

NOT FOR PUBLICATION

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

PEOPLE OF THE VIRGIN ISLANDS,

PLAINTIFF,

v.

DEVANTE PRYCE,

DEFENDANTS.

SX-15-CR-069

CHARGES:

**UNAUTHORIZED POSSESSION OF A
FIREARM, POSSESSION OF
AMMUNITION, ALTERATION OF
IDENTIFYING MARKS OF FIREARM**

MEMORANDUM OPINION

THIS MATTER came before the Court on Defendant Devante Pryce's Motion to Suppress, filed on June 10, 2015. The People of the Virgin Islands (hereinafter "the People") filed their response to Pryce's Motion on June 23, 2015. For the reasons set forth below, the Court shall grant the defendant's Motion.

BACKGROUND

At approximately 12:30 in the afternoon of February 24, 2015, VI police officers were present for the interment of Mustafa Williams at the Kingshill Cemetery on St.Croix. VI police officers were requested to attend this interment because the mother of the deceased stated she feared for her safety and the safety of the other funeral attendees. Officer Kenny Williams stated in his affidavit that he observed three unknown black men leaving the Kingshill Cemetery. Officer Williams alleges that one of the men, later identified as Pryce, appeared to have a bulge in his right front pocket, which he identified as an imprint of a firearm. Mr. Pryce was stopped as he was

attempting to leave the cemetery and asked by Officer Williams not to run. Officer Williams stated that Pryce began to pace back and forth and began fidgeting. Pryce was asked to walk with Officer Williams to the rear of the police cruiser and was advised that if he ran, the officer would release his K-9 partner that was in the police vehicle. Pryce was told to lay on the ground with both hands stretched forward while Officer Williams began to pat down his right pocket. Officer Williams felt the hard object and saw the magazine of the firearm. Once Officer Williams identified the bulge to be a firearm Mr. Pryce was placed in handcuffs and transported to the Police Administration and Operation Building. A firearms check was completed, and it was determined that Pryce did not have a firearm license to carry a firearm in the Territory.

DISCUSSION

In his Motion, he argues that the police lacked probable cause to arrest him, to search him, and to seize his firearm. This Court will address each of the issues raised in Pryce's Motion.

Pryce raises several issues, including whether the police had probable cause to arrest him without a warrant; and the constitutionality of the police officers' warrantless search of his person and seizure of his property.

The burden of proof is on the defendant who moves to suppress evidence. *People of the V.I. v. Samuel*, SX-09-CR-556, 2010 V.I. LEXIS 80 (Super. Ct. Nov. 12, 2010) (unpublished). Pryce has sustained his burden by establishing that he was detained and searched without a warrant. The People must now prove "that each individual act constituting a search or seizure under the Fourth Amendment was reasonable." *Id.*

A. Legality of the Warrantless Arrest

In his Motion, it is Pryce's contention that he was placed under arrest once he was placed into handcuffs and transported to the police station. He further asserts that he felt he was no longer free to leave and thus instituted a *de facto* arrest. The People argue that Pryce not was placed under arrest until after they discovered at the police station that the firearm was unlicensed. The Court finds that based on the reasonable person standard, when looking into the totality of the circumstances, that the arrest was effectuated upon transportation of the defendant to the Police Administration Building. "In the context of whether a person is effectively seized for the purposes of the Fourth Amendment, the question is whether the circumstances amount to a show of official authority such that a reasonable person would have believed that he was not free to leave." *United States v. Mendenhall*, 446 U.S. 544 (1986) A reasonable person would not believe that he was free to leave if an Officer told him that he would release his K-9 partner if he attempted to run, placed in handcuffs, and then transported to the police administration building. This court finds that these facts do amount to a "show of official authority".

In *Hayes v. Florida*, the United States Supreme Court explained that "the line is crossed when the police, without probable cause or a warrant, forcibly remove a person from his home or other place in which he is entitled to be and transport him to the police station, where he is detained, although briefly, for investigative purposes. We adhere to the view that such seizures, at least where not under judicial supervision, are sufficiently like arrests to invoke the traditional rule that arrests may constitutionally be made only on probable cause." 470 U.S. 811 (1985) In this case, Pryce was required to leave the Kingshill Cemetery, a public area, placed in handcuffs and was transported via a police vehicle to the Police Administration building. Based on these facts, this

a pertinent factor in determining reasonable suspicion.” *Id.* at 124. “What is reasonable depends upon all of the circumstances surrounding the search or seizure and the nature of the search or seizure itself.” *United States v. Ubiles*, 224 F.3d 213, 216 (2000)

Pryce asserts that his search and seizure was unlawful because police lacked reasonable suspicion to believe that a crime was being committed. According to the Defendant, at the time of his arrest Officer Williams had neither observed Pryce commit a crime nor had he found anything in Pryce’s possession that would have provided probable cause for arrest. Pryce argues that the police should have inquired whether the firearm was licensed or not. The People, on the other hand, argue that officers had reasonable suspicion based on Pryce’s pacing and fidgeting, as well as the officer’s ability to identify the imprint of a handgun in order to conduct the search.

According to the facts presented by both the People of the Virgin Islands and Pryce, Officer Williams viewed Pryce walking with two other males in Kingshill Cemetery in the afternoon. Officer Williams then noticed in the front right pocket of Pryce’s pants a bulge that in his experience is often a firearm. He then notified his commanding officer and approached Pryce. Notably, the gun was found *after* Pryce was apprehended. But there was still no probable cause to arrest him. In *Ubiles*, the Third Circuit specifically noted that it is not necessarily a crime to possess a firearm in the Virgin Islands. *Id.* at 217. According to *Ubiles*, “it is not a crime to possess a firearm in the Virgin Islands,--even when standing in a crowd.” *Id.* at 214. *Murrell v. People* states that “*Ubiles* was—and remains—binding on the Superior Court.” 54 V.I. 338, 366(2012)

In *Ubiles*, officers had no knowledge of whether Ubiles was licensed to carry a firearm prior to the stopping, the searching, and seizure. The court held that the police conduct was in violation of Ubiles’ Fourth Amendment right to be free of unreasonable searches and seizures. *Id.*

at 218. This Court finds that this case is similar to *Ubiles*. There were not enough facts to give the officers reasonable suspicion to believe that criminal activity was afoot, nor did the officers prior to Pryce's arrest, make any inquiry to determine whether the firearm was illegally possessed. In order for this arrest to have been valid, officers should have attempted to determine, prior to the arrest, whether Pryce was licensed to carry a firearm. . While the court has viewed the totality of the circumstances in this case, fidgeting, coupled with the appearance of a firearm is not enough.

The police simply viewed the three unknown black men walking through a cemetery in broad daylight and getting ready to leave, Nothing from their *Terry* stop of Pryce gave the police sufficient probable cause to believe that Pryce was in possession of the firearm unlawfully. In *Samuel*, 2010 WL 7746081, police officers found a firearm in the defendant's possession while they were conducting a traffic stop. In that case, this Court stated that

although the Officers had statutory authority pursuant to 23 V.I.C. § 488 to investigate the defendants lawful possession of the weapons that had been discovered through lawful police activity, there is absolutely no evidence on the record that the Officers sought to initiate the inquiry prior to Samuel's arrest . . . there is no additional evidence on the record that the Officers were apprised of any facts that lead them to the reasonable belief that defendants did not possess the firearms lawfully upon discovery of the weapons at the time of the traffic stop. The record reflects merely that it was determined at the Station upon checking with the Firearms Division that neither Doward nor Samuel had a license to possess a firearm. The record also fails to present any testimony from the Officers based upon their enforcement experience supporting that they had—prior to arresting Samuel—an articulable basis to reasonably believe that Defendants possessed the firearm unlawfully.

Id. at *7. The same is true in the case at bar. Without evidence that supports the officers' finding of probable cause to arrest, this Court cannot hold that the arrest of Pryce, made prior to determining whether he had a license for the firearm, was lawful.

Constitutionality of the Search and Seizure

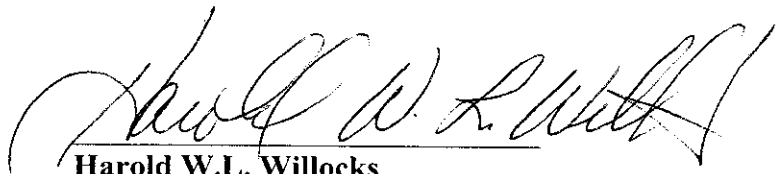
Following his arrest, Pryce was transported to the police station. The People acknowledge that once the defendant was arrested, the firearm in their possession was placed in evidence. Pryce argues that because the firearm was taken without his consent and without a warrant, it was illegally seized.

This Court has already found that the police illegally arrested Pryce, thus it must also follow that the search incident to their arrest was illegal. The search incident to arrest doctrine allows police to search an individual once he has been detained. *See Blyden v. People*, 53 V.I. 637, 652 (V.I. 2010). The doctrine does not apply in a case, such as this one, where individuals have been illegally arrested. *Id.* at 651-52. Thus, the firearm belonging to Pryce that was taken and placed into evidence must be suppressed as a fruit of an illegal arrest.

CONCLUSION

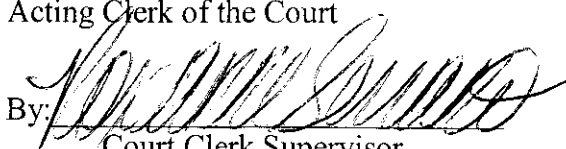
Pryce was arrested in violation of the Fourth Amendment. The police detained Pryce without probable cause or a warrant. As a result, the fruit of the illegal arrest must be suppressed. The Court will issue an Order consistent with this Opinion.

Dated: 7/27/15


Harold W.L. Willocks
Administrative Judge of the Superior Court

ATTEST:

Estrella George
Acting Clerk of the Court

By: 

Court Clerk Supervisor

Dated: 7/29/15