

FOR PUBLICATION

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

People of the Virgin Islands,

Plaintiff,

v.

Troy A. Somme, Jr.,

Defendant.

Case No. SX-17-CR-058

Charges: Possession of Ammunition;
Failure to Report Firearms Obtained
Outside or Brought into the Virgin
Islands; Possession of a Controlled
Substance with Intent to Distribute;
Possession of Drug Paraphernalia; and
Operating a Motor Vehicle without
Driver's License

Cite as: 2019 VI Super 95

Appearances:

PATRICIA QUINLAND, ESQ.

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For Plaintiff

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Deputy Territorial Chief Public Defender
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Kingshill, VI 00850

MEMORANDUM OPINION

MEADE, Judge

¶1 **THIS MATTER** came before the Court for a hearing on a motion the Defendant, Troy A. Somme, Jr. ("Somme"), filed to suppress evidence and statements he made after Virgin Islands police officers stopped him for speeding. Somme asserts that the officers lacked probable cause to stop him because the officers "lacked radar or any other speed detection equipment" and were "left to their 'unfettered discretion' to

determine the rate of speed of passing motorist[s].” (Def.’s Mot. to Suppress Evid. & Statements Alleged to Have Been Seized from Def. in Violation of Fourth & Fifth Amends. 1, filed Aug. 25, 2017 (hereinafter Mot.”).) Somme contends that the officers lacked probable cause and thus, the traffic stop violated his constitutional rights. This Court agrees and holds that absent “sufficient additional indicia of reliability, an officer’s visual approximation that a vehicle is traveling in slight excess of the legal speed limit is a guess that is merely conclusory and which lacks the necessary factual foundation to provide an officer with reasonably trustworthy information to initiate a traffic stop.” *United States v. Sowards*, 690 F.3d 583, 593 (4th Cir. 2012) (footnote and citations omitted). Accordingly, Somme’s motion will be granted, and all evidence and statements suppressed.

Background

¶2 Around 11:00 p.m. on February 20, 2017, Virgin Islands Police Officers Aisha Samuel-Jules (“Samuel”) and Michael Jules (“Jules”) observed a grey Acura heading east on East End Road, St. Croix, U.S. Virgin Islands, travelling at a high rate of speed. Samuel and Jules were parked near the Tide Village Service Station in a marked police vehicle on special assignment targeting traffic offenses. The officers were parked inside the gas station under a canopy. The gas station is located adjacent to East End Road, just beyond a school zone. The speed limit in the area is 35 miles per hour. When the officers saw the Acura pass, Samuel turned on the vehicle’s lights and sirens and they pursued, eventually pulling the vehicle over further down the road.

¶13 Once the vehicles came to a stop, Samuel asked the driver, later identified as Somme, to exit the vehicle with his driver's license, the vehicle's registration, and proof of insurance. Somme complied and met the officers at the back of his vehicle. Samuel asked Somme if he knew how fast he was driving, and Somme said he thought he was going about 40 or 50 miles per hour. Samuel then asked Somme if he was driving over the speed limit, but Somme said he did not know.

¶14 Samuel testified that Somme provided her with a Florida driver's license that had expired. Presumably the registration was current, and the vehicle insured, though the officers did not say. Jules did testify that he smelled marijuana (fresh not burned) emanating from Somme and Somme's vehicle. He asked Somme if he had used marijuana and Somme said yes; he had smoked some earlier at a friend's house. Jules then asked Somme if he had marijuana on him or in the car and Somme again said yes. Jules instructed him to get it. Somme returned to the front of the vehicle to retrieve the marijuana, which was located inside a console between the front seats. Either as Somme was opening the console, or during the entire time he was back inside the vehicle—the record is unclear—Jules shined a flash light inside the vehicle and saw the butt of a black gun inside the console. Jules asked Somme if he had a gun and Somme said yes. Jules then placed Somme in handcuffs. He was later placed under arrest and transported to police headquarters in Frederiksted where he was advised of *Miranda* rights.

¶15 Forensic officers were dispatched to secure the vehicle. In addition to the bag of marijuana Somme handed over to Jules, Virgin Islands police officers found another

bag of marijuana inside the console and much more inside a black duffle bag in the back seat. Police also retrieved the firearm Jules spotted with his flashlight, as well as a spare magazine. Thirteen live rounds of ammunition were contained in the firearm and another fifteen live rounds were contained in the second magazine. The police also seized a digital scale and approximately \$2,300 in cash. A total of 1.68 pounds of marijuana was taken from Somme's vehicle.

¶6 Somme appeared before a Superior Court magistrate judge the next day, February 21, 2017, where probable cause was found and where Somme was advised of his rights. The People of the Virgin Islands formally charged Somme by information on March 3, 2017, with one count of each of the following offenses: unauthorized possession of a firearm, a violation of Title 14, Section 2253(a) of the Virgin Islands Code; possession of ammunition, a violation of Title 14, Section 2256(a) of the Virgin Islands Code; failure to report a firearm obtained outside or brought inside the Virgin Islands, a violation of Title 23, Section 470(a) of the Virgin Islands Code; possession of a controlled substance with intent to distribute, a violation of Title 16, Section 604(a)(1) of the Virgin Islands Code; possession of drug paraphernalia, a violation of Title 19, Sections 630(a) and 593(15) of the Virgin Islands Code; and operating a motor vehicle without a valid driver's license, a violation of Title 20, Section 371(a) of the Virgin Islands Code. Somme was arraigned on March 8, 2017, where he entered a plea of not guilty to all charges and released on bail.

¶7 Somme filed a motion on August 25, 2017, to suppress all statements and evidence obtained from his arrest, claiming the Virgin Islands police officers were "left

to their 'unfettered discretion' to determine the rate of speed of [a] passing motorist" because "[t]hey were without radar or any other speed detection equipment." (Mot. 1.) The People of the Virgin Islands did not file a response. By order dated February 7, 2018, entered February 8, 2018, the Court scheduled a hearing for February 20, 2018. Somme appeared personally and through counsel at the February 20, 2018 hearing; the People appeared through counsel and called two witnesses, Virgin Islands Police Officers Aisha Samuel-Jules ("Samuel") and Michael Jules, Jr. ("Jules"). At the close of the hearing, the Court took Somme's motion under advisement. The People subsequently filed a motion on March 1, 2018, to supplement their argument with case law supporting their position. Somme did not respond to the People's motion.

Discussion

¶8 "As a general rule, the burden of proof is on the defendant who seeks to suppress evidence." *People v. Matthew*, 55 V.I. 380, 387 (Super. Ct. 2011) (citing *United States v. Acosta*, 965 F.2d 1248, 1256 n.9 (3d Cir. 1992)). "However, once the defendant has established a basis for his motion, *i.e.*, the search or seizure was conducted without a warrant, the burden shifts to the government to show that the search or seizure was reasonable." *Id.* (citation omitted). At that point, "although it is the defendant who has made the motion, it is the prosecution that bears the burden of proving that the warrantless search was reasonable." *People v. Armstrong*, 64 V.I. 528, 537 (2016) (citations omitted). Here, there is no dispute that the police lacked a warrant; they stopped Somme moments after he passed them driving on the public roads. Thus, the

officers' stop of Somme was a warrantless seizure and the People bears the burden to show it was reasonable. *See id.*

¶9 “The Fourth Amendment protects persons from ‘unreasonable searches and seizures.’” *People v. Looby*, 68 V.I. 683, 694 (2018) (footnote omitted) (quoting U.S. Const. amend IV).¹ “Generally . . . a judge or magistrate must issue a warrant upon a finding of probable cause that describes, with particularity, both the place to be searched and the persons or things to be seized.” *Id.* (citations omitted). Otherwise, “‘searches conducted outside the judicial process, without prior approval by judge or magistrate, are *per se* unreasonable under the Fourth Amendment — subject only to a few specifically established and well-delineated exceptions.’” *Id.* (quoting *Katz v. United States*, 389 U.S. 347, 357 (1967)) (remaining citations and footnote omitted).

¶10 One of the well-delineated exceptions to a limited warrantless seizure is a *Terry* stop.² *See Terry v. Ohio*, 392 U.S. 1 (1968); *see also Arizona v. Johnson*, 555 U.S. 323 (2009). “A ‘*Terry*’ stop, simply put, is an investigatory process which usually entails a vehicular stop, but encompasses any attempt by a law enforcement officer to literally stop an individual to question the person.” *People v. Blake*, 65 V.I. 13, 16 (Super. Ct. 2012) (*italics added*). Generally, under *Terry* and its progeny, a temporary stop of a

¹ The Fourth and Fifth Amendments to the Constitution of the United States apply to the Virgin Islands through the Revised Organic Act of 1954. *See Looby*, 68 V.I. at 694 n.6; *see also* 48 U.S.C. § 1561.

² Also called a *Terry* traffic stop in the context of law enforcement temporarily seizing, or stopping, a motor vehicle *See United States v. Scott*, No. 12-00115-01-CR-W-GAF, 2013 U.S. Dist. LEXIS 44124, *13 (W.D. Mo. Jan. 23, 2013) (“Not every proper *Terry* traffic stop . . . justifies the warrantless arrest of a driver.”); *People v. Matous*, 886 N.E.2d 1278, 1283 (Ill. Ct. App. 2008) (“An officer may conduct a *Terry* traffic stop if the officer has a reasonable, articulable suspicion that (1) the driver is unlicensed; (2) the vehicle is not registered; or (3) that either the vehicle, or an occupant of the vehicle, is subject to seizure for violation of a law.” (citing *Delaware v. Prouse*, 440 U.S. 648 (1979))).

vehicle is permissible if “the police officer reasonably suspects that the person apprehended . . . has committed a criminal offense.” *Johnson*, 555 U.S. at 326; see also *id.* at 327 (“Accordingly, we hold that, in a traffic-stop setting, the first *Terry* condition—a lawful investigatory stop—is met whenever it is lawful for police to detain an automobile and its occupants pending inquiry into a vehicular violation. The police need not have, in addition, cause to believe any occupant of the vehicle is involved in criminal activity.”).

¶11 “A lawful roadside stop begins when a vehicle is pulled over for investigation of a traffic violation.” *Id.* at 333. Here, the officers testified that they pulled Somme over for speeding. Under Virgin Islands law, “[t]he rate of speed for motorcars, pick-up trucks, or motorcycles shall not exceed 20 miles per hour within the town limits or 35 miles per hour on all public highways outside the town limits.” 20 V.I.C. § 494(b). Neither officer testified whether East End Road is outside or inside the town limits of Christiansted. However, Samuel testified that the speed limit was 35 miles per hour, which would place the site where the officers saw Somme drive past them, outside the town limits.

¶12 Somme is not asserting that he was driving at or under the speed limit on February 20th. Instead, what Somme takes issue with is the officers determining that he was speeding solely by watching him drive past. “[T]he opinion of the office[r] (without indication of what speed Mr. Somme was traveling at),” (Mot. 1), should not be a basis for a traffic stop, Somme argues. And during cross-examination Somme did elicit that the officers did not have a radar or other speed-detection device in their

vehicle to determine the speed of passing cars, which begs the question Somme is asking: must law enforcement officers use a speed-detection device before stopping a car for speeding or can they rely on their own, visual determinations of speed. The answer to this question has consequences because, although “[o]ne recognized exception to the warrant requirement is a traffic stop,” and even though “the police do not need a warrant to stop an automobile and conduct a brief investigation, the police must nonetheless have probable cause [or reasonable suspicion] to believe that a traffic violation has occurred *before* stopping a vehicle.” *People v. Torres*, No. SX-14-CR-457, 2015 V.I. LEXIS 96, *7 (Super. Ct. Aug. 15, 2015) (emphasis added) (quotation marks and citations omitted). If a police officer can stop a vehicle for speeding based on the officer’s own visual estimation of speed, then stopping Somme was reasonable. See *Whren v. United States*, 517 U.S. 806, 819 (1996) (“[T]he officers had probable cause to believe that petitioners had violated the traffic code. That rendered the stop reasonable under the Fourth Amendment, [and] the evidence thereby discovered admissible.”); cf. *United States v. Johnson*, 63 F.3d 242, 247 (3d Cir. 1995) (“[O]fficers cannot make a traffic stop without probable cause or a reasonable suspicion, based on articulable facts, that a traffic violation has occurred.” (citations omitted)).

¶13 Several courts to consider this question—whether a law enforcement officer’s visual estimation of speed, especially when only slightly in excess of the limit, can provide probable cause to stop a motorist for speeding—have reached different conclusions. See, e.g., *State v. Estes*, 223 P.3d 287, 289-90 (Idaho Ct. App. 2009) (reviewing divergent decisions but within the context of the sufficiency of the evidence

to convict). “Many courts have held that a sufficiently trained officer’s visual estimate of speed can supply reasonable suspicion to justify a traffic stop, and in some cases, probable cause.” *State v. Dunham*, 67 A.3d 275, 278 (Vt. 2013) (citing *United States v. Colden*, No. 11-M-989-SKG, 2011 U.S. Dist. LEXIS 122048, *2 (D. Md. Oct. 21, 2011); *Sazenski v. Comm’r of Pub. Safety*, 368 N.W.2d 408, 409 (Minn. Ct. App. 1985); *United States v. Ludwig*, 641 F.3d 1243, 1247 (10th Cir. 2011); *State v. Allen*, 978 So. 2d 254, 256 (Fla. Dist. Ct. App. 2008); *State v. Barnhill*, 601 S.E.2d 215, 218 (N.C. Ct. App. 2004)).

¶14 Others have held it “not necessary that an officer have specialized training to be able to visually estimate the speed of a vehicle” since “[e]xcessive speed of a vehicle may be established by a law enforcement officer’s opinion as to the vehicle’s speed after observing it.” *Barnhill*, 601 S.E.2d at 218; accord *Taylor v. Wimes*, 632 N.W.2d 366, 372 (Neb. Ct. App. 2001) (“An officer’s determination that a driver is exceeding the posted speed limit can be premised on a visual observation based on the speed of the officer’s vehicle and an observation of the driver’s vehicle in relation thereto.” (citations omitted)); see also *Dillard v. State*, 550 S.W.2d 45, 53-54 (Tex. Ct. Crim. App. 1977) (same). As the United States Court of Appeals for the Tenth Circuit observed, “[i]t’s long been the case that an officer’s visual estimation can supply probable cause to support a traffic stop for speeding in appropriate circumstances.” *United States v. Ludwig*, 641 F.3d 1243, 1247 (10th Cir. 2011) (citations omitted), cert. denied 535 U.S. 905 (2011); accord *United States v. Lork*, 132 F. App’x 34, 35 (5th Cir. 2005) (*per curiam*); *United States v. Rivera*, 10 F. App’x 617, 618 (9th Cir. 2001) (*mem.*). But courts have begun

to appreciate that “the eyes can deceive” and to question whether a police officer’s “training in speed estimation” is recurring or “dates back to his time in the police academy.” *Ludwig*, 641 F.3d at 1247.

¶15 In *United States v. Sowards*, 690 F.3d at 591, the United States Court of Appeals for the Fourth Circuit held “that at a minimum there must be sufficient indicia of reliability for a court to credit as reasonable an officer’s visual estimate of speed.” In *Sowards*, a North Carolina state police officer stopped a driver travelling five miles above the speed limit: 75 miles per hour in a 70 mile-per-hour zone. *See id.* at 593. The district court denied the defendant’s motion to suppress. On appeal, the Fourth Circuit reversed, concluding that the officer’s visual estimation of the driver’s speed lacked the “‘reasonably trustworthy information sufficient to warrant a prudent person in believing that [the driver] had committed’ a speeding violation.” *Id.* (ellipsis and brackets omitted) (quoting *Beck v. Ohio*, 379 U.S. 89, 91 (1964)). Siding with the Court of Appeals of Missouri, the Fourth Circuit “agree[d] that ‘the accuracy of human estimation of speed cannot easily, readily, and accurately discriminate between such small variations in speed.’” *Id.* at 594 (quoting *State v. Kimes*, 234 S.W.3d 594, 589 (Mo. Ct. App. 2007)).

¶16 The *Sowards* court contrasted two scenarios to reach its decision. First, “where an officer estimates that a vehicle is traveling in *significant excess* of the legal speed limit, the speed differential—i.e., the percentage difference between the estimated speed and the legal speed limit—may itself provide sufficient ‘indicia of reliability’ to support an officer’s probable cause determination.” *Id.* at 591-92 (emphasis added)

(citations omitted). Second, “where an officer estimates that a vehicle is traveling *in only slight excess* of the legal speed limit, and particularly where the alleged violation is at a speed differential difficult for the naked eye to discern, an officer’s visual speed estimate requires additional indicia of reliability to support probable cause.” *Id.* at 592 (emphasis added) (citations omitted).

¶17 It is in this second scenario—where the observed speed exceeds the speed limit just slightly—where, “in the totality of the circumstances, the reasonableness of the officer’s visual speed estimate” has to “be supported by radar, pacing methods, or other indicia of reliability,” the Fourth Circuit concluded. *Id.* at 592-93 (citations omitted). Otherwise, without such “additional indicia of reliability, an officer’s visual approximation that a vehicle is traveling in slight excess of the legal speed limit is a guess,” the court held, and “lacks the necessary factual foundation to provide an officer with reasonably trustworthy information to initiate a traffic stop.” *Id.* at 593 (citations and footnote omitted). This Court agrees with the *Sowards* court.

¶18 Here, the officers’ testimony lacked indicia of reliability to support finding a reasonable suspicion to stop Somme.

To find that reasonable suspicion existed to justify a stop, a court must examine the “totality of the circumstances” in the situation at hand, in light of the individual officers’ own training and experience, and should uphold the stop only if it finds that “the detaining officer had a particularized and objective basis for suspecting legal wrongdoing.”

Emanuel v. People, 68 V.I. 666, 673 (2018) (quoting *United States v. Arvizu*, 534 U.S. 266, 273 (2002)) (internal quotation marks omitted).³

³ The Supreme Court of the Virgin Islands applied the “reasonable suspicion” standard in *Emmanuel*,

¶19 Samuel testified that she underwent three months of on-the-job testing, riding along with other officers assigned to traffic duties, and had cited drivers for speeding in the past. But Samuel did not testify as to any specific training in visually detecting the speed of moving vehicles. Moreover, Samuel did not say how fast Somme was driving. Instead, she only estimated that Somme was travelling at “a high rate of speed.” Her testimony cannot support a finding of reasonable suspicion. *See Emmanuel*, 68 V.I. at 683 (“[A] court . . . should uphold the stop *only if* it finds that the detaining officer had a particularized and *objective* basis for suspecting legal wrongdoing.” (emphasis added) (quotation marks, brackets, and citations omitted)).

¶20 Jules, on the other hand, estimated Somme's speed as between 40 and 50 miles an hour, i.e., between five and fifteen miles above the speed limit. He also testified that he underwent training to operate speed detection devices as well as to be able to detect speed visually. According to Jules, he was required to stand on Airport Road in Estate

without expressly adopting that standard over the traditional “probable cause” standard for evaluating the propriety of a traffic stop. *Cf. Rodriguez v. United States*, 135 S. Ct. 1609, 1621 (2015) (Alito, J., dissenting) (“Traffic stops can be initiated based on probable cause or reasonable suspicion.”); *see also United States v. Delfin-Colina*, 464 F.3d 392, 397 (3d Cir. 2006) (“Thus, we now join our sister circuits in holding that the *Terry* reasonable suspicion standard applies to routine traffic stops.”). The distinction is typically case-specific. Where the stop is to investigate whether a crime has been committed, driving an uninsured vehicle, for example, reasonable suspicion is required because an officer typically cannot determine whether a vehicle is not insured by looking at it. By contrast, running a red light would supply the officer with probable cause if the officer witnessed the infraction. *Accord State v. Wilson*, 574 S.E.2d 93, 97-98 (N.C. Ct. App. 2002) (“While there are instances in which a traffic stop is also an investigatory stop, warranting the use of the lower standard of reasonable suspicion, the two are not always synonymous. A traffic stop made on the basis of a readily observed traffic violation such as speeding or running a red light is governed by probable cause. . . . On the other hand, a traffic stop based on an officer's reasonable suspicion that a traffic violation is being committed, but which can only be verified by stopping the vehicle, such as drunk driving or driving with a revoked license, is classified as an investigatory stop, also known as a *Terry* stop.” (citations and brackets omitted)). Nonetheless, because *Emmanuel* is binding precedent, and because *Emmanuel* applied the reasonable suspicion stand, this Court proceeds that the governing standard for evaluating the propriety of a traffic stop is reasonable suspicion.

Enfield Green while another officer drove past and then circled back and ask how fast the car was going. he had to gauge the correct speed within 5 miles before he could graduate to speed detection devices.

¶21 Accepting that his training qualifies as a legitimate means of detecting the speed of passing vehicles, *cf. Dunham*, 67 A.3d at 279 (“training included watching vehicles, estimating their speed, and then confirming the speed estimate by use of radar. To successfully complete this aspect of radar training, it was necessary for the officers to estimate vehicle speed to an accuracy of five miles per hour.”), *Somme* nonetheless correctly points out that gauging the speed of a passing vehicle on a flat road during the day is not the same as gauging the speed of a passing vehicle on a curving road at night. What’s more, Jules did not testify as to whether his training was in traveling or stationary mode, *but cf. Estes*, 223 P.3d at 290 (office testimony noted that “as part of . . . radar training and certification, we were required to estimate vehicles as we were in a traveling mode or as we were in a stationary mode.”), how many hours he completed, *but cf. People v. Nice*, 202 Cal. Rptr. 3d 860, 871 (Ct. App. 2016) (“Officer Beretta testified to 40 hours of radar certification training, which included training on visual speed estimations and allowed only a five-mile-per-hour margin of error. Officer Beretta’s training and field experience also included taking visual speed estimates while moving, and numbered “probably a thousand at least” visual speed estimations in the field.”), or how long ago he was certified and whether has to be recertified from time-to-time. *But cf. Estes*, 223 P.3d at 290.

¶22 Jules testified that Somme was driving approximately 40 to 50 miles an hour and the speed limit on East End Road is 35 miles per hour. However, according to Jules, his own training allowed him to be off by 5 miles an hour in gauging the speed of passing vehicles. Thus, factoring in Jules's own error rate means that Somme might have been driving five miles under Jules's estimate, i.e., between 35 to 45 miles an hour. Admittedly, it could also mean that Somme may have been driving five miles above Jules's estimate, i.e., between 45 and 55 miles an hour – if Jules's error rate tended be lower, rather than higher, than the actual speed. But the Court cannot make a determination here because the prosecution did not develop Jules's testimony.

¶23 On a motion to suppress, the prosecution has the burden of proof and persuasion once the defendant raises a constitutional challenge to the reasonableness of the stop of his vehicle. *See Armstrong*, 64 V.I. at 537 (“[I]t is the prosecution [who] bears the burden of proving that the warrantless search was reasonable.” (citations omitted)). Here, the People failed to carry their burden to show that the officers had a reasonable suspicion to stop Somme. It was about an hour before midnight when Somme drove past the officers and their vehicle was parked, not travelling, underneath an overhead canopy. Neither officer testified to weather conditions that night, *but cf. Ludwig*, 641 F.3d at 1247, or to anything unusual in how Somme passed them. *But cf. Colden*, 2011 U.S. Dist. LEXIS 122048 at *3 (“Officer Bunting’s visual estimation of defendant’s speed, in combination with the officer’s observations that his car shook and that defendant tapped his brakes, amounts to a reasonable articulable suspicion that defendant was speeding.” (citing *Smith v. State*, 957 A.2d 1139 (Md. 2006))). Neither

officer testified to any sounds or movements like an “engine racing [or] the bouncing of the car as it passed through the intersection” that would have “furnished [them] with a sufficient blend of circumstances to establish there was a fair probability that defendant was exceeding a speed greater than was [permitted].” *Barnhill*, 601 S.E.2d at 216. Nor did the officers testify that Somme was driving upwards of 20 or 30 miles above the speed limit. *But cf. United States v. Banks*, No. 2:08-cr-19-FtM-29SPC, 2008 U.S. Dist. LEXIS 69809, *3 (M.D. Fla. Sep. 11, 2008) (affirming magistrate judge finding of probable cause where officer testified that defendant was travelling 20 to 30 miles above posted speed limit). And the officers also did not testify that they paced Somme’s vehicle to gauge his speed. *But cf. State v. Hicks*, 791 N.W.2d 89, 91 (Iowa 2010) (“While following the car, Sparks attempted to drive at the same speed as the vehicle in front of him, a police tactic known as pacing.”).

¶24 Unlike in *Ludwig*, where the officer “enjoyed a fine view,” and where “the day was crystal clear and the [officer] possessed 15 years’ experience as a highway patrolman watching cars and estimating speeds,” 641 F.3d at 1247, or in *Barnhill*, where the officer testified to “an unobstructed view of the vehicle, as well as ample opportunity to observe defendant’s progress up [the street],” 601 S.E.2d at 218, or in *Taylor*, where the officer was travelling in the same direction and traveled behind the defendant to gauge the defendant’s speed, *see* 632 N.W.2d at 372, or even in *Allen*, where the court cited *State v. Joy*, 637 So.2d 946 (Fla. Ct. App. 1994), a case in which the officer “testified that he heard a ‘whoosh’ sound, saw dust, and heard the truck’s engine revving,” 978 So.2d at 255-56 (citing *Joy*, 637 So.2d at 947), the facts elicited by the

prosecution in this case do not have any additional indicia of reliability to support finding that the officers had a reasonable suspicion that Somme was speeding. In fact, the prosecution did not even charge Somme with speeding. “[W]ith proper foundation, an officer’s visual estimation of speed may be sufficient to supply probable cause to stop a vehicle for speeding. But that is not the case here.” *State v. Petzoldt*, No. 1-374/10-0861, 2011 Iowa App. LEXIS 480, *9 (Iowa Ct. App. June 29, 2011) (footnote omitted).

¶25 Nevertheless, even though “an experienced officer cannot testify as to the exact speed of a vehicle with precise accuracy, it does not mean that such testimony should be ignored in all cases.” *Kimes*, 234 S.W.3d at 589 (citing *People v. Olsen*, 239 N.E.2d 354, 355 (N.Y. 1968)). Instead, “as the variance between the estimated speed and the speed limit increases, the level of certainty . . . that a defendant is exceeding that speed limit also increases.” *Id.* at 589. But here, when Jules’s admitted error rate factored in, Somme would have been driving roughly five to ten miles above the speed limit. Without more, it is not possible to credit Jules’s visual estimation. Instead, his “visual speed estimate was in fact a guess that was merely conclusory, without an appropriate factual foundation, and simply lacking in the necessary indicia of reliability to be an objectively reasonable basis for probable cause to initiate a traffic stop.” *Sowards*, 690 F.3d at 594. Consequently, all the evidence seized from Somme must be suppressed.

Conclusion

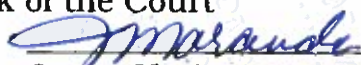
For the reasons stated above, the Court will grant Somme's motion and suppress all evidence seized by and statements made to the Virgin Islands Police Department as a result of the February 20, 2017 traffic stop. An appropriate order follows.

Dated this 8th day of July, 2019.


JOMO MEADE
Judge of the Superior Court

ATTEST:

Estrella H. George
Clerk of the Court

By: 
Court Clerk Supervisor

Dated: 7 / 9 / 19