

NOT FOR PUBLICATION

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

PEOPLE OF THE VIRGIN ISLANDS,

Plaintiff,

v.

JAMAL RIVERA,

Defendant.

SX-15-CR-308

**CHARGES:
POSSESSION OR SALE OF
AMMUNITION**

**UNAUTHORIZED POSSESSION OF
A FIREARM**

FAILURE TO REPORT FIREARMS

MEMORANDUM OPINION

THIS MATTER came before the Court on Defendant Jamal Rivera's Motion to Suppress (hereinafter "Defendant"), filed on December 02, 2015. The People of the Virgin Islands (hereinafter "the People") filed their response to Defendant's Motion on December 9, 2015. A suppression hearing was held on March 14, 2016. For the reasons set forth below, the Court shall deny the Defendant's Motion.

BACKGROUND

On October 4, 2015 at or about 9:48 pm, VI police officer Jamale Griffith heard over his police vehicle radio that shots were fired in the vicinity of Estate Mount Pleasant on the island of Saint Croix. Officer Griffith stated at the suppression hearing that he observed a silver Acura turn off the headlights when on the main road and then saw the vehicle make a right turn on a dirt road. Officer Griffith stated that he found this suspicious so he proceeded to follow the vehicle at a safe distance. While on the unpaved road the vehicle made a first stop, in which Griffith observed the

driver door open and then close. The door then closed and the vehicle began to drive again; the vehicle made two additional stops. On the third stop Defendant, Jamal Defendant stepped outside of the vehicle and began to rapidly approach Griffith. Griffith stated that he found this to be suspicious and in order to ensure his safety he called for police assistance and told Defendant to stop. Griffith then stated that Defendant told him there is a lady in the car and they were going to the beach.

Officers Kai Joseph and Johnathan Sanderson arrived to the area to give assistance to Griffith. Griffith stated that officers approached the vehicle to determine who was in the car. Officer Joseph approached the driver's side of the vehicle and while standing outside of the vehicle shined his flashlight onto the center console. Officer Joseph observed three 40 caliber live rounds of ammunition in the center console. Officer Griffith testified that he walked Defendant over to the car to show him the rounds and at that point Defendant dropped to his knees. Officer Griffith then stated that he asked Defendant for consent to search the vehicle to which Defendant replied "go ahead." No other ammunition, and no firearm was found inside of the vehicle. Police officers then searched the other two locations where the vehicle had initially stopped. The officers found a firearm magazine with 14 live rounds at one location and a 40 caliber Glock handgun with 21 rounds in the magazine in the other.

DISCUSSION

The burden of proof is on the defendant who moves to suppress evidence. *People of the V.I. v. Samuel*, SX-09-CR-556, 2010 V.I. LEXIS 80 (Super. Ct. Nov. 12, 2010) (unpublished). In his Motion, Defendant argued that the police investigatory stop was unconstitutional because the officers did not have reasonable suspicion nor probable cause. Defendant further argued that based

on this lack of probable cause and reasonable suspicion, the search of this vehicle was in violation of the Fourth Amendment. Defendant in his motion, also denied ever telling Officer Griffith or anyone that he had consented to a search of his vehicle. At the conclusion of the suppression hearing however, Defendant's counsel conceded that there was no stop effectuated and that Defendant stopped the car, and approached Officer Griffith voluntarily. This Court is in agreement that no stop took place because at no time did Officer Griffith flash the police sirens or command Defendant to stop. Additionally, Griffith at no point told Defendant to exit the vehicle and approach him; these were acts done on Defendant's own accord. This Court finds the argument that there was an unreasonable stop to be invalid and that no stop occurred.

B. The 40-Calibur live Rounds of Ammunition were in Plain View

The plain-view doctrine allows a law enforcement officer to 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. *Thomas v. People of the Virgin Islands*, 2015 V.I. Supreme LEXIS 25, *16 (2015).

Defendant argued that Officer Griffith lacked probable cause or reasonable suspicion for the investigatory stop and search of his vehicle. The People argue that the live rounds in plain-view from outside that car. This Court has already stated there was no investigatory stop therefore we will address whether the bullets were in plain view.

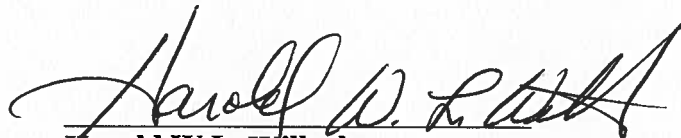
Here, the Officer's approached the car to determine who was inside of it for his safety and by merely shining a flashlight on the console of the vehicle, saw the ammunition. The officer was

within his lawful position when approaching the vehicle to determine who was inside based on the totality of the circumstances. This Court finds that the ammunition was in plain-view.

CONCLUSION

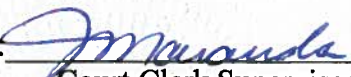
This court does not find that this was in violation of the Defendant's Fourth Amendment rights and as a result must deny Defendant's Motion to Suppress. The Court will issue an Order consistent with this Opinion.

Dated: 3-22-16



Harold W.L. Willocks
Administrative Judge of the Superior Court

ATTEST:
Estrella George
Acting Clerk of the Court

By: 
Court Clerk Supervisor

Dated: 3/23/16