Was Boddie Guilty of Intent to Distribute Drugs Within a Drug-Free Zone?

Boddie v. United States, *865 A.2d 544 (D.C. App. 2005)*

Officer Croson, who was assigned to the vice unit, "received a telephone call from a reliable source." Officer Croson recognized the voice of an informant with whom he had worked previously around thirty times. The informant stated that a person "wearing a black leather jacket, blue jeans and a gray skull cap" "was holding and selling heroin in the park in the 300 block of K Street, in the Southeast quadrant of the District of Columbia." The informant "had observed the [person] selling the narcotics." About ten minutes after he received the call from the informant, Officer Croson and two other Metropolitan Police Department (MPD) officers arrived at the K Street location.

Upon his arrival . . . Officer Croson saw "eight to ten subjects standing in the courtyard," one of whom "match[ed] the description" given by the telephone informant. . . . Officer Croson followed Mr. Boddie into an alley, got out of his vehicle, and "stopped" him. The area in which Mr. Boddie was stopped is "a high drug area where [people] sell narcotics. . . ." A park in that area was known as "an open-air heroin market." Officer Croson asked whether Mr. Boddie "had anything on him." Mr. Boddie said "he had a stem on him." He also admitted that he had "a couple of bags on [him]." When the officer could not find any drugs in Mr. Boddie's pockets, he inquired whether Mr. Boddie had "anything in [his] pants." Mr. Boddie removed "a . . . plastic bag from his crotch area" and handed it to the officer. The bag contained 45 "green zip-lock[ ] bags with a white powder substance that field-tested positive for heroin." Mr. Boddie claimed that he was not selling heroin but used the drug. Mr. Boddie was placed under arrest.

Sergeant John Brennan, a thirty-one-year veteran of the Metropolitan Police Department, testified as an expert in the distribution, sale, and use of narcotics in the District of Columbia. He stated that 24 of the bags possessed by Mr. Boddie contained a 31 percent concentration, and the other 21 bags a 23 percent concentration, with respect to the purity of the heroin. This compared with the average street concentration of "between 15 and 20 percent" purity. The typical user would have only one to three bags on his or her person at a time. . . . Sgt. Brennan explained that a dealer might give a person bags of heroin to sell in exchange for part of the proceeds from the sales; or that a person might take the bags, sell most of them and keep one or two bags for personal use. He posed the question: "Would a user have 45 bags for personal use[?]" And, he answered his own question: "[N]o. Never in my 31 years on the police force have I ever seen that."

Section 33-547.1 specifically prohibits "possessing" with intent to distribute narcotics in a drug free zone . . . , whether or not the heroin market itself is in a drug free zone[ ]." . . . [I]t is clear that this provision requires that the *actus reus* must occur within 1,000 feet of a school. . . . Since the *actus reus* for this offense is possession, it follows that possession of the drugs, not the intended location for distribution, must be located within 1,000 of a school.

If we require proof of intent to distribute only within the school zone . . . the statute would exclude many cases where the presence of drugs, in fact, increased the risk of harm to students. In view of the danger that the mere presence of drugs near a school presents, the district courts' interpretation would provide an escape-hatch for a defendant when, as here, the government is unable to establish precisely where the drugs were meant to be distributed, thereby defeating the intent of Congress. In many such cases, school