

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

PEOPLE OF THE VIRGIN ISLANDS,	)	Case No. ST-18-CR-313
	)	
Plaintiff,	)	
vs.	)	3 counts: 14 V.I.C. §2253(a)
	)	3 counts: 14 V.I.C. § 2256(a)
D'MOI A. MARTIN,	)	
	)	JURY TRIAL DEMANDED
Defendant.	)	

Cite as 2019 VI Super 149U

MEMORANDUM OPINION

¶1 This matter is before the Court on Defendant D'Moi A. Martin's Motion to Suppress all evidence obtained through the December 21, 2018 arrest, including statements made to the police on the grounds that they were obtained as the result of a seizure and search that violated the Fourth Amendment of the United States Constitution. For the reasons set forth herein, the motion will be granted in part and denied in part. The contents of Martin's blue backpack will be suppressed, but the contents of the black backpack will not be suppressed.

BACKGROUND AND PROCEDURAL POSTURE

¶2 On December 21, 2018, D'Moi A. Martin ("Martin") was arrested and ultimately charged with 3 counts of unauthorized possession of a firearm in violation of 14 V.I.C. § 2253(a) and 3 counts of unauthorized possession of ammunition in violation of 14 V.I.C. § 2256(a).

¶3 On April 12, 2019, Defendant filed a Motion To Suppress. The People filed an Opposition on July 2, 2019. A suppression hearing was held on September 16, 2019¹, where testimony was taken from: (1) Virgin Islands Police Department (“VIPD”) Officer Kerdin Lewis and (2) VIPD Officer Quiozel Francis, both of the Patrol Division in St. John, Virgin Islands. Office Lewis’ A-1 report written on December 21, 2018 (Defense Exhibit M1) and Officer Francis’ supplementary report (Defense Exhibit M2) were admitted into evidence.

¶4 Martin claims that the police had no reasonable suspicion to stop him, no probable cause or warrant to arrest him, no probable cause or warrant to search the backpacks, that his arrest was unlawful, and that all evidence should be suppressed as fruit of the poisonous tree.

¶5 Conversely, the People claim that the police had reasonable suspicion to conduct a stop and frisk, that the arrest occurred only after the police found a gun in Martin’s backpack, and that Martin has no standing to challenge the search of the black backpack.

FACTS

¶6 The Court finds the following facts from the suppression hearing.

¶7 On December 21, 2018, Officers Lewis and Francis, and Detective Shunna Greenaway of the VIPD arrived at Red Hook ferry terminal (“Red Hook

¹ Attorney Eugene James Connor, Jr. appeared on behalf of the People and Attorney Adam G. Christian appeared on behalf of Defendant Martin.

Terminal”) in St. Thomas, Virgin Islands to execute an outstanding arrest warrant for Khalid Smith (“Smith”) for robbery in the first degree. Officer Lewis, an officer with the VIPD for eight years, and Officer Francis, an officer with the VIPD for four, testified that on such date they observed Smith at the Red Hook Terminal with three males: Darius Penn (“Penn”), Lee Christian (“Christian”), and Defendant D'Moi Martin. Upon seeing Smith, Officer Lewis contacted Det. Griffith who instructed the officers to allow Smith and the others to board the ferry and then detain Smith in St. John. Officer Lewis then called the Leander Jurgen Command station to request that additional officers meet him and the other two officers at Cruz Bay ferry dock in St. John to assist in the arrest. Following the phone call, the officers allowed the four males to board the ferry and observed them proceed to the upper level. The officers then boarded the same ferry to St. John.

¶8 Officer Lewis and Officer Francis testified that all four individuals appeared “nervous” during the ride. Both officers testified that they observed Martin with a blue backpack, but they gave conflicting testimony as to the color and type of bag that Smith possessed while on the ferry. Officer Lewis testified that he observed Smith with a black backpack, while Officer Francis testified that he observed Smith carrying a “wheat” colored bag, with a single-strap, in a style that resembled “a duffle bag” or “sack”—not a backpack.

¶9 As the ferry neared the terminal at Cruz Bay, Officer Lewis and Officer Francis headed to the rear of the ferry and noticed Martin and Penn standing on the lower

level near the rear exit. It is not unusual for riders to stand while riding the ferry or to move to an exit. After the ferry docked, Martin and Penn exited the ferry "very quickly." Martin left with only his blue backpack. Neither Officer Lewis nor Officer Francis attempted to detain Martin, and both testified that they did not have reason to do so at the time. Smith was the last of the four men to come down from the upper level. Officer Francis approached Smith, told him that he was going to be placed under arrest, and escorted him off the ferry alongside Officer Lewis and Detective Greenaway.

¶10 While executing the arrest, Officer Francis conducted a pat-down of Smith's clothing and discovered a fully-loaded .40 caliber magazine in Smith's pocket. Officer Francis showed the magazine to Officer Lewis and to Sgt. Dominguez who had also traveled on the same ferry to St. John. From their experience and training, the officers concluded from the presence of the magazine meant there was a missing gun. Officer Lewis noted that Smith no longer had the backpack that he had aboard the ferry and conveyed this observation to Officer Francis and Sgt. Dominguez. Officer Francis testified that he believed Smith might have handed-off the backpack to Penn. The officers then decided to split up. Officer Lewis took custody of Smith and brought him to a Leander Jurgen Command station in St. John where he was placed in a holding cell. Officer Francis and Detective Greenaway took a patrol unit to look for Penn at places he was known to frequent. The officers did not search the ferry for the missing backpack and at no time did the officers decide to search for Martin.

¶11 Officer Francis testified that approximately seven minutes after leaving the ferry dock at Cruz Bay, the officers saw Martin leaving a local bar with a blue backpack on his back and a black backpack in his right hand.² Officer Francis testified that he asked Martin, “Who that black backpack for?” Martin responded that he did not know, at which point Officer Francis took possession of both backpacks, secured them in the front of the patrol unit, and conducted a pat-down of Martin’s outer-clothing. The pat-down did not reveal any dangerous items or contraband, and Officer Francis testified that Martin was cooperative and not aggressive during the procedure. The officers then placed Martin in handcuffs and put him in the patrol unit. The officers did not *Mirandize* Martin or advise him of his rights, though Francis conceded that Martin was not free to leave at the time. Officer Francis testified that they handcuffed Martin for officers’ safety purposes and that they had “temporarily detained” Martin because he had a second backpack and did not know to whom it belonged.

¶12 The officers then drove Martin to Leander Jurgen Command Police Station, placed him in the roll call room, and removed his handcuffs. Neither officer read Martin his *Miranda* Rights while in the patrol unit or before placing Martin in the room. Officer Francis testified that they had detained Martin for the purpose of determining “what was in the backpacks.” Shortly thereafter, Officer Lewis joined

² Francis’s testimony was that Smith boarded the vessel on St. Thomas with a wheat colored bag, not a black backpack.

Officer Francis and Detective Greenaway in the roll call room. At that time Officer Francis had possession of the black backpack and Detective Greenaway had possession of the blue backpack. Officer Lewis and Officer Francis testified that during this time, Martin was still not free to leave.

¶13 While in the roll call room, Martin reiterated that only the blue backpack was his. Officer Francis then asked Martin if he could search the blue backpack. Both officers testified that Martin consented to the search, which revealed a fully-loaded 9 mm Ruger handgun. Martin stated that the gun was not his and that it had nothing to do with him. Officer Lewis testified that he then read Martin his *Miranda* Rights and placed him under arrest for possession of a firearm. Both officers testified that they were not aware of whether Martin had a license to carry or possess a firearm, but actually thought he may have been a minor as he was wearing an Ivanna Eudora Kean High School uniform. The officers then searched the black backpack in which they found a fully-loaded 27 glock .40 caliber handgun and a fully loaded .38 special.

LEGAL ANALYSIS

¶14 Martin challenges the reasonableness of the officers' search and seizure under the Fourth Amendment. The Fourth Amendment guarantees the right of people "to be secure in their persons. . . and effects, against unreasonable searches and seizures." *Whren v. United States*, 517 U.S. 806, 809 (1996). "No right is held more sacred, or carefully guarded. . . than the right of every individual to the possession

and control of his own person, free from all restraint or interference of others, unless by clear and unquestionable authority of law.” *Terry v. Ohio*, 392 U.S. 1, 9 (1968) (quoting *Union Pac. R. Co. v. Botsford*, 141 U.S. 250, 251 (1891)). Where an officer “restrains [a] person’s freedom to walk away,” the officer has effectuated a seizure, and that seizure must be reasonable. *Blyden v. People of the V.I.*, 53 V.I. 637, 647 (citing *Brown v. Texas*, 443 U.S. 47, 50 (1979)); *People v. Rojas*, No. ST—17-CR-278, 2018 WL 4352113, at *2 (V.I. Super. Ct. May 31, 2018). “What is reasonable depends upon all the circumstances surrounding the search or seizure and the nature of the search or seizure itself.” *U.S. v. Ubiles*, 224 F.3d 213, 216 (3d Cir. 2000) (quoting *United States v. Montoya de Hernandez*, 473 U.S. 431, 537 (1985)). On a motion to suppress, “the government bears the burden of showing that each individual act constituting a search or seizure,” was reasonable under the Fourth Amendment. *Rojas*, 2018 WL 4352113 at *2; *People of the V.I. v. Samuel*, No. SX-09-CR-557, 2010 V.I. LEXIS 80, *8 (V.I. Super. Ct. Nov. 12, 2010) (citing *United States v. Johnson*, 63 F.3d 242, 245 (3d Cir. 1995)). Warrantless searches and seizures are *per se* unreasonable, subject only to a few “well-delineated exceptions.” *Katz v. United States*, 389 U.S. 347, 357 (1976) (footnote omitted); see *Ubiles*, 224 F.3d at 217; *People of the V.I. v. Looby*, 68 V.I. 683, 694-95 (V.I. 2018). For instance, where an officer has, “reasonable and articulable suspicion of criminal activity,” the Fourth Amendment allows for a limited search and seizure of the individual, without a warrant or probable cause. *Terry*, 392 U.S. at 21; see *Blyden*, 53 V.I. at 647-48 (quoting *United*

States v. Brignoni-Ponce, 422 U.S. 873, 881 (1975). Importantly, even a limited search and seizure must adhere to the precept of reasonableness under the Fourth Amendment, as such a “careful exploration of the outer surfaces of a person’s clothing all over his or her body” is still a “serious intrusion upon the sanctity of the person.” *Terry*, 392 U.S. at 16-17.

¶15 Reasonable suspicion need not rise to the level of probable cause³—as the circumstances triggering reasonable suspicion necessitate swift action—but such suspicion must nonetheless suffice “a minimal level of objective justification.” *Illinois v. Wardlow*, 528 U.S. 119 (2000). Whether this threshold is met is predicated on the totality of the circumstances.⁴ *United States v. Arvizu*, 534 U.S. 266, 273-78 (2002); *Terry*, 392 U.S. at 21 (“The scheme of the Fourth Amendment becomes meaningful only when. . . the conduct of those charged with enforcing the laws can be subjected to a more detached, neutral scrutiny of a judge who must evaluate the reasonableness of a particular search or seizure in light of the particular circumstances.”) Under the totality of the circumstances, an officer’s suspicion is reasonable if it is based on “specific reasonable inferences” drawn “from the facts in light of his experience.” *Looby*, 68 V.I. at 695 (quoting *Terry*, 392 U.S. at 27); *Blyden*, 53 V.I. 637 (finding a

³ “Reasonable suspicion is a less demanding standard than probable cause.” *United States v. Lima*, No. 2012-010, 2012 WL 4371830 at *3 (D.V.I. Sept. 25, 2012) (internal quotation marks omitted) (alteration in original) (quoting *Alabama v. White*, 496 U.S. 325, 330 (1990)).

⁴ In making this assessment, “it is imperative that the facts be judged against an objective standard.” *Terry*, 392 U.S. at 21. Specifically, the Court asks whether “the facts available to the officer at the moment of the seizure or the search warrant a man of reasonable caution in the belief that the action taken was appropriate?” *Id.* (citations omitted).

stop and frisk justified by reasonable suspicion where the defendant matched the description given to police, was leaving the vicinity of the crime, and was sweating).⁵ This does not require an officer to “rule out the possibility of innocent conduct,” *Arvizu*, 534 U.S. at 277 (citing *Wardlow*, 528 U.S. at 125), nor that he personally observe the defendant committing a crime; rather, the officer need only to have reasonable suspicion of criminal activity afoot to justify the stop and frisk. *Terry*, 392 U.S. at 30; *Ubiles*, 224 F.3d at 214; *People of the V.I. v. Murrell*, 56 V.I. 796, 799 (V.I. 2012); see *Rojas*, 2018 WL 4352113 at *3 (finding a stop reasonable where the officers did not “personally observe” the defendant committing a crime or know for certain that the defendant was the person described in a 911 call); see also *Illinois*, 528 U.S. at 125 (“*Terry* recognized that the officers could detain the individuals to resolve the ambiguity,” about whether the individuals were engaged in a crime.). Reasonable suspicion exists if the officer can “point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant [the] intrusion.” *Terry*, 392 U.S. at 21 (footnote omitted). “The principal components of a determination of reasonable suspicion or probable cause [are] the events leading up to the stop or search.” *Ornelas v. United States*, 517 U.S. 690, 696 (1996). In all cases, the officer’s suspicion must be “more than an inchoate and unparticularized suspicion

⁵ Reasonable suspicion may be based on several factors including the officer’s “specialized knowledge and investigative inferences, personal observation of suspicion behavior, information from sources that have proven to be reliable, and information from sources—while unknown to the police—prove by the accuracy and intimacy of the information provided to be reliable at least as to the details contained with that tip.” *United States v. Nelson*, 284 F.3d (3d Cir. 2002).

or hunch of criminal activity.” *Illinois v. Wardlow*, 528 U.S. 119, 124 (2000) (citing *Terry*, 392 U.S. at 27) (internal quotations omitted); *United States v. Ramos*, 443 F.3d 304, 308 (3d Cir. 2006); *Ubiles*, 224 F.3d at 217; *Looby*, 68 V.I. at 695; *Rojas*, 2018 WL 4352113 at *2.

¶16 If reasonable suspicion exists, the officer may conduct a brief, investigatory stop without a warrant “to identify himself and make reasonable inquiries.” *Looby*, 68 V.I. at 695 (citing *Blyden*, 53 V.I. at 648 (quoting *Terry*, 392 U.S. at 21)); *see also* *People of the V.I. v. Samuel*, 46 V.I. 177, 188 (V.I. Super. Ct. 2005) (“A policeman who lacks probable cause, but whose ‘observations lead him reasonably to suspect’ that a particular person has committed, is committing, or is about to commit a crime, may detain that person briefly to ‘investigate the circumstances that provoke suspicion.’” (quoting *Berkemer v. McCarty*, 468 U.S. 420, 439 (1984))). In the Virgin Islands, this rule is further clarified by statute. Title 23, section 488 of the Virgin Islands Code authorizes law enforcement officers to question and conduct a pat-down of the outer-clothing of an individual the officer believes to be “wearing, carrying, or transporting a firearm,” provided that the officer also believes the person is presently dangerous. *Murrell*, 56 V.I. at 808 (discussing 23 V.I.C. § 488(a)).⁶ “[O]fficers may take measures ‘reasonably necessary’ to protect themselves and maintain the status quo.” *Blyden*, 53 V.I. at 648 (quoting *United States v. Hensley*, 469 U.S. 221, 235 (1985)). Notably,

⁶ In *Murrell*, 56 V.I. at 812, n. 12, the V.I. Supreme Court noted that 23 V.I.C. § 488 may present constitutional challenges, but ultimately declined to determine whether the law implies a lower standard than the one established in *Terry*.

“there is no per se rule that. . . handcuffing [the defendant], constitutes an arrest” if the officers have reasonable suspicion that criminal activity was afoot. *Blyden*, 53 V.I. at 648 (quoting *Baker v. Monroe Tp.*, 50 F.3d 1186, 1193 (3d Cir. 1995) (first alteration in original). However, the stop “must be carefully tailored” to the underlying justification for it. *People of the V.I. v. Heath*, 63 V.I. 80, 90 (V.I. Super Ct. 2015) (citing *Florida v. Royer*, 460 U.S. 491, 500 (1983)). Any intrusion outside the scope of the underlying justification for the stop, must be based on “specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion.” *Terry v. Ohio*, 392 U.S. at 21; *see also Rodriguez v. U.S.*, 135 S. Ct. 1609 (2015) (finding absent reasonable suspicion, police may not extend an otherwise completed traffic stop).

¶17 If evidence of a crime is revealed during the initial stop, reasonable suspicion may ripen into probable cause for arrest. *Blyden*, 53 V.I. 651 (finding probable cause to exist after finding a firearm on the defendant during a lawful *Terry* stop); *Rojas*, 2018 WL 4352113 at *4 (“The finding of evidence of a crime. . . during a *Terry* stop and linked to the reason for the initial stop, often provides probable cause for a full arrest.”) (citations omitted). “Probable cause exists where 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. . . committed by the person to be arrested.” *Blyden*, 53 V.I. at 651 (quoting *United States v. Cruz*, 910 F.2d 1072, 1076 (3d Cir. 1990); *Rojas*, 2018 WL 4352113 at *4 (officers had probable cause after

a pat-down revealed a gun on the defendant's person and the defendant admitted to not have a license to carry). The Fourth Amendment requires that any arrest be based on probable cause.⁷ See *District of Columbia v. Wesby*, 138 S.Ct. 577, 586 (2018) (recognizing the requirement of probable cause to arrest); *Maryland v. Pringle*, 540 U.S. 366, 370 (2003); *Atwater v. Lago Vista*, 532 U.S. 318, 354 (2001); *U.S. v. Watson*, 23 411, 424 (1976); *Gerstein v. Pugh*, 420 U.S. 103, 111-12 (1975) ("The standard for arrest is probable cause.") (citing *Beck v. Ohio*, 379 U.S. 89, 91 (1925)). Where officers' stop and frisk give rise to probable cause that the individual stopped has committed, is committing, or is about to commit a crime, the officers are "empowered to make a formal arrest." *Terry*, 392 U.S. at 10; *Samuel*, 46 V.I. at 191 (the recovery of a firearm and ammunition on the defendant's person during a *Terry* stop and frisk, along with the admission that he did not have a firearm license, gave rise to probable cause). However, in the absence of probable cause, the authority to arrest ceases to exist. See *Florida v. Royer*, 460 U.S. 491, 499 (1983) (Absent probable cause, "the police may not. . . verify their suspicions by means that approach the conditions of arrest."); *Dunaway v. New York*, 442 U.S. 200, 207-09 (1979). If reasonable suspicion of criminal activity or concern for officer safety no longer exists, an initially lawful stop may transform into an unlawful, *de facto* arrest that violates the Fourth Amendment. *Terry*, 392 U.S. 1, 17-19 (1968) (citing *Kremen v. United States*, 353 U.S. 346 (1957);

⁷ An arrest is "a species of seizure" for Fourth Amendment purposes. *Payton v. New York*, 445 U.S. 573, 585 (1980) (citing *Beck v. Ohio*, 379 U.S. 89 (1964)).

Go-Bart Importing Co. v. United States, 282 U.S. 344, 356-58 (1931)); *People of the V.I. v. Smith*, 49 V.I. 229, 234-35 (V.I. Super. Ct. 2008) (officers' approaching of a suspect with guns drawn effected a *de facto* arrest because the officers lacked reasonable suspicion and a reasonable person in the suspect's position would not feel free to leave). A valid stop becomes invalid if it exceeds in "intensity and scope" or lacks objective justification. *Terry*, 392 U.S. 1, 17-19 (1968); *see Smith*, 49 V.I. at 234-35 ("If the officer's suspicion is without factual foundation and articulable facts. . . no degree of good faith, hunch, or intuition on the part of the officer can substitute for it."). As such, any evidence acquired from a Fourth Amendment violation must be excluded from trial as 'fruit of the poisonous tree.' *Blyden*, 53 V.I. at 650 (citing *Wong Sun v. United States*, 371 U.S. 471, 488 (1963)).⁸

DISCUSSION

¶18 In it indisputable that Martin was entitled to Fourth Amendment protections when he walked out of the bar in St. John and was observed by Officer Francis and Det. Greenaway. *See Terry*, 392 U.S. at 9 (citations omitted). Thus, the issues before this Court are whether the officers' stop and frisk of Martin was justified by reasonable suspicion under the Fourth Amendment, and if so, whether such suspicion

⁸ The "fruit of the poisonous tree" doctrine is vital to deterring police misconduct. *See U.S. v. Leon*, 468 897, 898 (1984). Absent this doctrine, the Fourth Amendment's guarantee would be an "empty promise." *Mapp v. Ohio*, 367 U.S. 643, 660 (1961) (evidence obtained in violation of the Constitution is constitutionally inadmissible in state courts).

ripened into probable cause justifying Martin's arrest. Martin argues that both the officers' initial stop and frisk and subsequent arrest violated his Fourth Amendment rights, and that as a result the firearm should be excluded as the fruit of the poisonous tree.

¶19 The Court can only judge the facts before it. *See Terry*, 392 U.S. at 15. First, the parties dispute whether the initial encounter between Martin and the VIPD outside the St. John bar constitutes a lawful stop and frisk under the Fourth Amendment. Second, if the Court finds that the stop and frisk was valid, Martin challenges the validity of his arrest under the Fourth Amendment. Under the totality of the circumstances, in light of the officers' knowledge and experience, the Court finds that Officer Francis and Greenaway had reasonable suspicion sufficient to justify a *Terry* stop and frisk, but that they lacked probable cause to justify Martin's detention, which the Court finds transformed into a *de facto* arrest. In its assessment, the Court looks to the events leading up to the encounter in light of the officers' knowledge and personal experiences. *See Ornelas*, 517 U.S. at 696.

¶20 On December 21, 2018, Officers Lewis and Francis, and Detective Greenaway arrived at Red Hook Terminal and observed Martin in the company of Smith whom the officers had a warrant to arrest. The officers had a warrant to arrest Smith for a charge of first-degree robbery, and one of the elements of that charge was possession of a firearm. The officers observed Smith and three friends, including Martin, and they all appeared "nervous" during the ride. At that time Martin had a blue backpack

and Smith had a separate bag—though testimony differed as to the type and color of the bag in Smith's possession. When the ferry docked, the officers observed Martin exit the ferry "very quickly,"

¶21 The officers arrested Smith based upon the arrest warrant and conducted a search of his person which that revealed a fully-loaded .40 caliber magazine. The officers then realized Smith's bag was missing. The presence of the magazine and the absence of Smith's bag reasonably led the officers to believe that there may be a gun located in Smith's missing bag, which they believed to have been handed-off to Penn. The officers then proceeded to search for Penn. At no time were the officers searching for Martin.

¶22 However, minutes after leaving the terminal, the officers saw Martin leaving a local bar. The officers observed Martin carrying the same blue backpack that he had while on the ferry, but then noticed that Martin was also carrying a second backpack—one he did not have on the ferry. In light of the preceding circumstances, the officers believed Martin's possession of a second backpack to be suspicious, and the Court agrees. The Court finds that, having observed Martin accompany Smith on the ferry, appear nervous during the ferry ride, exit the ferry very quickly, and then appear with a second bag just minutes after the officers realized Smith's bag was missing and that there may be missing gun, it was reasonable for Officer Francis and Detective Greenaway to suspect Martin of carrying or transporting a firearm and to ask Martin about the second backpack. *See Looby*, 68 V.I. at 695 (citing *Blyden*, 53

V.I. at 648 (quoting *Terry*, 392 U.S. at 21)); *Samuel*, 46 V.I. at 188. Martin's response indicating that he did not know whose backpack he was carrying gave the officers reason for heightened suspicion and entitled the officers to take reasonable measures to ensure their safety and investigate further. *See Blyden*, 53 V.I. at 648 (quoting *United States v. Hensley*, 469 U.S. 221, 235 (1985)). In light of the preceding circumstances, the officers had reasonable suspicion to think Martin may be carrying or transporting a firearm, and thereby justifies the officers' stop and frisk of Martin's outer-clothing. *See* 23 V.I.C. § 488; *Terry*, 392 U.S. at 20. The pat-down did not reveal any dangerous items or contraband.

¶23 Therefore, the Court finds that while the officers were justified in their stop and frisk, that suspicion did not rise to a level of probable cause sufficient to justify the confiscation of Martin's blue backpack. The Fourth Amendment guarantees "[t]he right of the people to be secure in their persons. . . and effects, against unreasonable searches and seizures." However, the officers' confiscation of the blue backpack is undoubtedly government intrusion of an "effect" within the scope of the Fourth Amendment. In reviewing the officers' testimony, the Court finds that the officers' observation of Martin traveling with Smith and subsequent carrying of a second backpack that was presumed, but not confirmed to be the same bag Smith was carrying, especially since Francis said Khalid Smith had a wheat colored bag and Martin now had a black backpack, are insufficient to "warrant a reasonable person to believe" that Martin had committed an offense. *See Blyden*, 53 V.I. at 651 (quoting

Cruz, 910 F.2d at 1076). The facts and circumstances, while sufficient to establish reasonable suspicion warranting a stop and frisk, do not amount to adequate justification to establish probable cause to justify Martin's continued detention. Despite the officers' suspicion that the black backpack belonged to Smith or that a hand-off may have occurred, in the absence of probable cause warranting action, "no degree of good faith, hunch, or intuition" can justify Martin's continued detention. See *Blyden*, 53 V.I. at 650 (citing *Wong Sun v. United States*, 371 U.S. 471, 488 (1963)); *Smith*, 49 V.I. at 234-35. The officers' stop and frisk revealed nothing that gave the officers reason to believe that Martin was armed, dangerous, or had committed an offense, nor had they even been in search of Martin. The pat-down of Martin's outer-clothing did not reveal any weapons or contraband, and Officer Francis testified that Martin was cooperative and not aggressive. Nevertheless, the officers handcuffed Martin, put him in the patrol unit, and drove him to Leander Jurgen Command Police Station where he was put in a roll call room. Though the officers testified that they had handcuffed Martin for safety purposes, the officers did not provide any testimony that demonstrated the reason for their safety concerns following the pat-down. Rather, Officer Francis testified that he and Detective Greenaway had "temporarily detained" Martin for the purposes of discovering "what was in the backpacks." At no time prior to or during Martin's detention was he advised of his rights and Officer Francis conceded that, even prior to arriving at the police station, Martin was not

free to leave.⁹ In the absence of any facts or circumstances warranting probable cause, the Court finds that the officers lacked the authority to further detain Martin. See *Florida v. Royer*, 460 U.S. 491, 499 (1983); *Dunaway v. New York*, 442 U.S. 200, 207-09 (1979). The reasonable suspicion that initially justified the *Terry* stop and frisk of Martin's outer-clothing did not ripen into probable cause after the officers' pat-down and as such, the officers lacked justification to seize and transport Martin and his blue backpack to the police station. The Court finds that by doing so, the officers' transformed their initially valid stop into a *de facto* arrest in violation of Martin's Fourth Amendment rights. See *Terry*, 392 U.S. 1, 17-19 (1968) (citing *Kremen v. United States*, 353 U.S. 346 (1957); *Go-Bart Importing Co. v. United States*, 282 U.S. 344, 356-58 (1931)); *People of the V.I. v. Smith*, 49 V.I. 229, 234-35 (V.I.

⁹ The officers testified that they *Mirandized* Martin only after he was placed in a roll call room at the station, his backpack was searched by Officer Francis, and a fully-loaded 9 mm Ruger handgun was revealed. The Court finds that, even if Martin consented to the search and his statements were found to be voluntary, the Fourth Amendment violation remains. See *Brown v. Illinois*, 422 U.S. 590, 601-02 (1975) ("If Miranda warnings, by themselves, were held to attenuate the taint of an unconstitutional arrest, regardless of how wanton and purposeful the Fourth Amendment violation, the effect of the exclusionary rule would be substantially diluted.") (citing *Davis v. Mississippi*, 394 U.S. 721, 726-27 (1969); see also *U.S. v. Wade*, 628 Fed.Appx. 144, 148-49 (3d Cir. 2015) (applying *Brown* factors); *Castillo v. People*, 59 V.I. 240, 256-59 (V.I. 2013) (applying *Brown* factors). To sever the causal chain between unlawful arrest and the evidence acquired therefrom, there must be, *inter alia*, an "act of free will" sufficient "to purge the primary taint" and no indication of "flagran[t] lawlessness" on the part of the police. *Brown*, 422 U.S. at 602 (finding the impropriety of the arrest to be obvious where the officers acknowledged that the purpose of their action was for "investigation and questioning") (quoting *Wong Sun*, 371 U.S. at 486). Given the officers' testimony, the Court finds that the officers' purpose in arresting Martin was for questioning and investigation unsupported by probable cause. As such, the Court finds that the officers' *Miranda* warnings are insufficient to sever the causal connection between the arrest and the fruits of the officers' search and seizure of the blue backpack must be excluded.

Super. Ct. 2008). For these reasons, the Court holds that the officers' unlawful arrest and the contents of Martin's blue backpack must be suppressed.¹⁰

¶24 However, the facts concerning the black backpack are notably distinct and therefore require separate analysis. Importantly, Fourth Amendment protections extend only to a person's reasonable expectation of privacy. *United States v. Jones*, 569 U.S. 400, 404-05 (2012); *Rakas et al. v. Illinois*, 439 U.S. 128, 144 (1978) (reaffirming privacy as the touchstone of Fourth Amendment rights). The right to Fourth Amendment protections is "personal in nature." *Minnesota v. Carter*, 525 U.S. 83, 101 (1998) (citing *Steagald v. United States*, 451 U.S. 204, 219 (1981)); *Katz v. United States*, 389 U.S. 347, 350-51 (1967) (stating that the Fourth Amendment protects "individual privacy"). To exercise this right on a motion to suppress, the movant must have standing to raise a Fourth Amendment violation. *U.S. v. Salvucci*, 448 U.S. 83, 95 (1980); *see also Hatch v. Reardon*, 204 U.S. 152, 160 (1907) (recognizing that remedies for constitutional violations are afforded only to persons belonging to "the class for whose sake the constitutional protection is given") (collecting cases). To establish standing, the movant must demonstrate that he has a legitimate, personal expectation of privacy in the item seized or searched and that

¹⁰ Martin challenged the officers' credibility, as both officers testified that Martin gave consent to search his blue backpack and that he was read his rights when the first gun was found. However, neither the A-1 Report prepared by Officer Lewis nor the Supplemental Report prepared by Officer Francis states that Martin was advised of his rights at any time during the officers' interactions with him or that the officers received Martin's permission to open the blue backpack. However, the Court need not address the credibility of the police officers since the contents of the blue backpack are suppressed on other grounds.

such expectation is considered reasonable by society. *See Salvucci*, 448 U.S. at 92-93 (citing *Rakas*, 439 U.S. at 144); *Gov't of the Virgin Islands v. Williams*, 739 F.2d 936, 938 (3d Cir. 1984) (citing *Salvucci*, 448 U.S. at 93). The reasonableness of a movant's privacy expectation may be found "by reference to concepts of . . . property law," *Carter*, 525 U.S. at 88 (citing *Rakas*, 439 U.S. at 144), but a movant "need not always have a recognized common-law property interest" in the item searched or seized "to claim a reasonable expectation of privacy in it." *Byrd v. U.S.*, 138 S.Ct. 1518, 1527 (2018) (collecting cases).¹¹ However, mere "legal possession" of an item acquired through an illegal seizure or search does not automatically create a presumption that the movant had a reasonable expectation of privacy in the item he possessed. *Salvucci*, 448 U.S. at 91 (legal possession of a seized good is not a proxy for a Fourth Amendment interest) (citing *Rawlings v. Kentucky*, 448 U.S. 98, 100 (1980)). In the absence of a bright-line rule, *see Byrd*, 138 S.Ct. at 1522, courts have used a totality of the circumstances test to determine whether a person has a reasonable expectation of privacy. *See Rawlings*, 448 U.S. at 104.

¶25 Martin does not argue that he had a reasonable expectation of privacy in the black backpack and, at the time of the officers' *Terry* stop, Martin denied ownership of the black backpack. Therefore, the Court cannot engage in a reasonable expectation of privacy analysis of the black backpack. Since the Court cannot find that Martin

¹¹ *See also Salvucci*, 448 U.S. at 91 ("While property ownership is clearly a factor to be considered in determining whether an individual's Fourth Amendment rights have been violated, property rights are neither the beginning nor the end of [the] inquiry.") (citing *Rakas*, 439 U.S. at 144, n. 12).

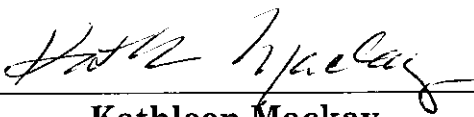
had a reasonable expectation of privacy, it must find that Martin did not have standing to contest the seizure or search of the black backpack. Accordingly, the evidence acquired from the officers' seizure and search cannot be suppressed. See *Jones*, 569 U.S. at 404-05.

CONCLUSION

¶26 The Court finds that the police had reasonable suspicion to conduct a *Terry* stop of Martin when they observed him with a second backpack just minutes after they had arrested Smith and discovered that Smith's bag and a gun were missing. However, after the pat down did not reveal any dangerous weapons or contraband, police lacked the probable cause necessary to justify a *de facto* arrest, during which the police handcuffed Martin, took him to the Jurgen Command Station, and searched the blue and black backpacks. Since the Court finds that Martin had a reasonable expectation of privacy in the blue backpack, the contents of Martin's blue backpack must be suppressed as fruit of an unlawful seizure and search. However, as Martin has no standing to contest the seizure or search of the black backpack, its contents will not be suppressed.

¶27 An Order consistent with this Memorandum Opinion will be entered.

DATED: October 25, 2019

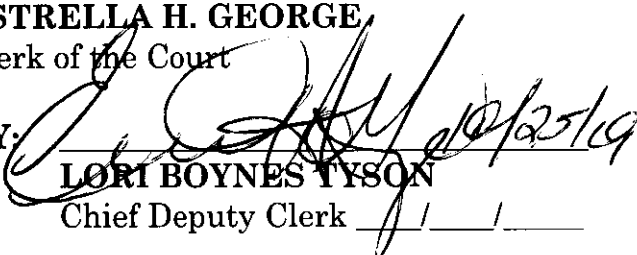


Kathleen Mackay
Judge of the Superior Court
of the Virgin Islands

ATTEST:

ESTRELLA H. GEORGE
Clerk of the Court

BY:



LORI BOYNES TYSON
Chief Deputy Clerk

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

PEOPLE OF THE VIRGIN ISLANDS,	)	Case No. ST-18-CR-313
	)	
Plaintiff,	)	
vs.	)	3 counts: 14 V.I.C. §2253(a)
	)	3 counts: 14 V.I.C. § 2256(a)
D'MOI A. MARTIN,	)	
	)	JURY TRIAL DEMANDED
Defendant.	)	

ORDER

THIS MATTER is before the Court on Defendant's Motion To Suppress, filed April 12, 2019 ("Motion To Suppress"). For the reasons set forth in the Memorandum Opinion entered on this day, it is hereby

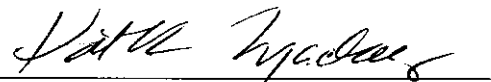
ORDERED that the Defendant's Motion To Suppress will be granted in part and denied in part;

ORDERED that the Defendant's Motion To Suppress is **GRANTED** as to Defendant's blue backpack, and the contents of the blue back pack are **SUPPRESSED**;

ORDERED that the Defendant's Motion To Suppress is **DENIED** as to the black backpack, and the contents of the black back pack are **NOT SUPPRESSED**;

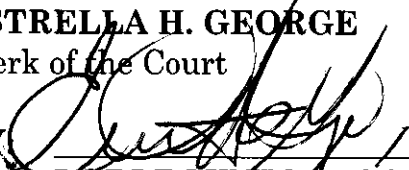
ORDERED that copies of this Order and the Memorandum Opinion shall be served on Defendant, and copies directed to counsel of record.

DATED: October 25, 2019



Kathleen Mackay
Judge of the Superior Court
of the Virgin Islands

ATTEST:
ESTRELLA H. GEORGE
Clerk of the Court

BY  01/25/19
LORI BOYNES-TYSON
Chief Deputy Clerk ____/____/____