

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

PEOPLE OF THE VIRGIN ISLANDS,	)	
	)	CASE NO. ST-17-CR-278
Plaintiff,	)	
vs.	)	
	)	
JOSHUA ROJAS,	)	
	)	
Defendant.	)	
_____	)	

MEMORANDUM OPINION

This case came on for Suppression Hearing on May 1, 2018. Plaintiff People of the Virgin Islands was represented by Assistant Attorney General Nadja D. Harrigan. Defendant Joshua Rojas appeared and was represented by Paula D. Norkaitis, Assistant Public Defender. Plaintiff called Virgin Islands Police Corporal Uston Cornelius to testify. Defendant called Department of Licensing and Affairs Officer Robert DeFreitas, and Jermaine Squiabro as witnesses.

The Court took the matter under advisement after hearing closing arguments by both parties. For the reasons set forth herein the Motion to Suppress will be denied.

BACKGROUND

On September 9, 2017, at approximately 11:35 a.m., Corporal Uston Cornelius, Virgin Islands Police Department ("VIPD")¹, was on patrol in the area of Frenchtown,

¹ Cornelius testified he is a 20-year veteran with the VIPD, is assigned to the Chief of Police and is a member of the SWAT team.

St. Thomas, when he received a call from Central Dispatch informing him about a potential emergency in the Soto Town area. A concerned citizen had made a 911 call reporting that a light-skinned male in a light-colored shirt and dark pants was threatening another male with a gun.

Cornelius responded to the area along with the assistance of Officer Robert DeFreitas, a Virgin Islands Department of Licensing and Consumer Affairs officer on temporary assignment with the VIPD. The two officers proceeded to the scene in separate vehicles, Cornelius in an unmarked car with private plates and DeFreitas in a marked vehicle.

Cornelius testified that upon arriving at the area directed by Dispatch, only one individual was in the area, "all alone." While the individual was not in an altercation with another person when officers arrived, he matched the description given by Dispatch of a person with light skin, light colored shirt, and dark pants. Officers Cornelius and DeFreitas exited their vehicles and approached the individual later identified as Joshua Rojas, Defendant herein. Both Cornelius and DeFreitas were armed but their weapons were not drawn. Cornelius proceeded to ask Defendant some questions, including asking his name and where he resided. Cornelius testified that while speaking with Defendant, he noted Defendant "shaking," "starting to sweat," and appearing "frightened." DeFreitas also testified that Defendant was, "real twitchy and nervous." Defendant's behavior made Cornelius suspicious and so he asked Defendant why he was so nervous. Cornelius

testified that Defendant replied, "I'm ok. I just want to go home to my son." DeFreitas testified that Defendant was not answering Cornelius' questions, and, "just kept saying he needed to go home to his son."

As Cornelius was talking to Defendant he noticed the butt of a hand gun protruding from the front, right pocket of Defendant's pants. He asked Defendant if he had a license to carry a gun and Defendant told him he did not. At this point, Cornelius placed Defendant in handcuffs and took him into custody. The gun was confiscated for the officers' safety. After the firearm was secured, officers conducted a search of Defendant's person and discovered an extra magazine in Defendant's right, rear pocket. During the search of Defendant's person, Defendant told officers, spontaneously, that he only had the weapon to defend himself. Cornelius contacted Sergeant Burke of the VIPD to verify that Defendant was without license to carry a firearm within the Virgin Islands, and Burke confirmed that he did not. Cornelius turned the firearm over to VIPD forensics following Defendant's arrest. Defendant is charged with unauthorized possession of a firearm in violation of 14 V.I. C. § 2253(a), and unauthorized possession of ammunition in violation of 14 V. I. C. § 2256(a).

Defendant argues that the officers did not have reasonable suspicion to stop and question him, that they lacked "reasonable belief" to proceed to stop and frisk him, and thus the handgun, ammunition, and Defendant's alleged statement must be suppressed as "fruit of the illegality."

DISCUSSION

Officers Had the Reasonable Suspicion Necessary to Legally Stop and Question Defendant

Defendant argues first that officers did not have reasonable suspicion to stop and question him. “The Fourth Amendment guarantees “the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.” *Whren v. United States*, 517 U.S. 806, 809 (1996). Whenever a police officer approaches an individual and restrains that person’s freedom to walk away, the officer has seized that person, and the Fourth Amendment thus requires that the seizure be reasonable. *Blyden v. People of the V.I.*, 53 V.I. 637, 647, 2010 V.I. Supreme LEXIS 25, *9 (citing *Brown v. Texas*, 443 U.S. 47, 50 (1979)). Warrantless seizures are unreasonable, *id.*, “subject only to a few specifically established and well-delineated exceptions,” *Mincey v. Arizona*, 437 U.S. 385, 390 (1978) (citing *Katz v. United States*, 389 U.S. 347, 357). One such exception is where an officer has, “reasonable and articulable suspicion of criminal activity.” *People of the V.I. v. Looby*, 65 V.I. 84, 89 (V.I. Super. Ct. 2016) (citing *Terry v. Ohio*, 392 U.S. 1, 21 (1968)). In such circumstances, the U.S. Supreme Court has held that the officer may conduct a brief, investigatory stop without a warrant and on less than probable cause. *Id.* In other words, the Fourth Amendment allows for a limited seizure of an individual based on facts that, while not necessarily rising to the level of probable cause, create

in an officer reasonable suspicion of illegal activity. *See United States v. Brignoni-Ponce*, 422 U.S. 873, 881 (1975). That being said, while “reasonable suspicion is a less demanding standard than probable cause and requires a showing considerably less than a preponderance of the evidence,” it nonetheless requires, “a minimal level of objective justification.” *Illinois v. Wardlow*, 528 U.S. 119, 123 (2000) (citation omitted).

To make a showing that he or she in fact had reasonable suspicion of criminal activity an officer, “must be able to articulate more than an inchoate and unparticularized suspicion or hunch of criminal activity. *Illinois v. Wardlow*, 528 U.S. 119, 124 (2000) (citing *Terry*, 392 U.S. at 27) (internal quotations omitted). However, reasonable suspicion does not require that the officer must personally witness illegal activity. *Wardlow*, 528 U.S. at 125; *Terry*, 392 U.S. at 22-23. Also, because ambiguity is a natural part of an investigatory stop, “a determination that reasonable suspicion exists . . . need not rule out the possibility of innocent conduct.” *United States v. Arvizu*, 534 U.S. 266, 277 (citing *Wardlow*, 528 U.S. at 125). Mindful that each individual factor in a stop might be seen as innocuous when viewed in isolation, the U.S. Supreme Court has made clear that reviewing courts instead consider the totality of the circumstances that an officer faced “in the field.” *Arvizu*, 534 U.S. at 273-78.

Lastly, on a motion to suppress, “the government bears the burden of showing that each individual act constituting a search or seizure,” complied with the Fourth

Amendment. *People of the V.I. v. Samuel*, 2010 V.I. LEXIS 80, *8 (V.I. Super. Ct.) (citing *United States v. Johnson*, 63 F.3d 242, 245 (3rd Cir. 1995)).

Corporal Cornelius responded to a call from Dispatch, informing him that a concerned citizen had made an emergency call about a man threatening another man with a gun. Cornelius was directed by Dispatch to the location identified by the 911 caller, and was given a description of the male that was reportedly committing the threats. After arriving at that location, Cornelius came upon a person whose skin complexion and shirt and pant colors matched that description and no one else was in the area. The officers' suspicions that Defendant might be engaged in criminal activity were not based on a mere hunch: Cornelius was informed that a light-skinned man with a light-colored shirt and dark pants was threatening another with a gun in a particular area of Soto Town, and when he arrived at or near Soto Town he found a light-skinned man, alone, wearing precisely that type of clothing. Under these circumstances, it was reasonable for officers to stop Defendant briefly to ask him a few questions and probe whether he might be the person reported to have been making threats.²

The fact that officers did not personally observe Defendant committing a crime or know for certain that he was the person described in the 911 call did not make the stop unreasonable. What mattered was that they reasonably suspected he might be.

² See *Blyden*, 53 V.I. at 649, where the Supreme Court concluded that police had reasonable grounds to believe that a defendant was the person who had committed a shooting, where the defendant was found emerging from the area of the crime minutes later, matching the description of the suspect given to police, "walking from the area of the shooting at a fast pace while visibly sweating."

See Illinois, 528 U.S. at 125 (“*Terry* recognized that the officers could detain the individuals to resolve the ambiguity,” about whether the individuals were engaged in a crime.). Defendant cites to *U.S. v. Ubiles*, 224 F.3d at 214, 217 (3rd Cir. 2000), to argue that officers in fact had no reason to suspect that Defendant had committed a crime. Recognizing that, “it is not necessarily a crime to possess a firearm in the Virgin Islands—even when standing in a crowd,” the Third Circuit in that case went on to conclude, “nor does a mere allegation that a suspect *possesses* a firearm, as dangerous as firearms may be, justify an officer in stopping a suspect absent the reasonable suspicion required by *Terry* . . .” *Ubiles*, (citing *Florida v. J.L.*, 529 U.S. 266) (emphasis added). But *Ubiles* differs materially from this case. Here officers were not acting on the mere “presumption that Defendant lacked a permit to carry a firearm”—they approached Defendant acting on a tip that Defendant had threatened another man with a firearm.³ Threatening another person with a gun is quite apart from merely possessing a firearm, and unlike mere possession of a firearm, *is* a crime in the Virgin Islands. *See* 14 V.I.C. §§ 291 *et seq.* One can own a license to carry a firearm; he cannot own a license to assault someone. Thus, *Ubiles* and the related cases to which Defendant cites are not fully analogous to this case.

The Court finds that Officers Cornelius and DeFreitas had reasonable suspicion to stop and question Defendant.

³ And unlike *Ubiles*, officers here did not have “reason to believe that [Defendant] was engaged in or planning or preparing to engage in illegal activity due to his possession of a gun,” 224 F.3d at 218, but discovered his possession of a gun because they had reason to believe he had already committed another crime and stopped him as a result.

The Search of Defendant's Person Was Legal

Defendant next argues that the search of his person was illegal, and that as a result the firearm and bullets recovered during that search, along with Defendant's statement that he only had the weapon to defend himself, should be excluded as the fruits of an illegal search.

An initially valid stop may become invalid if it becomes "intolerable" in "intensity or scope." *Terry v. Ohio*, 392 U.S. 1, 17-19 (1968). To remain valid, the scope of the detention following a stop "must be carefully tailored" to the underlying justification for the stop. *People of the V.I. v. Heath*, 63 V.I. 80, 90 (V.I. Super Ct. July 10, 2015) (citing *Florida v. Royer*, 460 U.S. 491, 500 (1983)). With any "particular intrusion" not tied to the justification for the initial stop, a police officer, "must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion." *Terry v. Ohio*, 392 U.S. at 21.

A "stop and frisk" is constitutionally permissible under *Terry* if two conditions are met: (1) the investigatory stop must be lawful, and (2) to proceed from the stop to a frisk, the police officer must reasonably suspect that the person stopped is armed and dangerous. *Arizona v. Johnson*, 555 U.S. 323 (2009) (citing *Terry*, 392 U.S. 1). Reasonable suspicion does not mean absolute certainty: "the issue is whether a reasonably prudent man in the circumstances would be warranted in the belief that his safety or that of others was in danger." *Terry*, 392 U.S. at 27. Courts "generally

require proof that the suspect engaged in specific, suspicious conduct during the stop, such as failing to promptly obey the officer's orders, or making furtive movements and gestures." *People of the V.I. v. Charles*, 2014 V.I. LEXIS 7, *12 (V.I. Super. Ct.) (citing *United States v. Atkins*, 2000 WL 781439, at *2 (E.D. Pa. June 5, 2000)); see also *Blyden*, 53 V.I. 637 (police had reasonable suspicion for a stop and frisk where defendant matched description given to police, was seen leaving area of crime, and was sweating).

Somewhat separately, if during a lawful *Terry* stop, an officer's reasonable suspicion 'ripens' into probable cause for arrest, then there develops "ample justification" for a search of the arrestee's person. *Blyden*, 53 V.I. at 651 (citing *Chimel v. California*, 395 U.S. 752, 763 (1969)). Other courts whose decisions are not binding have reached similar conclusion. For instance, "Probable cause exists where facts and circumstances within the arresting officer's knowledge are sufficient in themselves to warrant a reasonable person to believe that an offense has been . . . committed by the person to be arrested." *Blyden* 53 V.I. at 651 (quoting *United States v. Cruz*, 910 F.2d 1072, 1076 (3rd Cir. 1990)). The finding of evidence of a crime, found during a *Terry* stop and linked to the reason for the initial stop, often provides probable cause for a full arrest. *E.g.*, *United States v. Martinez*, 462 F.3d 903, 908 (8th Cir. 2006) (discovery of wad of money during *Terry* stop provided probable cause for arrest of person suspected of committing bank robbery); *United States v. Wilson*, 2 F.3d 226, 232 (7th Cir. 1993) (marijuana baggies found during *Terry* stop supplied

the probable cause that converted the investigative stop into a full arrest); *United States v. Martin*, 706 F.2d 263, 265 (8th Cir. 1983) (information officers obtained during investigatory stop "escalated the factual basis from one permitting an investigatory stop to one warranting an arrest").

In this case, officers had both reason to believe that Defendant was armed and dangerous, and found evidence of a crime that ripened reasonable suspicion into probable cause. Cornelius testified that while was questioning Defendant, he noticed the butt of a gun protruding from Defendant's pant pocket. Not only that, both Cornelius and DeFreitas testified that Defendant appeared nervous, and DeFreitas testified that Defendant was "real twitchy." Seeing a gun in Defendant's pocket left no doubt that Defendant was armed; that paired with the match of Defendant to the description of the suspect from the 911 call, Defendant's location, and Defendant's "twitchy" and nervous behavior, gave officers reasonable suspicion that he was dangerous, and gave officers justification to conduct a frisk of Defendant. *See People of the V.I. v. Felix*, 2014 V.I. LEXIS 59, *19 (V.I. Super. Ct.) ("Based on the matching witness description of Felix, Felix's proximity to the crime scene, the speed at which Felix was walking, and the voluntary admission by Felix that he had a firearm in his right front pocket, the Court finds that Officer Richards possessed a reasonable, articulable suspicion that Felix was armed and dangerous."). Defendant then admitted, when asked, that he did not have a license to carry a firearm. At that point, the officers knew that Defendant was in violation of 14 V.I.C. § 2253(a). They had

probable cause, were authorized under that statute to arrest without a warrant, and had “ample justification” for a search of Defendant’s person.

Defendant’s Statement Made During the Search of His Person Shall Be Upheld

“[I]t is well established that a spontaneous utterance, not prompted by a police interrogation, made by a suspect who is plainly in custody is admissible even if the suspect has not waived his *Miranda* rights. *Blyden*, 53 V.I. at 662 (citing *Miranda v. Arizona*, 384 U.S. 436, 478 (1966). “Any statement given freely and voluntarily without any compelling influences is, of course, admissible in evidence.” *Miranda*, 384 U.S. at 478. Defendant in this case made the statement that he, “only had the weapon to protect himself,” freely and voluntarily, and not in response to any question by officers. At the time he made it, officers had grounds to place him under arrest. Yet while officers had begun a search of Defendants’ person, they were not engaged in interrogating him. His statement was made unprompted.

Defendant’s statement will not be suppressed.

CONCLUSION

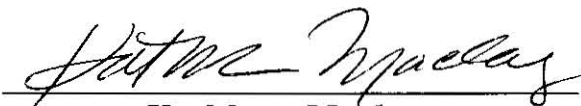
The People have met their burden of showing that the initial stop of Defendant and subsequent search of his person complied with the Fourth Amendment. Officers found Defendant alone in the area identified by the caller in the 911 call, and

Defendant matched the description given by the caller. This gave Officers the reasonable suspicion necessary to stop Defendant for questioning.

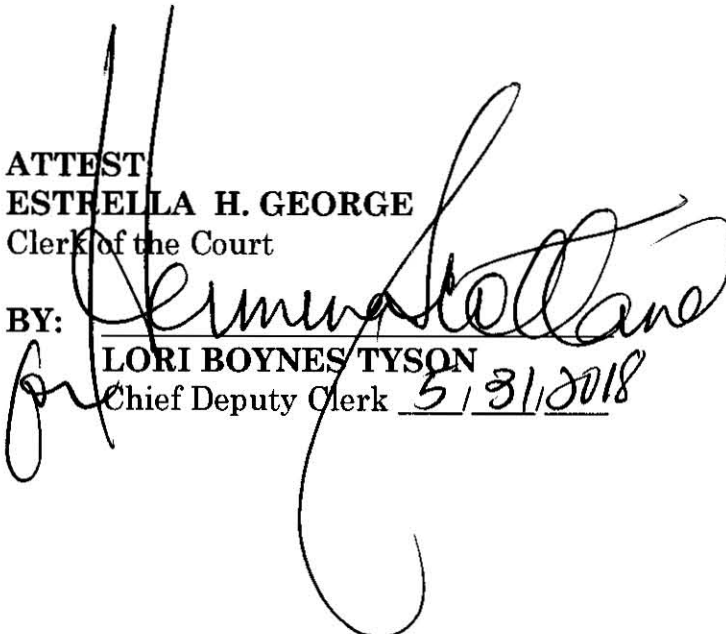
After stopping Defendant, the fact that Cornelius saw in Defendant's pocket a handgun, coupled with Defendant's nervous behavior and his admission that he did not have a license to carry a firearm, gave Officers at that point grounds to expand the search to a frisk of Defendant's person and to his arrest.

The evidence shall be upheld and the Motion to Suppress denied.

DATED: May 31, 2018


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 5/31/2018

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PEOPLE OF THE VIRGIN ISLANDS,)
)
) **Plaintiff,**)
) **vs.**)
)
) **JOSHUA ROJAS,**)
)
) **Defendant.**)
_____)

CASE NO. ST-17-CR-278

ORDER

IN ACCORDANCE with the Memorandum Opinion entered this day, it is hereby

ORDERED that Defendant's Motion For Suppression is **DENIED**;

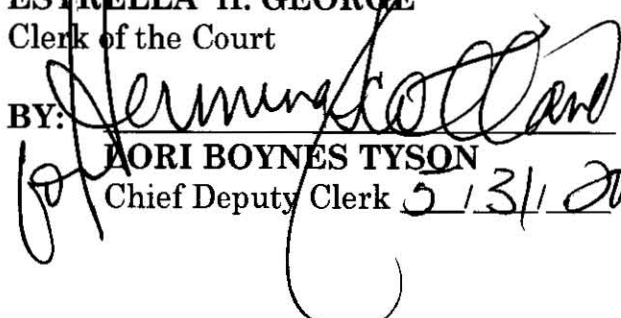
ORDERED copies of the Memorandum Opinion and this Order be served upon Defendant and copies directed to counsel of record.

DATED: May 31, 2018



Kathleen Mackay
Judge of the Superior Court
of the Virgin Islands

ATTEST:
ESTRELLA H. GEORGE
Clerk of the Court

BY: 
AORI BOYNES TYSON
Chief Deputy Clerk

5/31/2018