

IN THE TERRITORIAL COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX: CHRISTIANSTED

GOVERNMENT OF THE VIRGIN ISLANDS,	)	
	)	
Plaintiff,	)	CRIMINAL NO. 123/83
	)	
v.	)	
	)	DISCHARGING A FIREARM
PEDRO SUAREZ,	)	
	)	
Defendant.	)	

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PETERSEN, Judge

MEMORANDUM OPINION
July 6 , 1983

The defendant, Pedro Suarez, has been charged with Discharging a Firearm in violation of 23 V.I.C. 479(a). Before the court is a Motion to Suppress all evidence obtained from the defendant.

On January 21, 1983, the defendant was stopped, searched and arrested as he staggered along Centerline Road around 9:52 p.m. by a police officer responding to a telephone

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call of shots fired in that vicinity. After the defendant's arrest, he was taken to police headquarters where he signed an Advise of Rights and Waiver and made a statement. The defendant now seeks to have the statement and all physical evidence seized suppressed.

For the reasons stated herein, the defendant's Motion to Suppress must be denied.

DISCUSSION

I

The defendant contends that his detention by the police constituted an arrest and that there was no probable cause for such arrest. The Government, on the other hand, seeks to justify the initial stop of the defendant as an "investigative stop" under the principles of Terry v. Ohio, 392 U.S. 1 (1968).

A preliminary inquiry is whether the initial detention of the defendant violated his constitutional right to be secure against an unreasonable seizure of his person. The court finds that this case is governed by the principles established in Terry v. Ohio, 392 U.S. 1 (1968):

"One general interest is of course that of effective crime prevention and detection; it is this interest which underlies

the recognition that a police officer may in appropriate circumstances and in an appropriate manner approach a person for purposes of investigating a possible criminal behavior even though there is no probable cause to make an arrest."

Certainly the officers lacked probable cause to arrest the defendant as they approached him on the South side of Centerline Road approximately 400 yards from the area of the Old Cockpit. However, the Supreme Court has advised that not all seizures of a person must be justified by probable cause to arrest for a crime. Florida v. Royer, 51 LW 4293 (1983); Michigan v. Summers, 452 U.S. 692 (1981).

The issue then becomes whether at the time of the stop "the facts available to the officer at the moment of the seizure...warrant a man of reasonable caution in the belief that the action taken was appropriate." Terry v. Ohio supra at 21-22. Three conditions must exist before a person may be subjected to an investigative stop: (1) There must be a specific and articulable basis in fact for suspecting that criminal activity has occurred; (2) the purpose of the stop must be reasonable and (3) the scope and character of the stop must be reasonably related to its purposes. See United States v. Mendenhall, 446 U.S. 562 (1980), Brown v. Texas, 443 U.S. 47, 50-51 (1979). The officers received a telephone tip

around 9:50 p.m. that gun shots were fired in the vicinity of the old cockpit on Centerline Road by a man wearing a dark jacket and dark pants who was walking along the side of the road. The officers arrived on the scene about two minutes thereafter and observed a man fitting the rough description who was staggering and falling along the South side of Centerline road approximately four hundred (400) yards from the old cockpit. Admittedly at this point there was not probable cause to arrest. However a stop was clearly justified. Even if the officers had received no reports they would have been justified in stopping the defendant to ascertain whether he was ill or drunk and to thereafter assist him in reaching a safe place away from the normally rapid traffic flow. ^{1/} Obviously, the police had two options: they could have pursued the investigation or they could have continued on their way and acted as if the defendant never existed. It would be unrealistic to find that the police investigation had to be dropped, the defendant's solitary presence at 10:00 p.m. along the southside of Centerline Road

^{1/} The police in a democratic society are charged with the protection of constitutional rights, the maintenance of order, the control of pedestrian and vehicular traffic, the mediation of domestic and noncriminal conflicts and supplying emergency help and assistance . . . People v. DeBour 40 N.Y.2d 210, 386 N.Y.S.2d 375, 352 N.W.2d 562.

ignored and a potential problem unresolved. Therefore, while the police lacked probable cause to arrest the defendant as they approached him they were aware of facts that reasonably warranted stopping him and conducting a limited pat down search for weapons. Moreover, the limited intrusion on the personal security of the defendant was justified by the officer's interest in investigating the report of gun shots in the area. See Michigan v. Summers, 452 U.S. 692 (1981).

The defendant further maintains that the officers had not personally observed any suspicious activity. However, it has been established that the justification for an investigative stop need not be predicated upon personal observation. It is rather based upon the "specificity of information" upon which the police act. Terry v. Ohio, supra at 21 n.18. This specificity of information can be obtained from other sources and one, of course, is an informant. See Adams v. Williams, 407 U.S. 143 (1972).

II

The defendant vigorously contends that his arrest cannot be justified on the basis of probable cause because an arrest for a misdemeanor could not lawfully be based on probable cause alone without a warrant where the misdemeanor

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occurred outside of the presence of the arresting officer, citing 5 V.I.C. 3562. On the other hand, the government relies on 14 V.I.C. 2253(a) as authority for the arrest without a warrant.

The fact that the offense for which the defendant was charged is a misdemeanor is not dispositive of the issue of the legality of the arrest. The officer testified that while conducting a frisk for weapons the defendant acted in a strange manner and he appeared to be intoxicated. An empty gun holster was seen on the defendant's hip and the defendant possessed a weapon which the officer initially believed was unlicensed. At that moment the officer had probable cause to believe that the defendant was in violation of 14 V.I.C. 2253(a) which states, in relevant part, that "whoever, unless authorized by law . . . carries either openly or concealed . . . on or about his person . . . any firearm . . . loaded or unloaded may be arrested without a warrant."

The test to be applied is whether the facts available to the officers at the moment of the arrest were "sufficient to warrant a prudent man in believing that the petitioner had committed . . . an offense. Beck v. Ohio, 379 U.S.89, 91, 85 S.Ct. 223, 225 (1964).

A subsequent investigation after the arrest revealed that the defendant was authorized to carry a firearm and that

the firearm was the property of his employer. At the moment of the arrest, however, the facts and circumstances upon which the officer acted were sufficient to justify the arrest; thus a later determination that the weapon was licensed would not render the arrest illegal. Sufficient probability - not certainty - is the touchstone of reasonableness under the Fourth Amendment. Hall v. California, 401 U.S. 797, 804, 91 S.Ct. 1106. In the instant case the officer's action was understandable and reasonable in light of the facts and circumstances known to him at the time. Since at the moment of the arrest, the facts and circumstances upon which the officers acted were sufficient to justify the arrest, a subsequent determination that the information was incorrect will not render the arrest illegal. The rule to be applied in determining the validity of a warrantless arrest for an offense committed outside of the officer's presence in the face of a law which permits such arrests only if the crime was committed in the officer's presence has been enunciated in United States v. Bonds:

"Thus, if probable cause exists for the arrest of a person for the felony at the time of the arrest, the search incident to the arrest will be upheld, if reasonable in scope, although the officer did not accurately name the offense for which the

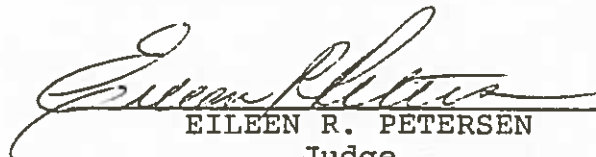
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arrest was made." 422 F.2d
660, 664 (8th Cir. 1970).

See also Chaney v. Wainwright 460 F.2d 1262 (5th Cir. 1972).

(Court upheld warrantless arrest for misdemeanor of damaging telephone since the officers had probable cause to arrest defendant for possession of burglar tools, a felony.)

This court concludes that the arrest was valid and that the defendant's motions to suppress the statement and all physical evidence seized must be denied.


EILEEN R. PETERSEN
Judge