

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

PEOPLE OF THE VIRGIN ISLANDS,	)	
	)	CASE NO. ST-2016-CR-0000376
Plaintiff,	)	
vs.	)	V.I. Code Ann. tit. 19, § 604(a)(1)
	)	
JOSE SQUIABRO,	)	
	)	
Defendant.	)	

Cite as: 2019 V.I. Super 169U

MEMORANDUM OPINION AND ORDER

¶1 **THIS MATTER** is before the Court on the Defendant's Motion and Memorandum to Suppress, filed on May 12, 2017. The People filed their Opposition to Motion to Suppress on June 14, 2017. A hearing was held on June 20 and 21, 2017, during which Virgin Islands Police Detective Shawn Querrard testified. The People also called VIPD Detective David Wyrzykowski as a witness. Defendant Jose Squiabro testified and also called Ms. Davia Rogers as a witness. Following the witnesses' testimony, the parties argued the Motion to the Court. Thereafter, the Court took the matter under advisement. Having considered the Motion, the testimony given at the hearings and the exhibits admitted into evidence, the Court will deny the Defendant's Motion and Memorandum to Suppress because the police officers' stop and search of Squiabro was reasonable under the circumstances.

I. FACTUAL BACKGROUND

¶2 On December 9, 2016, Squiabro was on the grounds of the Oswald E. Harris Court housing community with his three minor daughters in front of Building 20. According to police officer Shawn Querrard, a twenty-year veteran of VIPD who was assigned to the DEA High Intensity Drug Trafficking Area Task Force, the Task Force was conducting a community initiative in Oswald E. Harris Court due to a high number of homicides that had occurred. The purpose of the initiative was to provide contact information to anyone who may be willing to provide information. The officers were instructed to inform residents that local and federal officials were coming together to address the high homicide rate. On the first day of the initiative, the police went to Harris Court, stopping at the first building where they saw a gathering of residents.

¶3 Querrard testified that approximately 8 to 10 law enforcement officers provided perimeter security. These officers were a special response team from Puerto Rico armed with long guns and other standard issued equipment. Querrard and two other officers approached the building to make contact with the residents on the southern side of the building. Querrard said he asked the residents if

they had any fears or concerns and provided contact cards for the VIPD, DEA and US Postal Service.¹ Querrard had no direct contact with Squiabro.

¶4 Detective David Wyrzykowski testified. At the time of the incident in question, he had been assigned to the Task Force for two and one-half years. As the Task Force approached Harris Court, Wyrzykowski was in the back of a convoy of about 5 or 6 vehicles. He observed Squiabro seated in a chair in front of Building 20, another tall male, and some children. As the convoy approached, Wyrzykowski saw the tall male leave the area. He saw Squiabro grab a bag located on his left side, stand up, and begin to walk away. As Squiabro was walking, Wyrzykowski saw that he had something in his left hand which he was trying to put in his bag, but he dropped it. Wyrzykowski asked Squiabro what “did you drop”, to which Squiabro replied, “just a little weed.” Because Squiabro had his right hand in his pants pocket, Wyrzykowski asked him to remove his hand, and Squiabro complied.

¶5 According to Wyrzykowski, Squiabro placed his bag by his left foot. Wyrzykowski testified that the bag was partially opened so he could see what was in the bag. Wyrzykowski asked Squiabro what was in the bag, and Squiabro said “just a little weed.” Wyrzykowski picked up the bag which contained a large quantity of prepackaged marijuana, showed it to his partner and then placed Squiabro under arrest.

¶6 Wyrzykowski testified that prior to arresting Squiabro, he did not tell Squiabro that he was not free to leave and he did not point a gun at Squiabro.

¶7 Squiabro testified that he did not see the Task Force convoy arrive because he was watching his cell phone. The first thing Squiabro saw was “a heap of white guys in vehicles.” Squiabro testified that he stood up as the men approached because of his children. The police told him not to go anywhere. When he was asked what he dropped, Squiabro said just a little weed.

¶8 Squiabro also testified that his bag was on his shoulder and that it was closed. He was going to put the bag down and the officer told him not to. Squiabro said the officer searched him and said what’s in the bag. Squiabro said “a little bit of weed.” According to Squiabro, the officer asked him to open the bag and he complied.

¶9 Squiabro further testified that he was not free to leave because a police officer was pacing behind him and other officers nearby had weapons pointed at him.

¶10 Rogers testified that her apartment is on the second floor of Building 20. Rogers had seen Squiabro in front of the building when she came home from work. Rogers is not related to Squiabro. She does not have a professional or social relationship with Squiabro. Rogers knows Squiabro by

¹ See People’s Exhibit 1 admitted into evidence.

seeing him at a daycare facility that her daughter attended and because Squiabro's three daughters play in front of her building.

¶11 On December 9, 2016, Rogers was sitting on her second floor balcony when she saw a fleet of vehicles approach consisting of one "V.I.P.D. vehicle and Jeep Wranglers filled with Caucasians." According to Rogers, everyone jumped out of the vehicles, running, screaming and yelling "hey you stop" directly in front of her building. Squiabro's two youngest daughters began running toward him. Rogers saw the men from the vehicles approach Squiabro. Other law enforcement officers stopped vehicles driving by and made at least one young man get out and searched him. Several of the men had long guns that were pointed down but their fingers were on the triggers.

¶12 Rogers observed one officer say something and then Squiabro put the bag on the ground and unzipped it. Rogers believes that the bag was hanging from Squiabro's shoulder or near his waist. During this time, other men remained standing on the walkway while others went around the building.

¶13 Rogers also testified that the men had "extremely large weapons." According to Rogers, the men were wearing a mixture of different clothing. Some were wearing vests that may have had police written on them. Some were wearing camouflage with beige colored t-shirts. She thought some of the men were with the National Guard due to the nature of their uniforms.

II. LEGAL STANDARD

¶14 The Fourth Amendment of the U.S. Constitution applies to the U.S. Virgin Islands pursuant to section 3 of the Revised Organic Act of 1954.² The Fourth Amendment protects individuals from "unreasonable searches and seizures."³ Searches conducted without a warrant are "per se unreasonable under the Fourth Amendment—subject only to a few specifically established and well-delineated exceptions."⁴

¶15 When seeking to suppress evidence obtained through an allegedly unconstitutional search or seizure, the burden of proof is on the defendant who moves to suppress evidence.⁵ In the instant case, Squiabro has sustained his burden by establishing that he was detained and searched without a warrant. The lack of a warrant shifts the burden to the People to prove "that each individual act

² *Simmonds v. People of the Virgin Islands*, 53 V.I. 549, 555-556 (V.I. 2010). The complete Revised Organic Act of 1954 is found at 48 U.S.C. §§ 1541-1645 (1995), reprinted in V.I. Code Ann., Historical Documents, Organic Acts, and U.S. Constitution at 73-177 (1995) (preceding V.I. Code Ann. tit. 1).

³ U.S. CONST. amend IV.

⁴ *Mincy v. Arizona*, 437 U.S. 385, 390 (1978); *Horton v. California*, 496 U.S. 128, 133 (1990) (opining that the general rule is that warrantless searches are presumptively unreasonable).

⁵ *People of the Virgin Islands v. Samuel*, Super. Ct. Crim. No. SX-09-CR-556, 2010 WL 7746081, at *3 (V.I. Super. Ct. Nov. 12, 2010) (unpublished) (citations omitted).

constituting a search or seizure under the Fourth Amendment was reasonable.”⁶ The burden is on “the People to demonstrate by clear and convincing evidence that the governmental activity fell within some recognized exception to the warrant requirement.”⁷

¶16 “[W]hen a police officer accosts an individual and restrains his freedom to walk away, he has seized that person, and the Fourth Amendment requires that the seizure be ‘reasonable’.”⁸ “The Fourth Amendment’s protection extends to all seizures, including brief investigatory stops.”⁹ “Reasonableness is an objective inquiry measured by examining the totality of the circumstances surrounding the search or seizure and the nature of the search or seizure itself.”¹⁰ A search or seizure without a warrant is unreasonable absent the applicability of one of a few, well-delineated exceptions.¹¹ One such exception is the investigatory stop and frisk.

¶17 When an officer has “reasonable and articulable suspicion of criminal activity afoot,” the officer may stop the individual and make reasonable inquiries.¹² In *Terry v. Ohio*, the United States Supreme Court held that a police officer may conduct a brief, investigatory stop and conduct a quick pat-down search for weapons without a warrant and on less than probable cause if the officer has a reasonable and articulable suspicion of criminal activity.¹³

¶18 To determine whether an officer acted reasonably in such circumstances, the Court need not focus on “his inchoate and unparticularized suspicion or hunch.”¹⁴ Rather, the officer must articulate “specific reasonable inferences which he is entitled to draw from the facts in light of his experience.”¹⁵

A. The Officers Had Reasonable Suspicion for an Investigatory Stop.

¶19 In the instant case, the community outreach initiative turned into an investigatory stop and frisk. When Wyrzykowski approached Squiabro and began to ask him questions, Wyrzykowski was in uniform, he was armed and he came as part of a law enforcement Task Force. This was clearly a

⁶ *People of the Virgin Islands v. Pryce*, Super. Ct. Crim. No. SX-15-CR-069, 2015 WL 13579326, at *1 (V.I. Super. July 27, 2015) (unpublished).

⁷ *People of Virgin Islands v. Archibald*, 50 V.I. 74, 85 (V.I. Super Ct. 2008) (citations omitted).

⁸ *Brown v. Texas*, 443 U.S. 47, 50 (1979).

⁹ *People v. Heath*, 63 V.I. 80, 88 (V.I. Super. Ct. 2015) (citing to *United States v. Johnson*, 620 F.3d 685, 690 (6th Cir. 2010)).

¹⁰ *People of the Virgin Islands v. Prentice*, 64 V.I. 79, 89 (V.I. Super. Feb. 23, 2016) (citing *United States v. Montoya de Hernandez*, 473 U.S. 531, 537 (1985) and *Ohio v. Robinette*, 519 U.S. 33, 39 (1996)).

¹¹ *Browne v. People*, 56 V.I. 207, 217 (V.I. 2012) (quoting *Katz v. United States*, 389 U.S. 347, 357 (1967)).

¹² *Blyden*, 53 V.I. at 648 (quoting *Terry*, 392 U.S. at 27, 30).

¹³ *Terry v. Ohio*, 392 U.S. 1 (1968).

¹⁴ *People v. Looby*, 68 V.I. 683, 695 (quoting *Terry*, 292 U.S. at 27).

¹⁵ *Id.*

show of force on the part of the VIPD. Such a show of authority, even if Wyrzykowski did not physically touch Squiabro, constituted a seizure. Under *Terry*, “whenever a police officer accosts an individual and restrains his freedom to walk away, he has ‘seized’ that person.”¹⁶ The Court finds that the armed and uniformed Task Force officers, who may have numbered as much as 20 officers, operated to restrain Squiabro’s freedom. However, the police had reason to approach Squiabro and question him. First, Squiabro appeared nervous to the police. He got up from where he was sitting. Contrary to his testimony that he moved because he was concerned about his children, when the convoy of police arrived, Squiabro walked away from the police. Squiabro did not walk towards his children. Squiabro could have continued to sit and watch his phone but he did not do so. As he was putting something in his pocket or bag, he dropped what later turned out to be a partially rolled marijuana cigarette. When asked what he had dropped, Squiabro said “just a little weed.” In appropriate circumstances, the Fourth Amendment allows a properly limited ‘search’ or ‘seizure’ on facts that do not constitute probable cause to arrest or to search for contraband or evidence of a crime.”¹⁷ The Court finds that the police had reasonable grounds to believe that criminal activity may be occurring.

B. The Police Lawfully Seized Squiabro’s Bag Under the Plain View Doctrine.

¶20 Wyrzykowski testified that he was able to see into Squiabro’s partially opened bag. In this regard, the Court finds that despite Rogers’ testimony, she did not have the same line of sight as Wyrzykowski. Under the plain view doctrine, law enforcement may seize evidence without a warrant if:

- (1) [t]he officer observes an object from a vantage point that is reached by a prior valid intrusion or the officer is otherwise legitimately at that location. (2) The officer is in a location to seize the object lawfully. (3) The incriminating character of the object is immediately apparent.¹⁸

Wyrzykowski was legitimately at Harris Court as part of a police initiative. Squiabro was seen outside of Building 20 in a public area. Squiabro dropped a partially opened bag by his foot when Wyrzykowski asked him to take his hands out of his pockets. Because the bag was partially opened, Wyrzykowski could see into it and the incriminating character of the bag’s contents was readily apparent given that Squiabro had already dropped a small amount of marijuana. The seizure of Squiabro’s bag and its contents falls into the plain view exception to a warrantless search and seizure.¹⁹

¹⁶ *Terry* at 16.

¹⁷ *United States v. Brignoni-Ponce*, 422 U.S. 873, 882 (1975).

¹⁸ Thomas K. Clancy, *THE FOURTH AMENDMENT ITS HISTORY AND INTERPRETATION* 455-456 (3d ed. 2017) citing *Horton v. California*, 496 U.S. 128, 136-137 (1990).

¹⁹ *Horton v. California*, 496 U.S. 128, 133 (1990).

C. The Existence of the Marijuana Dropped by Squiabro Provided Justification for a Frisk Because it Represents a Higher Standard Than Reasonable Suspicion.

¶21 The Virgin Islands Supreme Court has observed that while possession of an ounce or less of marijuana has been decriminalized, “marijuana remains a Schedule I controlled substance under title 19, section 595 of the Virgin Islands Code.”²⁰ Possession of marijuana is still unlawful.²¹ Police “officers are permitted to make warrantless seizures of items that are evidence of a crime, contraband, or otherwise subject to seizure.”²² Further,

Section 607a(b)(1) provides that “[a]ny person who possesses one ounce or less of marijuana ... is subject to forfeiture of the contraband”; section 607a(b)(2) provides that “[a]ny person who openly and publicly displays, consumes, or uses one ounce or less of marijuana ... is subject to forfeiture of the contraband”; and additionally, section 607(a)(b)(3) provides that “[a]ny person under the age of eighteen at the time of the offense, who possesses one ounce or less of marijuana ... is subject to forfeiture of the contraband.”

¶22 Under the circumstances of the instant case, the police had reasonable suspicion, the predicate for a valid stop and frisk, and reasonably concluded that evidence of contraband or of a crime may be present when they saw Squiabro drop something and when asked, he admitted that it was just a little weed. Wyrzykowski also had reasonable suspicion to search Squiabro’s bag after seeing its contents. The testimony was conflicting on whether the bag was open enough for the officer to see its contents. However, the facts available to the officer, i.e. Squiabro’s nervousness, the presence of a partially rolled marijuana cigarette, and the officer’s experience, provided reasonable suspicion for the belief that contraband or evidence of a crime was present.

¶23 While there were armed police present, Squiabro was never told he was under arrest and he was not questioned until the police saw him drop something. Querrard testified that the police established a perimeter of security for the safety of the officers and the residents. Squiabro argues that because of the number of armed police officers present, he was in custody, not free to leave and subjected to interrogation without receiving his Miranda warnings. However,

[t]here is no rule per se that pointing guns at people, or handcuffing them, constitutes an arrest.’ ” *Blyden*, 53 V.I. at 648 (quoting *Baker v. Monroe Twp.*, 50 F.3d 1186, 1193 (3d Cir. 1995) (collecting cases)). The Virgin Islands Supreme Court has reiterated that where an officer draws their weapon for their own

²⁰ *Looby* at 696.

²¹ *Looby* at 696; and 19 V.I.C. §§ 607(a) and 607a.

²² *Looby* at 697 (internal citations omitted).

protection of the officer, this act does not “transform detention into an illegal arrest.” *Id.* (citing *Terry*, 392 U.S. at 27, 30, 88 S.Ct. 1868). “ ‘There is no bright line to distinguish a valid *Terry* stop from its invalid counterpart (commonly known as a de facto arrest).’ ” *United States v. Pontoo*, 666 F. 3d 20, 30 (1st Cir. 2011) (quoting *Florida v. Royer*, 460 U.S. 491, 506-7, 103 S.Ct. 1319, 75 L.Ed.2d 229 (1983)). Consequently, “seizures are permissible under the Fourth Amendment where there is a reasonable, articulable suspicion that a person has committed or is about to commit a crime.” *United States v. Wrensford*, 67 V.I. 1037, 1051 (3d Cir. 2017) (citing *Terry*, 392 U.S. at 21, 27, 88 S.Ct. 1868).²³

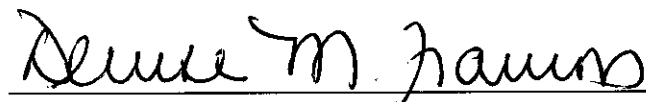
¶24 Based upon the foregoing, the Court finds that the officers possessed reasonable suspicion to conduct a *Terry* stop of Squiabro. The officers possessed reasonable suspicion to conduct a search of Squiabro for contraband. The evidence seized was not the result of an illegal search. Therefore, Defendant Jose Squiabro’s Motion and Memorandum to Suppress will be denied.

Accordingly, it is hereby

ORDERED that Defendant’s Motion and Memorandum to Suppress is **DENIED**; and it is further

ORDERED that a copy of this Memorandum Opinion and Order shall be directed to counsel of record.

DATED: 12/12/2019



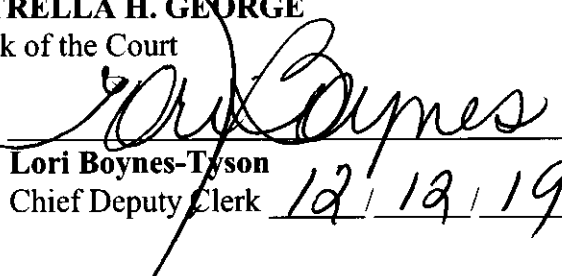
DENISE M. FRANCOIS

Judge of the Superior Court of the Virgin Islands

ATTEST:

ESTRELLA H. GEORGE
Clerk of the Court

BY:



Lori Boynes-Tyson
Chief Deputy Clerk

²³ *People v. Pemberton*, No. SX-16-CR-001, 2019 WL 4132687, at *11 (V.I. Super. Aug. 30, 2019).