

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN**

PEOPLE OF THE VIRGIN ISLANDS,	)	CRIM. NO. ST-10-CR-614
	)	
Plaintiff,	)	
	)	
v.	)	V.I. CODE ANN. tit. 23, § 481(b); tit.
	)	14, §§ 2253(a), 11(a); §§ 2256(c)(2),
SHEMELLE ISAAC,	)	11(a).
(D.O.B. 11/12/1991)	)	
	)	
Defendant.	)	

MEMORANDUM OPINION

Defendant Isaac Shemelle moves the Court to suppress evidence of a handgun seized after police, responding to an anonymous tip, stopped the vehicle in which Isaac was a passenger. The Court received evidence on the Motion at a February 17, 2011 hearing. Because the Court finds that the detaining officer lacked reasonable suspicion for the stop of the vehicle, it will grant the Motion to Suppress.

FACTUAL BACKGROUND

On Monday, November 1, 2010, around 4:30 p.m., Virgin Islands Police Officer Jose Allen was washing his police vehicle near Zone A Command in Charlotte Amalie, St. Thomas. He heard a high number of radio transmissions and realized that something was going on. He entered his vehicle and heard the dispatcher state that there had been an incident in the area of the Peace Corps School in Mandahl and that shots had been fired. He also heard them say that there was a dark-colored SUV in the area of the shooting, which had left and was heading towards Mafolie or Magens Bay. Officer Allen also heard Officer Frederico Perez state over the radio that he was following a dark-colored SUV on Mafolie and Officer Perez gave the license plate number over the radio.

Officer Allen reached the area of Pilgrim Terrace on Mafolie Hill and used his own vehicle to block traffic. He located a dark-colored SUV with tag numbers matching those provided by Officer Perez. Behind that SUV he saw Officer Perez's unmarked police vehicle. Officer Allen let other cars pass by. He then blocked the SUV. He drew his firearm and yelled for the individuals in the vehicle to exit. When they did not respond, he used his public announcement system in his vehicle to order them out of the car. Officer Perez also exited his vehicle and joined with Officer Allen, ordering the occupants out of their vehicle.

Soon thereafter, the right-side passenger door opened and Isaac's co-Defendant, Elvin Chinnery,¹ came out of the vehicle with his arms up, yelling that he did not have anything.² Chinnery ran into the bushes. Officers Allen and Perez did not pursue him because the other individuals were exiting the car. The individuals opened their car doors and exited with their arms in the air. Isaac had been in the rear, passenger-side seat. Roberts exited from the driver's seat. Stephens was in the rear, driver's-side seat. A minor exited from the passenger's side. The officers commanded them to get on the ground, and they did. Officer Allen then approached the SUV on the area of the passenger's side, where the door was open. He crouched down about four feet away from the vehicle and saw a handgun under the front, right-side passenger's seat. He called forensics officers. At the time Officer Allen pulled over Isaac's vehicle, he did not know who provided the report about the "shots fired" to the 911 operator.

DISCUSSION

I. THE FOURTH AMENDMENT APPLIES TO THE SEIZURE OF SHEMELLE ISAAC AND HIS CO-DEFENDANTS AND ISAAC HAS STANDING TO CHALLENGE THE ADMISSIBILITY OF THE FIREARM.

Isaac argues that the handgun found in the SUV should be suppressed because Officer Allen's stop of the vehicle violated the Fourth Amendment.³ The Fourth Amendment does not prohibit all searches and seizures but only those that are "unreasonable."⁴ Searches and seizures effectuated without a warrant are presumed unreasonable, but "an officer may, consistent with the Fourth Amendment, conduct a brief, investigatory stop when the officer has a reasonable, articulable suspicion that criminal activity is afoot."⁵ "Any evidence obtained pursuant to an investigatory stop (also known as a 'Terry stop' or a 'stop and frisk') that does not meet this exception must be suppressed as 'fruit of the poisonous tree.'"⁶

The People's contention in their Opposition that Isaac lacks standing to bring his challenge is misplaced. The People assert that unless Isaac claims ownership in the firearm that was seized, he cannot move to suppress that firearm. However, the case law is clear that if the

¹ Isaac's co-Defendants are Jibiri Roberts, Treson Stephens and Elvin Chinnery. Jibiri Roberts requests that the Court reopen the suppression hearing because he did not receive notice of it. However, the Court observes that he did conditionally join in Isaac's Motion to Suppress on March 7, 2011, and, in addition, he filed his own Motion to Suppress on March 7, 2011. Stephens filed a "Joinder" in Isaac's Motion to Suppress on March 2, 2011. Stephens filed his own Motion to Suppress on March 1, 2011. Chinnery, on the other hand, requests more time to decide whether to join the Motion to Suppress, as he does not yet have a copy of the suppression hearing transcript.

² Officer Allen recognized Chinnery based on previous interactions with him.

³ Recent cases of the Superior Court have considered first whether the police's actions violated a statute found in Title 23 of the Virgin Islands Code. Because the Court would necessarily have to address the Fourth Amendment question regardless of the outcome of the statutory analysis, the Court finds it unnecessary to determine whether Section 488 was violated during this stop.

⁴ The Fourth Amendment is explicitly made applicable to the Virgin Islands by Section 3 of the Revised Organic Act of 1954.

⁵ *Illinois v. Wardlow*, 528 U.S. 119, 123 (2000).

⁶ *United States v. Brown*, 448 F.3d 239, 244 (3d Cir. 2006) (citations omitted).

police improperly stop a vehicle, they cannot use any evidence from that stop against any occupants of that vehicle.⁷ Therefore, Isaac has standing to challenge the stop and, if the stop was improper, to move to suppress the evidence that was discovered during that stop.

II. THE OFFICERS' CONDUCT DID NOT CONVERT THE *TERRY* STOP INTO A *DE FACTO* ARREST.

As the Third Circuit noted, it is often difficult to distinguish between *Terry* stops and *de facto* arrests.⁸ The former requires only reasonable suspicion; the latter, probable cause.⁹ After a *Terry* stop, the police are permitted to take those steps "reasonably necessary to protect their safety and maintain the status quo," without converting the stop to an arrest.¹⁰ The "reasonableness of the intrusion is the touchstone, balancing the need of law enforcement officials against the burden on the affected citizens and considering the relation of the policeman's actions to his reason for stopping the suspect."¹¹

In this case, Isaac and his co-Defendants had an interest in avoiding the intrusion and indignity of being stopped, ordered out of a vehicle at gunpoint, and made to lie on the ground. However, the officers conducting the stop had an even higher interest in protecting their own safety. They were stopping a vehicle they suspected of being involved a shooting and the vehicle had tinted windows, so they were unable to observe the conduct of the occupants until they ordered them out of the SUV. Therefore, the officers' actions were both reasonable and related to the purpose for which they stopped the SUV. In a similar case, an officer drawing his gun and ordering suspects out of a car and onto the ground did not convert a stop to an arrest.¹² Consequently, the Court finds that the officers conducted a *Terry* stop, which did not rise to the level of a *de facto* arrest.

III. THE POLICE LACKED REASONABLE SUSPICION TO CONDUCT A *TERRY* STOP OF THE SUV.

The Court must consider the totality of the circumstances surrounding the stop of the SUV to determine whether the detaining officers had a "particularized and objective basis for

⁷ *United States v. Mosley*, 454 F.3d 249, 251 (3d Cir. 2006).

⁸ *United States v. Johnson*, 592 F.3d 442, 447-48 (3d Cir. 2010); *see also United States v. Sharpe*, 470 U.S. 675, 685 (1985) (emphasizing that there is no bright-line between investigative stops and *de facto* arrests and that "common sense and ordinary human experience must govern").

⁹ *United States v. Johnson*, 592 F.3d 442, 447-48 (3d Cir. 2010).

¹⁰ *United States v. Edwards*, 53 F.3d 616, 619 (3d Cir. 1995) (quoting *United States v. Hensley*, 469 U.S. 221, 235 (1985)).

¹¹ *Baker v. Monroe Twp.*, 50 F.3d 1186, 1192 (3d Cir. 1995).

¹² *United States v. Johnson*, 592 F.3d 442 (3d Cir. 2010) (finding no arrest had occurred where cops circled a car, drew weapons, yelled at the occupants to leave the vehicle and handcuffed them); *Baker v. Monroe Twp.*, 50 F.3d 1186, 1193 (3d Cir. 1995) (collecting cases, and stating that although there is no *per se* rule that "pointing guns at people, or handcuffing them, constitutes an arrest," nonetheless the "use of guns and handcuffs must be justified by the circumstances").

suspecting the particular person stopped of criminal activity.”¹³ Where an officer is responding to an incident as a result of a radio dispatch, the dispatcher’s knowledge is imputed to the responding officer.¹⁴ In this case, the People presented evidence that all the information the police had came from an unidentified caller to 911.¹⁵

In assessing the reasonableness of a stop based on an anonymous tip, the Court must consider the tipster’s “veracity,” “reliability,” and “basis of knowledge.”¹⁶ The Third Circuit has “identified specific aspects” of anonymous tips which may indicate their reliability:

- (1) The tip information was relayed from the informant to the officer in a face-to-face interaction such that the officer had an opportunity to appraise the witness’s credibility through observation.
- (2) The person providing the tip can be held responsible if her allegations turn out to be fabricated.
- (3) The content of the tip is not information that would be available to any observer . . .
- (4) The person providing the information has recently witnessed the alleged criminal activity.
- (5) The tip predicts what will follow, as this provides the means to test the informant’s knowledge or credibility.¹⁷

In this case, the People failed to meet their burden of proving that Officer Allen’s stop of the SUV was supported by reasonable suspicion.¹⁸ At the time he blocked the vehicle, Officer Allen himself only knew that shots had been fired near Mandahl and that a dark-colored SUV was seen leaving the area. He testified, though, sometime after the stop, he listened to a recording of the radio dispatches and heard that shots had been fired *from* the SUV. Because the Court imputes the dispatcher’s knowledge to the officer performing the stop, this information is relevant. However, it is not a sufficient basis for reasonable suspicion.

All of the information provided by the dispatcher came from one source: an unidentified caller.¹⁹ Considering the factors laid out in *Torres*, the Court finds that there is insufficient evidence the tip was reliable. The tip was made by phone, rather than in a face-to-face

¹³ *United States v. Cortez*, 449 U.S. 411 (1981); see also *People v. Archibald*, No. ST-07-CR-418, 2008 WL 4813051 (V.I. Super. Ct. Sept. 11, 2008) (requiring specific and articulable facts that give rise to reasonable suspicion).

¹⁴ *United States v. Torres*, 534 F.3d 207, 210 (3d Cir. 2008). The People’s argument, therefore, that the only relevant information is what the detaining officer himself knew is unavailing.

¹⁵ People’s Ex. 1, admitting at the hearing, contains the dispatcher’s relay of information from the alleged eyewitness to the police radios.

¹⁶ *Alabama v. White*, 496 U.S. 325, 328 (1990) (quoting *Illinois v. Gates*, 462 U.S. 213, 230 (1983)).

¹⁷ *United States v. Torres*, 534 F.3d 207, 211 (3d Cir. 2008) (quoting *Brown*, 448 F.3d at 249-50).

¹⁸ *United States v. Ritter*, 416 F.3d 256, 261 (3d Cir. 2005) (stating that the government maintains the burden of proving that “each individual act constituting a search or seizure under the Fourth Amendment was *reasonable*”).

¹⁹ If the caller identified himself to the dispatcher, the People did not provide that evidence in the suppression hearing.

interaction. Moreover, there was no way for the police to hold the tipster responsible if it turned out the tip was a lie.

Supporting the People's position, the information provided was available to an ordinary observer; anyone on the vicinity would have heard the shots fired. In addition, it may have been that the information was recently witnessed by the caller, as the caller said he saw "six to eight shots coming from this vehicle."²⁰ Although the information was available to an ordinary observer, this is insufficient by itself, considering all of the other factors, to ensure the tip's reliability.

In *Government v. Ashby*,²¹ the Court determined the police lacked reasonable suspicion where the 911 caller's tip carried even more indicia of reliability than in this case. In *Ashby*, a woman called 911, identifying herself as a K-Mart customer service representative.²² She told the dispatcher that she had been informed by a security guard that a white Honda Civic was being stolen in the K-Mart parking lot.²³ Sometime later, officers responding to the scene saw a white Honda Civic exit the parking lot at a normal speed and pull into a gas station across the street.²⁴ They ordered all of the occupants out of the car with their guns drawn, and ordered them to the ground.²⁵ An officer approaching the vehicle saw a weapon and seized it.²⁶

The Court determined that these facts, taken together, did not amount to reasonable suspicion. Even though the police "could trace the source of the tip and identify the caller," that was insufficient, by itself, to constitute reasonable suspicion.²⁷ The Court observed that the caller gave no other description of the car than the "bare description" of its color and model.²⁸ Further, the vehicle and its occupants did not display any "independently suspicious behavior," nor did the incident or the stop occur in a high crime area.²⁹ For these reasons, the Court suppressed the handgun.

Similarly, in the case presently before the Court, the tipster gave a "bare description" of the vehicle. In fact, the caller provided less detail in this case—black SUV, which "look's like a tourist's jeep"³⁰—than the caller in *Ashby*—white Honda Civic. The dispatcher stated that the caller could not state how many occupants were in the vehicle, or what the license plate number was. Furthermore, the caller in this case did not provide *any* information to identify himself, at least as presented by the People in the hearing on the Motion. The tip was not provided in a face-to-face interaction. Furthermore, it cannot be said that the tip was effective as a predictor of

²⁰ People's Ex. 1, at minute 35:00 on the compact disc recording.

²¹ *Government v. Ashby*, No. CR. 179/02, 2002 WL 31422980 (V.I. Super. Ct. September 26, 2002).

²² *Id.* at *1.

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.* at *2.

²⁸ *Id.*

²⁹ *Id.*

³⁰ People's Ex. 1, at minute 35:30 on the compact disc recording.

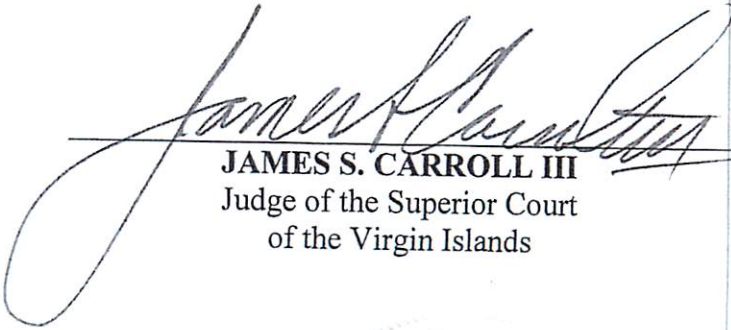
future behavior. The tip only said that the vehicle was leaving the Mandahl area and was heading in a direction towards Magens Bay or Mafolie. However, that is hardly a powerful predictor: while both areas are west of Mandahl, Magens is north and Mafolie is south, so the tipster would have been correct regardless of which way the SUV headed.

Furthermore, the fact that Officer Perez was trailing a dark-colored SUV does not, without more, tell the Court whether the dark-colored SUV he was following was the SUV involved in the alleged shooting in Mandahl. It appears from the dispatch recording provided by the People that India 7—Officer Perez's unit—was coming from the Havensight area at the time of the initial call, and was not in the area of the shooting.

Finally, it is important to note that St. Thomas is an island with many steep hills. It is exceedingly common to see SUVs throughout the island, especially on or near Mafolie hill. The majority of these are dark in color. In addition, the stop occurred during rush hour on a workday, at which time one would expect a large number of vehicles to be on or near Mafolie hill. At the time of the stop, there was insufficient evidence to tie the Defendants' dark-colored SUV with the dark-colored SUV in Mandahl. For this reason, Officer Allen lacked reasonable suspicion and, in a separate Order issued today, the evidence of the firearm will be suppressed.

ORDERED that copies of this Order shall be directed to counsel for all Defendants in ST-10-CR-613, -614, -615 and -627, and to Assistant Attorney General Michael Motylinski, Esq., and copies of this Order shall be placed in the files of each co-Defendant.

DATED: March 8, 2011

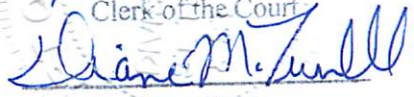

JAMES S. CARROLL III
Judge of the Superior Court
of the Virgin Islands

ATTEST: VENETIA H. VELAZQUEZ, ESQ.
Clerk of the Court

BY: ESTRELLA GEORGE
Court Clerk Supervisor 3/9/2011

CERTIFIED A TRUE COPY

Date: 3/9/11
Venetia H. Velazquez, Esq.
Clerk of the Court

By: 
Court Clerk

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DIVISION OF ST. THOMAS AND ST. JOHN

PEOPLE OF THE VIRGIN ISLANDS,

Plaintiff,

v.

SHEMELLE ISAAC,
(D.O.B. 11/12/1991)

Defendant.

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V.I. CODE ANN. tit. 23, § 481(b); tit.
14, §§ 2253(a), 11(a); §§ 2256(c)(2),
11(a).

ORDER

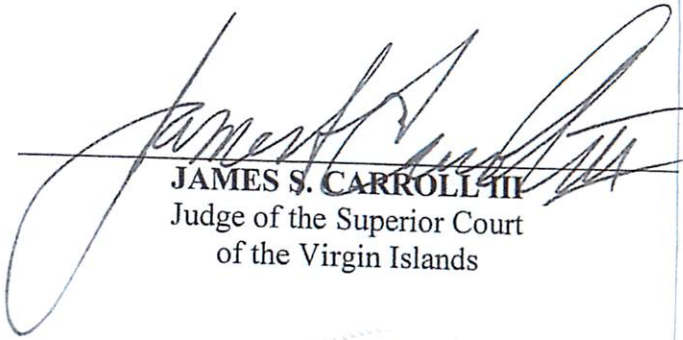
AND NOW, consistent with the Memorandum Opinion issued in this case on today's date, it is hereby

ORDERED that Shemelle Isaac's Motion to Suppress is **GRANTED**; and it is further

ORDERED that the evidence of the firearm seized from the Defendant's vehicle is **SUPPRESSED** as to Defendant Shemelle Isaac and his co-Defendants, Elvin Chinnery, Treson Stephens and Jibiri Roberts; and it is further

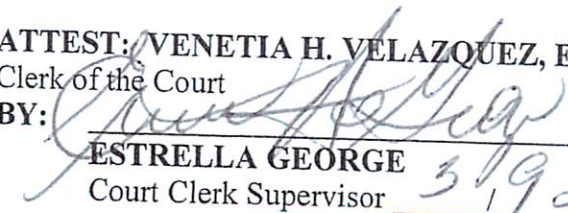
ORDERED that copies of this Order, and of the Memorandum Opinion of even date, shall be directed to counsel for all Defendants in ST-10-CR-613, -614, -615 and -627, and to Assistant Attorney General Michael Motylinski, Esq., and copies of this Order shall be placed in the files of each co-Defendant.

DATED: March 8, 2011


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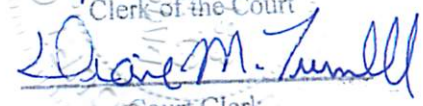
BY:


ESTRELLA GEORGE
Court Clerk Supervisor

Date:

3/8/11
Venetia H. Velazquez, Esq.
Clerk of the Court

By:


Court Clerk