

NOT FOR PUBLICATION

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

PEOPLE OF THE VIRGIN ISLANDS,

PLAINTIFF,

v.

JOSEPH WOODFOLK,

DEFENDANT.

SX-13-CR-359

CHARGE:

BURGLARY SECOND DEGREE

14 V.I.C. § 443

MEMORANDUM OPINION

THIS MATTER comes before the Court on Defendant Joseph Woodfolk's (hereinafter "Defendant") Motion to Suppress, filed April 4, 2014. The People filed a response to Defendant's Motion on May 19, 2014. A suppression hearing was held on June 11, 2014, and the matter was taken under advisement. For the reasons set forth, the Court shall deny Defendant's Motion.

BACKGROUND

On August 9, 2013, Police officers Stevens and Navarro arrived at the home of Mr. William Becker to respond to a 911 Emergency Call Center report of a possible home invasion. Upon arrival, Mr. Becker explained to the officers that around 5:30 a.m. that morning he heard his son screaming in the living room and ran to him. In the living room, Mr. Becker saw a slim black rasta male, about 5'10" or 5'11" tall, wearing a black top and white shorts, escape through the door of his home and jump over the fence into the bushes.

After interviewing Mr. Becker, the officers conducted a search of the area for the suspect. While in the area of Sally's Fancy Road, they were flagged down by an individual, matching the

description given by Mr. Becker, with what appeared to be traces of bush on his body and clothing. The individual initially identified himself as Joseph Menders and caught a ride to town with the officers. The individual was transported to the police station where he later admitted his name was Joseph Woodfolk.

Officer Stevens testified at the suppression hearing about the circumstances surrounding the arrest of the defendant. In his testimony, Officer Stevens stated that while he was interviewing Defendant at the police station, Mr. Becker arrived at the station for an in-depth interview with Detective Hector. When Mr. Becker saw the defendant, he identified him to another officer, out of his own volition, as the man he saw in his home that morning. According to Officer Stevens, Defendant was wearing the same clothes from that morning but the pieces of bush were brushed off of him, however, there may have still been grass stuck to Defendant's skin. On cross-examination Officer Stevens admitted that there was no other person in the police station Mr. Becker could have observed other than the suspect.

DISCUSSION

In his Motion, Defendant challenges the pre-trial identification procedure used against him. According to Defendant, the procedure, which he describes as a "one-man show-up" procedure was so impermissibly suggestive that it gave rise to an extremely substantial likelihood of irreparable misidentification, thus denying him due process of law. The People argue that even if the confrontation procedure was suggestive, the totality of the circumstances still indicate that the identification was reliable.

In order to determine whether the pre-trial identification procedure "... created a substantial likelihood of misidentification, and thus violated due process," this Court must

consider: (1) whether the identification procedure was unduly suggestive and (2), if it was unduly suggestive, whether the identification itself was still reliable. *Richards v. People*, 53 V.I. 379, 387 (V.I. 2010). An identification procedure is unduly suggestive if it is “unnecessarily” or “impermissibly” suggestive. *Potter v. People*, 56 V.I. 779, 790 (V.I. 2012). This Court must “assess the degree of suggestiveness presented by the identification procedure actually used in this case, and whether the police had good reason not to use less suggestive procedures” in order to discover whether the procedure was unnecessarily or impermissibly suggestive. *Id.* at 789. The second prong of the test in ascertaining whether the pre-trial identification procedure violated Defendant’s due process rights – determining the reliability of the identification – requires this Court to look at “the totality of the circumstances to determine whether the identification procedure was so suggestive as to give rise to a substantial likelihood of misidentification.” *Id.* In doing this “we consider the opportunity of the witness to view the criminal at the time of the crime, the witness’ degree of attention, the accuracy of the witness’ prior description of the criminal, the level of certainty demonstrated by the witness at the confrontation, and the length of time between the crime and the confrontation.” *Id.*

In the case at bar, the complaining witness, Mr. Becker, was called to the police station and arrived just as the Defendant was being interviewed. Mr. Becker was taken to the same area as Defendant and had ample view of him as he was being interviewed by Officer Stevens. At the time Mr. Becker identified him, Defendant was wearing the same clothes he had on earlier; the same clothes Mr. Becker had previously described to police. Defendant also may have still had grass on his skin. There was no other person in the police station Mr. Becker could have observed other than Defendant. Whether intentional or unintentional, it is clear that there was a

high degree of suggestibility involved in Mr. Becker's identification of Defendant. What is unclear is why officers felt it appropriate to have the complaining witness walk through the station while Defendant was being interviewed and also have him wait in the same area where Defendant was interviewed. It seems such a situation could have been avoided. Nothing in Officer Stevens' testimony provides good reason for such conduct.

Although the identification procedure in this case was highly suggestive, considering the totality of the circumstances, this Court does not believe that it was so suggestive as to give rise to a substantial likelihood of misidentification. Mr. Becker saw Defendant as he was fleeing his home and was able to discern that he was a slim rasta male, about 5'10" or 5'11", wearing a black top and white shorts. This description fairly accurately matched the description of the man picked up by Officers Stevens and Navarro as they were leaving Mr. Becker's home. When Mr. Becker later saw Defendant at the police station, he informed officers out of his own volition, that Defendant was the man he saw fleeing from his home. Mr. Becker also identified Defendant the same day the alleged crime took place. All of these facts lead this Court to the conclusion that Mr. Becker's identification was reliable and independent of the suggestive nature of the identification procedure.

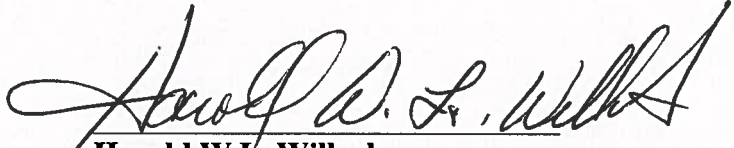
CONCLUSION

A review of the circumstances surrounding the pre-trial identification procedure used against Defendant indicate that, although the procedure was highly suggestive, the complaining witness' independent identification of Defendant was reliable. The reliability of the witness' identification of the Defendant indicates the identification procedure was not so suggestive as to

give rise to a substantial likelihood of misidentification, thus the Defendant's due process rights were not violated. Therefore it is:

ORDERED that Defendant's Motion to Suppress is **DENIED**.

DONE and so **ORDERED** this 14 day of August, 2014.


Harold W.L. Willocks
Administrative Judge of the Superior Court

ATTEST:

Estrella George
Acting Clerk of the Court

By: 
Court Clerk Supervisor

Dated: 8/15/14