

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

PEOPLE OF THE VIRGIN ISLANDS,	)	
	)	
Plaintiff,	)	CRIMINAL NO. ST-12-CR-544
v.	)	
	)	V.I. Code Ann. tit. 14, §§ 2253(a), 11(a)
GERALD G. LEWIS,	)	(2 Counts)
(D.O.B.: 02-24-94)	)	
Defendant.	)	
PEOPLE OF THE VIRGIN ISLANDS,	)	
	)	
Plaintiff,	)	CRIMINAL NO. ST-12-CR-547 ✓
v.	)	
	)	V.I. Code Ann. tit. 14, §§ 2253(a), 11(a)
DMARI J. HEYLIGER,	)	(2 Counts); 2101(a)
(D.O.B.: 02-08-92)	)	
Defendant.	)	

MEMORANDUM OPINION

THIS MATTER is before the Court on Defendant Dmari J. Heyliger's Motion for Suppression of Evidence, filed on February 1, 2013, joined by Codefendant Gerald G. Lewis on February 13, 2013.¹ After consideration of the evidence presented during the suppression hearing, the Court concludes that the police were not justified in performing a pat down search of Heyliger. Therefore, the glock firearm and magazine, which was found during the course of the search of Heyliger, and bag found in the automobile as well as its contents, the glock magazine and the .38 caliber firearm, must be suppressed as evidence against Heyliger. However, Lewis, the passenger in the automobile, does not have standing to challenge the search, and the weapons, bag and magazines recovered by the police during the search of Heyliger and the automobile will not be suppressed as to Lewis. For these reasons, the Court will grant the Motion to Suppress as to Heyliger and deny it as to Lewis.

FACTS

In the early morning of September 29, 2012, in the area of Raphune Hill near the Lockhart Residence, the V.I. Police Department was conducting a traffic initiative. At about 1:25 a.m., Officer Kent Hodge observed a green Chevy Malibu, with License Plate No. TEE-570, with one headlight and the driver without a seatbelt. Officer Hodge pulled the car over due

¹ The People were represented by Assistant Attorney General Douglas Sprotte, Esq. Defendant Dmari Heyliger was represented by Helen Kim, Esq.. Defendant Gerald Gregory Lewis was represented by Paula D. Norkaitis, Esq., Territorial Public Defender.

to the observed traffic violations. Defendant Dmari Heyliger was driving the vehicle and Defendant Gerald Lewis was in the front passenger seat.

Officer Hodge approached the vehicle. Officer Reese Carty, Heyliger's aunt, also approached the vehicle to talk to Heyliger about not wearing a seatbelt. Officer Hodge asked Heyliger for his driver's license and registration. Heyliger stated that he did not have his driver's license. Officer Hodge asked Heyliger to step out of the vehicle and told Heyliger to walk to the front of the vehicle. Though Heyliger was cooperative throughout the traffic stop, Officer Hodge then told Agent Derrick Greaves, Sr. to search Heyliger. The Police Department has a policy of frisking or patting down drivers of stopped vehicles late at night regardless of whether the officers have a reasonable suspicion that the drivers are armed and dangerous.² Though Agent Greaves stated that he was not in fear for his safety, he approached Heyliger and stood shoulder-to-shoulder with him in preparation for the search.

Before beginning the pat down, Agent Greaves asked Heyliger if he had anything. Heyliger then stated that he had a gun in his pocket. Agent Greaves patted Heyliger down and felt a gun in Heyliger's front right pants pocket. Greaves yelled out "gun!" and removed the gun from Heyliger's pocket. Heyliger was given his Miranda warnings, and placed under arrest.

Upon hearing the word, "gun," Officer Kendelth Wharton approached the vehicle on the passenger side and asked Lewis to step out, so that a search of the vehicle could be conducted. During the search, the officers found a black bag on the floor of the front passenger seat. When the bag was opened, a gun was found inside. Lewis was then given his Miranda warnings, searched, and placed under arrest.

LEGAL ANALYSIS

The pat down search of Heyliger was not conducted in accordance with the Fourth Amendment, and the firearm seized on Heyliger's person and the bag containing the magazine and firearm seized from the automobile must be suppressed.

The first issue before the Court is the legality of the pat down of Heyliger subsequent to the traffic stop. The People argue that the pat down was justified because Heyliger admitted that he was armed prior to Agent Greaves physically searching Heyliger, though the People concede that the frisk would have been unjustified if conducted without Heyliger's admission. 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.³ However, "[t]o justify a patdown of the driver or a passenger

² Officer Reese Carty testified that she does not believe that a pat down is a search. As the United States Supreme Court stated in *Terry v. Ohio*, "it is nothing less than sheer torture of the English language to suggest that a careful exploration of the outer surfaces of a person's clothing all over his or her body in an attempt to find weapons is not a 'search.' . . . It is a serious intrusion upon the sanctity of the person, which may inflict great indignity and arouse strong resentment, and it is not to be undertaken lightly." 392 U.S. 1, 16-17 (1968).

³ *Arizona v. Johnson*, 555 U.S. 323, 327 (2009).

during a traffic stop, . . . the police must harbor reasonable suspicion that the person subjected to the frisk is armed and dangerous.”⁴ In *People v. Phillips*, this Court stated that 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.”⁵

While the stop of Heyliger was justified by the observed traffic violations (i.e., one headlight and driving without a seatbelt), the justification for the stop did not provide justification to frisk or pat down Heyliger.⁶ Officer Hodge testified that either he or another officer instructed Agent Greaves to pat down Heyliger after Heyliger was told to exit the vehicle.⁷ Agent Greaves stated that Heyliger was cooperative and calm throughout the duration of the traffic stop. Agent Greaves also stated that he was not in fear for his safety or the safety of the other officers; he was merely following the directions of another officer when he began to search Heyliger. Neither Officer Hodge nor Agent Greaves articulated any facts giving rise to a reasonable suspicion that Heyliger was armed and dangerous. In fact, Officer Carty testified that it is the general policy of the V.I. Police Department to frisk any driver of a stopped vehicle late at night whether the officers have a reasonable fear for their safety or not. Since the stop occurred at about 1:25 a.m. on September 29, 2012, the Court concludes that the frisk of Heyliger was only conducted in accordance with the Police Department’s policy, not in the interest of officer security.

The Court notes that the People raise a curious argument, since they submit that the search did not begin until after Heyliger admitted that he had a weapon in his front pocket, thereby creating the requisite suspicion to justify the search. During the hearing, Agent Greaves testified that he was directed by another officer at the scene to search Heyliger once Heyliger was ordered to exit the vehicle. Heyliger was also in close range to hear the instructions of the officer. Before actually starting the pat down, Agent Greaves asked Heyliger if he had any weapons and Heyliger responded that he had a gun in his pocket. The agent then searched Heyliger, found a gun in Heyliger’s pocket, and seized it. Although the officer states that he had not started the pat down when he asked Heyliger whether he had a weapon, he was about to begin the search, and Heyliger, according to the officer’s testimony, was not free to go. Also, Heyliger would have believed a search had begun, since he would have been in a position to hear the directions of the other officers to search him. Thus, the statement by Heyliger that he had a gun was not a freely elicited statement, but one made in reaction to the fact that he was ready to be searched.

As such, this Court finds that the pat down of Heyliger was unjustified and the subsequent seizure of the weapon on his person must be suppressed. Since the search of Heyliger’s car was directly tied to the police having found a weapon on Heyliger’s person, the

⁴ *Id.*

⁵ *People v. Phillips*, 53 V.I. 25, 39 (Super. Ct. 2010) (citing *Terry*, 88 S. Ct at 1882-83).

⁶ *Id.*

⁷ In *Pennsylvania v. Mimms*, the U.S. Supreme Court held that “once a motor vehicle has been lawfully detained for a traffic violation, the police officers may order the driver to get out of the vehicle without violating the Fourth Amendment’s proscription of unreasonable searches and seizures.” 434 U.S. 106, 111, n. 6 (1977).

fruits of the illegal search of Heyliger's person and the bag found in the car containing the glock magazine and .38 caliber firearm must also be suppressed as to Heyliger.⁸

Lewis does not have standing to contest the search of the automobile as a passenger, or the search of Heyliger, and, therefore, the Motion to Suppress as to Lewis must be denied.

The analysis of Lewis's Motion to Suppress is different than the analysis of Heyliger's, and it hinges on the issue of whether Lewis has proper standing to contest the searches and seizures. Lewis lacks standing to challenge the search of Heyliger or his vehicle, primarily because he does not have any reasonable expectation of privacy in another's person or vehicle. The facts of this case are analogous to those presented in *Rakas v. Illinois*,⁹ where the U.S. Supreme Court found that passengers in an automobile do not have a reasonable expectation of privacy in the vehicle. In that case, the defendants asserted neither a property nor a possessory interest in the automobile, nor an interest in the property seized. As the Court noted, the fact that the defendants were "legitimately on [the] premises" in the sense that they were in the car with the permission of its owner is not determinative of whether they had a legitimate expectation of privacy in the particular areas of the automobile searched.

Additionally, according to *Rakas*, "[a] person who is aggrieved by an illegal search and seizure only through the introduction of damaging evidence secured by a search of a third person's premises or property has not had any of his Fourth Amendment rights infringed." "In order to qualify as a 'person aggrieved by an unlawful search and seizure,' one must have been a victim of a search or seizure, *one against whom the search was directed*, as distinguished from one who claims prejudice only through the use of evidence gathered as a consequence of a search or seizure directed at someone else."

As noted by the U.S. Supreme Court, the "established principle is that suppression of the product of a Fourth Amendment violation can be successfully urged only by those whose rights were violated by the search itself, not by those who are aggrieved solely by the introduction of damaging evidence. Coconspirators and codefendants have been accorded no special standing."¹⁰

The cases cited by Defendant Lewis all discuss an automobile passenger's standing to challenge an unlawful stop or seizure and any evidence that results from the seizure. However, in this case, the stop of the vehicle was valid, although the pat down search of Heyliger was unlawful. Therefore, Lewis has no standing to challenge the search of the automobile or to suppress any of the evidence found by the police, including the evidence found on his codefendant. The motion to suppress as to Lewis must, therefore, be denied.

⁸ *Wong Sun v. United States*, 371 U.S. 471, 485 (1963) ("The exclusionary rule has traditionally barred from trial physical, tangible materials obtained either during or as a direct result of an unlawful invasion.").

⁹ 439 U.S. 128 (1978).

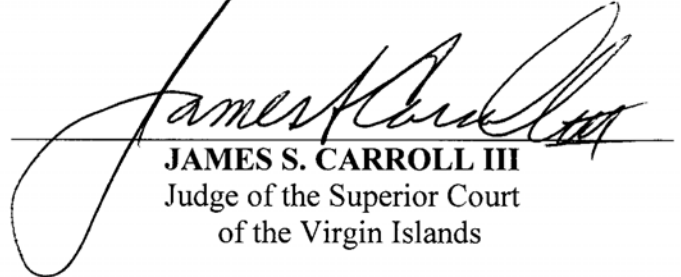
¹⁰ *Alderman v. United States*, 394 U.S. 165, 171-72 (1969).

CONCLUSION

The pat down search of Heyliger was not in accordance with the Fourth Amendment or the Revised Organic Act, because the police had no reasonable suspicion that Heyliger was armed and dangerous; therefore, the search was illegal, and the weapon seized as a result of the search should be suppressed. Also, the evidence found in Heyliger's automobile must be suppressed because it was the fruit of the original illegal search of Heyliger. The fact that Heyliger admitted that he had a firearm does not change the analysis because the admission was only made after the police had commenced searching him.

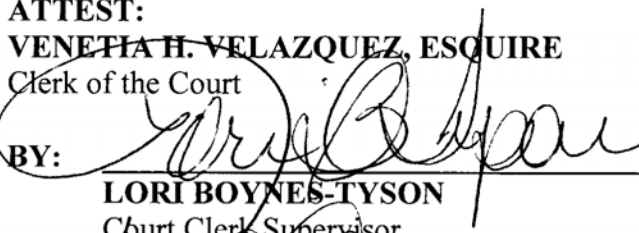
Lewis does not have standing to contest the search of the automobile or the search of Heyliger because he did not have any property interest in the automobile, the bag that was seized from the automobile, or in Heyliger's person. He does not obtain standing solely by virtue of the fact that the evidence will be used against him in court. Instead, he must show that he has a legitimate expectation of privacy in the automobile, the bag that contained the glock and the magazine, or in the search of Heyliger. Since he is unable to do so, he lacks standing to contest the search and his motion to suppress the firearm must be denied.

DATED: June 18, 2013


JAMES S. CARROLL III
Judge of the Superior Court
of the Virgin Islands

ATTEST:
VENETIA H. VELAZQUEZ, ESQUIRE
Clerk of the Court

BY:


LORI BOYNES-TYSON
Court Clerk Supervisor

6/19/13