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

PEOPLE OF THE VIRGIN ISLANDS,	)	
	)	**CASE NO. ST-17-CR-200**
Plaintiff,	)	
vs.	)	
	)	
LEVI REGISTE,	)	
	)	
Defendant.	)	
	)	

MEMORANDUM OPINION

This case came on for Suppression Hearing on March 13, 2018. Plaintiff People of the Virgin Islands was represented by Assistant Attorney General Nadja D. Harrigan. Defendant Levi Registe appeared and was represented by Paula D. Norkaitis, Esq., Office of the Territorial Public Defender. Plaintiff called the following witnesses: Officer Ecedro A. Lindquist, Jr. and Officer Gigi Alexander. Defendant did not testify nor call witnesses.

The parties gave closing arguments and the Court took the matter under advisement. For the reasons set forth herein the Motion to Suppress will be denied.

BACKGROUND

On June 26, 2017, Officer Ecedro A. Lindquist, a member of the Virgin Islands Police Department (VIPD)'s Special Operations Bureau and the Canine Unit trainer, was on patrol in Estate Nazareth, St. Thomas, USVI. Lindquist was accompanied on patrol by Officer Gigi Alexander and Lindquist's canine partner, Ingor. At

approximately 11:43 p.m., Lindquist and his partners were travelling on Nicholas Friday Drive in the area of the National Guard Armory, heading toward a stop light at the top of a hill. Lindquist observed a car with license plates TEZ-371 overtake another vehicle as it approached the stop light near the Armory. Lindquist was travelling two vehicles behind TEZ-371 before it overtook the other vehicle.

In overtaking and passing the vehicle, the car bearing plates TEZ-371 crossed over the double yellow lines in the middle of the road dividing the two lanes of traffic. After passing the other vehicle, TEZ-371 turned left at the stop light, onto Ridge Road. Lindquist followed the car onto Ridge Road and initiated a traffic stop. He then used the P.A. system on the patrol car to instruct the driver of the vehicle, later identified as Defendant Levi Registe, to exit his vehicle and approach the officers with his driver's license, registration and proof of insurance.

Registe did not immediately exit his vehicle. Lindquist observed Registe moving about in a "furtive" manner in the front seat of the vehicle, "as if he was trying to hide something," and not immediately leaning towards the vehicle glove box where most car owners keep their documents. Registe eventually exited his vehicle and approached the officers, carrying his license, registration and proof of insurance in his left hand. Officers Lindquist and Alexander observed that as he approached, Registe had his right hand under his shirt, "fumbling around" by his waistband, "as if he was hiding something." Lindquist's experience as a 22-year veteran of the VIPD made him suspicious and led him to believe Registe was trying to hide something.

Registe was wearing a loose-fitting, baggy shirt and no bulge could be seen under his shirt.

Lindquist asked Registe why he had crossed over the double yellow lines; Registe did not answer. Lindquist then asked him, "What do you have there?" Registe responded, "Just some weed." Registe did not attempt to evade the officers. Because Registe had his right hand concealed under his shirt and fumbling around his waistband, and because the lighting on the road was low and the area was dark, Lindquist and Alexander began to feel concerned for their safety. Lindquist also stated that the way in which Registe was moving his hand under his shirt made him suspicious. Lindquist had Registe place his hands on the hood of the squad car. He proceeded to conduct a pat-down search of Registe to search for weapons out of concern for the officers' safety.

During the pat-down search, a bag containing a white, powdery substance fell from Registe's right front pants pocket. Other officers arrived on the scene and one of them, Officer Shakim Mike, field-tested the white, powdery substance. The substance field-tested positive for cocaine. Lindquist read Registe his Miranda rights and placed him under arrest for cocaine possession.

Registe's license, registration and proof of insurance were all found to be in order. He was cited for the traffic infraction of overtaking another vehicle over double yellow lines. Lindquist and his canine partner Ingor conducted a narcotics sniff of the outside of Registe's vehicle. When Ingor came to the open, front driver's side door,

the canine alerted Lindquist to the presence of marijuana in the area of the front seat, but there was not a strong odor of marijuana and Ingor did not give a final indication.

After discovering the bag of cocaine that fell from Registe's front pocket and placing Registe under arrest, Lindquist conducted a search of Registe's person. Lindquist discovered a partially burned marijuana cigarette in Registe's right front pocket and several plastic bags in Registe's right rear pocket, consisting of: sixteen bags containing a green, leafy substance; seven bags containing a white, hard substance; and twelve bags containing a white, powdery substance.

The contents of the bags were field tested. The green, leafy substance tested positive for marijuana; the white, hard substance tested positive for crack cocaine; and the white, powdery substance tested positive for cocaine. Registe was transported to VIPD Richard N. Callwood Command. Lindquist and Officer Mike placed the evidence collected at the scene into evidence bags and delivered the bags to the property clerk.

Defendant Registe argues that the traffic stop was illegal and as a result, the statement that he allegedly made that he had "just some weed" and the drugs should be suppressed as "fruit of the poisonous tree."

DISCUSSION

The Stop of Defendant's Vehicle Was Valid.

"The Fourth Amendment guarantees 'the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.'" *Whren v. United States*, 517 U.S. 806, 809 (1996). In Fourth Amendment terms, a traffic stop, even if the purpose of the stop is limited and the resulting detention brief, entails a seizure of the driver. *Brendlin v. California*, 551 U.S. 249, 255 (2007) (citing *Delaware v. Prouse*, 440 U.S. 648, 653 (1979)). Thus a traffic stop must not be "unreasonable" under the circumstances in which it is carried out. *Whren*, 517 U.S. at 810. An officer's decision to stop a vehicle generally is reasonable where the officer has probable cause to believe a traffic violation has occurred. *Id.*

Lindquist testified that he initiated a stop of Registe's vehicle after observing the vehicle cross over double yellow lines to overtake and pass another vehicle. It is a violation of traffic regulations in the Virgin Islands to overtake and pass another vehicle in violation of road striping or markings. 20 V.I.C. § 495.[1] Therefore, the Court finds the stop was reasonable and valid.

[1] Registe's written motion argues that his arrest was illegal because "it is not clear that law enforcement were able to observe a traffic violation because upon information and belief there is no discernible double yellow line in the area of the alleged motor vehicle violation." However, during the hearing Registe did not challenge Lindquist's testimony on the presence or visibility of double yellow lines, nor did Registe present any testimony on the visibility of the striping. Therefore, the Court accepts Lindquist's unchallenged testimony.

Defendant's Statement After Exiting the Vehicle Must Be Upheld.

An initially valid stop may become invalid if it becomes "intolerable" in "intensity or scope." *Terry v. Ohio*, 392 U.S. 1, 17-19 (1968). To remain valid, the scope of the detention following a stop "must be carefully tailored" to the underlying justification for the stop. *People v. Heath*, No. SX-14-CR-033, 2015 WL 4243247, at *4 (V.I. Super. July 10, 2015) (citing *Florida v. Royer*, 460 U.S. 491, 500 (U.S. 1983)). With any "particular intrusion" not tied to the justification for the initial stop, a police officer, "must be able to point to 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. The U.S. Supreme Court, recognizing that traffic stops are dangerous encounters for police officers, has held that a police officer ordering a driver out of a vehicle following a valid stop is a *de minimis* intrusion that does not impermissibly expand the scope of the initial stop. *Pennsylvania v. Mimms*, 434 U.S. 106, 110-111 (1997)); *People of the V.I. v. Charles*, 2014 V.I. LEXIS 7, *10, 2014 WL 797857 (V.I. Super. Ct. February 26, 2014) ("[A] police officer may order the driver to get out of the vehicle without violating the Fourth Amendment's proscription of unreasonable searches and seizures."). But in any case, "an investigative detention must be temporary and last no longer than is necessary to effectuate the purpose of the stop." *People v. Heath*, No. SX-14-CR-033, 2015 WL 4243247, at *4 (V.I. Super. July 10, 2015).

After initiating a valid stop of Registe's vehicle, Lindquist then used the P.A. system on his patrol car to order Registe to exit his vehicle. This was permissible.

Lindquist testified that rather than immediately exit the vehicle, Registe moved about inside the vehicle and appeared to be hiding something. Lindquist also testified that after exiting, Registe was moving his hand about beneath his shirt, near his waistband, and appeared to be hiding something. Out of suspicion that Registe might be hiding a weapon, Lindquist asked Registe, "What do you have there?" It was to this that Registe replied, "Just some weed."

Lindquist asking Registe "What do you have there?" was not an impressible expansion of the scope of the traffic stop. In holding that a police officer may permissibly order a driver out of a vehicle following a traffic stop, the U.S. Supreme Court described at length the "weighty" and "important" interest of the protection of police officers during routine traffic stops. It balanced this interest against the "intrusion into the driver's personal liberty occasioned" by ordering a driver to exit a vehicle, and found such an intrusion to be *de minimis*. *Mimms*, 434 U.S. at 111. Like the Supreme Court in *Mimms*, this Court finds that Lindquist asking Registe "What do you have there?" "can only be described as *de minimis*."

If a weighty interest in officer safety attaches when an officer asks a driver to exit a vehicle, then naturally that interest extends to the time after the driver exits. Lindquist asked Registe a single question about what Registe might have on his person before Registe answered, "Just some weed." When weighed against the officers' interest in protecting themselves after viewing suspicious activity, this single question was justified. Simply asking, "What do you have there?" did not amount to an interrogation, and was not overly invasive or coercive; it was not the sort of

targeted questioning that would require Registe be read his *Miranda* rights. *Berkemer v. McCarty*, 468 U.S. 420, 439 (1984) ("Typically, this means that the officer may ask the detainee a moderate number of questions to determine his identity and to try to obtain information confirming or dispelling the officer's suspicions."); *see People of the V.I. v. Castillo*, 49 V.I. 195, 220 (citing *R.I. v. Innis*, 446 U.S. 291, 301 (1980)) ("[T]he term 'interrogation' under *Miranda* refers not only to express questioning, but also to any words or actions on the part of the police (*other than those normally attendant to arrest and custody*) that the police should know are reasonably likely to elicit an incriminating response from the suspect.") (emphasis added) (parentheses in original).

Concerning officer safety, the U.S. Supreme Court has said, "[c]ertainly it would be unreasonable to require that police officers take unnecessary risks in the performance of their duties." *Mimms*, 434 U.S. at 110 (citing *Terry*, 392 U.S. at 23). In this case, where Registe was approaching the officers on a darkened street with his hand concealed under his clothing, it would have been an unnecessary risk to expect Lindquist to find more evidence before or refrain altogether from asking Registe what he had concealed on his person. Lindquist's inquiry was valid. Therefore, Registe's oral response shall not be suppressed.

The Search of Defendant's Person Was Legal.

Defendant next argues that the search of his person was illegal, and that the drugs seized pursuant to and following that search should be suppressed under the exclusionary rule.

A "stop and frisk" is constitutionally permissible under *Terry* if two conditions are met: (1) the investigatory stop must be lawful, and (2) to proceed from a stop to a frisk, the police officer must reasonably suspect that the person stopped is armed and dangerous. *Arizona v. Johnson*, 555 U.S. 323 (2009) (citing *Terry*, 392 U.S. 1). "[I]n 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." *Id.*

After an initially valid traffic-stop, an officer who develops a reasonable, articulable suspicion of criminal activity may expand the scope of an inquiry beyond the reason for the stop and detain the vehicle and its occupants for further investigation. *People of the V.I. v. Turnbull*, 2014 V.I. LEXIS 46, *16 (V.I. Super. Ct. June 23, 2014) (citing *United States v. Givan*, 320 F.3d 452, 458 (3rd Cir 2003)). Normally however, to move beyond the mere traffic-stop and proceed to a *pat-down* of a driver or passenger of a vehicle, "the police must harbor reasonable suspicion that the person subjected to the frisk is armed and dangerous." *Arizona v. Johnson*, 555 U.S. at 327. Reasonable suspicion does not mean that the officer must be absolutely certain that the individual is armed. *Terry* 392 U.S. at 27. "[T]he 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.* Courts "generally require proof that the suspect engaged in specific, suspicious conduct during the stop, such as failing to promptly obey the officer's orders, or making furtive movements and gestures." *Charles*, No. ST-13-CR-194, 2014 WL 797857 at *4 (citing *United States v. Atkins*, 2000 WL 781439, at *2 (E.D. Pa. June 5, 2000)). Finally, although an officer's reliance on a mere hunch is insufficient to establish reasonable suspicion, *United States v. Arvizu*, 534 U.S. 266, 274 (2002), due weight is to be given to specific reasonable inferences which he is entitled to draw from the facts in light of his experience. *Terry*, 392 U.S. at 27.

In this case, Lindquist initiated a valid stop of Registe's vehicle and instructed Registe to exit the vehicle and approach officers with his driver's license and vehicle documentation. Registe did not exit the vehicle immediately however, and Lindquist observed Registe moving about in the vehicle in a "furtive" manner, "as if he was trying to hide something." After Registe exited the vehicle, Lindquist and Alexander observed him approaching with his right hand under his shirt, feeling around his waistband.

Lindquist testified that based on his observations he felt Registe might be concealing a weapon, and that he feared for his safety and that of Alexander. Lindquist is an officer with 22 years of experience serving in that capacity, and the Court gives weight to the inferences he drew from his observations. The inference that Lindquist drew from what he observed was that Registe was armed and

dangerous. Lindquist's suspicion was not based on a mere hunch: Lindquist articulated ways Registe was behaving both before and after exiting the car that raised Lindquist's suspicion that Registe might be concealing a weapon. The Court finds that Lindquist had reasonable suspicion that Registe was armed and dangerous. Therefore, Lindquist had the right to expand the traffic stop, and the frisk of Registe's person were legal.

After Lindquist commenced his search and discovered the bag with a white, powdery substance that fell to the ground from Registe's person, he had grounds to seize the bag and then expand the *Terry* stop further. *See Gumbs v. People*, No. S.CT.CRIM. 2014-0069, 2016 WL 1713600, at *7 (V.I. Apr. 26, 2016) ("[A]n officer may make a warrantless seizure of any item that he or she has viewed from a place or position in which he or she was lawfully entitled to be, provided it is immediately apparent that the item observed is evidence of a crime, contraband, or otherwise subject to seizure.") (citations omitted) (internal quotations omitted); 5 V.I.C. § 3562 ("A peace officer may . . . without a warrant, arrest a person . . . when a felony has in fact been committed and he has reasonable cause for believing the person to have committed it . . .).

The evidence seized shall not be suppressed.

CONCLUSION

Lindquist's stop of Registe's vehicle was legal. He observed Registe cross over double yellow lines to pass and overtake a vehicle, a traffic violation for which a valid traffic-stop could be executed. After executing a stop of the vehicle, Lindquist

observed suspicious activity by Registe, both before and after Registe exited the car. This led Lindquist to develop a reasonable suspicion that Registe was armed and dangerous. Lindquist lawfully inquired with Registe about what was on his person, and subsequently conducted a legal frisk of Registe's person. The bag of cocaine that fell to the ground and was discovered during the frisk provided officers with the evidence necessary to expand the initial traffic stop.

The Motion to Suppress will be denied. An Order will accompany this opinion.

DATED: April 30, 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 4/30/2018