

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

PEOPLE OF THE VIRGIN ISLANDS,	)	
	)	
Plaintiff,	)	Case. No.: ST-17-CR-42
	)	
vs.	)	
	)	
DALANEY L. MURRAY,	)	
	)	
Defendant.	)	
_____	)	

MEMORANDUM OPINION

THIS MATTER is before the Court on Defendant's Motion to Suppress and Memorandum of Support.¹ The motion came on for hearing on January 8, 2018. The People were represented by Assistant Attorney General Nadja D. Harrigan, Esq. Defendant Dalaney L. Murray was present and represented by Territorial Public Defender Paula D. Norkaitis, Esq. The Court heard testimony from Virgin Islands Port Authority Officers Adelbert Molyneaux, Jr. and Evans Jackson. At the conclusion of the hearing, the Court took the matter under advisement. By Order dated January 11, 2018, the Court denied the Motion to Suppress. This Memorandum Opinion is issued to support that Order denying the Motion to Suppress.

Background

On Saturday, February 8, 2017, Officer Adelbert Molyneaux, Jr. ("Molyneaux") was on duty at the Urman V. Fredericks ferry boat terminal in Red Hook, St. Thomas, VI (the "Terminal"). At approximately 3:44pm, Molyneaux received word from the

¹ The instant motion was filed on May 25, 2017. The People filed an Opposition on June 12, 2017.

Virgin Islands Port Authority Police dispatch that they had received an anonymous call regarding a black male with a gun, located in the gaming facility in the Terminal. The male was described as wearing a dark blue T-shirt, jeans and tennis shoes. Upon entering the gaming facility, Molyneaux saw Defendant Dalaney L. Murray ("Murray"), who matched the description provided by the dispatcher, playing on a video slot machine. Molyneaux approached Murray and asked him to stand up. Murray complied. Molyneaux then asked Murray if he had a gun on his person. Murray responded that he did not. Molyneaux repeated the question and Murray again said "no." At that point, Molyneaux became aware of a "protruding bulge" on Murray's right hip, under his shirt. Molyneaux asked Murray to turn around and place his hands on the wall, so that Molyneaux could conduct an external pat-down search for his own safety. Molyneaux described the terminal as "full"; many people in the area. Murray refused and became "irate," pacing back and forth and stating that he was not going to be searched by Molyneaux. Molyneaux again requested that he be allowed to conduct a pat-down search but Murray would not allow the officer to touch him. Murray began grabbing at his pockets and at the right side of his pants and started to approach Molyneaux. Molyneaux unholstered his service revolver and held it in the "low ready" position while ordering Murray to get on the floor. Murray refused to comply, telling Molyneaux "you ain't f—king touching me. You gonna have to shoot me." Murray again came toward Molyneaux, who then raised his weapon to the "high ready" position, pointing at Murray. Molyneaux told Murray twice more to

get on the ground.² Molyneaux testified that Murray eventually complied, and Officer Evan Jackson (“Jackson”) arrived on the scene after Murray was on the ground.³ Jackson testified that he was on his way in to start his shift at the Terminal when he received word that an officer needed assistance. Jackson handcuffed and frisked Murray. When Jackson lifted Murray’s shirt, he found a 9mm Smith and Wesson handgun. Further search also revealed a fully loaded magazine and two bags of a leafy substance on Murray’s person. Murray was arrested and charged with Unauthorized Possession of a Firearm and Unauthorized Possession of Ammunition. Murray now argues that there was no probable cause for Molyneaux to stop him or to conduct the subsequent search and asks that the Court suppress all physical evidence recovered, as a result.

Legal Standard

The Fourth Amendment to the United States Constitution, applicable to the United States Virgin Islands through section 3 of the Revised Organic Act of 1954,⁴ guarantees:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

² Molyneaux testified that at some point he radioed for back up, as he didn’t know if Murray was going to “fight or flee.” But Jackson did not arrive in response to the request for backup; he arrived for his assigned shift.

³ Evans Jackson’s testimony was slightly different to Molyneaux’s as Jackson testified that when he arrived Murray was standing next to a pole and Molyneaux was telling Murray to get on the ground. The difference in the witnesses’ testimony on this point is irrelevant for purposes of this opinion.

⁴ Revised Organic Act of 1954 is codified at 48 U.S.C. §§ 1541-1645 and reprinted in V.I. Code Ann., Historical Documents, Organic Acts, and U.S. Constitution at 861 (1995) (preceding V.I. Code Ann. tit. 1).

Discussion

Murray contends that Molyneaux did not have reasonable suspicion to stop and question him per the Fourth Amendment and that therefore the subsequent search and arrest were illegal. “The Fourth Amendment protects individuals from ‘unreasonable searches and seizures,’ and ‘searches without a warrant are presumptively unreasonable.’” *United States v. Smith*, 2013 U.S. Dist. LEXIS 121721, *8 (quoting *United States v. Mathurin*, 51 V.I. 1196 (3d Cir. 2009)). However, “the Supreme Court has held that ‘police can stop and briefly detain a person for investigative purposes if the officer has a reasonable suspicion supported by articulable facts that criminal activity ‘may be afoot,’ even if the officer lacks probable cause.” *Mathurin* 51 V.I. at 1203 (quoting *United States v. Sokolow*, 490 U.S. 1, 7 (1989); *Terry v. Ohio*, 392 U.S. 1, 30 (1968)). “The concept of reasonable suspicion, like probable cause, is not ‘readily, or even usefully, reduced to a neat set of legal rules.’” *Sokolow*, 490 U.S. at 7 (quoting *Illinois v. Gates*, 462 U.S. 213, 232 (1983)). In evaluating what constitutes ‘reasonable suspicion’ sufficient to justify a *Terry* stop, “the totality of the circumstances -- the whole picture -- must be taken into account.” *United States v. Cortez*, 449 U.S. 411, 417 (1981).

Here, Molyneaux had been dispatched to investigate an anonymous tip about a man with a gun. Molyneaux was already on duty in the Terminal when he received the call from 911 dispatch and was able to respond immediately. The tipster had provided a physical description of the suspect and the clothes he was wearing, as well as a location where the suspect could be found. Molyneaux testified that when he

entered the gaming area of the Terminal, Murray was present and was the only person in the area who matched the given description. Molyneaux further testified that as he was initially questioning Murray about having a gun, he was observing and evaluating Murray's demeanor. Although Murray twice repeated that he was not carrying a gun, Molyneaux saw the bulge under Murray's shirt and – taking into account the bulge, the denials and his own observations of Murray's behavior – had reason to suspect that Murray was not only in possession of a firearm but that said firearm might be illegal.

[A] reasonable suspicion may be the result of any combination of one or several factors: specialized knowledge and investigative inferences, personal observation of suspicious behavior, information from sources that have proven to be reliable, and information from sources that — 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 within that tip.

Blyden v. People of the Virgin Islands, 53 V.I. 637, 649, 2010 V.I. Supreme LEXIS 25 (quoting *United States v. Nelson*, 284 F.3d 472, 478 (3d Cir. 2002) (citations omitted) (collecting cases)). Weighing the totality of the circumstances, Molyneaux had a reasonable suspicion that criminal activity might be “afoot” and thus had justification for detaining Murray to investigate further. Molyneaux testified that, given his suspicion that Murray was carrying a weapon, he was concerned for his own safety and the safety of the other people in the Terminal, at the time. “The purpose of a *Terry* frisk is to allow police officers to continue their investigatory stop of a suspect without fear of violence.” *People of the V.I. v. Archibald*, 50 V.I. 74, 96 (V.I. Super. Ct. Sep. 11, 2008) (citing *Adams v. Williams*, 407 U.S. 143, 146 (1972)). “[A] perfectly

reasonable apprehension of danger may arise long before the officer is possessed of adequate information to justify taking a person into custody for the purpose of prosecuting him for a crime.” *Terry*, 392 U.S. at 26-27. “The officer need not be absolutely certain that the individual is armed; the issue 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.” *Id.* at 27.

When an officer is justified in believing that the individual whose suspicious behavior he is investigating at close range is armed and presently dangerous to the officer or to others, it would appear to be clearly unreasonable to deny the officer the power to take necessary measures to determine whether the person is in fact carrying a weapon and to neutralize the threat of physical harm.

Id. at 24. *See also Fla. v. J.L.*, 529 U.S. 266, 272 (2000) (“Firearms are dangerous, and extraordinary dangers sometimes justify unusual precautions. . . . *Terry*’s rule . . . responds to this very concern.”) “During investigative stops, including traffic stops, a police officer may perform a protective pat down and/or frisk of a defendant’s person when he has reason to believe that the person with whom he is dealing is armed and/or dangerous.” *People of the V.I. v. Charles*, 2014 V.I. LEXIS 7, *11-12 (Super. Ct. Feb. 26, 2014). Molyneaux had the necessary reasonable, articulable suspicion required to request a pat-down search.

Murray argues that Molyneaux lacked sufficient corroborating facts to indicate (i) any criminal activity or (ii) that Murray was the person referred to, by the anonymous tipster. As a result, Murray claims that Molyneaux did not have reasonable suspicion to stop him and that therefore, both the stop and the search

were invalid. To back this assertion, Murray points to a Third Circuit case, *U.S. v. Ubiles*, 224 F.3d 213 (2000). In *Ubiles*, police on patrol during *jouvert*, one of St. Thomas' annual carnival events, stopped and frisked a man ("Ubiles") after being alerted by an anonymous informant that the man possessed a gun. Officers approached Ubiles, conducted a pat-down search and discovered an illegal handgun. The District Court found that the search was valid and convicted Ubiles of Possession of an Unregistered Firearm.⁵ On appeal, the Third Circuit overturned the lower court's decision and vacated the conviction. The Circuit Court held that the officers had lacked reasonable and articulable suspicion to stop Ubiles, basing their decision on two factors: first, it is not a crime to possess a firearm in the Virgin Islands, and second, nothing in the anonymous tip or the defendant's actions gave officers reason to believe that the defendant possessed a gun illegally, that a crime was about to be committed, or that the officers were in any danger. See *Ubiles*, 224 F.3d 217-218. The Court notes that while Third Circuit decisions may be persuasive, they are not necessarily binding upon the Superior Court. "Although we previously instructed that 'decisions rendered by the Third Circuit ... are binding upon the Superior Court . . .', we have made this statement in the context of decisions the Third Circuit rendered while serving as the *de facto* court of last resort in the Virgin Islands." *Najawicz v. People of the Virgin Islands*, 58 V.I. 315, 327-328, 2013 V.I. Supreme LEXIS 12 (quoting *In re People of the V.I.*, 51 V.I. 374, 389 n.9 2009 V.I. Supreme LEXIS 32);

⁵ (D.C. Crim. No. 98-cr-00143.)

see also Ernest v. Morris, 64 V.I. 627, 630, 2016 V.I. Supreme LEXIS 18, *1 (“In other words, Third Circuit decisions are merely persuasive authority if the case was before that court on appeal from . . . the District Court of the Virgin Islands sitting as a federal trial court.”) Therefore, while this Court acknowledges the holding in *Ubiles*, the Court is not persuaded that the Circuit Court’s decision applies, here.⁶ Rather, the Court distinguishes *Ubiles* from the instant matter. In *Ubiles*, the officers acted on the informant’s tip without any further corroboration. Here, Molyneaux was able to corroborate specific details of the tipster’s information, evaluate the situation and assess Murray’s demeanor, all of which combined to create reasonable suspicion for the investigatory stop. “Reasonable suspicion exists when there are ‘specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant intrusion.’” *People of the V.I. v. Butler*, 2014 V.I. LEXIS 83, *9-10 (quoting *Terry*, 392 U.S. at 21). “[T]he reasonableness of official suspicion must be measured by what the officers knew before they conducted their search,” *J.L.*, 529 U.S. at 271. “The police corroboration of the anonymous tip’s innocent details . . . bolsters the veracity and reliability of the tip . . .” *United States v. Ritter*, 416 F.3d 256, 272, 2005 U.S. App. LEXIS 15941, *44. “Reliable information from a citizen informant may create reasonable suspicion and justify an investigatory stop.” *People of the V.I. v. Butler*, 2014 V.I. LEXIS 83, *11 (V.I. Super. Ct. Oct. 4, 2014) (citing *Alabama v. White*, 496 U.S. 325, 326-27 (1990)).

⁶ The Court notes that in the *Ubiles* decision, the Circuit Court addressed certain statutory issues that this Court has not been asked to consider, in the instant matter.

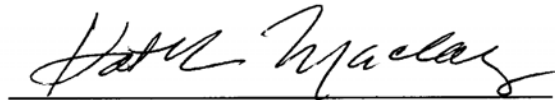
Molyneaux had the requisite reasonable, articulable suspicion to stop Murray. As Molyneaux's detention of Murray was justified, the subsequent search was also valid and the fruits of that search are admissible at trial.

Conclusion

Officer Molyneaux had reasonable suspicion to stop Defendant Murray. Officer Molyneaux was justified in conducting a pat-down search of Defendant Murray, prior to continuing with the investigatory stop. The evidence obtained as a result of the pat-down search are admissible at trial. Therefore, Defendant's Motion to Suppress was denied.

As noted above, the Order denying the motion to suppress was issued on January 11, 2018. Therefore, no order will accompany this Opinion.

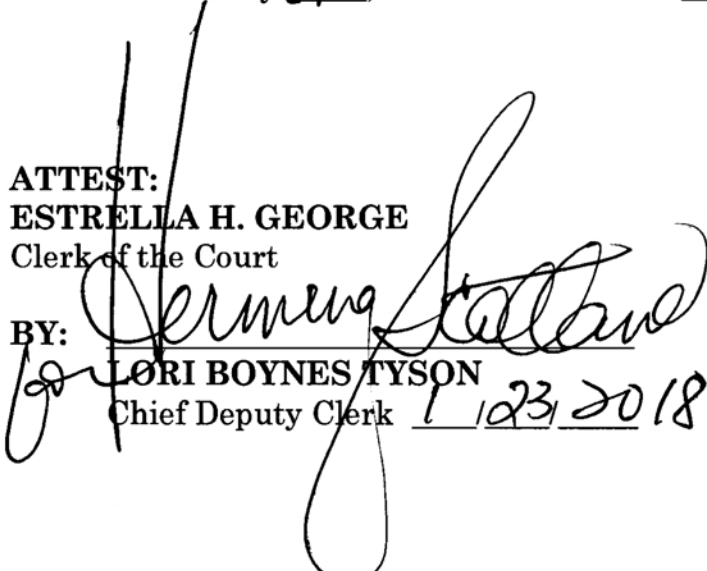
DATED: January 23, 2018



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

1/23/2018