

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

PEOPLE OF THE VIRGIN ISLANDS,	)	CRIMINAL NO:
	)	ST-17-CR-36
Plaintiff,	)	ST-17-CR-37
vs.	)	
	)	
YOCELIN FRANCO ROA,	)	
JAMARL C. JACOBS	)	
	)	
Defendants.	)	

MEMORANDUM OPINION

THIS MATTER is before the Court on Defendant Jamarl C. Jacobs' Motion to Suppress (filed March 24, 2017) and Defendant Yocelin Franco Roa's Motion to Suppress (filed May 30, 2017). The People opposed both motions, and an evidentiary hearing was held on June 7, 2017. The People were represented by Assistant Attorney General Nadja Harrigan. Defendant Yocelin Franco Roa was present with counsel, Assistant Public Defender Paula Norkaitis. Defendant Jamarl Jacobs was also present with counsel, Robert Leycock, Esq. The Court heard testimony from Virgin Islands Police Department (VIPD) Sgt. Cornel Esprit and Detective Brian Bedminster. For the reasons set forth herein, the Defendants' motions will be granted; and the firearm, ammunition magazines, and marijuana that were seized during the illegal stop will be suppressed.

I. Facts

On February 2, 2017, at approximately 2:11 a.m., VIPD officers Linda Raymond, Raquel Dover¹, and nine-year VIPD veteran Detective Brian Bedminster were on special assignment in the Estate Frydenhoj area of St. Thomas regarding recent rapes in that area. While they were traveling together in a police unit, Bedminster pulled over a maroon Mazda in the vicinity of a gas station in Red Hook.² On cross examination, Detective Bedminster testified that he stopped the vehicle because its tags were expired.

Defendant Jacobs was driving the vehicle, Defendant Roa was the front seat passenger, and a minor female was sitting in the back seat. Detective Bedminster testified that he asked Jacobs for proof of the car's registration, insurance, and for Jacobs' driver's license. During the stop Jacobs had trouble locating his documents and walked back and forth from his Mazda to the officers to show them different papers. Detective Bedminster described Jacobs as "okay" and "cool" and not acting in a nervous or suspicious manner as he tried to find his documents.

According to Detective Bedminster, Jacobs was ultimately unable to provide proof of his insurance or his driver's license. Although Jacobs did provide a document seeming to represent the Mazda's registration, the registration document was

¹ None of the witnesses testified as to the rank or position of Linda Raymond or Raquel Dover. Therefore, the Court will refer to them as officers.

² Detective Bedminster described the vehicle as red. Sgt Esprit described the vehicle as maroon. But the color is not an issue of fact in this case.

inaccurate and Detective Bedminster testified that the registration document did not match the “dealer plates”³ on the Mazda. Detective Bedminster also testified that the dealer plates did not have an expiration date, but he did not notice the tags were missing the expiration date until after he had made the stop. Detective Bedminster issued Jacobs tickets for not having a driver’s license, proof of vehicle registration, or proof of vehicle insurance.

Sgt. Esprit testified he and Sgt. Sophia Rachid were doing inspections in the Red Hook area of St. Thomas when they came upon the traffic stop effected by Detective Bedminster and the other two officers. Sgt. Esprit said he had no knowledge of why Jacobs was stopped, but when he arrived, Esprit observed Detective Bedminster with his ticket book in hand, and Jacobs standing at the rear of a maroon vehicle. While Sgt. Esprit sat in his VIPD vehicle, he observed Jacobs walking back and forth to the Mazda; a behavior he found suspicious, so he got out of his VIPD vehicle to further assess the situation.

When Sgt. Esprit inquired of the reason for the stop, Bedminster advised Sgt. Esprit the vehicle was not registered. Sgt. Esprit radioed in the registration document to the VIPD, and the VIPD confirmed that the vehicle was not registered to Jacobs. Esprit testified that dealer plates may only be used on vehicles not previously registered in the Virgin Islands. But it was obvious the vehicle had been registered in the Virgin Islands. Therefore, Sgt. Esprit concluded the dealer plates on the

³ Dealer plates are temporary license plates issued by a car dealership pursuant to 20 V.I.C. § 336.

vehicle were invalid. After concluding the vehicle was not registered to Jacobs, nor otherwise properly registered, Sgt. Esprit opened the back door of the Mazda and removed the dealer tag.

Sgt. Esprit testified that based upon his experience, as a 16 year veteran with the V.I. Police Department, Jacobs was acting nervous as he walked back and forth to the vehicle. Sgt. Esprit observed Jacobs going in and out of the Mazda and at one point Jacobs spent three to four minutes in the driver's seat, arched forward, fiddling or fidgiting with something and reaching under the driver's seat. Jacobs then exited the vehicle and swiftly closed the door.

Sgt. Esprit testified that his police experience further caused him to believe Jacobs was trying to conceal something under the seat, which is normally indicative of contraband. Esprit then opened the front door and used the flashlight on his cell phone to make a visual inspection under the driver's seat. Sgt. Esprit observed a black nylon bag too bulky to fit completely under the seat but partially tucked under the driver's seat. Based upon his experience, Esprit believed the black nylon bag was a firearm pouch bag, and he felt the bag and believed he felt an ammunition magazine. When Sgt. Esprit asked Jacobs of the contents of the bag, Jacobs said "it's a steel." Sgt. Esprit testified that "steel" is slang for a firearm.

Forensics came to inventory the car; they removed the bag and ultimately discovered that it contained a firearm, ammunition magazines, and marijuana. Neither Defendant Jacobs nor Defendant Roa had a license to possess a firearm, and

both were subsequently charged with Constructive Possession of an Unlicensed Firearm pursuant to 14 V.I.C. 2253(a) and Constructive Possession of a Controlled Substance with the Intent to Distribute pursuant to 19 V.I.C. 604(a)(1).

Both Defendants assert that the evidence seized from the stop should be suppressed because the stop was in violation of their Fourth Amendment rights. The People argue the evidence seized was not in violation of the Fourth Amendment because the search was based on the detective's experience in law enforcement, and also because of the "Plain View Doctrine."

II. Discussion

The Fourth Amendment protects an individual from "unreasonable searches and seizures." U.S. Const. amend. IV.⁴ "No right is held more sacred, or is more carefully guarded, by the common law, than the right of every individual to the possession and control of his own person, free from all restraint or interference of others, unless by clear and unquestionable authority of law." *Terry v. Ohio*, 392 U.S. 1, 9 (1968).

The Fourth Amendment is implicated in this case because "stopping an automobile and detaining its occupants constitute a 'seizure' within the meaning of [the Fourth Amendment]." *Delaware v. Prouse*, 440 U.S. 648, 653 (1979). "The burden of proof is on a defendant seeking to suppress evidence under a Fourth Amendment

⁴ The Fourth Amendment of the United States Constitution is applicable in the Virgin Islands pursuant to § 3 of the Revised Organic Act of 1954, as amended, 48 U.S.C. § 1561.

challenge...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.” *People of the V.I. v. Lloyd*, 2015 V.I. LEXIS 122, *6 (V.I. Super. Ct. Sept. 29, 2015).

“In *Terry*, the Court made it clear that the reasonableness of a search is to be determined by an inquiry into the facts of each case.” *Pa. v. Mimms*, 434 U.S. 106, 116 n.3, (1977). Meaning, to justify “the particular intrusion the 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.” *Id.* (citing *Terry* 392 U.S., at 21). See e.g., *People of the V.I. v. Matthew*, 55 V.I. 380, 390 (Super. Ct. 2011) (“a stop to check a driver's license and registration is constitutional when it is based on an ‘articulable and reasonable suspicion that ... either the vehicle or an occupant’ has violated the law.”)

In *Delaware v. Prouse*, 440 U.S. 648, 663 (1979), the United States Supreme Court held,

except in those situations in which there is at least articulable and reasonable suspicion that a motorist is unlicensed or that an automobile is not registered, or that either the vehicle or an occupant is otherwise subject to seizure for violation of law, stopping an automobile and detaining the driver in order to check his driver's license and the registration of the automobile are unreasonable under the Fourth Amendment.

It is established that the Defendants' search occurred without a warrant, and therefore the burden shifts to the People to show that warrantless search was reasonable under the Fourth Amendment.

The People have not met their burden because the officers failed to identify *any* articulable or reasonable suspicion that the Defendants had violated any law before they were stopped. Testimony shows the officers could not have known if the car was properly registered before they stopped the defendants.

Esprit testified officers can validate the registration of a vehicle by reading the license plate number to VIPD dispatch, via radio, to check the Bureau of Motor Vehicle database. However, the Bureau of Motor Vehicles does not have registration information for dealer plates temporarily assigned; therefore, the officers could not have known the vehicle was not registered, until *after* they stopped the Defendants and checked the Defendants' registration paperwork. In addition, Sgt. Bedminster admitted he only discovered the expired tags after he stopped the vehicle.

Without an articulable suspicion for stopping the Defendants, the stop was unreasonable—and therefore unconstitutional. “When evidence is obtained as a result of an unconstitutional search, the exclusionary rule requires that the fruits of that search be excluded from evidence at trial.” *Castillo v. People of the V.I.*, 59 V.I. 240, 255-56 (2013). *See Wong v. United States*, 371 U.S. 471, 488 (1963) (holding that evidence derived from a Fourth Amendment violation must be excluded from trial as “fruit of the poisonous tree”).

At the hearing the Defendants argued the plain view doctrine. Therefore, the plain view doctrine is inapplicable in this instance. “[A]n officer may seize potential evidence in plain view when conducting an arrest or executing a search warrant or making a *lawful* warrantless search,” *Gumbs v. People of the V.I.*, 64 V.I. 491, 509 (2016) (emphasis added). However Sgt. Esprit was not in the process of any of the above-listed activities when he seized the evidence.

Because “‘plain view’ provides grounds for seizure of an item when an officer’s access to an object has some prior justification under the Fourth Amendment,” *Tex. v. Brown*, 460 U.S. 730, 738 (1983), the plain view doctrine cannot provide any grounds for the seizure of the evidence in this instance because the original stop was unconstitutional. *See also Tex*, 460 U.S. at 730-31. (“Plain view is perhaps better understood, therefore, not as an independent ‘exception’ to the Warrant Clause, but simply as an extension of whatever the prior justification for an officer’s ‘access to an object’ may be.”)

III. Conclusion

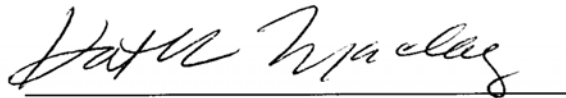
The People failed to identify *any* articulable or reasonable suspicion that the Defendants had violated any law before they were stopped. The testimony shows that the law enforcement could not have known the vehicle was not registered until after the vehicle was pulled over.

Without an articulable suspicion for stopping the Defendants, the stop was unreasonable—and therefore unconstitutional.

Accordingly, all evidence derived as a result of the Defendants' unconstitutional stop will be suppressed.

An Order consistent with this Memorandum Opinion will be entered.

DATED: June 29, 2017

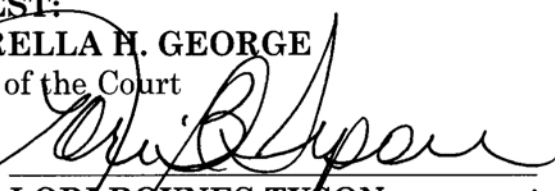


Kathleen Mackay
Judge of the Superior Court
of the Virgin Islands

ATTEST:

ESTRELLA H. GEORGE
Clerk of the Court

BY:



LORI BOYNES TYSON
Chief Deputy Clerk 6/29/17