

The following facts are based on the testimony elicited at the suppression hearing. On the evening of August 18, 2012, a robbery occurred at the Eat @ Cane Bay Restaurant on the island of St. Croix. At approximately 8:57 p.m., 9-1-1 dispatcher Erma David received an emergency call regarding the robbery, indicating that three or four individuals stole money

and personal property from the restaurant and its patrons. The individuals then fled the scene of the robbery in a gray Kia Rio with license plate CEM-395, belonging to a restaurant patron. The vehicle was seen traveling in a direction towards the Mon Bijou area. That information was transmitted by police radio and St. Croix Police Chief Christopher Howell and Police Officer Elsworth Jones responded by traveling to the scene of the incident.

En route to the scene of the robbery, the officers observed a small vehicle on Canaan Ridge Road. As they approached the vehicle, shots were fired at the officers, resulting in the officers being injured. At approximately 9:21 p.m., a gray Kia Rio bearing license plate CEM-395 was recovered in the vicinity of Scenic Drive West in the bushes. The officers concluded that the suspects fled on foot and were potentially armed. The officers secured the roads in the area where the shooting took place and canvassed the area throughout the night to search for potential witnesses and suspects.

After sunrise on August 19, 2012, Detective Frankie Ortiz ("Detective Ortiz") was canvassing the Frangipani area in his vehicle to search for potential witnesses and suspects when he observed an African American male with no shirt and bloody jeans walking near the Frangipani Bridge. Detective Ortiz passed the individual and turned his vehicle around to further investigate but the individual was no longer near the bridge when he returned.

On August 19, 2012, at approximately 7:11 a.m., 9-1-1 dispatcher Erma David called Sergeant Freddy Ortiz ("Sergeant Ortiz") to report an African American male near the Frangipani Bridge. David was not on duty at the time of the call but was familiar with the investigation because she had worked the night before. David was traveling through the Frangipani area on her way to a local laundromat when she observed an unfamiliar dark

skinned, African American male with braided hair emerge shirtless from the bush and onto the road. David further observed that the individual had welts on his upper body and the bottom of his pants were torn and dirty.

When he received David's call, Sergeant Ortiz was leading a team of officers searching the bushes and area as a result of the robbery and shooting. These officers were aware that two other officers were shot and that the suspects were armed and dangerous. In response to David's call, Sergeant Ortiz and Corporal Luis Encarnacion traveled to the Frangipani Bridge area. Upon arrival, the officers observed an African American male walking in the Frangipani residential area who fit the description provided by David. The officers observed that the individual's clothes were torn and dirty with brush, leaves, and twigs, and that the individual had cuts on his forearms. He was the only person on the road at that time.

The officers followed the individual to a residence in the Frangipani area. The individual entered the gate to the residence and sat on the front steps. Prior to approaching, Sergeant Ortiz requested backup via 9-1-1 Central Dispatch. Upon approaching the individual, the officers observed the individual shouting the name of a woman alleged to be at the residence. The officers also observed a bulge in the individual's pocket. Sergeant Ortiz asked the individual his name and what he was doing there. The individual identified himself as Alphonso Butler and responded that he was there to visit a friend. An occupant of the residence then came out and responded that no one by the name Butler was shouting lived at the residence and that he did not know Butler.

Shortly thereafter, several officers arrived to the scene in response to Sergeant Ortiz's request for backup, including Detective Frankie Ortiz. Detective Ortiz was familiar with the

police investigation of the robbery and shooting that had taken place the night before. Detective Ortiz knew that the suspects in those crimes had not been apprehended and were presumed to be armed. When Detective Ortiz approached Sergeant Ortiz and Corporal Encarnacion, he immediately recognized Butler as the same individual he had seen earlier that morning near the Frangipani Bridge when he was canvassing the area for suspects. Detective Ortiz also recognized Butler from a previous encounter and therefore knew him to be a convicted felon.

Detective Ortiz observed money in Butler's back pocket as Sergeant Ortiz and Corporal Encarnacion instructed Butler to place his hands on the fence surrounding the residence. At the suppression hearing, Detective Ortiz testified that Butler failed to comply with police instructions and that he consequently conducted a pat-down search of Butler for officer safety. During the pat-down search, Detective Ortiz felt a bulge in Butler's pocket and immediately believed it to be a large amount of currency, a round of ammunition, and multiple cell phones. Based on his knowledge that Butler was a convicted felon, Detective Ortiz knew that it was unlawful for Butler to possess a firearm or ammunition. Detective Ortiz also knew, based on information gathered from the other officers, that money and electronic devices were taken from the patrons at the Eat @ Cane Bay Restaurant during the robbery. Detective Ortiz subsequently arrested Butler.

Butler was transported to the Criminal Investigation Bureau. Lieutenant Dino Herbert advised Butler of his *Miranda* rights to which Butler acknowledged and signed a waiver agreeing to talk to Lieutenant Herbert. At the suppression hearing, Lieutenant Herbert testified that Butler admitted to his participation in the crimes, indicated who was

involved, and identified fellow participants in a photo array.

On September 18, 2014, the People filed an Information charging Butler with multiple criminal offenses. On September 28, 2012, the People filed a First Superseding Information charging Butler with the following: (1) robbery in the first degree in violation of 14 V.I.C. § 1862(2) & 11(a); (2) assault in the first degree in violation of 14 V.I.C. § 295(1) & (3) & 11(a); (3) grand larceny in violation of 14 V.I.C. § 1083(a) & 11(a); (4) possession of an unlicensed firearm during a crime of violence in violation of 14 V.I.C. § 2253(a) & 11(a); (5) attempted murder in the first degree in violation of 14 V.I.C. § 922(a)(1) & 331 & 11(a); and (6) mayhem in violation of 14 V.I.C. § 1341(a)(2) & 11(a).

On February 21, 2014, Defendant filed a motion requesting the Court suppress the evidence seized from him as a result of the stop and search as well as statements made during police interrogation. The People filed a response on March 14, 2014. The Court held a suppression hearing on April 9, 2014. Erma David, Sergeant Freddy Ortiz, Detective Frankie Ortiz, and Lieutenant Dino Herbert testified at the suppression hearing.

II. LEGAL STANDARD

The Fourth Amendment to the United States Constitution prohibits unreasonable searches and seizures. U.S. CONST. amend. IV. "Generally, for a seizure to be reasonable under the Fourth Amendment, it must be effectuated with a warrant based on probable cause." *United States v. Robertson*, 305 F.3d 164, 167 (3d Cir. 2002) (citing *Katz v. United States*, 389 U.S. 347, 356-57)). Warrantless searches, however, "are *per se* unreasonable under the Fourth amendment subject to a few specifically established and well delineated exceptions."

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).

“As a general rule, the burden of proof is on the defendant who seeks to suppress evidence.” *United States v. Johnson*, 63 F.3d 242, 245 (3d Cir. 1995). That burden, however, shifts to the government to show that the search or seizure was reasonable once the defendant has established a basis for his motion, i.e. the search or seizure was conducted without a warrant. *Id.* It is undisputed that the police officers conducted a search and seizure of the Defendant. Accordingly, the People bear the burden of proof to demonstrate that the actions of the police officers were reasonable under the Fourth Amendment.

III. DISCUSSION

Butler contends that the search and seizure were unlawful. Butler maintains that the information that the arresting officer possessed at the time of his detention was insufficient for the stop and arrest. According to Butler, the sole information possessed by the arresting officer, “that a suspicious male was walking on the road,” was relayed to the officer through the 9-1-1 operator. Since the People are unable to show that the arresting officer had neither reasonable suspicion to stop nor probable cause to arrest, Butler maintains that the evidence seized should be suppressed.

The People contend that the evidence seized should not be suppressed for the following reasons: (1) the law enforcement officers had reasonable suspicion to conduct a stop and pat down of Butler; (2) pursuant to 23 V.I.C. § 488, the police officers possessed the authority to conduct a limited search of Butler; and (3) the police officers possessed probable cause to search Butler and seize the evidence in his possession. The resolution of these issues are discussed below.

A. *Sergeant Ortiz and Corporal Luis Encarnacion had Reasonable Suspicion to Stop Butler.*

Butler contends that the police officers stopped him without a particularized and objective basis for believing that he was a suspect in criminal activity. The People contend that the police officers' stop of Butler was justified by reasonable suspicion based on the tip provided by 9-1-1 dispatcher Erma David which was corroborated by the officers' observations, the uncorroborated claim by Butler that he was at the residence to visit a friend, the bulge in Butler's pocket, and Butler's physical appearance. Thus, the People must demonstrate that the investigative stop of Butler fits under one of the exceptions to the warrant requirement.

One such exception is an investigatory stop conducted in accordance with *Terry v. Ohio*, 392 U.S. 1 (1968). Under *Terry*, law enforcement officers may conduct an investigatory stop when justified by a reasonable suspicion that an individual is engaged in criminal activity. *Terry*, 392 U.S. at 21, 28-31. Reasonable suspicion exists when there are "specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant [the] intrusion." *Id.* at 21. An "officer . . . must be able to articulate something more than an 'inchoate and unparticularized suspicion or hunch.'" *United States v. Sokolow*, 490 U.S. 1, 7 (1989) (quoting *Terry*, 392 U.S. at 27). The Supreme Court of the United States cautions that the concept of reasonable suspicion is not "readily, or even usefully, reduced to a neat set of legal rules." *Sokolow*, 490 U.S. at 7. Consequently, "[c]alculating whether an officer has reasonable suspicion to warrant a stop and search is often an imprecise judgment." *Robertson*, 305 F.3d at 168. Accordingly, "[c]ourts give considerable deference to police officer's determinations of reasonable suspicion. . ." *United*

States v. Mosley, 454 F.3d 249, 252 (3d Cir. 2006). Thus, “[i]n determining whether there was a basis for reasonable suspicion, a court must consider the totality of the circumstances, in light of the officer’s experience.” *United States v. Givan*, 320 F.3d 452, 458 (3d Cir. 2003). Reasonable suspicion may be the result of several factors, including specialized knowledge and investigative inferences, personal observation of suspicious behavior, and information received from reliable sources. *Blyden v. People*, 53 V.I. 637, 649 (2010) (citing *United States v. Nelson*, 284 F.3d 472, 478 (3d Cir. 2002)). Evidence obtained as a result of a “Terry stop” that does not meet this exception must be suppressed as “fruit of the poisonous tree.” *United States v. Brown*, 448 F.3d 239, 244 (3d Cir. 2006) (citing *Wong Sun v. United States*, 371 U.S. 471, 487-88 (1963)).

1. *Erma David’s Tip Supports the Investigatory Stop of Butler.*

Where officers are told to investigate a situation by a police dispatcher, “the knowledge of the dispatcher is imputed to the officers in the field when determining the reasonableness of the Terry stop.” *United States v. Torres*, 534 F.3d 207, 210 (3d Cir. 2008). However, where an off-duty dispatcher places a call to police regarding suspicious behavior, the dispatcher must assume the role of a citizen informant. *See Comm. v. Riggieri*, 438 Mass. 613, 616-17 (2003) (holding that an off-duty police officer was found to be a reliable citizen informant when he reported a vehicle being driven erratically and thus information relayed by dispatch to an on-duty police officer was sufficient to stop the vehicle). Reliable information from a citizen informant may create reasonable suspicion and justify an investigatory stop. *Alabama v. White*, 496 U.S. 325, 326–27 (1990). Courts must consider both the reliability and content of the tip, as well as other surrounding circumstances. *United States v. Valentine*, 232 F.3d 350, 355 (3d Cir. 2000).

Here, several factors support the reliability and content of David's tip. First, David was an identifiable citizen informant who could be held responsible if she was found to fabricate details of her observations. *Florida v. J.L.*, 529 U.S. 266, 270 (2000) (stating that one of the characteristics of a known informant that contributes to reliability is that he or she can be held responsible if the allegations turn out to be fabricated). Second, David's description of Butler was based on her personal observation of what she perceived as suspicious behavior in light of the on-going police investigation. See *United States v. Goodrich*, 450 F.3d 552, 560 (3d Cir. 2006) ("A description, in other words, must be considered with reference to the totality of the circumstances."). Third, Sergeant Ortiz and Corporal Encarnacion's independent corroboration of David's tip further enhances her reliability. *Illinois v. Gates*, 462 U.S. 213 (1983) (stating that corroborating the details of an informant's tip is an important step in establishing the veracity of an informant).

Based on the foregoing reasons, the Court finds that David's tip, that a shirtless, dark-skinned, African American male with welts on his upper body and torn and dirty clothes emerged from the bush in the Frangipani area, constituted reliable information which was corroborated by the officers. The Court next finds it pertinent to determine when the stop occurred.

2. *The Investigatory Stop Occurred when the Officers Approached and Questioned Butler.*

The Fourth Amendment's protection extends to all seizures, including brief investigatory stops. *United States v. Johnson*, 620 F.3d 685, 690 (6th Cir. 2010). A person is seized when there is either (a) "a laying on of hands or application of physical force to restrain movement, even when it is ultimately unsuccessful," or (b) submission to "a show of authority." *California v. Hodari D.*, 499 U.S. 621, 626 (1991). "[T]he test for existence of a

'show of authority' is an objective one: not whether the citizen perceived that he was being ordered to restrict his movement, but whether the officer's words and actions would have conveyed that to a reasonable person." *Id.* at 628 (citing *United States v. Mendenhall*, 446 U.S. 544, 554 (1980)). Whether an encounter is a seizure or consensual depends on the totality of the circumstances including "the threatening presence of several officers, the display of a weapon by an officer, some physical touching of the person of the citizen, or the use of language or tone of voice indicating that compliance with the officer's request might be compelled." *Mendenhall*, 446 U.S. at 554. In this case, there is no indication that officers used physical force to restrain Butler prior to the pat-down by Detective Ortiz. Therefore, the relevant inquiry here is at what point would the officers' show of authority have caused a reasonable person to believe he was not free to leave.

Here, Sergeant Ortiz and Corporal Encarnacion responded to David's call by traveling to the Frangipani area. The officers knew that the suspects from the robbery and shooting were still at large and likely on foot. Upon observing an individual matching the description provided by David, the officers followed Butler to the front of a residence in the Frangipani residential area. Sergeant Ortiz testified that Butler's clothes were torn, he had brush on him, and there were fresh cuts on his forearms. The officers also observed a bulge in the Butler's pocket. Butler was shouting the name of a woman at the residence when the officers first observed him but called for back-up before approaching. Sergeant Ortiz asked Butler his name and what he was doing there. Butler identified himself and responded that he was there to visit a friend. An occupant of the residence then came out and notified the officers that no one by that name lived at the residence and that he did not know Butler. Additional police officers arrived shortly after Sergeant Ortiz and Corporal Encarnacion approached

Butler, including Detective Frankie Ortiz. Detective Ortiz testified that when he arrived to the scene, Sergeant Ortiz and Corporal Encarnacion were instructing Butler to place his hands on the fence. Detective Ortiz testified that Butler failed to comply with police instructions and that he consequently conducted a pat-down search of Butler for officer safety.

The Court finds that a reasonable person in Butler's position would not have felt free to leave when Butler was approached and questioned by the officers. When questioning Butler, Sergeant Ortiz and Corporal Encarnacion stood in between Butler and the fence, essentially blocking Butler's ability to terminate the encounter and exit the gate. Although the police questioning itself did not implicate Butler's Fourth Amendment rights, the Court finds that under the totality of the circumstances, the officers' physical blockade of the exit and questioning were a show of authority to which Butler submitted by failing to terminate the encounter and by answering the questions. *See United States v. Crandell*, 668 F.Supp.2d 635, 647-48 (D.N.J. 2009) (stating that three officers standing about two feet from defendant blocking his ability to continue walking in any direction and requesting to conduct a pat-down constituted a show authority to which defendant submitted). The Court finds that this conduct constituted a seizure under the Fourth Amendment.

Having determined that Sergeant Ortiz and Corporal Encarnacion seized Butler prior to the arrival of the other officers, the Court must determine whether Sergeant Ortiz and Corporal Encarnacion had reasonable suspicion to justify the seizure. Several factors weigh in support of a finding that the officers possessed reasonable suspicion to conduct an investigatory stop. First, prior to the call from Erma David, the officers knew from their participation in the investigation that the suspects from the robbery and shooting were still

at large, likely on foot, and presumably armed. *See United States v. Robertson*, 305 F.3d 164, 168 (3d Cir. 2002) (“It is well settled that reasonable suspicion can be based on information gathered from another person.”); *see also Johnson v. Campbell*, 332 F.3d 199, 206 (3d Cir. 2003) (noting that “officers may rely on a trustworthy second hand report, if that report includes facts that give rise to particularized suspicion”). Second, the officers observed that Butler matched the description given by Erma David—that a shirtless African American male with marks on his body wearing torn and dirty clothes was walking through the Frangipani area. Third, Butler was found walking near the scene of the police shooting several hours earlier. *See United States v. Savage*, 677 F.Supp.2d 756, 762 (E.D. Pa. 2009) (noting that in determining whether officer had reasonable suspicion to support an investigatory stop, the court may consider “the temporal and geographic proximity of the suspect to the crime scene; the area in which the suspect is observed; and the similarity between the suspect's physical appearance and the details of the reported descriptions.”). Fourth, Butler gave the officers a questionable explanation as to why he was at the Frangipani residence. *See United States v. Summers*, 268 F.3d 683, 687 (9th Cir. 2001) (reasonable suspicion to detain individual who provided questionable explanation during consensual questioning near charity collection station late at night). Thus, based on the totality of the circumstances, the Court that the officers articulated specific facts which, taken together, establish a reasonable and objective basis to perform a *Terry* stop.

B. Detective Frankie Ortiz had Reasonable Suspicion to Frisk Butler.

Butler contends that the police officers stopped him without a particularized and objective basis for believing that he was involved in criminal activity. Therefore, Butler contends that he should not have been subjected to a pat-down search or “frisk,” pursuant

to *Terry*. Although the People assert that the officers had reasonable suspicion to conduct a *Terry* frisk, they also contend that 23 V.I.C. § 488 permits U.S. Virgin Islands police officers to approach and conduct a limited search of a person who they reasonably believe is carrying an unlicensed firearm and poses a danger to the officer or others. Therefore, the People argue that the pat-down search of Defendant was lawful. The Court will address the parties' arguments in turn.

In order to be valid under *Terry*, a pat-down search must be based on a reasonable belief or suspicion that the person is armed and presently dangerous. *Ybarra v. Illinois*, 444 U.S. 85, 93 (1979). The test 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. In determining whether the officer acted reasonably under the circumstances, "due weight must be given, not to his inchoate and particularized suspicion or 'hunch,' but to the specific reasonable inferences which he is entitled to draw from the facts in light of his experience." *Id.*

Here, Detective Ortiz was involved in the police investigation of the robbery and shooting that had taken place on August 18, 2012. On the morning of August 19, 2012, Detective Ortiz was canvassing the Frangipani area to search for suspects to the robbery and shooting when he observed an individual walking along the road. Based on his participation in the investigation, Detective Ortiz knew that the suspects had taken money, electronic devices, and other personal property during the armed robbery. He was also aware that the suspects had not been apprehended and were presumed to be on foot and in possession of firearms. Consequently, upon passing the individual on the road, Detective Ortiz turned his

vehicle around to investigate further, but the individual was gone before Detective Ortiz returned.

Later on the morning of August 19, 2014, Detective Ortiz responded to the request for backup made by Sergeant Ortiz. When Detective Ortiz arrived to the residence, he recognized Butler to be the individual he had observed earlier that morning and knew from a previous encounter that he was a convicted felon. Detective Ortiz also observed money in Butler's back pocket as Sergeant Ortiz and Corporal Encarnacion instructed Butler to place his hands on the fence surrounding the residence. Detective Ortiz testified that Butler was uncooperative and did not comply with the instructions. Detective Ortiz then conducted a pat-down search of Butler for officer safety.

Based on Detective Ortiz's observation of money in Butler's back pocket and his personal knowledge gathered from the investigation that money and electronic devices were taken from the robbery victims, Detective Ortiz had reason to believe that Butler was involved in the robbery and shooting. *See United States v. Howard*, 210 F.Supp.2d 503, 515-16 (D. Del. 2002) (stating that although money is not *per se* contraband and a person can possess a substantial amount of cash for any number of lawful reason, the incriminating nature of a sum of money may be immediately apparent if, for example, the underlying crime is bank robbery). Additionally, Detective Ortiz knew from his participation in the investigation that the suspects were presumed to be armed. Based on Detective Ortiz's observation of the money in Butler's pocket when he approached him, the close proximity of Butler to the shooting, Butler's torn and dirty clothes which were consistent with him spending the night in the bush to elude police, and Butler's failure to cooperate when

instructed to place his hands on the fence, the Court finds that Detective Ortiz possessed a reasonable suspicion that Butler had been involved in the robbery and shooting and thus was armed and dangerous. Therefore, under the totality of the circumstances, the Court finds that Detective Ortiz conducted a valid *Terry* frisk that did not violate the Defendant's Fourth Amendment rights.¹ See *United States v. Hensley*, 469 U.S. 221, 235 (1985) (stating that police officers are "authorized to take such steps as [are] reasonably necessary to protect their personal safety and to maintain the status quo during the course of the stop.").

C. The Officers had Probable Cause to Arrest Butler and Seize the Evidence.

Next, Butler asserts that the officers lacked probable cause to arrest him and seize the evidence. Probable cause to arrest exists when the 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 or is being committed by the person to be arrested. *United States v. Cruz*, 910 F.2d 1072, 1076 (3d Cir. 1990) (citing *Dunaway v. New York*, 442 U.S. 200, 208, (1979)). Officers may search and seize objects on an arrestee's person if made contemporaneous to a lawful arrest. *Chimel v. California*, 395 U.S. 752, 763 (1969) (opining that "it is entirely reasonable for the arresting officer to search for and seize any evidence on the arrestee's person in order to prevent its concealment or destruction."); see also *United States v. Robinson*, 414 U.S. 218, 235 (1973) ("A custodial arrest of a suspect based on probable cause is a reasonable intrusion under the Fourth Amendment; that intrusion being lawful, a search incident to the arrest requires no additional justification.").

¹Because the Court finds that Detective Ortiz possessed reasonable suspicion to conduct a lawful pat-down search of Butler, the Court finds it unnecessary to address the People's argument that 23 V.I.C. § 488 authorized a pat-down search.

Moreover, under the “plain feel doctrine”, if an officer lawfully pats down a suspect’s outer clothing and the officer’s sense of touch makes it immediately apparent that the felt object is contraband, the contraband detected may be seized. *Minnesota v. Dickerson*, 508 U.S. 366, 375 (1993) (“If a police officer lawfully pats down a suspect’s outer clothing and feels an object whose contour or mass makes its identity immediately apparent, there has been no invasion of the suspect’s privacy beyond that already authorized by the officer’s search for weapons; if the object is contraband, its warrantless seizure would be justified by the same practical considerations that inhere in the plain-view context.”). A lawful pat-down pursuant to *Terry* is limited “to that which is necessary for the discovery of weapons which might be used to harm the officer or others nearby.” *Terry*, 392 U.S. at 26. To assure himself that the suspect does not have weapons, an officer is allowed “to slide and manipulate an object in the suspect’s pocket” until he is reasonably able to eliminate the possibility that the object is a weapon. *United States v. Yamba*, 506 F.3d 251, 259 (3d Cir. 2007). If the officer develops probable cause to believe that the object is contraband prior to eliminating the possibility that it is a weapon, he may lawfully perform a more intrusive search. *Id.* If the officer discovers the object to be contraband, he may seize it and the contraband will be admissible against the suspect. *Id.*

Here, Detective Ortiz conducted a lawful pat down of Butler under the reasonable belief that he was armed and dangerous. During the pat-down, Detective Ortiz felt what he immediately believed, based on his sixteen years of experience on the police force, to be ammunition, a large amount of money, and multiple cell phones. Detective Ortiz knew that Butler was a convicted felon and that it was unlawful for him to be in possession of

ammunition.² Further, Detective Ortiz understood these items to be evidence related to the robbery because he was aware that money and electronic devices had been taken from restaurant patrons during the robbery. Based on the totality of the circumstances, the Court finds that Detective Ortiz possessed a reasonable belief that the objects he felt were contraband and, consequently, that a criminal offense had been committed by Butler. *See United States v. Crooker*, 688 F.3d 1, 8 (1st Cir. 2012) (finding that officers had probable cause to seize ammunition found while lawfully searching defendant's tackle box because officers knew that defendant was unable to lawfully possess ammunition); *United States v. McCrae*, 234 F. App'x 150, 152 (4th Cir. 2007) (holding that an officer had probable cause to arrest defendant because at the time of the pat down search, the officer knew that a drug store had been robbed and the officer immediately recognized the lump in defendant's pocket to be a pocketful of pills). Thus, Detective Ortiz had sufficient probable cause to conduct a warrantless arrest of Butler and seize the evidence.

D. Butler's Statements to the Police were Made Knowingly and Voluntary and not Coerced.

Butler argues that after he was detained and arrested, he was taken to the police station where officers used physical force to extract incriminating evidence from him. The People maintain that Butler knowingly, intelligently, and voluntarily made his statement to police. Therefore, the Court must determine whether Butler's statements were the product of coercion and in violation of his Fifth Amendment rights.

The Fifth Amendment of the U.S. Constitution provides in relevant part that "[n]o person . . . shall be compelled in any criminal case to be a witness against [himself]." U.S.

² Under Virgin Islands law, convicted felon is prohibited from possessing ammunition. 23 V.I.C. § 456a(a)(1).

CONST. amend. V.³ The landmark Supreme Court case, *Miranda v. Arizona*, 384 U.S. 436 (1966), established procedural safeguards for the manner in which an accused person is questioned while in custody. *Miranda* warnings require that a suspect be informed of his right against self-incrimination before being subject to any questioning. *Id.* at 444. Law enforcement officials must administer *Miranda* warnings where a person is subject to a custodial interrogation. *Id.* Custodial interrogation refers to “questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way.” *Id.* Where the interrogation is conducted without the presence of an attorney and a statement is taken, the government has the burden “to demonstrate that the defendant knowingly and intelligently waived his privilege against self-incrimination and his right to retained or appointed counsel.” *Id.* at 475.

Waiver must be “voluntary in the sense that it was the product of a free and deliberate choice rather than intimidation, coercion, or deception,” and “made with a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it.” *Moran v. Burbine*, 475 U.S. 412, 421 (1986). The Court must examine the totality of the circumstances in order to determine if a confession was coerced or involuntary. *Schneckloth v. Bustamonte*, 412 U.S. 218, 226 (1973). A statement is involuntary when the suspect's “will was overborne in such a way as to render his confession the product of coercion.” *Arizona v. Fulminante*, 499 U.S. 279, 288 (1991). In evaluating the totality of the circumstances, courts should examine “some traditional indicia of coercion,” including: (1)

³The Fifth Amendment is made applicable to the Virgin Islands by the Revised Organic Act of 1954, as amended, § 3, 48 U.S.C. §§ 1541-1645 (1994), reprinted in V.I. CODE ANN., Historical Documents, Organic Acts, and U.S. Constitution at 73-177 (1995 & Supp. 1997) (preceding V.I. CODE ANN. tit. 1).

the duration and conditions of detention; (2) the attitude of the police toward the suspect; (3) the suspect's maturity, education, physical condition and mental state; (4) the suspect's background and experience; and (5) the suspect's prior dealings with the criminal justice system. *Colorado v. Spring*, 479 U.S. 564, 574 (1987).

During closing arguments at the suppression hearing, Butler, through his counsel, conceded that Lieutenant Herbert did not coerce any statements from him at the police station following his arrest. The record reflects that Lieutenant Herbert advised Butler of his *Miranda* rights, and Butler knowingly and intelligently signed a waiver agreeing to talk to Lieutenant Herbert. *See Berghuis v. Thompkins*, 560 U.S. 370, 384 (2010) ("Where the prosecution shows that a *Miranda* warning was given and that it was understood by the accused, an accused's uncoerced statement establishes an implied waiver of the right to remain silent."). Therefore, the Court finds that Butler's statements to the police were lawfully given and not in violation of his Fifth Amendment rights.

IV. CONCLUSION

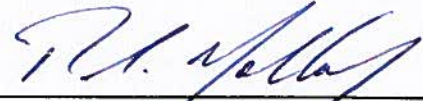
After a review of the record and the totality of the circumstances surrounding this matter, the Court finds that the People have proven the existence of a recognized exception to the warrant requirement. At the April 9, 2014 suppression hearing, Sergeant Ortiz provided specific, articulable facts leading to a reasonable suspicion that Butler was involved in criminal activity at the time he was stopped by the officers. Detective Ortiz provided specific, articulable facts leading to a reasonable suspicion that Butler was armed and dangerous. When Detective Ortiz conducted a lawful pat-down of Butler, he immediately understood the objects he felt in Butler's pockets to be contraband specifically related to the

robbery, giving Detective Ortiz probable cause to arrest Butler and seize the evidence.

Lieutenant Herbert subsequently conducted a lawful custodial interrogation of Butler.

Accordingly, Defendant's motion to suppress will be denied. An appropriate Order follows.

DATED: October 3, 2014



ROBERT A. MOLLOY
Judge of the Superior Court

ATTEST:

ESTRELLA GEORGE
Acting Clerk of the Court

By: 

Court Clerk Supervisor

Dated: 10/3/14

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

PEOPLE OF THE VIRGIN ISLANDS,

Plaintiff,

v.

ALPHONSO BUTLER,

Defendant.

) **CASE NO. SX-12-CR-387**
)
) **CHARGES:**
)
) **ROBBERY IN THE FIRST DEGREE;**
) **ASSAULT IN THE FIRST DEGREE;**
) **GRAND LARCENY; POSSESSION OF**
) **AN UNLICENSED FIREARM DURING A**
) **CRIME OF VIOLENCE; ATTEMPTED**
) **MURDER IN THE FIRST DEGREE;**
) **MAYHEM PRINCIPAL**
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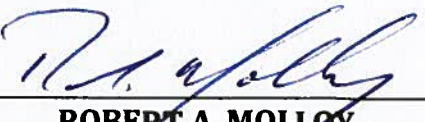
ORDER

THIS MATTER comes before the Court on Defendant's Motion to Suppress filed on February 21, 2014. The People of the Virgin Islands filed an opposition on March 14, 2014. The Court held a suppression hearing on April 9, 2014. For the reasons stated in the accompanying Memorandum Opinion dated October 3, 2014, it is hereby

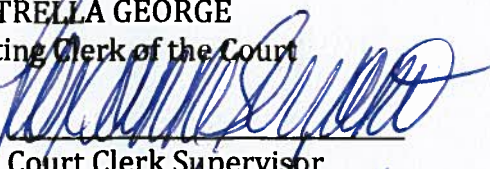
ORDERED that Defendant's Motion to Suppress the is **DENIED**; it is further

ORDERED that copies of this Order shall be provided to all counsel of record.

Dated: October 3, 2014


ROBERT A. MOLLOY
Judge of the Superior Court

ATTEST:
ESTRELLA GEORGE
Acting Clerk of the Court

By: 
Court Clerk Supervisor

Dated: 10/3/14