

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

PEOPLE OF THE VIRGIN ISLANDS,	)	
	)	
Plaintiff,	)	Case No.: ST-16-CR-31
	)	
vs.	)	
	)	
RUPERT G. WALTERS, JR.,	)	
	)	
Defendant.	)	

MEMORANDUM OPINION

THIS MATTER is before the Court on Plaintiff People of the Virgin Islands' "Motion in Limine and Notice of People's Intent to Use Evidence Collected from and Testimony Concerning Prior Bad Acts/Crimes to Establish Identity Pursuant to Virgin Islands Rule of Evidence 404(b)," filed August 15, 2017 (the "Motion in Limine").¹ The People's motion seeks permission to enter into evidence a firearm that was suppressed in another case involving the same defendant. For the reasons set forth herein, Plaintiff's Motion in Limine will be denied.

Relevant Background

Defendant Walters is charged with first degree murder in the shooting death of Kenson Jolly on May 29, 2015, in Cruz Bay, St. John, U.S. Virgin Islands.

¹ Defendant Rupert G. Walters, Jr. filed an opposition on August 18, 2017 (the "Opposition") and the People filed a Response on August 21, 2017. Then the People filed "People's Brief" on August 30, 2017, and Walters filed Defendant's Response to People's Opposition on November 6, 2017.

Approximately four months later, but before Walters was charged with Kenson's death, police stopped Walters in his vehicle based on a report filed by Mr. Hyacinth Ashley ("Ashley") alleging that Walters had threatened to kill him. The officers made a citizen's arrest, charging Walters with disturbance of the peace (as to Ashley). Following the arrest, Walters' vehicle was impounded and an inventory search was conducted. During the inventory search, investigators discovered a firearm. Walters was therefore charged with disturbance of the peace, unauthorized possession of a firearm and possession of a dangerous weapon. *See People of the Virgin Islands v. Rupert G. Walters*, ST-15-CR-367. Walters moved that the firearm evidence be suppressed as the search and seizure were the results of an invalid arrest since the police officer was not present at the time of the alleged disturbance of the peace and Ashley was not present at the time of the arrest.² Walters argued that the arrest was invalid, and therefore any evidence collected during the resulting inventory search was 'fruit of the poisonous tree' and should be suppressed under the exclusionary rule. The court agreed and the judge in that matter, the Honorable James S. Carroll, III, ordered that all evidence found during the search be suppressed. (Order Aug. 22, 2016 in ST-15-CR-367).

In the interim the People had tested the firearm and it allegedly matched the shell casings collected from the site of Kenson Jolly's homicide. Therefore, on or about

² Arrest by peace officer for a misdemeanor requires that the arresting officer be present at the time of the offense or attempted offense. 5 V.I.C. § 3562. Arrest by a private person allows a private citizen to make a citizen's arrest for a misdemeanor, provided the private citizen was present at the time of the offense or attempted offense. 5 V.I.C. § 3563.

January 17, 2016, Defendant Walters was charged with Jolly's murder. Relying on Virgin Islands Rules of Evidence 404(b), the People now ask that the firearm discovered during the inventory search in Case No. ST-15-CR-367 be admitted into evidence in the instant matter to establish the identity of Kenson Jolly's shooter (as Walters). The People argue that the previously suppressed firearm should now be admissible under the doctrine of attenuation. People's Br. 13. Walters objects to this request, arguing (i) that the firearm is still the result of an illegal search and thus remains 'fruit of the poisonous tree' and (ii) that the Motion in Limine was not made in a timely fashion.³

Legal Standard

V.I. Rules of Evidence 404(b), upon which the People rely, provides the following:

(b) Crimes, Wrongs, or Other Acts.

(1) Prohibited Uses. Evidence of a crime, wrong, or other act is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character.

(2) Permitted Uses; Notice in a Criminal Case. Evidence of a crime, wrong, or other act may be admissible for other purposes, such as addressing issues, if actually contested in the case, concerning motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident — provided that the probative value of such proof, supported by specific facts and circumstances, substantially outweighs its prejudicial effect . . .

³ The timeliness issue is now moot as the trial date was moved due to hurricanes Irma and Maria. Therefore, the Court will not address this issue, here.

Therefore, the People seek to have the evidence admitted to show the identity of Jolly's shooter as Defendant Rupert Walters.

The exclusionary rule, as explained by the V.I. Supreme Court, stands for the principle that "evidence obtained through unreasonable searches and seizures is excluded from use in criminal prosecutions." *People of the Virgin Islands v. Santana*, 63 V.I. 25, 29 (V.I. 2014) (citing *Mapp v. Ohio*, 367 U.S. 643, 654-57, 81 S. Ct. 1684 (1961)). Walters argues that the firearm is the fruit of the poisonous tree. Under the 'fruit of the poisonous tree' doctrine, "[w]hen evidence is obtained as a result of an unconstitutional search, the exclusionary rule requires that the fruits of that search be excluded from evidence at trial." *People of the V.I. v. Benyehudah*, 2016 V.I. LEXIS 191, *14 (quoting *Castillo v. People of the V.I.*, 59 V.I. 240, 255-256(V.I. 2013) (citing *Simmonds v. People of the Virgin Islands*, 53 V.I. 549, 561 (V.I. 2010) (other citations omitted)).

On the other hand, the attenuation doctrine provides that "evidence obtained by illegal means may nonetheless be admissible if the connection between the evidence and the illegal means is sufficiently attenuated or remote." *Black's Law Dictionary* 146 (9th ed. 2009).

Discussion

The People are seeking permission to introduce into evidence the firearm found in the inventory search of Walters' vehicle (the "Firearm") to show a connection between said weapon and the shell casings found at the scene of Jolly's homicide, thereby establishing the probable identity of the shooter. Under V.I.R.E. 404(b),

evidence of other crimes is admissible to establish identity. *See People of the Virgin Islands v. Penn*, 2011 V.I. LEXIS 9, *1. In *Morton v. People of the Virgin Islands*, 59 V.I. 660 (V.I. 2013), the court found that evidence showing shell casings discovered at a murder scene matched a weapon found near the defendant a few days later was admissible to show identity. The court held that the probative value of the evidence was not substantially outweighed by the potential danger of unfair prejudice to the defendant under Fed. R. Evid. 403. *Morton*, 59 V.I. at 667 (citing *Tyson v. People*, 59 V.I. 391 (V.I. 2013)). Importantly however, the evidence in *Morton* had not been suppressed and instead appeared to have been obtained legally. Here, as already discussed, the court (Honorable Judge Carroll presiding) found that the Firearm was obtained as the result of an illegal search and was accordingly suppressed. Therefore, *Morton* is not persuasive.

In a different argument, the People posit that the arrest in the first case, ST-15-CR-367, did not violate the Fourth Amendment because the citizen arrest was only a violation of local law and was not unconstitutional. Therefore, the People argue the resulting search – and any evidence obtained therefrom – was legal. As justification for this contention, the People cite *Virginia v. Moore*, 553 U.S. 164, 172, (2008), “whether or not a search is reasonable within the meaning of the Fourth Amendment . . . [does not depend] on the law of the particular State in which the search occurs.” (Quoting *California v. Greenwood*, 486 U.S. 35, 43 (1988).) However, *Virginia v. Moore* ultimately concluded that “warrantless arrests for crimes committed in the presence of an arresting officer are reasonable under the Constitution and that while

States are free to regulate such arrests however they desire, state restrictions do not alter the Fourth Amendment's protections." (emphasis added) *Id.* at 176. *Virginia v. Moore* further opined that "[w]hen officers have probable cause to believe that a person has committed a crime in their presence, the *Fourth Amendment* permits them to make an arrest, and to search the suspect in order to safeguard evidence and ensure their own safety. (emphasis added) *Id.* at 178. Clearly, *Virginia v. Moore* did not address an arrest by an arresting officer for a crime not committed in his presence, as was the situation in case No. ST-15-CR-367. Therefore, the People's reliance on *Virginia v. Moore* for the proposition that Walters arrest was constitutionally permissible and thus the Firearm is admissible into evidence is misplaced. In addition, significantly, *Virginia v. Moore* was decided on the direct appeal of Defendant Moore's trial, whereas the People are using this case to collaterally attack the ruling in No. ST-15-CR-367. Therefore, *Virginia v. Moore* is not binding nor persuasive. This Court may not now decide the constitutionality of the search in ST-15-CR-367. The job of this Court is to determine whether the evidence suppressed in the previous matter is now admissible in the later matter. We decide it is not.

The People argue that the attenuation doctrine should apply here because (i) the search of Walters' car came four months after Jolly's murder and (ii) as the search was not motivated by a desire to obtain evidence in the first matter, the connection between the search and the instant case has been so attenuated as to make the previously suppressed evidence admissible. This is a misinterpretation of the attenuation doctrine. Attenuation here does not mean the time elapsed between the

crime and the discovery of the weapon. It instead refers to whether “the connection between the lawless conduct of the police and the discovery of the challenged evidence has “become so attenuated as to dissipate the taint.” *Wong Sun v. United States*, 371 U.S. 471, 487-488 (1963) (quoting *Nardone v. United States*, 308 U.S. 338, 341 (1939)). That the search of Walters’ vehicle came four months after Jolly’s murder and was not directly connected to that homicide does not change the fact that the search itself was illegal and all resulting evidence was obtained as the exploitation of that illegality. Under the ‘fruit of the poisonous tree’ doctrine, “all evidence derived, either directly or indirectly, from an unlawful invasion into one’s realm of constitutional sanctity, must be excluded as proof against the victim.” *People of the V.I. v. Castillo*, 49 V.I. 195, 222-223(V.I. 2008) (citing *Wong Sun*, 371 U.S. at 484-488). “The essence of a provision forbidding the acquisition of evidence in a certain way is that not merely evidence so acquired shall not be used before the court, but that it shall not be used at all.” *Nardone*, 308 U.S. at 340-341 (quoting *Silverthorne Lumber Co. v. United States*, 251 U.S. 385, 392 (1920); *Gouled v. United States*, 255 U.S. 298, 307 (1921)).

The People further suggest that evidence resulting from an illegal arrest (and by extension, search) should not be held inadmissible in perpetuity and cites as evidence for this proposition a Nebraska case, *State v. Tyrrell*, 234 Neb. 901, 453 N.W.2d 104 (1990)). In *Tyrell*, an illegal arrest resulted in a booking photograph that was later used to identify the defendant in a trial for a separate offense. The defendant was convicted and on appeal contended that the photograph should have been suppressed as the ‘fruit of the poisonous tree’. The court disagreed, holding that

“[a]ll evidence [is] not fruit of the poisonous tree simply because it would not have come to light but for the illegal actions of police.” *Tyrrell*, 234 Neb. 901907, 453 N.W.2d 109. However, the *Tyrrell* court went farther, clarifying that “[t]he taking of a photograph during the booking process is standard police procedure . . . bearing no relationship to the purpose or validity of the arrest or detention” *Id.* 908, and noting that “thousands of persons ultimately found to be entirely innocent undoubtedly have their photographs, as well as fingerprints, on record with law enforcement agencies.” *Id.* The narrow use of a routine booking photograph in *Tyrrell* is easily distinguishable from the use of the Firearm obtained through an illegal search in the instant case. The Court notes that there are certain limited exceptions to the exclusionary rule, i.e. good faith exception, evidence obtained by an independent source or a break in the causal connection. However, none of those exceptions apply to the Firearm discovered in Walters’ car during the illegal search.⁴

“[T]he purpose of the exclusionary rule ‘is to deter -- to compel respect for the [Fourth Amendment] constitutional guaranty in the only effectively available way -- by removing the incentive to disregard it.’” *Mapp v. Ohio*, 367 U.S. 643, 656 (1961) (quoting *Elkins v. United States*, 364 U.S. 206, 217 (1960)). The Firearm must remain suppressed under the exclusionary rule, and the People may not introduce it into evidence under Rule 404(b) V.I.R. Civ.P.

⁴ Walters asserts that the firearm was found in the steering column of Walters’ vehicle. The People note that months before his death, Jolly and Walters were involved in a physical altercation, which resulted in Walters hospitalization and Jolly being charged with assault.

Conclusion

The Firearm evidence collected in the previous matter, ST-15-CR-367, was obtained as the result of a search following an illegal arrest. As such, the evidence is the “fruit of the poisonous tree” and subject to the exclusionary rule. While there are exceptions to the exclusionary rule, the People have not demonstrated that the evidence falls into any of those exceptions.

The firearm evidence was obtained by a direct exploitation of the illegal search and therefore, the search is not attenuated from the “primary taint” of the illegality. Nor do any other exceptions to the exclusionary rule apply. For these reasons, the Court will deny People’s Motion in Limine.

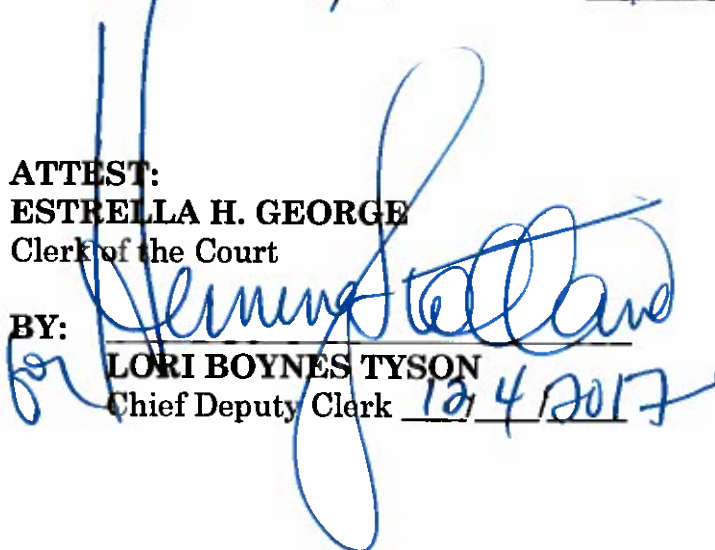
An Order consistent with this Memorandum Opinion will be entered.

DATED: December 4, 2017



Kathleen Mackay
Judge of the Superior Court
of the Virgin Islands

ATTEST:
ESTRELLA H. GEORGE
Clerk of the Court



BY: **LORI BOYNES TYSON**
Chief Deputy Clerk 12/4/2017