

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX**

PEOPLE OF THE VIRGIN ISLANDS,

Plaintiff,

v.

**LAWRENCE T. BETHEL,
DENNIER THOMAS,
DWAYNE LOUIS PIERRE,**

Defendants.

**SX-14-CR-246
SX-14-CR-247
SX-14-CR-248**

MEMORANDUM OPINION

THIS MATTER came before the Court on Defendant Dwayne Louis Pierre's (hereinafter, "Pierre") Motion to Suppress, filed on February 2, 2015 and Defendant Lawrence T. Bethel's (hereinafter, "Bethel") Motion to Suppress, filed on March 5, 2015. On March 9, 2015, Defendant Dennier Thomas (hereinafter, "Thomas") filed a notice of joinder in Bethel and Thomas' Motion to Suppress and filed a memorandum in support on March 10, 2015. Pierre, Bethel and Thomas will also be collectively referred to as the Defendants. The People of the Virgin Islands (hereinafter, "the People") filed their response to Pierre's Motion on February 25, 2015. A Suppression Hearing was held on April 10, 2015 and Defendants' Motions were taken under advisement. Thereafter, the People filed a supplemental response to the Defendants' motions to suppress on April 17, 2015. For the reasons set forth, the Court shall deny the Defendants' Motions.

BACKGROUND

On Sunday, July 6, 2014, at approximately 5:16 p.m., Police Officer Carlton Wakefield, Jr. (hereinafter, "Officer Wakefield") received a call from 911 dispatch reporting that a concerned citizen reported a disturbance on Route 76 (also known as Mahogany Road) in Frederiksted. The concerned citizen stated that there were three (3) guys outside a dark blue Chevrolet Cobalt pointing guns at some guys who were riding all-terrain vehicles (hereinafter "ATV"). While traveling on Route 70 (also known as Centerline Road or Queen Mary Highway) to the location in the vicinity of Consumer Gas

Station, Officer Wakefield observed a vehicle matching the description. The officer advised dispatch that he would attempt to traffic stop the vehicle and that he needed an additional unit. At the suppression hearing, Officer Wakefield testified that he trailed the vehicle in a marked police car without flashing his lights or sirens for about a minute to a minute and a half and obtained the vehicle's license plate number. The driver of the vehicle abruptly turned into the entrance of St. Joseph High School (hereinafter, "School"). Officer Wakefield followed the vehicle into to entrance and turned on his lights and siren.

When the vehicle stopped, three of the four doors flung open. As the occupants of the vehicle attempted to exit the vehicle, Officer Wakefield ordered them to the ground. The occupants were later identified as Bethel, Thomas and Pierre. The driver of the vehicle, was identified as Pierre, pretended to go to the ground, but he reached into the vehicle and grabbed a black backpack which appeared to be heavy and fled on foot. Pierre allegedly fled in the direction of the School. A description of the vehicle, CEL-506, a dark blue Chevrolet Cobalt, was relayed to the 911 Emergency Call Center as well as the description of the fleeing suspect.

Officer Gregory Bennerson (hereinafter, "Officer Bennerson") responded to Officer Wakefield's request for assistance with the traffic stop. Officer Bennerson testified that upon his arrival, he handcuffed two (2) individuals, Bethel and Thomas, for his safety and the safety of the other officers. The officer testified that he conducted a pat down. No illegal contraband was found in the vehicle or from the pat down of Bethel and Thomas.

A search of the area was conducted by members of the Virgin Islands Police Department along with several other law enforcement agencies for Pierre, the alleged fleeing suspect. When Pierre was located, he was not in possession of the backpack. Officer Bennerson searched the area with his K-9 partner Rico (hereinafter "K-9 Officer Rico") trained to locate narcotics. K-9 Officer Rico alerted to an

object on the other side of the fence in an open field. Officer Bennerson could not see the object on the other side of the fence. He testified that Officer Innis jumped the fence and saw the black backpack described by Officer Wakefield.

Forensic Technician Linda Pascal (hereinafter, "Forensic Technician Pascal") retrieved the bag and discovered two (2) handguns—a black Glock S/N: KF157 model 31 357 Caliber Pistol with fourteen (14) rounds of ammunition and one (1) in the chamber; a 9 millimeter (mm) Smith and Wesson pistol with ten (1) 9 mm ammunitions, and one (1) in the chamber; a chrome magazine with ten (10) 9mm ammunitions; and a green leafy substance field tested by Forensic Technician Pascal and determined to be marijuana. A firearms check was conducted by Detective Karen Stout revealed that none of the Defendants had a license to carry a firearm. Also, a National Crime Index Check (NCIC) revealed that the Glock 31 was reported stolen in Florida. Officer Wakefield testified that no warrant was obtained to open the backpack because of the surrounding circumstances—guns and a fleeing suspect.

The issues to be resolved by this Court are (1) whether the traffic stop was lawful; (2) whether Officer Bennerson's "pat down" of the Defendant's outer garments for weapons was lawful; and (4) whether the warrantless search of the backpack found in an open field was lawful.

DISCUSSION

The Defendants contend that the stop was unlawful, and that the seizure and subsequent search of their person without their consent and continued detention after no contraband was found was unlawful. In their respective motions, the Defendants argue that the stop was unlawful because the anonymous tip did not rise to the level of reasonable suspicion. Moreover, since the traffic stop was unlawful from its inception, any evidence seized must be suppressed as "fruit of the poisonous tree."

The People counter argue that there was no constitutional violation. In their opposition, the People insist that there was reasonable suspicion to justify the traffic stop considering the totality of the circumstances and there was no expectation of privacy in the backpack because Pierre abandoned the bag as he was fleeing.

A. The Traffic Stop was Lawful

The initial step in our suppression analysis is to determine whether the traffic stop was lawful. “The Fourth Amendment protects people from unreasonable searches and seizures.”¹ To prevail on a motion to suppress, “the defendant bears the burden of establishing that his Fourth Amendment rights were violated by an unlawful search and seizure.”² “Generally, for a seizure to be reasonable under the Fourth Amendment, it must be effectuated with a warrant based on probable cause.”³ A well-established exception to the Fourth Amendment's warrant requirement permits an officer to “conduct a brief, investigatory stop when the officer has a reasonable, articulable suspicion that criminal activity is afoot.”⁴ “Reasonable suspicion exists when an officer can point to specific and articulable facts, which taken together with rational inferences from those facts, reasonably warrant the intrusion.”⁵ “To determine whether reasonable suspicion existed at the time of the encounter, we use a totality of the circumstances test.”⁶ “The primary basis for reasonable suspicion are a police officer’s personal observations and the officer’s knowledge that a crime has been committed.”⁷ In his affidavit, Officer

¹ U.S. Const. amend. IV. See *Blyden v. People of the Virgin Islands*, 53 V.I. 637, 647 n.5 (V.I. 2010) (The Fourth Amendment is applicable in the Virgin Islands pursuant to section 3 of the Revised Organic Act of 1954, as amended, 48 U.S.C. § 1561.)

² *People of the Virgin Islands v. Samuel*, 2010 V.I. LEXIS 80, *8 (V.I. Super. Ct. Nov. 12, 2010).

³ *United States v. Robertson*, 305 F.3d 164, 167 (3d Cir.2002) (citation omitted).

⁴ *Illinois v. Wardlow*, 528 U.S. 119, 123 (2000) (citing *Terry v. Ohio*, 392 U.S. 1, 30 (1968)).

⁵ *Id.* at 21. See also *United States v. Arvizu*, 534 U.S. 266, 273 (2002) (“[T]he [4th] Amendment is satisfied if the officer’s action is supported by reasonable suspicion to believe that criminal activity ‘may be afoot.’”); *U.S. v. Cortez*, 449 U.S. 411, 417 (1981) (investigatory stop valid when totality of circumstance gives officers “particularized and objective basis” for suspicion of criminal activity)).

⁶ 43 GEO. L.J. ANN. REV. CRIM. PROC. 48 (2014).

⁷ *Id.* at 50.

Wakefield stated that a concerned citizen reported three guys in a dark blue Cobalt pointing guns at some guys on Route 76 in violation of Title 23, Section 479 of the Virgin Islands Code. Under Section 479(b), it is unlawful to intentionally although without malice, aim a revolver, pistol or other firearm toward any person. *See* 23 V.I.C. §479(b).

The Court finds that the traffic stop was lawful. A claim that a firearm was being pointed at someone is sufficient to establish reasonable suspicion of criminal activity. The Defendants were allegedly pointing the firearms at people on a public road in violation of Title 23, Section 479 (b) of the Virgin Islands Code.⁸ Based on his knowledge and experience, Officer Wakefield followed the vehicle while calling for backup in order to conduct the traffic stop.

B. Officer Bennerson's *Terry* frisk of Bethel and Thomas was Lawful

Next, the Court must inquire whether Officer Bennerson's invasion of Bethel and Thomas' personal security by searching them for weapons in the course of his investigation was justified.⁹ "A legal investigatory stop does not necessarily provide justification to 'frisk' or 'pat down' an individual."¹⁰ Under the Fourth Amendment, the general rule is that "warrantless searches and seizures are per se unreasonable unless justified by some well delineated exception."¹¹ In light of *Terry* and its progeny, a "stop and frisk" is one such exception.¹²

⁸ *See Joseph v. People of the Virgin Islands*, 60 V.I. 338, 350 (VI. 2013) (Aiming a loaded firearm at someone, even without intending to pull the trigger, can cause grave risk of death).

⁹ *Terry*, 392 U.S. at 23.

¹⁰ *People of the Virgin Island v. Phillip*, 53 V.I. 25, 39 (V.I. Super. Ct. 2010) (citing *Terry*, 392 U.S. at 88).

¹¹ *Coolidge v. New Hampshire*, 403 U.S. 443, 454-55 (1971).

¹² *Terry*, 392 U.S. 1 at 30.

“During an investigatory stop, police officers may take measures reasonably necessary to protect themselves and maintain the status quo.”¹³ A police officer may stop a suspect on the street and conduct a limited search, i.e. a frisk, of the suspect without probable cause:

where a police officer observes unusual conduct which leads him reasonably to conclude in light of his experience that criminal activity may be afoot and that the persons with whom he is dealing may be armed and presently dangerous, where in the course of investigating this behavior he identifies himself as a policeman and makes reasonable inquiries, and where nothing in the initial stages of the encounter serves to dispel his reasonable fear for his own or others' safety.¹⁴

“The officer need not be absolutely certain that the individual is armed; 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.”¹⁵ “In determining whether the officer acted reasonably in such circumstances, the primary consideration is the specific reasonable inferences which he is entitled to draw from the facts in light of his experience—not the officer’s inchoate and unparticularized suspicion or ‘hunch.’”¹⁶ “A protective search for weapons (commonly referred to as a “frisk” and/or “pat down”) is a limited search done only for detection of a dangerous weapon in the interest of officer security.”¹⁷ “It by no means authorizes a search for contraband, evidentiary material, or anything else in the absence of probable cause and reasonable grounds to arrest.”¹⁸

The Court finds that the *Terry* frisk was lawful. Only Bethel and Thomas were frisked because Pierre fled on foot shortly after the traffic stop. Here, Officer Bennerson responded to Officer Wakefield’s request for assistance with a traffic stop at the west end parking lot at St. Joseph’s High School because of a report that individuals were pointing guns on a public road. Upon Officer

¹³ *Id.*

¹⁴ *Blyden*, 53 V.I. at 643.

¹⁵ *Terry*, 392 U.S. at 27; *Cf. Beck*, 379 U.S. at 91; *Brinegar v. United States*, 338 U.S. 160, 174-176 (1949); *Stacey v. Emery*, 97 U.S. 642, 645 (1878).

¹⁶ *Id.*

¹⁷ *Id.* at 26-27.

¹⁸ *Id.*

Bennerson's arrival, one Defendant, Pierre, had fled the scene. At this point, in light of his experience and observations, Officer Bennerson could reasonably conclude that criminal activity was afoot. Upon making contact with the Defendants, considering the totality of the circumstances, it was reasonable for the officer to conduct a limited search or "pat down" of Bethel and Thomas for weapons. Ergo, Officer Bennerson's "pat down" of the Defendants' person and outer garments for weapons was justified and lawful.

C. The Warrantless Search of the Backpack Found in an Open Field was Lawful

"The Fourth Amendment protects a person's expectations of privacy that society has recognized as reasonable."¹⁹ But, "Fourth Amendment protection does not extend to abandoned property."²⁰ The doctrine of abandonment postulates that "one who abandons property no longer holds any reasonable expectation of privacy warranting Fourth Amendment protections."²¹ As a result, "the Fourth Amendment ceases to protect a defendant with respect to property he has voluntarily abandoned."²²

Whether property is "abandoned" for Fourth Amendment purposes is a factual question based on the objective intent of its owner to voluntarily relinquish possession and control of the object in question. Key to this determination is voluntariness; therefore, property may be seized as abandoned only if it is found that the appellant was not seized at the time he discarded the drugs and that such abandonment was voluntary. A person is "seized" within the meaning of the Fourth Amendment where there has been an application of physical force or a show of police authority to which he submits and where, given the circumstances, a reasonable person would have believed he was not free to leave.²³

In *Hodari D.*, during the officers' pursuit of a youth, he tossed away an object that police later identified as contraband. The youth moved to suppress the contraband as the fruit of an illegal seizure.²⁴ However, the Court concluded that the fleeing subject abandoned the material before he

¹⁹ *Id.*

²⁰ *Abel v. United States*, 362 U.S. 217, 240-41(1960).

²¹ *Edwards v. Virgin Islands*, 2004 U.S. Dist. LEXIS 25110, 1 (D.V.I. Nov. 30, 2004)(internal quotation marks omitted).

²² *People of the V.I. v. Thomas*, 2014 V.I. LEXIS 28, 7 (V.I. Super. Ct. May 19, 2014) (citing *Government v. Morton*, 15 V.I. 418, 421 (Terr. Ct. 1978)).

²³ *Edwards v. Virgin Islands*, 2004 U.S. Dist. LEXIS 25110, 1 (D.V.I. Nov. 30, 2004)

²⁴ *Cal. v. Hodari D.*, 499 U.S. 621, 622-23 (1991)

submitted to the show of authority and that in those circumstances the police did not recover it as the fruit of a seizure implicating the Fourth Amendment.²⁵

Here, Pierre was not seized because he was not subject to police authority when he fled the scene with the backpack during the traffic stop. During his flight, Pierre tossed the backpack into a field before the police officers could apprehend him. Ergo, Pierre had no Fourth Amendment interest in the backpack when the officers retrieved it. Therefore, the contents of the backpack will not be suppressed. The Defendants have not met their burden of establishing that their Fourth Amendment rights were violated.

CONCLUSION

For the reasons explicated above, the Court will deny the Motion to Suppress. The traffic stop was lawful, the *Terry* frisk was legal, and Fourth Amendment protections do not extend to the contents of the abandoned backpack. The Court will issue an Order consistent with this Opinion.

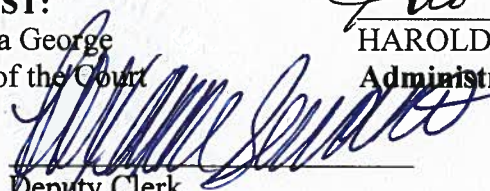
DATED this 3rd day of August, 2017.

ATTEST:

Estrella George
Clerk of the Court


HAROLD W. L. WILLOCKS
Administrative Judge of the Superior Court

By:


Deputy Clerk

Dated:

8/14/17

²⁵ *Id.* at 629.