

I. FACTUAL AND PROCEDURAL BACKGROUND:

The government has charged Luis Vazquez and Gabriel Santana with two counts of violating 21 U.S.C. § 841(a)(1) and 841(b)(1)(A). On April 22, 2003, a confidential source advised government agents that sometime on the morning of April 23, 2003, a Dominican male by the name of Gabriel Santana would deliver ten kilograms of cocaine and three kilograms of heroin to someone on a boat which would be arriving from Puerto Rico. The source, who has provided reliable information to the government in the past, also advised that the delivery of the narcotics would take place at a beach near the airport.

On April 23, 2003, Drug Enforcement Administration ["DEA"] and HIDTA agents [collectively, "agents"] set up surveillance in a known drug trafficking area near John Brewer's Bay, called the "Old Xanadu Beach Resort." At approximately 10:20 a.m., several agents on the scene observed a red vehicle pull up to the beach and saw Santana exit the vehicle. Mark Thomas, a detective with the Virgin Islands Police Department assigned to work with the DEA and HIDTA, observed Santana enter the water while fully clothed, approach a boat occupied by Luis Angel Rosario Vasquez, and hand Vasquez a blue and white cooler.¹ As Santana returned

¹ Agent Blake witnessed Santana enter the water wearing shorts, a button down shirt, a red baseball cap, and brown shoes.

to the beach and began to walk toward the red vehicle, he was intercepted by Special Agent Adams, one of the agents on the scene. Adams asked Santana what he was doing on the beach and Santana replied that he was at the beach to go bathing, even though he had neither a swim suit nor a towel. At this time, the driver of the red vehicle sped away² as did Vasquez in his boat. Santana was then placed under arrest and transported to the HIDTA Regional Office.³ At the HIDTA office, the agents searched Santana and found twenty-four grams of cocaine in his wallet. At approximately 11:30 a.m., the U.S. Customs service interdicted Vasquez in his boat and had found a blue and white cooler in the boat containing ten kilograms of cocaine and three kilograms of heroin. Santana has filed this motion to suppress, arguing that evidence of illegal drugs found in his possession and his statements should be suppressed because the agents did not have probable cause to arrest him.

II. ANALYSIS:

In its supplemental response to the defendant's motion to

² Other agents followed the vehicle and later found it abandoned at the Tower Condominiums in Contant.

³ Testimony by Agent Darnel Blake at the hearing on this motion to suppress indicated that Santana was formally arrested on the beach, although the record is not entirely clear. Regardless of whether Santana was formally arrested on the beach or later at the HIDTA office, it is clear that from the time the agents stopped him on the beach as he walked back toward the red vehicle, Santana was under the control of law enforcement officers.

suppress, the government argues that the agents had probable cause to arrest Santana based solely on their witnessing of the events of April 23, 2003 as described above. Alternatively, the government claims it had probable cause to arrest Santana based on information from a confidential source, which was corroborated by the agents' witnessing of the events of April 23, 2003. I find the agents' witnessing of the events leading to Santana's arrest was not sufficient to give the agents probable cause to arrest the defendant. Instead, I agree with the alternative argument presented by the government and hold that the combination of what the agents witnessed and the consistent information provided by the confidential source gave the agents probable cause the arrest the defendant.⁴

A. The Probable Cause Standard

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. *See United States v. Watson*, 423 U.S. 411, 421 (1976). Probable cause to conduct a warrantless arrest exists when police have, at the moment of arrest, knowledge of facts and circumstances grounded

⁴ The government's supplemental motion presents a third argument as well. The government argues that if I do not find probable cause that Santana's detention was justified as a *Terry* stop. Because I find probable cause, I do not address the merits of this argument.

in reasonably trustworthy information and sufficient in themselves to warrant a belief that an offense has been committed or is being committed by the person to be arrested. See *Beck v. Ohio*, 379 U.S. 89, 91 (1964). Probable cause is a fluid concept that must be determined on the particular facts of each case. See *Illinois v. Gates*, 462 U.S. 213, 232 (1983).

B. The Observations of the Agents Do Not Establish Probable Cause

The government relies on *United States v. Funches* to argue that the agents had probable cause to arrest Santana solely based on what they observed on April 23, 2003. 327 F.3d 582 (7th Cir. 2003). In *Funches*, DEA agents witnessed a series of events over the course of more than two hours that included, among other events, following multiple vehicles traveling between multiple locations, a back-alley transaction between two individuals, interaction between other individuals in a grocery store parking lot ten miles away from the back alley, and exchanges of multiple shopping bags between the suspects. *Id.* at 583-85. In contrast, the agents here observed the defendant for several minutes while he engaged in odd, but not unheard of, activity on a beach. Although wading into the water while fully clothed, in order to hand off a cooler to a boat, with the alleged purpose of bathing, is hardly normal beach activity, it is also not sufficient to "warrant a man of reasonable caution in the belief that an

offense has been or is being committed." *Brinegar v. United States*, 338 U.S. 160, 175-76 (1949).

C. The Observation of the Agents Combined With the Tip From the Confidential Source Does Constitute Probable Cause

The informant's tip was independently corroborated by the events the agents observed on the morning of April 23, 2003. Accordingly, the personal observation of the agents that corroborated the reliability of the informant's information constituted probable cause to arrest the defendant. *See United States v. Satubbs*, 281 F.3d 109, 122 (3d Cir. 2002) (eyewitness corroboration of an informant tip that defendant's accomplice would rob bank gave agents probable cause to arrest accomplice and the defendant); *United States v. Anton*, 753 F.2d 1301, 1304 (probable cause found after police used surveillance to confirm time, place and mechanics of drug transaction about which they had been forewarned by an informant).

III. CONCLUSION:

For the reasons stated above, I find that the informant's tip, combined with the agents' corroboration of the informant's information, gave the agents probable cause to arrest the defendant. An appropriate order follows.

ENTERED this 6th day of January, 2004.

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Memorandum
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For the Court

_____/s/_____
Thomas K. Moore
District Judge

ATTEST:
WILFREDO MORALES
Clerk of the Court

AFPD Patricia Schrader-Cooke
Kevin Weatherbee, Esq.
Mrs. Jackson
Jeffrey Corey

By:_____/s/_____
Deputy Clerk

Copies to:

Hon. G. W. Barnard
AUSA Patricia Sulzbach

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