However, deficiencies in the informant's tip can be cured by independent corroboration of the investigating officers: Draper v. United States, 358 U.S. 307, 79 S. Ct. 329, 3 L. Ed.2d 327 (1959); United States v. Branch, 565 F.2d 275, 276 (4th Cir. 1977); United States v. Baker, 577 F.2d 1147, 1150, cert. denied, Weinstein v. United States, 439 U.S.

850, 99 S. Ct. 154, 58 L. Ed.2d 153 (1978). Here, the defendant's nervous appearance in the airport, coupled with his running away once he spotted Detective Bradley, who was known to him as a narcotics agent, corroborated the informant's tip. In addition, Corbitt lied regarding his arrival from New York. The officers thus had probable cause to arrest Corbitt for drug trafficking.

The situation here is thus easily distinguishable from that in United States v. Craemer, supra, where the informant's tip was not corroborated at all, much less in the convincing way it is corroborated here.

Thus, it is not necessary to determine if the airport interrogation of Corbitt by Bradley and McCracken or the seizure of his bag is but an investigative stop, not deserving the full protection of the Fourth Amendment. The reliable informant's tip, Bradley's past dealings with Corbitt, Corbitt's deplaning from New York City on Friday, as predicted by the informant, his nervous behavior and, importantly, his running upon spotting Bradley all give rise to probable cause to seize Corbitt for drug trafficking or to detain his bag.

Having had probable cause to arrest Corbitt, Bradley certainly could detain Corbitt's bag while a search warrant was obtained. By refusing to surrender his luggage and forcibly resisting the officer's attempt to seize it, Corbitt clearly violated 18 U.S.C. § 111.<sup>1/</sup> While this court is alarmed at

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<sup>1/</sup>18 U.S.C. § 111 provides:

Whoever forcibly assaults, resists, opposes, impedes, intimidates, or interferes with any person designated in section 1114 of this title [18 USCS § 1114] while engaged in or on account of the performance of his official duties, shall be fined not more than \$5,000 or imprisoned not more than three years, or both.

Whoever, in the commission of any such acts uses a deadly or dangerous weapon, shall be fined not more than \$10,000 or imprisoned not more than ten years, or both.

the potential for spurious arrests and searches under § 111,<sup>2/</sup> Corbitt's arrest was legitimate.<sup>3/</sup> The statute does not require the infliction of bodily injury, but only that some degree of force be used. United States v. Marcello, 423 F.2d 993 (5th Cir.), cert. denied 398 U.S. 959, 90 S. Ct. 2172, 26 L. Ed.2d 543, rehearing denied 399 U.S. 938, 90 S. Ct. 2240, 26 L. Ed. 809 (1970); United States v. Frizzi, 491 F.2d 1231 (1st Cir. 1974). Corbitt here used force in resisting the agent's attempt to detain his bag and was justifiably arrested for violating § 111.

A warrant or probable cause is not required if a defendant consents to a search. A defendant consents where he intentionally relinquishes a known right. Schneckloth v. Bustamante, 412 U.S. 218, 93 S. Ct. 2041, 36 L. Ed.2d 854 (1973); see United States v. Mendenhall, 446 U.S. 544, 100 S. Ct. 1870, 64 L. Ed.2d 497 (1980). Corbitt understood his rights and intended to relinquish them. His consent to the search of his luggage was valid.

For the reasons set forth herein, the defendant's motion to suppress is denied.

Richard L. Williams  
United States District Judge

December 31, 1980

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<sup>2/</sup>The instant motion makes no challenge to the validity of 18 U.S.C. § 111.

<sup>3/</sup>An arrest properly supported by probable cause for a certain offense is not vitiated because the officer characterizes it as an offense for which no probable cause exists. United States v. Pulvano, 629 F.2d 1151, 1156 n. 5 (5th Cir. 1980); United States v. Saunders, 476 F.2d 5, 7 (5th Cir. 1973); cf. Ralph v. Pepersack, 335 F.2d 128 (4th Cir. 1964), cert. denied 380 U.S. 925, 85 S. Ct. 907, 13 L. Ed.2d 811 (officer's characterization of arrest as "investigative" does not invalidate arrest made with probable cause). Thus, the fact that Corbitt was arrested for violation of 18 U.S.C. § 111 rather than for a drug offense arguably would have no bearing on the validity of the arrest, even if there was no probable cause to arrest under § 111.