

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

THE PEOPLE OF THE VIRGIN ISLANDS,	)	CRIMINAL NO.
	)	ST-14-CR-395
Plaintiff,	)	
vs.	)	
	)	
KENRICK M. TALBERT,	)	
	)	
Defendant.	)	

MEMORANDUM OPINION

THIS MATTER came on for a suppression hearing on May 6, 2015.¹ The People were represented by Daniel H. Huston, Assistant Attorney General. Defendant Kenrick M. Talbert was present and represented by Paula D. Norkaitis, Assistant Public Defender. At the hearing, the Court heard testimony from Sergeant Richard Dominguez of the Virgin Islands Police Department, Officer Ecedro Lindquist of the Virgin Islands Police Department, and Defendant Talbert. At the conclusion of the hearing, the Court took the matter under advisement and will now deny the motion to suppress the drugs found in and around Talbert's vehicle.

I. Findings of Fact

During the evening of September 24, 2014, the inter-agency High Intensity Drug Trafficking Task Force and the Special Operations Bureau of the Virgin Islands Police Department were conducting surveillance operations of drug activity in the

¹ Talbert's filed his Motion to Suppress on February 6, 2015. The People filed their response on March 4, 2015.

Red Hook area of St. Thomas. In particular, law enforcement focused its attention on the parking lot of the Game and Fish Club due to previous reports of drug deals conducted out of vehicles there. That evening, police observed an SUV, driven by Talbert, enter the lot. He parked and then re-parked the vehicle in different spots throughout the lot.² Sgt. Dominguez, who was part of the team surveilling the lot, recognized Talbert as having sold drugs during a controlled purchase operation in the area two months before.³ Talbert exited the vehicle and spoke to multiple passers-by until, after some apparent negotiation, two pedestrians got into the vehicle with Talbert and they drove away. Police did not hear the subject of the conversation⁴ nor did they observe Talbert conduct a drug sale. At that point, the police surveilling the lot notified Ofc. Lindquist (who was posted on stand-by with his police K-9 by Eudora Kean High School further down the road from the Game and Fish Club) that Talbert was travelling at a high rate of speed and to look for him as he drove in Lindquist's direction.⁵ Once Lindquist saw Talbert drive by, he followed.

Sgt. Dominguez and Ofc. Lindquist both testified that they observed Talbert driving at a high rate of speed at different locations along the road (Dominguez as Talbert left the lot; Lindquist as Talbert approached his position further down the

² Defendant testified that he moved his vehicle to get closer to the main road to facilitate picking up passengers. During the suppression hearing, the Court viewed footage from the video surveillance that showed Defendant re-parking his car.

³ Police had no prior reason to believe Talbert would be there that night nor reason to believe he would be involved in criminal activity. This case involves no tips or informants.

⁴ Talbert testified that he was negotiating a price to take the pair to Bovoni as an informal taxi service.

⁵ Lindquist received a description of the vehicle, but Talbert was not identified by name.

road). Neither testified to a direct speeding measurement by radar, but each noticed that the angle of light from Talbert's headlights bounced substantially as he drove over speed bumps. Dominguez testified that Talbert drove faster than other traffic in the area and noted the presence of many pedestrians. Lindquist also testified that his own vehicle's GPS indicated that he himself was moving at approximately 30 miles per hour,⁶ which he believed roughly matched Talbert's speed.

Lindquist pulled Talbert to the side of the road without trouble. Talbert exited the vehicle without being instructed to do so, and was otherwise cooperative.⁷ The subsequent order of events is not perfectly clear from the testimony, but at some point two additional police vehicles arrived at the scene (one marked and one not, the latter belonging to Sgt. Dominguez); Lindquist advised Talbert of his rights; another police officer patted Talbert down (and found nothing problematic on him); and Lindquist asked for driver's license and insurance, which Talbert provided. Then, after explaining Talbert's rights, Lindquist asked whether Talbert had any weapons, drugs, or other contraband. Talbert replied that he had marijuana in the center console of his vehicle. Lindquist got his dog and approached the vehicle. The dog indicated the presence of drugs and Lindquist saw a baggy on the ground next to the open driver-side door through which Talbert had exited the vehicle. It contained a substance that appeared (and was later confirmed) to be marijuana. The police placed

⁶ In an area with a 20 mph speed limit, according to Lindquist.

⁷ Talbert testified he believed he heard an order to exit the vehicle.

Talbert under arrest⁸ and drove his vehicle to the Mariel Newton Command Station. The other occupants of the vehicle were searched and released. Two days later, police conducted a thorough search of the vehicle and found more marijuana, as well as ecstasy and cocaine in the console of the vehicle.

II. Analysis

Talbert moves to suppress from evidence the drugs from his vehicle, arguing that police stopped him because they believed he was a drug dealer, that the traffic violation was a pre-text for the stop, and as a result police recovered the drugs in violation of the Fourth Amendment. The People must show that the police were entitled to act without a warrant with regard to two actions in particular: the initial traffic stop and the subsequent search of the vehicle. The Court considers each in turn.

Traffic Stop

In *Terry v. Ohio*, 392 U.S. 1 (1968), and its progeny, the United States Supreme Court carved out an exception to the Fourth Amendment's usual requirement that searches and seizures must follow warrants issued on the basis of probable cause, deciding that "an officer may . . . conduct a brief, investigatory stop when the officer

⁸ The police and Talbert offer conflicting testimony concerning whether police issued a ticket for the alleged traffic violation too.

has a reasonable, articulable suspicion,” as opposed to an “inchoate and unparticularized suspicion” that “a particular individual is engaged” in criminal activity. *Illinois, v. Wardlow*, 528 U.S. 119, 123-24 (2000) (citing *Terry*, 392 U.S. at 27, 30); *United States v. Cortez*, 449 U.S. 411, 418 (1981). This same *Terry* standard applies to traffic stops like the one in this case. *Navarette v. California*, 134 S.Ct. 1683, 1687 (2014); *United States v. Johnson*, 63 F.3d 242 (3d Cir. 1995) (citing *Delaware v. Prouse*, 440 U.S. 648, 663 (1979)).

Talbert’s brief and his presentation at the suppression hearing argued persuasively that police could not have reasonably suspected that he was engaged in criminal drug activity when Ofc. Lindquist pulled him over. But the People have substantially simplified this matter by conceding that point. Rather, the People premise the stop on the police having had a reasonable suspicion that Talbert was breaking *traffic* laws, rather than *drug* laws. In fact, the People go even further and concede that the police’s subjective purpose in pulling Talbert over was related to their drug surveillance operations. But this subjective purpose is not relevant to assessing the validity of the stop; the Court must instead assess whether the police objectively had a reasonable, articulable suspicion that Talbert was breaking traffic laws, regardless of their other motivations. *Whren v. United States*, 517 U.S. 806, 813 (1996); *Johnson*, 63 F.3d at 245-247.

In making this objective reasonableness assessment, the Court must consider the totality of the circumstances at the time of the traffic stop. *Navarette*, 134 S.Ct.

at 1687 (citing *Cortez*, 449 U.S. at 417-418). The Court finds that the People here have met their burden in articulating particular facts that support their suspicion that Talbert was breaking traffic laws. Not only did Talbert subjectively *seem* to be speeding, but both Sgt. Dominguez and Ofc. Lindquist pointed to the severe bounce they observed in the vehicle's headlights when it negotiated speed bumps as evidence that the vehicle was exceeding the speed limit. Sgt. Dominguez's testimony that Talbert was going faster than other vehicles and Ofc. Lindquist's testimony that his GPS indicated to him that he was over the speed limit while he was matching speed with Talbert are additional well-articulated facts that bolster the suspicion. Talbert's argument to the contrary, i.e. that the speed bumps make it physically impossible for a vehicle to exceed the speed limit in the area, is neither supported by any evidence nor compelling. Although these observations are hardly conclusive proof of a traffic violation, overwhelming proof is not required to sustain the traffic stop. It is enough that the People have shown far more than an "inchoate and unparticularized suspicion or 'hunch.'" *Terry*, 392 U.S. at 27. Therefore, the traffic stop comports with the Fourth Amendment.

Vehicle Search

Having established that the police's stopping Talbert was justified by their reasonable, articulable suspicion that he was not obeying traffic laws, the People must further account for their search of the vehicle. "[T]he existence of probable cause

justifie[s] the warrantless search and seizure of [Talbert's] car." *Government of the Virgin Islands v. Williams*, 739 F.2d 936, 939 (3d Cir. 1984) (citing *Carroll v. United States*, 267 U.S. 132 (1925), and *Chambers v. Maroney*, 399 U.S. 42 (1970)); *see also United States v. Thompson*, 545 Fed. App'x 167, 170 (3d Cir. 2013) ("The automobile exception permits police to search and seize a vehicle so long as they have probable cause to believe that the vehicle contains contraband or evidence of a crime.") (citing *Pennsylvania v. Labron*, 518 U.S. 938, 940 (1996)). Despite not even having a reasonable suspicion that Talbert possessed drugs at the time the traffic stop began, it is plain that, by the time they searched his vehicle, police had developed probable cause to believe it contained drugs. Talbert's admission to Lindquist that he had marijuana in the car,⁹ combined with the K-9 indicating the presence of drugs¹⁰ and Lindquist's discovery of what appeared to be marijuana next to Talbert's open car door, provided far more than the minimum required showing for probable cause to believe that Talbert's vehicles contained drugs. Moreover, that showing of probable cause on the evening of September 24 sustained the actual warrantless search two days later while the vehicle was still in police custody. *See, e.g., United States v. Johns*, 469 U.S. 478, 487-488 (1985). Therefore, the search of Talbert's vehicle also comported with the Fourth Amendment.

⁹ There is no doubt that Ofc. Lindquist could during a traffic stop ask Talbert whether he had contraband in the vehicle. *See, e.g., Arizona v. Johnson*, 555 U.S. 323, 333 (2009).

¹⁰ It is also uncontroversial that prompt use of drug-sniffing K-9's at traffic stops is permissible. *Illinois v. Caballes*, 543 U.S. 405, 409-410 (2005).

III. Conclusion

Police had reasonable, articulable suspicion that Defendant Talbert was breaking traffic laws when they pulled him over. Then, after his admission that he possessed marijuana in his vehicle, the K-9 indication of drugs, and the discovery of marijuana immediately outside his open car door, the police had probable cause to search Talbert's vehicle. This probable cause supported a search even two days later. Therefore, Talbert's Fourth Amendment rights were not violated by the discovery of his drugs and Talbert's motion to suppress will be denied. The Court will issue an order consistent with this opinion.

DATED: July 22, 2015

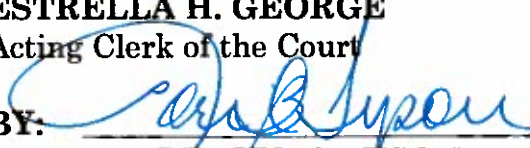


Kathleen Mackay
Judge of the Superior Court
of the Virgin Islands

ATTEST:

ESTRELLA H. GEORGE
Acting Clerk of the Court

BY:



LORI BOYNES-TYSON

Court Clerk Supervisor 7/22/15