

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF PUERTO RICO

UNITED STATES OF AMERICA,

Plaintiff,

v.

JOSEAN RAMOS-RIOS,

Defendant.

CRIMINAL NO. 16-013 (PAD)

**REPORT AND RECOMMENDATION**

**INTRODUCTION**

On January 8, 2016, a federal Grand Jury returned a three count Indictment against defendant Josean Ramos-Ríos (“Ramos”) for possession of a firearm with an obliterated serial number, in violation of Title 18, United States Code, Section 922(k); possession of a firearm in furtherance of a drug trafficking crime, in violation of Title 18, United States Code, Section 924(c)(1)(A); and possession with intent to distribute controlled substances, in violation of Title 21, United States Code, Section 841(a)(1). (Docket No. 11).

On February 22, 2016, Defendant Ramos filed a “Motion to Suppress Evidence” arguing that the physical evidence against him (Smith & Wesson pistol, controlled substances and paraphernalia) is the product of an illegal traffic stop, arrest and warrantless search and seizure in violation of his Fourth Amendment rights and should be suppressed. Defendant Ramos requested suppression of the seized items for the following reasons: 1) the PRPD Officer did not have reasonable suspicion to support the traffic stop; 2) the PRPD Officer impermissibly extended an otherwise completed traffic

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stop; 3) Ramos' arrest violated the Fourth Amendment; and 4) Ramos did not consent to the search of the vehicle. (Docket No. 20).

On March 12, 2016, the government filed the "United States of America's Motion in Opposition to Motion to Suppress" submitting the Motion to Suppress should be denied because the traffic stop was based on reasonable suspicion that Ramos had committed a traffic violation; the drugs and paraphernalia were seized pursuant to a valid consent; the inevitable discovery doctrine applies; and the inventory search performed of the vehicle was valid. (Docket No. 24).

On March 18, 2016, Defendant filed a Reply in Response to the government's Opposition. (Docket No. 25).

On June 15, 2016, the presiding District Judge referred Defendant Ramos' Motion to Suppress to this United States Magistrate Judge for report and recommendation. (Docket Nos. 26 and 27).

On July 28, 2016, the suppression hearing was held. The government called PRPO Santiago Aguila-Rodríguez ("PRPO Aguila") to the witness stand. Direct examination began. Several Exhibits were presented and admitted into evidence. (Docket No. 32).

On August 19, 2016, the suppression hearing continued with the direct examination of PRPO Aguila. Cross-examination was conducted. Several Exhibits were presented and admitted into evidence. The government then submitted the case. (Docket Nos. 33.

On October 18, 2016, the suppression hearing continued. The defense called

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Felícita Gómez-Ayala to testify. Direct and cross-examination were conducted. Defendant Ramos took the witness stand after being advised by the Court of his rights. Direct examination was conducted. Cross-examination started but did not conclude. (Docket No. 39).

On November 20, 2016, the suppression hearing continued with Defendant Ramos' cross-examination. Several Exhibits were presented and admitted. Defendant submitted his case. (Docket No. 40).

On December 8, 2016, a pending translation of one of the exhibits was submitted by the defense. (Docket Nos. 41 and 42).

### **LEGAL DISCUSSION**

#### **A. Investigatory Stop based on Reasonable Suspicion.**

The issue of whether the stop of Defendant Ramos' vehicle was legal and based on reasonable suspicion, as required by Terry v. Ohio, 392 U.S. 1, 88 S.Ct. 1868 (1968), is first addressed.

An investigative stop, also known as a Terry stop, *see Terry v. Ohio*, 392 U.S. at 1, occurs when a police officer, acting on reasonable and articulable suspicion of criminal activity, briefly detains an individual to confirm or dispel his suspicion. *Id.* at 6, 88 S.Ct. 1868 (*citing United States v. McCarthy*, 77 F.3d 522, 529 (1st Cir. 1996)).

With regards to investigative stops, the Court must determine "not whether the police had probable cause to act, but instead whether the actions taken were reasonable under the circumstances." *Id.* The Court must first conclude whether the officer's action

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was justified at its inception. If the action is justified, the Court must then ask whether the action taken was reasonably related in scope to the circumstances which justified the interference. *Id.* To satisfy the first prong, "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." United States v. Young, 105 F.3d 1, 7 (1st Cir. 1997) (*citing* United States v. Kimball, 25 F.3d 1, 6 (1st Cir. 1994)). To fulfill the second prong, the Court must examine the totality of the circumstances. *See* United States v. Walker, 924 F.2d 1, 4 (1st Cir. 1991); United States v. Acosta-Colón, 157 F.3d 9, 14 (1st Cir. 1998).

Pursuant to the testimony of PRPO Aguila at the suppression hearing, he was assigned to the Transit Division in Humacao, Puerto Rico on December 29, 2015 at approximately 12:38 PM. PRPO Aguila was patrolling on Route 908 in Humacao, Puerto Rico in a marked motorcycle. PRPO Aguila arrived at the intersection with Highway #3 and he stopped at the red traffic light. There was a traffic jam and the traffic was very slow. PRPO Aguila observed in front of him a white Toyota Tercel vehicle. The Toyota Tercel vehicle was riding on Highway #3 from Yabucoa to Humacao. The Toyota Tercel vehicle caught the attention of PRPO Aguila because, at a distance, the color of the vehicle's tag ("marbete") did not appear to be authentic. The weather condition at the moment was sunny. The vehicles were travelling on Highway #3 from Yabucoa to Humacao at about 2 MPH, the traffic was locked. The only person stopped at the intersection of Route 908 was PRPO Aguila. There was no other vehicle in front of PRPO

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Aguila when he was stopped there. PRPO Aguila was able to determine that the vehicle's tag ("marbete") was not legitimate because, based on his experience, he pays attention to registration stickers and has acquired experience in the color and the transparency of the "marbetes." The approximate distance between the location of PRPO Aguila and the Toyota Tercel was about the distance from the witness stand to the jury box in the courtroom. The Toyota Tercel's front passenger window was down when PRPO Aguila observed it and the vehicle did not have tinted windows. The Toyota Tercel was travelling from Yabucoa to Humacao and PRPO Aguila was able to observe it because the vehicle passed in front of him slowly at a perpendicular angle. PRPO Aguila saw that the back of the "marbete" was white and this was the fact that caught his attention. See Exhibits 7 and 8. PRPO Aguila noticed the "marbete" was not transparent enough and could see that the background was too white from the back not consistent with an authentic issued "marbete". This caused PRPO Aguila to suspect the vehicle's "marbete" was fake. A fake "marbete" could lead from a misdemeanor to a state felony crime under Law 22.

As a result, PRPO Aguila ordered the driver of the white Toyota Tercel vehicle to stop to investigate further the authenticity of the "marbete". The driver was later identified as Defendant Ramos. Defendant stopped his vehicle on top of the Patagonia Bridge in Highway #3 in direction to Humacao. PRPO Aguila approached Defendant Ramos from the passenger side of the vehicle, told Defendant the reason for the stop, and asked for his driver's license and vehicle's registration. Defendant Ramos told PRPO Aguila he did not have his driver's license and the vehicle's registration with him. At that

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point, PRPO Aguila asked Defendant Ramos to step out of the car to take his personal information and verify the status of his driver's license with the PRPD Command Center.

Pursuant to PRPO Aguila's testimony, while he and Defendant Ramos were standing next to the Toyota Tercel, PRPO Aguila observed Defendant Ramos had in his hand a small baggie containing what appeared to be controlled substances. Upon noticing that PRPO Aguila had observed the small baggie in his hand, Defendant voluntarily handed the small baggie to PRPO Aguila and stated that it contained controlled substances. As a result, PRPO Aguila placed Defendant under arrest, verbally advised him of his Miranda rights and called for backup.

On cross-examination, PRPO Aguila admitted that, besides the defective "marbete", Defendant Ramos did not commit any other traffic violation or criminal offense in his presence. Thus, PRPO Aguila had no other reason to order Defendant to stop his vehicle.

In turn, Defendant Ramos testified a different version of the facts at the suppression hearing after being advised of rights prior to testifying. Defendant Ramos testified that he was pulled over by a transit police officer after noon on December 29, 2015. When the officer approached the car, Defendant Ramos was not holding a bag of cocaine in his hand. The officer asked Defendants Ramos for his driver's license and registration. When Defendant Ramos could not immediately locate his registration, the officer ordered him out of the vehicle and began to search the car. The officer initially made no mention or inquiries regarding a defective tag or "marbete". Defendant Ramos

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never provided verbal or written consent for the officer to search his car. Defendant Ramos never volunteered any information about where the officer could find contraband in the car. When the officer found a small bag of controlled substances in the car, he placed Defendant Ramos under arrest.

Pursuant to the evidence presented at the suppression hearing, under the totality of the circumstances and after assessing credibility, the Court cannot find that PRPO Aguila had a reasonable, articulable suspicion about Defendant Ramos being in violation of Puerto Rico's Traffic Law 22 because simply put, his version of facts is incredible. Thus, the initial stop of Defendant Ramos' vehicle was not valid and was not within the parameters of Terry, 392 U.S. at 21; United States v. Chhien, 266 F.3d 1, 6 (1st Cir. 2001). As such, all evidence seized should be suppressed as fruits of the poisonous tree. A brief explanation follows.

The Court cannot accept PRPO Aguila's version of fact because the same is simply unbelievable. Even crediting the fact that PRPO Aguila allegedly has prior experience in traffic law violations and with "marbetes" in particular, it defies our imagination how he could have seen from a distance, at 12:38 PM on a sunny day, while in a motorcycle wearing a helmet and with the visor down, in the middle of a busy intersection with a lot of traffic and vehicles, at a perpendicular angle and from the opposite side of Defendant's vehicle, that the "marbete" of Defendant's vehicle was fake because it was white on the back and lacked "transparency." Defendant's vehicle was in motion at the time that PRPO Aguila allegedly observed the "marbete" through the windshield.

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To believe PRPO Aguila would have us to conclude that he has “bionic” vision, was not affected by the glare at that time of a sunny day, and that he was at a “perfect” angle and in a privileged position. This is simply impossible to believe. If more were needed, suffice it to say that “judges are [not] required to divorce themselves of common sense,” whereas here, an explanation is “inherently unbelievable.” United States v. Portalla, 496 F.3d 23, 28 (1st Cir. 2007) (citation and internal quotation marks omitted); *see also Fed. Deposit Ins. Corp. v. Francisco Inv. Corp.*, 638 F.Supp. 1216, 1219 n. 3 (D.P.R. 1986) (“We judges should not, after all, be so naive as to believe statements which no one else would believe.”) (citation and internal quotation marks omitted), *aff’d*, 873 F.2d 474 (1st Cir. 1989). And here, common sense dictates that PRPO Aguila’s alleged observation that the “marbete” was not transparent enough and, as such was fake, is simply not credible.

If that were not enough, the Court cannot believe either the testimony of PRPO Aguila that, when he approached the vehicle and Defendant exited the car, Defendant had a baggie with cocaine in his hand and voluntarily handed the same to the officer. This is unconvincing and improbable. Why would Defendant Ramos exit the car with drugs in his hand on top of a bridge, after being ordered by a uniformed police officer to stop his vehicle, when he had the opportunity to hide the drugs in the car or toss them away?

The Court sides with Defendant Ramos’ reasonable inference that it was not until well into the traffic stop when PRPO Aguila performed a registration check that he discovered that the “marbete” was fake. This suggests that the expired “marbete” was an after-the-fact justification for the traffic stop, rather than one that existed at the time of

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the stop. *See* United States v. Lewis, 672 F.3d 232, 238 (3d Cir. 2012) (finding that officer's offered justification of illegal window tinting was "a contrived, after-the-fact explanation for the traffic stop" that could not support reasonable suspicion).

Thus, after assessing credibility and under the totality of the circumstances, the facts that PRPO Aguila had at the time he initiated the stop of Defendant Ramos' stop did not support reasonable articulable suspicion that Defendant was in violation of Puerto Rico Law 22 because the "marbete" was defective or that he had committed another traffic violation. As such, the initial traffic stop was unlawful and in violation of the Fourth Amendment.

As properly argued by Defendant Ramos, all further interventions flowing from the initial stop were also in violation of the Fourth Amendment. New York v. Harris, 495 U.S. 14, 19, 110 S.Ct. 1640 (1990). The seizures of the controlled substances, firearm, and paraphernalia were all the attenuated consequences of the illegal stop, as were Defendant Ramos's incriminating statements. *See* Segura v. United States, 468 U.S. 796, 804, 104 S.Ct. 3380 (1984); Brown v. Illinois, 422 U.S. 590, 604-05, 95 S.Ct. 2254 (1975) (suppressing statements that were temporally and logically related to the defendant's illegal arrest); United States v. Budzyna, 666 F.2d 666, 671 (1st Cir. 1981) (suppressing statements as "fruits of an illegal search and seizure").

Accordingly, it is recommended to the Court that all physical evidence and incriminating statements obtained as a direct result of the illegal traffic stop be suppressed as fruits of a Fourth Amendment violation. Based on this recommendation

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and for judicial economy, there is no need for the undersigned to discuss the other grounds under which Defendant Ramos is seeking suppression of the evidence.

### **CONCLUSION**

In view of the foregoing, it is recommended that Defendant Ramos “Motion to Suppress Evidence” (Docket No. 20) be GRANTED.

IT IS SO RECOMMENDED.

The parties have fourteen (14) days to file any objections to this report and recommendation. Failure to file same within the specified time waives the right to appeal this order. Henley Drilling Co. v. McGee, 36 F.3d 143, 150-151 (1st Cir. 1994); United States v. Valencia, 792 F.2d 4 (1st Cir. 1986). *See* Paterson-Leitch Co. v. Mass. Mun. Wholesale Elec. Co., 840 F.2d 985, 991 (1st Cir. 1988) (“Systemic efficiencies would be frustrated and the magistrate’s role reduced to that a mere dress rehearsal if a party were allowed to feint and weave at the initial hearing, and save its knockout punch for the second round”).<sup>1</sup>

In San Juan, Puerto Rico, this 14<sup>th</sup> day of December of 2016.

s/CAMILLE L. VELEZ-RIVE  
CAMILLE L. VELEZ-RIVE  
UNITED STATES MAGISTRATE JUDGE

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<sup>1</sup> 28 U.S.C. § 636(b)(1) provides that, “[w]ithin fourteen days after being served with a copy, any party may serve and file written objections” to a magistrate judge’s proposed findings and recommendations. “A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” *Id.*; *see also* United States v. Hernández-Rodríguez, 443 F.3d 138, 147-48 (1st Cir. 2006) (“The Supreme Court has held that a district judge need not hear the live testimony of a witness in order to *accept* the credibility determination of a magistrate judge. However, .... absent special circumstances, a district judge may not reject the credibility determination of a magistrate judge without first hearing the testimony that was the basis for that determination.” (internal citation omitted)). United States v. Guzman-Batista, 783 F.3d 930, 933-35 (1st Cir. 2015).