

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX**

PEOPLE OF THE VIRGIN ISLANDS,

Plaintiff,

v.

JEROME TURNBULL,

Defendant.

CASE NO. SX-11-CR-832

CHARGES:

**UNAUTHORIZED POSSESSION OF A
FIREARM; POSSESSION OF
AMMUNITION; FAILURE TO REPORT
FIREARM; POSSESSION OF STOLEN
PROPERTY; SPEEDING;**

ORDER

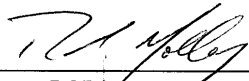
THIS MATTER comes before the Court on Defendant's Motion to Suppress filed on November 13, 2012, and Defendant's Motion for Expedited Ruling on Defendant's Motion to Suppress filed on April 11, 2014. For the reasons stated in the accompanying Memorandum Opinion dated June 23, 2014, it is hereby

ORDERED that Defendant's Motion to Suppress is **DENIED**; it is further

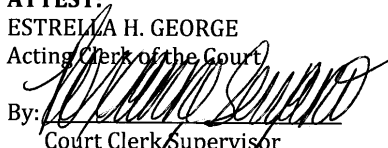
ORDERED that Defendant's Motion for Expedited Ruling on Defendant's Motion to Suppress is **DENIED** as moot;

ORDERED that copies of this Order shall be provided to Assistant Attorney General Melissa P. Ortiz and Attorney Mark L. Milligan.

Dated: June 23, 2014


ROBERT A. MOLLOY
Judge of the Superior Court

ATTEST:
ESTRELLA H. GEORGE
Acting Clerk of the Court

By: 

Court Clerk Supervisor

Dated: 6/23/14

NOT FOR PUBLICATION

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APPEARANCES:

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Attorney for Defendant

MEMORANDUM OPINION

MOLLOY, Judge.

THIS MATTER comes before the Court on Defendant's Motion to Suppress filed on November 13, 2012. The People of the Virgin Islands (the "People") filed a response opposing the motion on July 30, 2013. The Court held a suppression hearing on July 30, 2013, and at the conclusion of the hearing, the Court allowed Defendant to file a supplemental brief, which was filed on August 12, 2013.¹ For the reasons stated below, the Court will deny the motion.²

¹ The Honorable Darryl D. Donohue presided over the suppression hearing held on July 30, 2013. However, due to the retirement of Judge Donohue in September 2013, this case was reassigned to the undersigned judicial officer.

² On April 11, 2014, Turnbull filed a Motion for Expedited Ruling on Defendant's Motion to Suppress. The Court's disposition on Turnbull's Motion to Suppress renders his motion for an expedited ruling moot.

I. FACTUAL AND PROCEDURAL BACKGROUND

On November 28, 2011, Officers Tehran Parris and Nyeim France of the Virgin Islands Police Department were on patrol in two separate marked police vehicles in the vicinity of Paradise Road near the Louis E. Brown Villas on the island of St. Croix. At the suppression hearing, Officer Parris testified that, while on patrol around 3:00 p.m., he observed a white Ford Explorer driving in front him "going a little fast." According to Officer Parris, it was drizzling and he saw a man walking on the side of the road when he observed the Ford Explorer swerve to avoid hitting the pedestrian. Officer Parris performed a traffic stop and instructed the driver of vehicle, later identified as Defendant Jerome Turnbull ("Turnbull"), to produce his driver's license, registration, and proof of vehicle insurance. Officer Parris testified Turnbull stuck his hand out of the driver's side window of the vehicle holding his driver's license when Officer Parris instructed him to bring it to him. Turnbull then got out of the vehicle, left the driver's side door open, and started to walk towards Officer Parris' police vehicle to present his driver's license.

Officer Parris then testified that he informed Turnbull that he stopped him because he almost hit the pedestrian that was walking on the side of the road. According to Officer Parris, Turnbull responded that he swerved to avoid hitting the pedestrian. Turnbull testified that although it was drizzling, he was driving normally, was not speeding, and there were no pedestrians on the side of the road.

After Officer Parris informed Turnbull the reason for the stop, Officer Parris then requested that he needed to see the vehicle's registration along with proof of insurance. Turnbull informed Officer Parris he did not have the vehicle registration and proof of

insurance, but he could call his girlfriend, who was the owner of the vehicle and lived nearby, to bring the documents for him. Turnbull then proceeded to call his girlfriend on his personal cell phone.

A short time later, a young male arrived at the scene and provided the police officers with the vehicle's registration and proof of insurance. While Officer France was reviewing the documents, Officer Parris proceeded to check the registration sticker on the front of the vehicle. Officer Parris testified that while in the process of checking the vehicle's registration sticker, he passed by the driver side door, which was open, and smelled a "faint" odor of marijuana coming from the vehicle. At the time Officer Parris smelled the odor of marijuana, Officer France informed Officer Parris that all of the documents for the vehicle were in order. Officer Parris then informed Turnbull that he smelled an odor of marijuana coming from the vehicle and asked Turnbull if he had been smoking in the vehicle, at which time Turnbull stated that he does not smoke and started to turn around, lifted up his shirt with his two hands just below his chest area, and started to spin around. Officer Parris considered Turnbull's actions to be nervous and suspicious activity and asked he if could check the vehicle. Officer Parris testified Turnbull gave him permission to check the vehicle, but only in the ashtray. Conversely, Turnbull testified Officer Parris asked him several times for permission to search the vehicle, but each time he refused to give consent.

Officer Parris then testified that after Officer France patted down Turnbull for officer safety, Officer Parris looked in the vehicle's ashtray and then looked in the back seat area to see if there was an ashtray in the back console. It was at this time that Officer Parris

saw what he described as a black shirt wrapped around an object on the floor behind the driver's seat shaped like a "T" that looked like the shape of a gun. Officer Parris testified he advised Turnbull of his *Miranda* rights and asked Turnbull if there was a gun in the vehicle or anything else that he needed to know about, at which time, Turnbull stated, "Wha, it feel like I going to jail." Officer Parris testified Turnbull's statement heightened his suspicions even more. Officer Parris then contacted his supervisor, Detective Sergeant Naomi Joseph ("Sergeant Joseph"), advised her of the situation, and then waited for her to arrive at the scene.

Sometime later, Sergeant Joseph arrived at the scene, and after discussing the situation with Officer Parris, Sergeant Joseph approached Turnbull and requested that he contact his girlfriend so she could obtain her consent for the police officers to search the vehicle. After speaking with Turnbull's girlfriend, Sergeant Joseph then drove to her house and returned with a signed hand-written document bearing Turnbull's girlfriend's signature purportedly authorizing the police officers to search her vehicle.

While performing the search of the vehicle, Sergeant Joseph opened the rear passenger door on the driver's side, touched the black cloth on the floor and determined it was a firearm. Sergeant Joseph then instructed one of the other officers to call forensics to complete the search of the vehicle. Two forensics officers came to the scene, unwrapped the cloth and discovered a black Mack 11 semi-automatic firearm with a magazine clip containing multiple rounds of ammunition. The officers thereafter placed Turnbull under arrest and transported him to the police station.

On December 12, 2011, the People filed an Information charging Turnbull with the following criminal offenses: (1) unauthorized possession of a firearm in violation of 14 V.I.C. § 2253(a); (2) unauthorized possession of ammunition in violation 14 V.I.C. § 2256(a); (3) possession of stolen property in violation of 14 V.I.C. § 2101(a); (4) failure to report a firearm in violation of 23 V.I.C. § 470(a); and (5) speeding in violation of 20 V.I.C. § 494(a).

On November 13, 2012, Turnbull filed a motion to suppress requesting the Court suppress all of the evidence discovered as a result of the stop and search of the vehicle. The Court held a hearing on July 30, 2013. At the conclusion of the hearing, the Court allowed Turnbull to file supplemental briefs within one week of the hearing. Turnbull filed a Reply and Supplemental Brief on August 12, 2013, maintaining his arguments that all of the evidence discovered should be suppressed under the Fourth Amendment to the U.S. Constitution.

II. LEGAL STANDARD

The Fourth Amendment to the U.S. Constitution prohibits “unreasonable searches and seizures.” U.S. Const. amend. IV. “Generally, for a seizure to be reasonable under the Fourth Amendment, it must be effectuated with a warrant based on probable cause.” *United States v. Robertson*, 305 F.3d 164, 167 (3d Cir. 2002) (citing *Katz v. United States*, 389 U.S. 347, 356-57 (1967)). Warrantless searches, however, are *per se* unreasonable under the Fourth Amendment subject to a few specifically established and well delineated exceptions.” *Mincy v. Arizona*, 437 U.S. 385, 390 (1978); *Horton v. California*, 496 U.S. 128,

133 (1992) (opining that the general rule is that warrantless searches are presumptively unreasonable).

“As a general rule, the burden of proof is on the defendant who seeks to suppress evidence.” *United States v. Johnson*, 63 F.3d 242, 245 (3d Cir. 1995). That burden, however, shifts to the government to show that the search or seizure was reasonable once the defendant has established a basis for his motion, i.e. the search or seizure was conducted without a warrant. *Id.* It is undisputed that the police officers conducted a traffic stop and searched the vehicle without a search warrant. Accordingly, the People bear the burden of proof to demonstrate that the actions of the police officers were reasonable under the Fourth Amendment.

III. DISCUSSION

Turnbull contends the evidence seized in this case should be suppressed for the following reasons: (1) the police officers lacked reasonable suspicion to conduct the traffic stop; (2) the smelling of a faint odor of marijuana was insufficient for the police officers to search his vehicle; and (3) the People failed to satisfy its burden that Turnbull consented to the search of the vehicle. The resolution of these issues are discussed below.

A. Officer Parris Had Reasonable Suspicion to Conduct the Traffic Stop

Turnbull contends that the police officers had no legal justification to stop the white Ford Explorer driven by Turnbull. The People contend Officer Parris had reasonable suspicion to perform a traffic stop based on his observation that Turnbull was speeding and swerved to avoid hitting a male individual who was walking on the side of the road. Undoubtedly, a traffic stop is a seizure of the occupants of the vehicle within the meaning of

the Fourth and Fourteenth Amendment. *Delaware v. Prouse*, 440 U.S. 648, 653 (1979).

Thus, the People must demonstrate that the traffic stop fits under one of the exceptions to the warrant requirement.

One such exception is an investigatory stop done in accordance with *Terry v. Ohio*, 392 U.S. 1 (1968). Under *Terry*, law enforcement officers may conduct an investigatory stop when justified by a reasonable suspicion that an individual is engaged in criminal activity. *Terry*, 392 U.S. at 21, 28-31. Reasonable suspicion exists when there are “specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant [the] intrusion.” *Id.* at 21. An “officer . . . must be able to articulate something more than an ‘inchoate and unparticularized suspicion or hunch.’” *United States v. Sokolow*, 490 U.S. 1, 7 (1989) (quoting *Terry*, 392 U.S. at 27). The Supreme Court of the United States cautions that the concept of reasonable suspicion is not “readily, or even usefully, reduced to a neat set of legal rules.” *Sokolow*, 490 U.S. at 7. Consequently, “[c]alculating whether an officer has reasonable suspicion to warrant a stop and search is often an imprecise judgment.” *Robertson*, 305 F.3d at 168. Accordingly, “[c]ourts give considerable deference to police officer’s determinations of reasonable suspicion. . .” *United States v. Mosley*, 454 F.3d 249, 252 (3d Cir. 2006). Thus, “[i]n determining whether there was a basis for reasonable suspicion, a court must consider the totality of the circumstances, in light of the officer’s experience.” *United States v. Givan*, 320 F.3d 452, 458 (3d Cir. 2003). Evidence obtained as a result of a “*Terry* stop” that does not meet this exception must be suppressed as “fruit of the poisonous tree.” *United States v. Brown*, 448

F.3d 239, 244 (3d Cir. 2006) (citing *Wong Sun v. United States*, 371 U.S. 471, 487-88 (1963)).

With regards to a traffic stop, “[a] police officer may lawfully stop a motorist if the officer observes a violation of a state traffic regulation.” *United States v. Sanders*, 404 Fed. Appx. 613, 617 (3d Cir. 2010) (citing *Whren v. United States*, 517 U.S. 806, 810 (1996) (holding that “the decision to stop an automobile is reasonable when the police have probable cause to believe that a traffic violation has occurred.”). “[A]ny technical violation of a traffic code legitimizes a stop, even if the stop is merely pretext for an investigation of some other crime.” *Mosley*, 454 F.3d at 252.

In this matter, the Court is satisfied the law enforcement officers articulated a minimal and objective basis for performing the traffic stop. Title 20, Section 494(a) of the Virgin Islands Code provides:

No person shall drive a motor vehicle on a public street at a speed greater than is reasonable and prudent under the conditions and having regard to the actual and potential hazards then existing. In every event speed shall be so controlled as may be necessary to avoid colliding with any person, vehicle or other conveyance on the public street or highway.

20 V.I.C. § 494(a). During the suppression hearing, Officer Parris articulated specific facts justifying stopping the vehicle. Officer Parris testified it was drizzling when he observed the Ford Explorer vehicle “going a little fast” and swerved to avoid hitting a male individual who was walking on the side of the road. Officer Parris’ observation constituted reasonable suspicion that Turnbull was driving the vehicle at a speed greater than is reasonable and prudent under the conditions in violation 20 V.I.C. § 494(a). *See e.g., United States v. Willis*, 431 F.3d 709, 715 (9th Cir. 2005) (holding police officer had reasonable suspicion to

perform traffic stop due to driver's illegal U-turn and "making a turn more excessive than it should have been . . .").

Turnbull argues that swerving to avoid hitting a pedestrian does not necessarily mean that a driver is operating a vehicle in a negligent to reckless manner. At this stage of the proceedings, the People are not required to prove beyond a reasonable doubt that Turnbull committed a violation of Virgin Islands law. The People need only prove that law enforcement had reasonable suspicion to effectuate a traffic stop. Thus, giving the proper deference to Officer Parris' observation and judgment as to whether Turnbull was driving unreasonably and imprudently at the time of the incident, the Court holds that Officer Parris had reasonable suspicion to stop the vehicle. *See United States v. Ramos*, 443 F.3d at 308 (opining that a court must "accord deference to an officer's judgment of whether criminal activity is taking place with an understanding that 'whether an officer has reasonable suspicion to warrant a stop . . . is often an imprecise judgment.'").³

B. The Police Officers Had Probable Cause to Search the Vehicle

Turnbull next contends Officer Parris did not have a legal basis to search the vehicle based on his smell of a "faint" odor of marijuana and, therefore, there was insufficient evidence to establish that criminal activity was afoot. Turnbull further argues that because

³ Turnbull also argued that the officers lacked reasonable suspicion to stop the vehicle because the officers did not issue a traffic citation to Turnbull. The issue, however, is not whether the officers issued a traffic citation, but whether law enforcement was able to articulate specific and objective facts to justify the stop. Furthermore, the Court finds that the officers' decision not to issue a traffic citation was reasonable under the circumstances, particularly where Officer Parris smelled an odor of marijuana and later discovered the firearm and ammunition. These subsequent events rendered the issuance of a traffic citation inconsequential. *See United States v. Willis*, 431 F.3d 709, 717 (9th Cir. 2005) ("We think that it was reasonable for the officers to view any traffic violation as inconsequential in light of [defendant's] arrest."). Nonetheless, the People filed an Information charging Turnbull with speeding in violation of 20 V.I.C. § 494(a). Thus, the Court rejects Turnbull's argument that the officers did not have reasonable suspicion to stop the vehicle because the officers did not issue a traffic citation.

Turnbull was located safely away from his vehicle when Officer Parris smelled the marijuana, there was no legal justification to conduct the initial search of the vehicle.

In their respective legal memoranda, both parties acknowledged that “[i]t is well settled that the smell of marijuana alone, if articulable and particularized, may establish not merely reasonable suspicion, but probable cause” to search a vehicle. *United States v. Ramos*, 443 F.3d at 308. Probable cause is a more demanding standard than reasonable suspicion and exists when “there is a fair probability that contraband or evidence of a crime will be found in a particular place.” *Illinois v. Gates*, 462 U.S. 213, 238 (1983). In this matter, Officer Parris testified he smelled a faint odor of marijuana coming from the vehicle as he walked by the opened driver’s side door.⁴ “While smelling marijuana does not assure that marijuana is still present, the odor certainly provides probable cause to believe that it is.” *United States v. Humphries*, 372 F.3d 653, 658 (4th Cir. 2004). The smell of marijuana was particularized to the vehicle wherein Turnbull was a recent occupant.

Turnbull argues, without any citation to authority, that a “faint” odor of marijuana is insufficient to establish that criminal activity is afoot. The Court is unaware of any precedential authority requiring that the smell of illegal contraband contain a certain odor level in order to establish probable cause. As indicated above, probable cause exists to search a vehicle once the smell of marijuana is articulable and particularized. Whether faint, strong, or otherwise, “the odor of marijuana alone can provide probable cause to believe that marijuana is present in a particular place.” *Humphries*, 372 F.3d at 658. Thus,

⁴ It is undisputed that, under Virgin Islands law, it is illegal to possess marijuana. See 19 V.I.C. §§ 595(c), 607(a).

the Court finds that Officer Parris' smell of marijuana from the vehicle, faint or otherwise, constituted probable cause to search the vehicle for marijuana.

"If probable cause justifies the search of a lawfully stopped vehicle, it justifies the search of every part of the vehicle and its contents that may conceal the object of the search." *United States v. Ross*, 456 U.S. 798, 823 (1982). Because the Court holds that Officer Parris had probable cause to search the vehicle for marijuana, he was justified in searching every part of the vehicle which may conceal marijuana, including the back seat area of the vehicle. Upon searching the vehicle, the officers discovered what appeared to be a shirt wrapped around an object shaped in the form of a "T". Officer Parris testified that based on his training, experience, and knowledge, the item appeared to be a firearm. Thus, because the firearm was located in a place where an officer was justified in searching for marijuana, the officers' actions in discovering the firearms and ammunition were reasonable and not unconstitutional.

With regards to Turnbull's argument that because he was safely away from his vehicle when Officer Parris smelled the marijuana, there was no legal justification for the officers to search the vehicle, the Court finds this argument unpersuasive. "After a traffic stop that was justified at its inception, an officer who develops a reasonable, articulable suspicion of criminal activity may expand the scope of an inquiry beyond the reason for the stop and detain the vehicle and its occupants for further investigation." *Givan*, 320 F.3d at 458. At the time Officer France was verifying the vehicle's registration and proof of insurance, Officer Parris proceeded to check the registration sticker on the front of the vehicle. While at the vehicle, Officer Parris smelled the odor of marijuana coming from

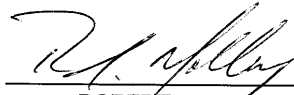
inside the vehicle. It was at this time that Officer France notified Officer Parris that the vehicle's registration and proof of insurance were in order. Therefore, because Officer Parris smelled the marijuana at the time he was informed that the vehicle's documents were in order, he had the right to expand the scope of the stop and search the vehicle based on the smell of marijuana.

IV. CONCLUSION

The Court concludes the police had reasonable suspicion to perform a traffic stop on the vehicle. The Court also concludes the officers had probable cause to search the vehicle based on the articulable and particularized smell of marijuana. Because the officers had probable cause to search the vehicle, the Court need not address Turnbull's argument as to whether the People met their burden of proving that Turnbull consented to the search of the vehicle. Accordingly, Turnbull's motion to suppress the evidence seized is denied.

An appropriate order follows.

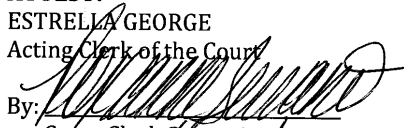
Dated: June 23, 2014


ROBERT A. MOLLOY
Judge of the Superior Court

ATTEST:

ESTRELLA GEORGE

Acting Clerk of the Court

By: 

Court Clerk Supervisor

Dated: 6/23/14