

PEOPLE OF THE VIRGIN ISLANDS,) CRIMINAL NO. ST-13-CR-194
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)
Plaintiff,) V.I. Code Ann. tit. 14, § 2253(a)
)
v.)
)
CARIEM J. CHARLES,)
)
Defendant.)

THIS MATTER came before the Court for a hearing on Defendant Cariem J. Charles's Motion to Suppress on January 13, 2014.¹ At issue in the hearing is whether the stop and search of the Defendant was legal under the under the terms of the Fourth Amendment of the U.S. Constitution and the Revised Organic Act, and whether the fruits of the alleged illegal stop and search should be suppressed.

Detective Jose Allen, who has fifteen years of experience as an officer and four year of experience as a detective in the Major Crimes Unit, testified that on April 24, 2013 he was assigned as a part of a plain clothes detail to monitor the activities in the Carnival Village from 6:00 p.m. to closing (around 2:00 a.m.). There had been prior shootings during the carnival activities. At or around 11:00 p.m., Allen and other officers in the Intelligence and Major Crimes Units, including Intelligence Director Ray Martinez, Detective Elisa Francis and Elisa King, received information from two sources that a group of men dressed in white t-shirts from the Tutu Valley Hi-Rise Housing Community, also known as “Ras Valley,” “looked like they were up to something.”

Det. Allen and the other officers walked toward the Criminal Justice Complex, where Allen observed men matching the description leaning against a vehicle near the Carnival booths. Allen stood on the opposite side of Hospital Line road and watched the men for over an hour. Hospital Line is the street running north to south between the police station and the Carnival Village. On the night in question, Hospital Line was partially blocked off with “Police Line Do Not Cross” signs to limit access to officers and people conducting business at booths in the Carnival Village. Allen testified that there were unidentified vehicles that did not belong to booth operators.

¹ Sigrid M. Tejo-Sprotte, Esquire, Assistant Attorney General, represents the People. Julie Smith Todman, Esquire, Public Defender, represents Defendant Cariem J. Charles.

Allen then observed a Maroon four-door Ford Fusion drive passed the Police Line Do Not Cross sign on to Hospital Line and stopped between Allen and the men from Ras Valley. Allen stated that, when the vehicle came in the restricted area, he noticed the demeanor of the men from Ras Valley change and they began yelling at the men in the vehicle. Detective Elisa Francis walked over to the Ras Valley men and spoke to one of them, named Lamar Richardson. Allen heard Richardson say "Ayu ain't see what da man ova de do," pointing to the vehicle. Allen then looked over to the vehicle and made eye contact with the Defendant Cariem Charles (also known as "Remy"), who was driving the vehicle. Allen recognized Charles, a person known to have convictions for illegal firearms.

Allen saw that Charles began to reverse the vehicle slowly, while maintaining eye contact with Allen. As Allen approached the vehicle, he asked Charles "what's going on?" Allen then leaned into the vehicle and smelled a strong odor of marijuana emanating from inside the vehicle. Allen told Charles to stop the car, but Charles continued to reverse without looking at the road and said "everything is safe, Allen." Again, Allen told Charles to stop the vehicle, but Charles put the vehicle in drive. Once more Allen instructed Charles to put the vehicle park, and Charles complied.

Once the vehicle was stopped, Allen testified that Charles placed his hands on his waist area. Since the car was not well lit and he could not see Charles's hands, Allen instructed Charles to put his hands up on the steering wheel, but Charles did not respond quickly enough. Allen then opened the car door and told Charles to step out of the vehicle. Allen asked Charles "is there anything that I need to know about?" Charles said "yes." Allen began to pat Charles on his waist, felt a firearm, and pulled it out. The firearm was a fully loaded .45 caliber Glock Pistol and an extra fully loaded magazine. Allen asked Charles if he had a license for the firearm, and Charles said no. Charles was placed under arrest for unlawful possession of a firearm.

Shawon Whyte, the passenger in the Ford Fusion, also testified at the hearing. He testified that when the Ford turned onto Hospital Line, a white vehicle stopped in front of it. Charles then reversed the Ford in an attempt to exit Hospital Line onto Veteran's Drive. Whyte testified that Allen walked over, told Charles to stop the vehicle, and stuck his head into the vehicle. Allen then asked them if they had anything on them, but neither Whyte nor Charles responded. Whyte also stated that he did not smoke marijuana, but he smoked "Black and Mild" cigars.

Charles testified that he turned onto Hospital Line from Veteran's Drive, following a white vehicle in front of him. When the white car stopped and blocked the road, he attempted to reverse back onto Veteran's Drive. As he reversed, Allen walked towards his vehicle and asked "what's going on, Remy?" Charles then said "everything is safe, Allen." Allen then leaned his head into the vehicle and told Charles to place the car in park and to step out of the vehicle. Charles testified that he did not give Allen consent to search him.

The Court has concerns regarding the credibility of Charles and Whyte's testimony because the reasons that they gave for driving to back to the Carnival Village they had just left were not the same. Charles testified that he had come to the Village with some people. He went back to get his car and drove around by Emancipation Garden where he left them, but then he got a call telling him that they were in, he thinks, Roosevelt Park. Once Charles received that call, he said since he was already at Emancipation Garden he took the left by the police station onto Hospital Line instead of driving all the way around by Lucinda Millin Home. Charles' passenger, Whyte, on the other hand, testified that he ended up in Charles car because he and Charles "...were just going to get something to eat and I just asked him for a ride." Whyte also testified that he first got in Charles vehicle which was parked by a lawyer's office some distance from the Carnival Village. Whyte testified that he had to pick up a plate of food for his sister.

Neither Whyte nor Charles had a booth at the Carnival Village and, therefore, neither one of them had a reason to be on Hospital Line where access was restricted to police vehicles and persons operating Carnival booths.

DISCUSSION

Under consideration is whether the stop and search of Charles were illegal under the Fourth Amendment.

A. DETECTIVE ALLEN LAWFULLY INITIATED A TRAFFIC STOP.

The Fourth Amendment to the U.S. Constitution is made applicable to the Virgin Islands pursuant to Section 3 of the Revised Organic Act of 1954, as amended.² The Fourth Amendment provides:

The right of people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause supported by Oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized.³

It is well settled that in Fourth Amendment terms, a traffic stop entails a seizure of the driver "even though the purpose of the stop is limited and the resulting detention brief."⁴ A vehicle stop is thus subject to the constitutional imperative that it not be unreasonable under the circumstances.⁵

² See 48 U.S.C.A. § 1561 (2012).

³ U.S. CONST. amend. IV.

⁴ *Brendlin v. California*, 551 U.S. 249, 255 (2007) (citing *Delaware v. Prose*, 440 U.S. 648 (1979)).

⁵ *Id.*

Generally, the decision to stop an automobile is reasonable where the police have probable cause to believe that a traffic violation has occurred.⁶ Detective Allen stopped Charles for committing two (2) traffic violations in his presence, i.e., driving pass the Police Line Do Not Cross sign without authorization and unsafely reversing the vehicle without looking behind him. Thus, the initial stop of Charles' vehicle was both constitutional and lawful.

B. THE TRAFFIC STOP WAS LAWFULLY CONVERTED TO A TERRY STOP.

In *Arizona v. Johnson*, the U.S. Supreme Court held that a police officer may be justified in stopping a vehicle due to a traffic violation without an additional requirement of believing that the occupant is involved in criminal activity.⁷ An officer's inquiries into matters unrelated to the justification for the traffic stop does not convert the encounter into something other than a lawful seizure, so long as those inquiries do not measurably extend the duration of the stop.⁸ After a justified and lawful traffic stop, an officer who develops a reasonable, articulable suspicion of criminal activity may inquire beyond the reason for the traffic stop and may detain the vehicle and its occupants for further investigation.⁹ While reasonable suspicion must be more than an inchoate hunch, the Fourth Amendment only requires that the police articulate some minimal objective justification for an investigatory stop.¹⁰

In his Motion to Suppress, Charles argues that Allen had no basis for reasonable suspicion to lean into the vehicle. Allen testified that he initially noticed Charles's vehicle because of the way that the men from Ras Valley responded to its presence. Allen then attempted to stop Charles's vehicle for reversing in an unsafe manner. Also, Charles' vehicle was in a restricted area without authorization. Allen leaned into the vehicle and immediately questioned Charles about the reason Lamar Richardson directed the officers to his vehicle, a matter unrelated to the traffic stop. This immediate inquiry did not measurably extend the duration of the stop.

Allen testified that his suspicion heightened after processing: (1) the smell of marijuana emanating from the vehicle; (2) Charles's initial failure to place the vehicle in park; and (3) Charles placing his hands on his waist area. Based on nineteen (19) years of experience in law enforcement, Allen concluded that Charles may be armed. Since Allen was able to articulate an objective reasonable basis for suspecting that Charles was involved in some type of criminal activity, his decision to lean into extend and/or convert the traffic stop to a full *Terry* stop was justified.

⁶ *Whren v. United States*, 517 U.S. 806, 810 (1996).

⁷ *Arizona v. Johnson*, 555 U.S. 323, 327 (2009).

⁸ *Id.*

⁹ *United States v. Givan*, 320 F.3d 452, 458 (2003).

¹⁰ *Id.*

C. DETECTIVE ALLEN LAWFULLY ORDERED THE DEFENDANT AND/OR OCCUPANT/PASSENGER OF THE STOPPED VEHICLE TO EXIT.

The U.S. Supreme Court has repeatedly recognized that traffic stops are dangerous encounters wherein police officers can be assaulted or murdered.¹¹ In order to minimize that threat, the Supreme Court has held that once a motor vehicle has been lawfully detained for a traffic violation, a police officer may order the driver to get out of the vehicle without violating the Fourth Amendment's proscription of unreasonable searches and seizures.¹² Moreover, a police officer making a traffic stop may also order the passengers to exit the vehicle pending the completion of the stop.¹³

Before ordering the occupants to exit the vehicle, Detective Allen noted that there was a strong odor of marijuana emanating from the vehicle, Charles did not immediately comply with his instruction to stop the vehicle, and Charles, known to have been convicted for unlawful possession of a firearm, placed his hands on his waist area when the vehicle was stopped. Since Charles's vehicle was lawfully detained for two (2) traffic violations, and Allen had reason to believe that Charles may be armed and dangerous, Allen lawfully ordered Charles and the other occupant to exit the stopped vehicle.

D. DETECTIVE ALLEN ARTICULATED FACTS WITH REASONABLE SPECIFICITY JUSTIFYING THE PAT DOWN OF DEFENDANT.

The purpose of a *Terry* stop is not to discover evidence of a crime, but to allow officers to pursue their investigation without the fear of violence.¹⁴ In determining whether the officer acted reasonably under the circumstances, due weight must be given, not to his inchoate and unparticularized suspicion or hunch, but to specific inferences which he is entitled to draw from the facts in light of his experience.¹⁵ A court must therefore measure the reasonableness of an officer's suspicion by taking into account the totality of the circumstances.¹⁶

During investigative stops, including traffic stops, a police officer may perform a protective pat down and/or frisk of a defendant's person when he has reason to believe that the person with whom he is dealing is armed and/or dangerous.¹⁷ The protective search of a defendant's person can be conducted notwithstanding the absence of probable cause to arrest the defendant for a crime.¹⁸ The officer need not be absolutely certain that the individual is armed.¹⁹ Rather, the issue is whether a reasonably prudent man under the same circumstances would

¹¹ *United States v. Moorefield*, 111 F.3d 10, 13 (1997).

¹² *Pennsylvania v. Mimms*, 434 U.S. 106, 111 (1997).

¹³ *Maryland v. Wilson*, 519 U.S. 408, 415 (1997).

¹⁴ *People v. Archibald*, 50 V.I. 74, 92 (V.I. Super. Ct. 2008).

¹⁵ *Terry v. Ohio*, 392 U.S. 1, 27 (1968).

¹⁶ *United States v. Focareta*, 283 F. App'x 78, 83 (3d Cir. 2008).

¹⁷ *United States v. Moorefield*, 111 F.3d 10, 14 (3rd Cir.1997).

¹⁸ *Id.*

¹⁹ *Id.*

believe that his safety or that of others was in danger.²⁰ In applying this standard, 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.²¹

Objectively assessing the totality of the circumstances in this matter, at the time Charles was patted down/frisked, Allen articulated a specific and objective reasonable basis for believing that Charles may be armed and dangerous. Charles's failure to immediately stop the vehicle, though instructed to do so at least three times, heightened the suspicion of Detective Allen. Additionally, once Charles, who has previously been convicted of unlawful possession of a firearm, placed the car in park, he put his hands on his waist area. Given Allen's experience, a poorly lit vehicle combined with Charles hand placement further raised Allen's suspicion.

It is contested whether Charles stated that he was armed or gave consent to Allen to search his person. Nevertheless, the events when taken together were sufficient to create articulable suspicion that criminal activity may be afoot and/or to reasonably believe that Charles may be dangerous and armed, thereby authorizing Allen under *Terry* to remove Charles from the stopped vehicle and conduct a protective search of their persons for weapons in the interest of officer safety. Upon finding the firearm in front waist area Charles's pants and determining that Charles did not have a license for the firearm, Allen had the probable cause to arrest Charles for unlawful possession of a unlicensed firearm under Title 14, section 2253(a) of the Virgin Islands Code.

CONCLUSION

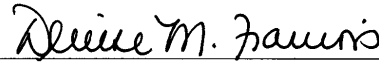
Detective Allen's decision to stop Charles's automobile was reasonable because he personally observed Charles commit two (2) traffic violations. Thus, the initial traffic stop of the vehicle was constitutional and lawful. Allen leaning into the vehicle to inquire about a matter unrelated to the traffic stop did not convert the stop into an unlawful seizure. Because Allen observed Charles's refusal to immediately stop the vehicle as instructed, the scent of marijuana emanating from the vehicle, and Charles's placement of his hands on his waistband, Allen had reasonable suspicion that Charles was armed and dangerous. Consequently, Charles was lawfully ordered to exit the stopped vehicle.

²⁰ *Id.*

²¹ *United States v. Atkins*, No. 99-633, 2000 WL 781439, at *2 (E.D. Pa. June 5, 2000).

Given the totality of the circumstances, Allen had reasonable suspicion to believe that Charles was involved in some type of criminal activity so the traffic stop was extended and converted to an investigatory *Terry* stop. Upon locating a firearm on Charles's person, Allen had probable cause to arrest Charles for possession of the firearm. Accordingly, the Motion to Suppress shall be denied.

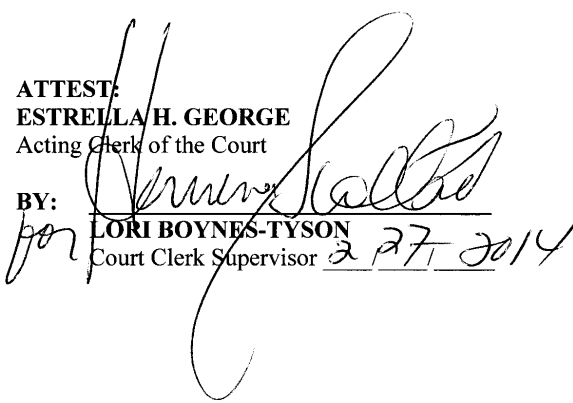
DATED: February 26, 2014



DENISE M. FRANCOIS
Judge of the Superior Court
of the Virgin Islands

ATTEST:
ESTRELLA H. GEORGE
Acting Clerk of the Court

BY:


LORI BOYNES-TYSON
Court Clerk Supervisor

27 2014