

II

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX

THE PEOPLE OF THE VIRGIN ISLANDS **Plaintiff** )  
 )  
 Vs. )  
 )  
ALEXIS DOWARD **Defendant** )

CASE NO. SX-09-CR-0000556

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

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

TO: ORDER BOOK  
LIBRARIAN  
LAW CLERKS  
JUDGES AND MAGISTRATES OF THE SUPERIOR COURT  
JOMO MEADE, ESQ.  
IT  
GARFIELD BLOODMAN, ESQ.

Please take notice that on November 15, 2010 a(n) MEMORANDUM OF  
OPINION AND ORDER dated November 12, 2010 was entered by the Clerk in the  
above-entitled matter.

Dated: November 15, 2010

Venetia H. Velazquez. Esq.  
CLERK OF THE SUPERIOR COURT

  
ROXANNE SERRANO  
COURT CLERK II

**NOT FOR PUBLICATION**

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS**

**DIVISION OF ST. CROIX**

**PEOPLE OF THE VIRGIN ISLANDS,**

**PLAINTIFF,**

**v.**

**TISHAWN SAMUEL,**

**DEFENDANT.**

**SX-09-CR-557**

**CHARGE(S):**

UNAUTHORIZED  
POSSESSION OF A FIREARM;  
FAILURE TO REPORT  
FIREARM PURCHASED  
OUTSIDE OR BROUGHT  
INTO THE VIRGIN ISLANDS;  
FAILURE TO REPORT  
AMMUNITION PURCHASED  
OUTSIDE OR BROUGHT  
INTO THE VIRGIN ISLANDS;  
POSSESSION OF A  
CONTROLLED SUBSTANCE  
WITH INTENT TO  
DISTRIBUTE; INTERFERING  
WITH AN OFFICER  
DISCHARGING HIS DUTIES;  
SIMPLE POSSESSION OF A  
CONTROLLED SUBSTANCE;  
FAILURE TO STOP

**PEOPLE OF THE VIRGIN ISLANDS,**

**PLAINTIFF**

**v.**

**ALEXIS DOWARD,**

**DEFENDANT.**

**SX-09-CR-556**

**MEMORANDUM OPINION**

**THIS MATTER** came before the Court on the Defendant Alexis Doward's (hereinafter "Doward") Motion to Suppress filed pursuant to Rule 12(b)(3)(c) of the Federal Rules of Criminal Procedure on grounds that evidence was seized in violation of the Fourth and Fifth Amendment. At the suppression hearing, Defendant Tishawn Samuel joined in the motion. For reasons elucidated below, the Court will grant Defendants' Motion to Suppress.

### FACTUAL AND PROCEDURAL BACKGROUND<sup>1</sup>

On or about October 11, 2009 at approximately 1:32 a.m. Police Officer Ralston Wright (hereafter "Officer Wright") and Police Officer David Stevens, Jr., (hereafter "Officer Stevens") were on mobile patrol on King Street, Frederiksted. While travelling south on King Street, Officer and Officer Stevens (hereafter "Officers") observed a blue Chevrolet Cavalier bearing license plate CDL-969 (hereafter the "vehicle") approach the intersection at Fisher and King Street and make a right turn without stopping at a visible posted stop sign. The officers conducted a traffic stop of the vehicle on Veterans Drive in the vicinity of Marley Project. According to Officer Wright, when he approached the vehicle he asked the driver of the vehicle later identified as Defendant Alexis Doward (hereafter "Doward") to exit the vehicle with his driver's license, registration and proof of insurance. Doward complied with the request. According to Officer Wright, he then approached the vehicle and asked the passenger later identified as Defendant Tishawn Samuel (hereafter "Samuel") to step out of the vehicle. Officer Wright stated that when Samuel began to exit the vehicle he (Officer Wright) heard an item fall inside of the vehicle. According to Officer Wright, he used his flashlight to illuminate the interior of the vehicle. Upon doing so, he (Officer Wright) observed a firearm on the floor of the front passenger side of the vehicle. Both Samuel and Doward were placed under arrest.

Samuel was asked to show his hands, but according to Officer Wright, Samuel was reluctant to do so. Samuel then continued to reach in his waistband and Officer Wright pulled out his service weapon and instructed Samuel to show his hands. Shortly thereafter Samuel removed an additional firearm from his waist and placed it on the seat of the vehicle. Samuel was thereafter instructed to exit the vehicle at which time he was arrested and placed in

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<sup>1</sup> This case is almost identical to that of *People of the Virgin Islands vs. Matthew, Gordon, Morton and Gordon*, No. 09-723, 724, 725, 726, slip op. (Super.Ct. filed Nov. 9, 2010). In that case, the same Police Officer Wright made a traffic-stop of a Toyota Forerunner and found in "plain view" a firearm on the floorboard of the vehicle. This prompted a search in which one gun was found on the person of a juvenile and the other in the rear passenger side of the vehicle.

handcuffs. Following this a search of his person was conducted. The search resulted in the discovery by Officer Wright from Samuel's right front pocket of eight (8) small clear zip lock bags containing a green leafy substance, which Officer Wright suspected as marijuana. Also, uncovered from the search was \$715.00 in U.S. currency. The denominations were 1 - \$50.00 bill, 33 - \$20.00 bills and 1 - \$5.00 bill.

Samuel and Doward were later transported to the Station where a secondary search of both Samuel and Doward was conducted. It revealed concealed in Samuel's right shoe one (1) small clear zip lock bag containing a green leafy substance, which Officer Wright suspected as marijuana. It also revealed in the stocking cap that Samuel was wearing on his head a plastic bag containing eight (8) white pieces substance which seemed to be of crack cocaine. From Doward's right shoe there was also discovery of one (1) small clear zip lock bag containing a green leafy substance likewise suspected by Officer Wright as marijuana. The marijuana was tested, using the "Duquenois Reagent Marijuana Test Kit # 8" field tested and proved positive for the controlled substance of marijuana. The white rocky like substance contained inside the "Nickel Bags" was test utilizing a "Cocaine HCl and free base (Crack) Reagent Narco Test Kit" and proved positive for crack-cocaine.

At the Station, both Samuel and Doward were advised of their Miranda Warnings. In response thereto Samuel declined to give a statement. Doward on the other hand provided a statement to the effect that he picked up Samuel in the vicinity of the vegetable market and was giving Samuel a ride to Walter I. M. Hodge Pavilion. Doward also stated that after being stopped by the police Samuel had confided in Doward that he (Samuel) was in possession of a firearm. After processing the scene another firearm had been discovered under a child booster seat which located in the right rear passenger seat. That weapon was collected and photographed. Also found in the right passenger door was a speed loader which contained six live rounds. Upon closer inspection of weapons, the Forensics division determined that the first

weapon uncovered in plain view on the floor in the front right passenger side was a Smith and Wesson, Model 13-2, 357 caliber revolver. The serial number of the first weapon that had been found in plain view could not be located. The second weapon found in the waistband on the person of Samuel was a Smith and Wesson, Model SW40VE, .40 caliber pistol, bearing serial number RPB8044. The third weapon found under the booster seat on the rear passenger right side of the vehicle was a Heckler and Koch USP, .40 caliber pistol bearing serial number Z27988.

While at the police station a check was made with the Virgin Islands Police Department Firearms Section and it revealed that Samuel and Doward were not licensed to possess a firearm in the Virgin Islands. Samuel was subsequently charged with Unauthorized Possession of a Firearm, Possession of a Controlled Substance with Intent to Distribute, and Simple Possession of a Controlled Substance. Doward was subsequently charged with Unauthorized Possession of a Firearm and Simple Possession of a Controlled Substance. Doward filed a motion to suppress the weapons and ammunition seized by the Officers as fruits of a warrantless search and seizure in violation of the Fourth and Fifth Amendments of the Constitution. Samuel joined in the motion at the suppression hearing. Additionally, the defendants move to suppress the introduction of any statement allegedly made to agents of the Government prior to or subsequent to the date recounted above, and all other evidence which is derivative of the search and seizure of his person and property conducted by agents of the Government. In opposition, the People contend that the weapons and ammunition seized were the fruits of lawful police activity that was reasonable under the totality of the circumstances and are, therefore, not subject to suppression. Defendants filed a supplemental brief in support of the motion to which the People responded.

#### DISCUSSION

As in the case of *People of the Virgin Islands v. Accelyn Morton*, No. 09-725, slip. op.

(Super. Ct. filed Nov. 12, 2010), the Court need not determine whether the guns were in plain view or no. The central issues in this matter are the constitutionality of the traffic stop and the legality of the arrest.

It is axiomatic that under the protection of the Fourth Amendment of the United States Constitution "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." U.S. Const. Amend. IV. The right of security in person and property afforded by the Fourth Amendment may be invaded in various different ways by searches and seizures; however, "[i]t must always be remembered that what the Constitution forbids is not all searches and seizures, but *unreasonable* searches and seizures," *Elkins v. United States*, 364 U.S. 206, 222, 80 S.Ct. 1437, 4 L.Ed.2d 1669 (1960).

As a general rule, the burden of proof is on the defendant who seeks to suppress evidence. *See United States v. Acosta*, 965 F.2d 1248, 1256 n. 9 (3d Cir.1992) (citations omitted). However, once the defendant has established a basis for his motion, *i.e.*, the search or seizure was conducted without a warrant, the burden shifts to the government to show that the search or seizure was reasonable. *See United States v. McKneely*, 6 F.3d 1447, 1453 (10th Cir.1993). The government bears the burden of showing that each individual act constituting a search or seizure under the Fourth Amendment was reasonable. *United States v. Johnson*, 63 F.3d 242, 245 (3d Cir.1995).

"What is reasonable depends upon all of the circumstances surrounding the search or seizure and the nature of the search or seizure itself." *United States v. Montoya de Hernandez*, 473 U.S. 531, 537, 105 S.Ct. 3304, 87 L.Ed.2d 381 (1985). The "general rule" is that "warrantless searches are presumptively unreasonable...." *Horton v. California*, 496 U.S. 128, 133, 110 S.Ct. 2301, 110 L.Ed.2d 112 (1990). The courts have, however, fashioned exceptions to

the general rule, recognizing that in certain limited situations the government's interest in conducting a search without a warrant outweighs the individual's privacy interest. *See, e.g., id.; Montoya de Hernandez*, 473 U.S. at 537-41, 105 S.Ct. 3304. A *Terry* "stop and frisk" is one such exception. *See Terry v. Ohio*, 392 U.S. 1, 20-22, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968).

#### **Constitutionality of the Police Traffic Stop**

The threshold issue to determine in this case is the constitutionality of the police traffic stop. The constitutionality of the police traffic stop will depend upon whether—at the time of the stop—the Officers reasonably believed that Defendant Doward [the driver] was committing a traffic offense, and whether the law authorized a stop for such an offense. *See supra U.S. v. Johnson*, 63 F.3d 242, 246 (3d Cir.1995).

The Officers testified that they observed a blue Chevrolet Cavalier approach the intersection of Fisher and King Street and make a right turn without stopping at a visible posted stop sign. It was based upon the observed traffic violation that the Officers proceeded to stop the car. Virgin Islands traffic laws impose a clear obligation on a motorist to bring his motor vehicle to a full stop at a stop sign. *See* 20 V.I.C. § 495. Moreover, police officers have a legal duty to effect traffic stops to investigate and enforce motorists' compliance with this type of traffic regulation. *See* 20 V.I.C. § 491.<sup>2</sup>

The United States Supreme Court has held that stopping a car and detaining its occupants is a seizure under the Fourth Amendment. *See United States v. Hensley*, 469 U.S. 221, 226, 105 S.Ct. 675, 678, 83 L.Ed.2d 604 (1985); *see also United States v. Velasquez*, 885 F.2d 1076, 1081

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<sup>2</sup> 491. Police Regulations; special traffic regulations

(a) In addition to the provisions of this chapter, operators of motor vehicles shall observe the general traffic regulations contained in the Police Regulations set out in Title 23, and such traffic and parking regulations as may from time to time be published by the Police Commissioner.

(b) Motor vehicles shall stop or proceed immediately when so ordered by members of the police force.

20 V.I.C. § 491

(3d Cir.1989), *cert. denied*, 494 U.S. 1017, 110 S.Ct. 1321, 108 L.Ed.2d 497 (1990). However, 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. *Delaware v. Prouse*, 440 U.S. 648, 663, 99 S.Ct. 1391, 1401, 59 L.Ed.2d 660 (1979); *see Velasquez*, 885 F.2d at 1081; *see also* 75 PA.CON.S.TAT.ANN. § 6308(b) (Supp.1995).

After a traffic stop that was justified at its inception, 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. *See United States v. Johnson*, 285 F.3d 744, 749 (8th Cir.2002). While "reasonable suspicion" must be more than an inchoate "hunch," the Fourth Amendment only requires that police articulate some minimal, objective justification for an investigatory stop. *See United States v. Sokolow*, 490 U.S. 1, 13, 109 S.Ct. 1581, 1585, 104 L.Ed.2d 1 (1989). In determining whether there was a basis for reasonable suspicion, a court must consider the totality of the circumstances, in light of the officer's experience. *See United States v. Arvizu*, 534 U.S. 266, 273, 122 S.Ct. 744, 750-51, 151 L.Ed.2d 740 (2002); *United States v. Orsolini*, 300 F.3d 724, 728 (6th Cir.2002). Within the last year we have noted that in "the Supreme Court's most recent pronouncement on the Fourth Amendment reasonable suspicion standard, it accorded great deference to the officer's knowledge of the nature and the nuances of the type of criminal activity that he had observed in his experience, almost to the point of permitting it to be the focal point of the analysis." *United States v. Nelson*, 284 F.3d 472, 482 (3d Cir.2002).

In evaluating the constitutionality of a police traffic stop, most courts agree that an objective analysis of the facts and circumstances surrounding the stop is appropriate. *See, e.g., Scott v. United States*, 436 U.S. 128, 137-38, 98 S.Ct. 1717, 1723, 56 L.Ed.2d 168 (1978); *United States v. Whren*, 53 F.3d 371, 374 (D.C.Cir.1995); *United States v. Hawkins*, 811 F.2d 210, 213 (3d Cir.), *cert. denied*, 484 U.S. 833, 108 S.Ct. 110, 98 L.Ed.2d 69 (1987).



Under the "authorization test"<sup>3</sup>, materials seized following a traffic stop are admissible so long as a reasonable police officer *could* have made the stop (also known as the "could" test). These courts simply inquire whether, *at the time of the stop*, the police officer reasonably believed the defendant was committing a traffic offense, and whether the law authorized a stop for such an offense. *See Whren*, 53 F.3d at 375-76; *Scopo*, 19 F.3d at 782-84; *United States v. Jeffus*, 22 F.3d 554, 557 (4th Cir.1994); *United States v. Bloomfield*, 40 F.3d 910, 915 (8th Cir.1994); *United States v. Roberson*, 6 F.3d 1088, 1092 (5th Cir.1993); *Ferguson*, 8 F.3d at 389-91; *United States v. Hadfield*, 918 F.2d 987, 993 (1st Cir.1990), *cert. denied*, 500 U.S. 936, 111 S.Ct. 2062, 114 L.Ed.2d 466 (1991); *United States v. Hope*, 906 F.2d 254, 257-58 (7th Cir.1990). In evaluating the constitutionality of a traffic stop, a court is free to examine the sufficiency of the reasons for the stop as well as the officer's credibility. *U.S. v. Johnson*, 63 F.3d at 247.

The police are, however, subject to a number of statutory and common law limitations. One such example is that officers cannot make a traffic stop without probable cause or a reasonable suspicion, based on articulable facts that a traffic violation has occurred. *See Prouse*, 440 U.S. at 661, 99 S.Ct. at 1400; *Velasquez*, 885 F.2d at 1081; *see also* 75 PA.CONST. STAT. ANN. § 6308(b). Hence, in evaluating the constitutionality of a traffic stop, a court is free to examine the sufficiency of the reasons for the stop as well as the officer's credibility. *U.S. v. Johnson*, 63 F.3d at 247.

Moreover, a traffic stop must be reasonably related in scope to the justification for the stop. *See Berkemer v. McCarty*, 468 U.S. 420, 439, 104 S.Ct. 3138, 3149, 82 L.Ed.2d 317 (1984); *Bloomfield*, 40 F.3d at 915; *Scopo*, 19 F.3d at 785; *United States v. Hassan El*, 5 F.3d

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<sup>3</sup> The authorization test was adopted by the Third Circuit in *U.S. v. Johnson*, 63 F.3d 342 (3d Cir.1995). In contrast, when applying the "usual police activities" test to a traffic stop, materials seized are admissible as evidence only if a reasonable police officer *would* have made the stop in the absence of an invalid purpose. These courts inquire not only into the legality of the stop, but also into its conformity with regular police practices.

726, 731 (4th Cir.1993), *cert. denied*, 511 U.S. 1006, 114 S.Ct. 1374, 128 L.Ed.2d 50 (1994). To justify a greater intrusion unrelated to the traffic stop, the totality of the circumstances known to the police officer must establish reasonable suspicion or probable cause to support the intrusion. See *United States v. Ramos*, 42 F.3d 1160, 1163 (8th Cir.1994); *United States v. Hernandez*, 872 F.Supp. 1288, 1293-94 (D.Del.1994). Clearly, a lawful traffic stop is not “carte blanche” for an officer to engage in other unjustified action. *U.S. v. Johnson*, 63 F.3d at 247.

The Court finds, therefore, that in applying the “authorization test” there was reasonable basis under the circumstances for the Officers to stop the vehicle to investigate the traffic violation of failure to make a full stop at the stop sign at the intersection of Fisher and King Street. See also *U.S. v. Bell*, 2008 WL 806 (D. Virgin Islands) and *Wren v. U.S.*, 517 U.S. 806. Accordingly, the police traffic stop passes constitutional muster as a valid *Terry* stop. However, the Court is troubled and must question the intent of the police in that they did not immediately stop the vehicle when they observed the Defendants vehicle violate the traffic law, but rather followed it a distance before effectuating the traffic stop.

#### **Constitutionality of the Arrest of the Defendants at the Traffic Stop Scene**

##### **Arrest of Samuel**

The People introduced evidence that while travelling south on King Street at 1:30 a.m. on October 11, 2009 the Officers observed a blue Chevrolet Cavalier bearing license plate CDL-968 (hereafter the “vehicle”) approach the intersection at Fisher and King Street and make a right turn without stopping at a visible posted stop sign. Based upon the observed traffic violation, the Officers conducted a traffic stop of the vehicle on Veterans Drive in the vicinity of the Marley Homes. When Officer Wright approached the vehicle, he asked the driver of the vehicle later identified as Doward to exit the vehicle with his driver’s license, registration and proof of insurance. Doward complied with the request. When Officer Wright approached the vehicle and asked the passenger later identified as Samuel to step out of the vehicle, he heard an item fall

inside of the vehicle and using his flashlight illuminated the interior of the vehicle. Upon doing so, the Officer observed a firearm on the floor of the front passenger side of the vehicle. Samuel was immediately asked to show his hands, but Samuel was reluctant to do so. Samuel then continued to reach in his waistband and Officer Wright pulled out his service weapon and instructed Samuel to show his hands. Shortly thereafter Samuel removed an additional firearm from his waist and placed it on the seat of the vehicle. Samuel was thereafter instructed to exit the vehicle at which time he was arrested and placed in handcuffs.<sup>4</sup>

Virgin Islands law expressly authorizes law enforcement officers to investigate a person's possession of a firearm and—if a firearm is discovered and the suspect is unable to provide proof of license to carry under 23 V.I.C. § 454 upon the officer's demand—to seize the weapon and arrest the person without having to first obtain a warrant. See below 23 V.I.C. § 488.

Section 488 plainly lays out the procedures of an officer encounter with someone who has a firearm. The police must, in carrying out his statutory duties, preliminarily demand the person as to whether he has a license to possess a firearm. Section 488 states

**(a)** Any law enforcement officer who, in the light of his observations, information and experience, has a reasonable belief that (i) a person may be wearing, carrying, or transporting a firearm in violation of section 454 of this title, (ii) by virtue of his possession of a firearm, such person is or may be presently dangerous to the officer or to others, (iii) it is impracticable, under the circumstances, to obtain a search warrant; and (iv) it is necessary for the officer's protection or the protection of others to take swift measures to discover whether such person is, in fact, wearing, carrying, or transporting a firearm, such officer may:

**(1)** approach the person and identify himself as a law enforcement officer;

**(2)** request the person's name and address, and, if the person is in a vehicle, his license to operate the vehicle, and the vehicle's registration; and

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<sup>4</sup> It is uncertain as to when Doward was placed under arrest. Nevertheless, the record is clear, that no inquiries were made to Doward as to whether he had a license to possess a firearm until after his arrest.

(3) ask such questions and request such explanations as may be reasonably calculated to determine whether the person is, in fact, unlawfully wearing, carrying, or transporting a firearm in violation of section 454 of this title; and

(4) if the person does not give an explanation which dispels the reasonable belief which he had, he may conduct a search of the person, limited to a patting or frisking of the person's clothing in search of a firearm. The police officer in acting under this section shall do so with due regard to all circumstances of the occasion, including but not limited to the age, appearance, physical condition, manner and sex of the person approached.

(b) In the event that the officer discovers the person to be wearing, carrying, or transporting a firearm, he may demand that the person produce evidence that he is entitled to so wear, carry, or transport the firearm pursuant to section 454 of this title. If the person is unable to produce such evidence, the officer may then seize the firearm and arrest the person.

(c) Nothing in this section shall be construed to limit the right of any police officer to make any other type of search, seizure, and arrest which may be permitted by law.

Any police officer sued in a civil action for conducting a search or seizure pursuant to this section which is alleged to be unreasonable and unlawful shall, upon his request, be defended in said action and any appeals therefrom, by the Attorney General.

Every police officer who conducts a search or seizure pursuant to this section shall, within twenty-four hours after such search or seizure, file a written report with the U.S. Virgin Islands Police Department (V.I.P.D.) describing the circumstances surrounding the search or seizure and the reasons therefore on a form prescribed by the Police Commissioner. Such report shall include the name of the person searched.

23 V.I.C. § 488.

In the case at bar, although the Officers had statutory authority pursuant to 23 V.I.C. § 488 to investigate the defendants lawful possession of the weapons that had been discovered through lawful police activity, there is absolutely no evidence on the record that the Officers sought to initiate the inquiry *prior* to Samuel's arrest at the traffic stop scene. Even though there is evidence of Samuel's reluctance to show his hands and his attempt to reach to his waistband where the second weapon was concealed—in spite of Officer Wright's drawing of his weapon on

Samuel to secure compliance—there is no additional evidence on the record that the Officers were apprised of any facts that lead them to the reasonable belief that defendants did not possess the firearms lawfully upon discovery of the weapons at the time of the traffic stop. The record reflects merely that it was determined at the Station upon checking with the Firearms Division that neither Doward nor Samuel had a license to possess a firearm. The record also fails to present any testimony from the Officers based upon their enforcement experience supporting that they had—prior to arresting Samuel—an articulable basis to reasonably believe that Defendants possessed the firearm unlawfully. Most critically, the record is also devoid of any articulable facts to support that the Officers suspected any other criminal activity for instance suspicion of illegal drug activity that provided probable cause for the arrest prior to the subsequent discovery of the drugs on the defendants following the arrest. Under the totality of the circumstances, therefore, this Court finds that the Officers lacked probable cause to arrest Samuel.

#### **Arrest of Doward**

Doward was the driver of the vehicle at the time of the traffic violation. The evidence adduced at trial shows that Doward cooperated with the police and provided the necessary documents that they (the Police) requested. Doward was only arrested after Officer Wright heard something drop when Samuel exited the Vehicle and then he (Officer Wright) looked in to the car and saw a gun on the floor where Samuel was sitting. At the Station, both Samuel and Doward were advised of their Miranda Warnings. In response thereto Samuel declined to give a statement. Doward on the other hand provided a statement to the effect that he picked up Samuel in the vicinity of the vegetable market and was giving Samuel a ride to Walter I. M. Hodge Pavilion. According to Doward's statement, after being stopped by the police, Samuel had confided in Doward that he was in possession of a firearm. After processing the scene another firearm had been discovered under a child booster seat which was located in the right rear

passenger seat. That weapon was collected and photographed. Also found in the right passenger door was a speed loader which contained six live rounds.

The People have not articulated any reasons or shown that—prior to Doward's arrest—the arresting officers had a reasonable belief that he was involved in a criminal activity or that the firearm found in his vehicle was illegal or that he (Doward) cannot have a license firearm or that Officer Wright questioned him and he, Doward had stated that he did not have a license for the firearm.

It axiomatically follows that the unlawful arrest of Samuel, lead to the unlawful arrest of Doward. This so because, all evidence derived from the unlawful arrest of Samuel is subject to suppression under the exclusionary rule. Accordingly, the Officers therefore also clearly lacked probable cause to arrest Doward.

#### **Search and Statements Obtained Incident to Arrest**

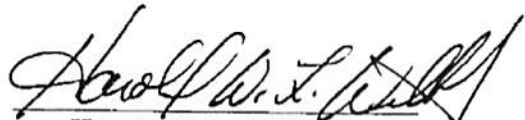
Following the arrest of Defendants a full search was conducted. The search resulted in the discovery by Officer Wright from Samuel's right front pocket of eight (8) small clear zip lock bags containing a green leafy substance, which Officer Wright suspected as marijuana. Also, uncovered from the search was \$715.00 in U.S. currency. The denominations were 1 - \$50.00 bill, 33 - \$20.00 bills and 1 - \$5.00 bill. At the Station, both Samuel and Doward were advised of their Miranda Warnings. In response thereto Samuel declined to give a statement. Doward on the other hand provided a statement to the effect that he picked up Samuel in the vicinity of the vegetable market and was giving Samuel a ride to Walter I. M. Hodge Pavilion. Doward also stated that after being stopped by the police Samuel had confided in Doward that he was in possession of a firearm. After processing the scene another firearm had been discovered under a child booster seat which located in the right rear passenger seat. Also found in the right passenger door was a speed loader which contained six live rounds. The Court finds that all evidence and statements acquired subsequent to the unlawful arrest was obtained in violation of

the Fourth Amendment and Fifth Amendment and, thereby, subject to suppression under the doctrine of fruits of the poisonous tree.

**CONCLUSION**

In conclusion, this Court holds, consistent with the Third Circuit's decision in *U.S. v. Ubiles*, and Title 23 Section 488 of the Virgin Islands Code, that the warrantless arrest of defendants—without probable cause that the weapons were unlawfully possessed or without any other evidence to support probable cause that other criminal activity was afoot—was unreasonable under the totality of the circumstances and that the weapons and ammunition and all other evidence uncovered subsequent to the unlawful arrest are, thus, subject to suppression under the exclusionary rule.

Dated: November 12<sup>th</sup> 2010

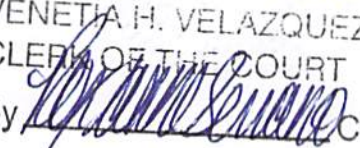
  
Harold W. L. Willocks  
Judge of the Superior Court

**ATTEST:**

Venetia H. Velazquez, Esq.  
Clerk of the Court

By:   
Court Clerk Supervisor

Dated: 11/15/10

CERTIFIED TO BE A TRUE COPY  
This 15<sup>th</sup> day of Nov 20 10  
VENETIA H. VELAZQUEZ, ESQ.  
CLERK OF THE COURT  
By:  Court Clerk TV

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

PEOPLE OF THE VIRGIN ISLANDS,

PLAINTIFF,

v.

TISHAWN SAMUEL,

DEFENDANT.

SX-09-CR-557

**CHARGE(S):**

UNAUTHORIZED POSSESSION OF A FIREARM; FAILURE TO REPORT FIREARM PURCHASED OUTSIDE OR BROUGHT INTO THE VIRGIN ISLANDS; FAILURE TO REPORT AMMUNITION PURCHASED OUTSIDE OR BROUGHT INTO THE VIRGIN ISLANDS; POSSESSION OF A CONTROLLED SUBSTANCE WITH INTENT TO DISTRIBUTE; INTERFERING WITH AN OFFICER DISCHARGING HIS DUTIES; SIMPLE POSSESSION OF A CONTROLLED SUBSTANCE; FAILURE TO STOP

PEOPLE OF THE VIRGIN ISLANDS,

PLAINTIFF

v.

ALEXIS DOWARD,

DEFENDANT.

SX-09-CR-556

**ORDER**

This matter came before the Court on Defendants' Motion to Suppress filed pursuant to Rule 12(b)(3)(c) of the Federal Rules of Criminal Procedure on grounds that evidence was illegally obtained in violation of their Fourth and Fifth Amendment Rights. For reasons elucidated in this Court's Memorandum Opinion of even date, it is hereby

**ORDERED** that Defendants' Motion to Suppress is **GRANTED**.

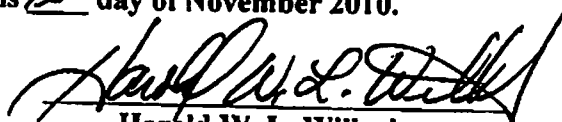
**DONE** and so **ORDERED** this 12<sup>th</sup> day of November 2010.

**ATTEST:**

Venetia Harvey-Velazquez, Esq.  
Clerk of the Court

By:   
Court Clerk Supervisor

11/15/10



Harold W. L. Willocks  
Judge of the Superior Court

CERTIFIED TO BE A TRUE COPY  
This 15<sup>th</sup> day of Nov 2010

VENETIA H. VELAZQUEZ, ESQ.  
CLERK OF THE COURT

By:  Court Clerk **II**



BY \_\_\_\_\_ COURT CLERK  
CLERK OF THE COURT  
VENETIA H. VELOZQUEZ, ESQ.  
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