

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX

THE PEOPLE OF THE VIRGIN ISLANDS **Plaintiff**)
)
 Vs.)
)
TERRANCE A.G. BRYSON **Defendant**)

CASE NO. SX-12-CR-0000285

ACTION FOR: 23 V.I.C. 470(B)

**NOTICE OF ENTRY OF
MEMORANDUM
OPINION AND ORDER**

TO: ZULEYMA M. CHAPMAN, ESQ.
MARTIAL A. WEBSTER, SR., ESQ.
LAW CLERKS; LAW LIBRARY; IT; RECORD BOOK
JUDGES AND MAGISTRATES OF THE SUPERIOR COURT

Please take notice that on December 01, 2014 a(n) MEMORANDUM
OPINION AND ORDER dated November 26, 2014 was entered by the Clerk in the
above-entitled matter.

Dated: December 01, 2014

Estrella H. George
ACTING CLERK OF THE SUPERIOR
COURT



IRIS D. CINTRON
COURT CLERK II

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

PEOPLE OF THE VIRGIN ISLANDS,

Plaintiff,

v.

TERRANCE A.G. BRYSON,

Defendant.

CRIMINAL CASE No.: SX-12-CR-285

**UNAUTHORIZED POSSESSION OF A
FIREARM; ETC.**

(JURY)

MEMORANDUM OPINION AND ORDER

THIS MATTER is before the Court on Defendant's Motion to Suppress and Memorandum of Law in Support of Defendant's Motion to Suppress ("Motion"), filed June 7, 2013; the People's Objections and Response to the Defendant's Motion to Suppress ("Opposition"), filed September 17, 2013; Defendant's Supplemental Brief in Support of Motion to Suppress ("Supplement"), filed October 10, 2014 and the People's Response to Defendant's Supplemental Brief in Support of Motion to Suppress ("Response to Supplement"), filed October 31, 2014. A hearing on the Motion ("Hearing") was held on October 1, 2014. At the Hearing, the parties presented arguments and the Court heard testimony from Virgin Islands Police Officers Gregory Bennerson and Jason Viveros. For the reasons that follow, the Motion will be denied.

BACKGROUND

On June 7, 2012, Officer Gregory Bennerson made a traffic stop of Defendant's vehicle for speeding on the Melvin H. Evans Highway. Motion, at 1. In his affidavit, Officer Bennerson stated that he observed Defendant "... in the vehicle fidgeting and acting suspicious as though he was trying to conceal something." Motion, at 2 (citing Affidavit of Officer Bennerson). Officer

Bennerson further testified that Defendant exited the vehicle and approached him at the rear of the vehicle with license, registration and proof of insurance in hand. *Id.*

Officer Bennerson stated that, while speaking with Defendant, he noticed "...a green leafy substance on the right front pocket of his pants..."*Id.* That observation prompted Officer Bennerson to contact K-9 Officer Jason Viveros and request that Officer Viveros travel with his canine partner Luka to conduct a sweep of Defendant's vehicle.

Officer Viveros arrived at the scene shortly after Officer Bennerson's call, and advised Defendant on his arrival that he and Luka, "a narcotics detection canine," would walk around the vehicle. As they did so, Luka stopped by the driver's side door and began breathing heavily through his nose, a behavior that Officer Viveros testified indicated that Luka had detected the presence of narcotics. *Id.* at 3.

Officer Viveros advised Defendant that Luka detected the presence of narcotics in the vehicle and asked Defendant whether there were any narcotics inside of his car. Defendant responded "no." Officer Viveros asked him if he was sure, and Defendant responded "yes, it's not in the vehicle... it's in my pocket." Defendant then removed a small plastic bag containing what appeared to be marijuana.

Officer Viveros read Defendant his *Miranda* rights. The record does not establish that Defendant confirmed that he understood his *Miranda* rights. At the Hearing, each of the officers testified that he could not remember whether Defendant affirmatively stated that he understood his rights. However, Defendant presented no evidence to contradict the officers' testimony that Officer Viveros read to Defendant his *Miranda* rights, or that Officer Viveros did not adequately "...convey the constitutional rights of the defendant." Supplement, at 6 (*citing California v. Prysock*, 453 U.S. 355 (1981)).

Officer Viveros asked Defendant whether the marijuana from his pocket was all he had on him to which Defendant replied, "Yeah, that's it." Motion, at 3. Officer Viveros asked if Defendant would allow the officers to search his vehicle to which Defendant replied, "No, I'm kind of in a rush." *Id.* yet, based upon Luka's behavior, Officer Viveros stated that he wanted to confirm that there were no other drugs in Defendant's vehicle.

Officer Bennerson testified that, at this point, Defendant appeared nervous, biting at his lip and trembling. *Id.* at 4. Officer Viveros asked again if there was anything illegal in the vehicle, mentioning bombs or narcotics. Defendant repeated his negative response. Finally, Officer Viveros asked if it was a gun. Following a long pause, Defendant stated, "Yes, it's under the mat on the driver side floor, I just got it, it's empty, it doesn't have any bullets in it, it's a 9 millimeter, I just got it." *Id.*

Following Defendant's admission, Officer Viveros informed Defendant that he was going to retrieve the gun to which Defendant replied, "Go ahead, it's right there." Officer Viveros went into the vehicle and looked under the mat near the driver's side door where he found a silver gun with a brown wooden handle.

By the Motion, Defendant seeks to exclude all evidence obtained during the search of the vehicle, claiming that both the initial traffic stop and the subsequent search were unconstitutional. In Defendant's Supplement, he argues that the People failed to establish that Defendant knowingly waived his right against self-incrimination following Officer Viveros reading Defendant his *Miranda* rights. Defendant argues that the officers coerced his various incriminating statements through "...sustained and intimidating interrogation at the scene of their initial detention." Supplement, at 7 (*citing Pennsylvania v. Bruder*, 488 U.S. 9, 10-11 (1988)).

The People argue that the police officers had more than sufficient probable cause to search Defendant's vehicle, regardless of whether Defendant knowingly waived his *Miranda* rights, including: Defendant's nervous behavior; his admission to possession of a narcotic; together with Luca's reaction and behavioral changes near the driver's side door. The circumstances as a whole gave officers sufficient probable cause to believe that the vehicle might contain contraband or evidence of the commission of a crime, which allowed the police officers to lawfully search Defendant's vehicle.

DISCUSSION

The Fourth Amendment to the United States Constitution protects against "unreasonable searches and seizures."¹ Generally, the burden of proof is on a defendant seeking to suppress evidence under a Fourth Amendment challenge. *See United States v. Acosta*, 965 F.2d 1248, 1256, n. 9 (3d Cir. 1992) (citations omitted). However, once the defendant establishes that the search occurred without a warrant, the burden shifts to the government to show that each act of the warrantless search was reasonable under the Fourth Amendment. *United States v. Johnson*, 63 F.3d 242, 245 (3d Cir. 1995).

I. For purposes of the Motion, the traffic stop is deemed constitutional.

Police officers "may briefly stop a moving automobile to investigate a reasonable suspicion that its occupants are involved in criminal activity." *United States v. Hensley*, 469 U.S. 221, 226 (1985). An objective analysis of the facts and circumstances surrounding the stop is appropriate to determine its constitutionality. *United States v. Hawkins*, 811 F.2d 210, 213 (3d

¹ The Fourth Amendment of the United States Constitution is applicable in the U.S. Virgin Islands pursuant to the Revised Organic Act of 1954, §3, 48 U.S.C. §1561, *reprinted in* V.I. CODE ANN., Historical Documents, Organic Facts, and U.S. Constitution at 87–88 (1995) (preceding V.I. CODE ANN. tit. 1).

Cir. 1987), *cert. denied*, 484 U.S. 833. The traffic stop is constitutional so long as a reasonable police officer could have made the stop, regardless of the officer's motivation for making the stop. *Id.* at 246.

In his Motion, Defendant argues that Officer Bennerson has not articulated any legitimate factual basis to make a traffic stop of Defendant's vehicle. Yet, the Hearing evidence was to the effect that the officer personally observed Defendant's vehicle pass him on the highway at a high rate of speed, clearly justifying a traffic stop. As such, the Court accepts that Officer Bennerson lawfully detained Defendant on the Melvin H. Evans Highway when he pulled over Defendant's vehicle for exceeding the posted speed limit.

II. The search of the car was constitutional.

Once the traffic stop is justified, the next question for analysis is whether Officer Viveros' warrantless search of Defendant's vehicle was constitutional.

a. The People met its burden of showing that consent to search Defendant's vehicle was freely and voluntarily given.

Police officers "...may undertake a search without a warrant or probable cause if an individual consents to the search, and any evidence discovered during such a search may be seized and admitted at trial." *United States v. Kim*, 27 F.3d 947, 955 (3d Cir. 1994). Officer Bennerson and Officer Viveros both stated under oath that Officer Viveros read to Defendant his *Miranda* rights and that Defendant eventually gave Officer Viveros permission to search the car, after he admitted to having a gun under the driver's floor mat. Neither officers could recall whether Defendant confirmed to them that he understood his *Miranda* rights.

The burden is on the People to show that consent to a warrantless search was freely and voluntarily given. *See Id.* While Defendant argues that he never expressly stated that he

understood his *Miranda* rights, the totality of the facts set forth by the affidavits of Officers Bennerson and Viveros and by their sworn testimony is sufficient for the Court to conclude that Defendant freely and voluntarily consented to the search.

Even if a defendant inadequately expressed his appreciation and understanding of his *Miranda* warnings, the central issue is whether the defendant freely and voluntarily consented to a search. “A *Miranda*-defective statement that was otherwise voluntary under the Fifth Amendment will not render the evidence derived therefrom inadmissible.” *United States v. Patane*, 542 U.S. 630, 637–638 (2004) (the Court found no violation of the defendant’s Fourth Amendment rights and allowed into evidence a gun that was discovered and seized as a result of the defendant’s voluntary statements made without *Miranda* warnings). Additionally, “a defendant who has been advised of, but has not yet invoked, his *Miranda* rights may waive them—provided he does so knowingly, intelligently, and voluntarily, given the totality of the circumstances.” *U.S. v. Harvey*, 48 V.I. 635 (D.V.I. 2006)(See *Moran v. Burbine*, 475 U.S. 412, 422–423 (1986)).

When looking at the totality of the circumstances in this case, it is apparent that Defendant was advised of his *Miranda* rights but continued to answer the questions asked by Officer Viveros, ultimately admitting to the fact that there was a firearm in his car. There is no indication that this admission was coerced. Rather, it appears that Defendant was nervous from the time the vehicle was stopped, more so once Officer Viveros appeared on scene and circled the car with his partner Luka. Regardless of whether Defendant expressed an understanding of his *Miranda* rights, he continued to converse with Officer Viveros following the *Miranda* warning, and consented to the search after admitting that he had a gun within his car. In the

totality of the circumstances, Defendant's consent appears to have been voluntary and not the product of coercion.

- b. Even if Defendant did not adequately consent to the vehicle search, there existed sufficient probable cause for the officers to search Defendant's vehicle

As the People argue in its Response to Defendant's Supplement, police can lawfully "seize and search an automobile without a warrant if probable cause exists to believe it contains contraband." Response to Supplement, at 2 (*citing United States v. Burton*, 288 F. 3d 91, 100 (3d Cir. 2002)(internal quotations and citations omitted)).

Probable cause to search a vehicle exists when, "viewing the totality of the circumstances, there is a fair probability that contraband or evidence of a crime will be found in a particular place." *Gresh v. Godshall*, 170 Fed. Appx. 217, 220 (3d Cir. 2006)(*citing Illinois v. Gates*, 462 U.S. 213, 238 (1983)); *see also U.S. v. Rickus*, 737 F.2d 360, 367 (3d Cir. 1984) (holding that "objective facts of this case certainly justified the officers in concluding that there was a fair probability that evidence of a burglary would be found in the car").

The People argue that there was sufficient evidence to establish the existence of probable cause for Officer Bennerson and Officer Viveros to believe that there was further contraband in Defendant's car. First, during the initial traffic stop, Defendant was fidgeting and left his vehicle to meet Officer Bennerson to the rear of the vehicle, an indication that Defendant did not want to Officer Bennerson to get close to the vehicle. Second, Defendant admitted to having drugs on his person, indicating the distinct possibility that he might have more in his car. Third, Defendant became noticeably nervous when Luca, a canine trained to detect even faint odors of narcotics, began sniffing the exterior of his car. Finally, Luca alerted (began breathing heavily) to

Defendant's driver side door, a clear indication to his handler that he detected the presence of narcotics within the car.

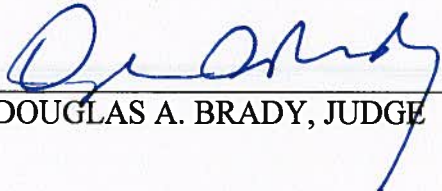
The Court concludes that, given the totality of the circumstances, the police had more than enough information to conclude that there was a fair probability that contraband or evidence of a crime would be found in Defendant's vehicle. Therefore, even if Defendant did not adequately consent to the vehicle search, there existed sufficient probable cause for the officers to search his car.

On the basis of the foregoing, it is hereby

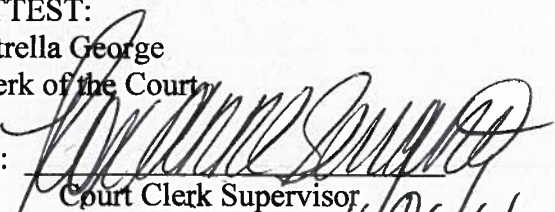
ORDERED Defendants' Motion to Suppress is **DENIED**; and it is further

ORDERED that a copy of this Order be served on the parties forthwith.

Dated: November 26, 2014.


DOUGLAS A. BRADY, JUDGE

ATTEST:
Estrella George
Clerk of the Court

By: 
Court Clerk Supervisor

11/26/14