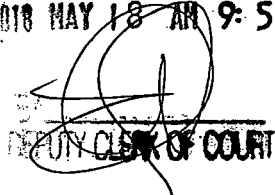


2018 MAY 18 AM 9:55



IN THE SUPERIOR COURT
FOR THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS,)	CRIMINAL CASE NO. 17-0146
)	
Plaintiff,)	ORDER GRANTING DEFENDANT'S
)	MOTION TO SUPPRESS EVIDENCE
v.)	
)	
REMEDIO SABLAN ISLAM)	
D.O.B.: 12/18/1966)	
)	
Defendant.)	

I. INTRODUCTION

THIS MATTER was last before the court on Defendant's Motion to Suppress Evidence on April 18, 2018 in Multipurpose Room 2. Attorney Bruce Berline represented the Defendant Remedio Sablan Islam who was present out of custody. Assistant Attorney General Chester Hinds represented the Commonwealth of the Northern Mariana Islands ("the Commonwealth").

The Defendant is charged with Illegal Possession of a Controlled Substance on or about September 20, 2017 in violation of 6 CMC § 2142(a). At the April 18, 2018 motion hearing, the Commonwealth called Department of Public Safety ("DPS") Dispatcher, Pedro Teregeyo, and the two responding DPS officers—Officer I Joel Ignacio and Officer III Maverick Sorres. The Commonwealth also admitted a DPS Radio Log Sheet (Ex. 1) and the surveillance video from Royal Poker (Ex. 2). The Defendant submitted one photograph—a still shot from Royal Poker's surveillance video (Ex. B)—and called no witnesses.

The Defendant moves to suppress the Ziploc baggie that was found under the Defendant's foot shortly before her arrest and all other evidence related to that baggie as fruit of unlawful search

1 and seizure. The Commonwealth argues the responding officers had reasonable suspicion to detain
2 the Defendant from which the lawful arrest followed. After reviewing the legal arguments and
3 papers, video filings, and relevant law, the Court makes the following order.

4 **II. BACKGROUND FACTS**

5 On September 20, 2017 at around 6:21 a.m., DPS dispatch received a call through the 911
6 hotline, which was noted in the DPS Radio Log Sheet. (See Ex. 1). Dispatcher Teregeyo testified
7 that the caller refused to identify themselves, but reported that two people were “possibly” smoking
8 ‘ice’ in a “red Corolla” parked outside Afetna Supermarket. This information was dispatched to
9 Officer Ignacio, who proceeded to Afetna Supermarket with Officer Sorres.¹

10 Upon arriving at the scene, the two responding officers did not find a red Corolla in the
11 Afetna Supermarket parking lot. Dispatcher Teregeyo and Officer Ignacio testified that at about this
12 time Officer Ignacio received a second dispatch informing him that the anonymous informant had
13 called again and reported that the red Corolla had moved across Beach Road to the parking lot of
14 Royal Poker. This second call was not mentioned or referenced in any of the discovery materials
15 provided to the Defendant before the hearing nor documented in the DPS Radio Log Sheet (even
16 though DPS procedures require the detailed notation of every such call and dispatch). (See Ex. 1).

17 The responding officers nonetheless proceeded in their vehicle to Royal Poker location.
18 Both officers testified that they did see a red Toyota Corolla among the cars filling the Royal Poker
19 parking area. The Corolla was parked in front of the Royal Poker building. (Ex. B). Officer Ignacio
20 then parked the DPS vehicle directly behind the Corolla, which prevented the car from any possible
21 movement. The responding officers did not turn on the DPS vehicle’s police lights or siren. The
22 responding officers further testified that from their position in the DPS vehicle, they could see two

23 ¹ Dispatcher Teregeyo testified that the caller did provide a few additional details about why the caller thought criminal
24 activity was occurring and how the caller came to have their knowledge. However, these details were not reported to or
known by the responding officers or documented in the DPS Radio Log and are therefore not relevant to this Court’s
analysis of the responding officers’ reasonable suspicion. (See Ex. 1).

1 figures sitting in the car, but could not see clearly into the Corolla due to Corolla's window tinting.
2 Moreover, the officers testified that they did not see any suspicious or criminal activity occurring in
3 the Corolla at that time. The officers then approached the Corolla's driver and passenger sides.

4 The surveillance video from Royal Poker that was shown during the suppression hearing
5 corroborates the testimony and shows the Defendant arrived in a Red Toyota Corolla at
6 approximately 6:35 a.m. on the morning in question. (Ex. 2).² The video then shows that two
7 individuals in the Corolla exited the back passenger doors shortly after the Corolla parked. (Ex. 2).
8 The Defendant and Thomas Matsunaga remained in the Corolla. DPS officers then arrived and
9 parked behind the Corolla at approximately 6:41 a.m. as marked on the tape. (Ex. 2). Within 20-30
10 seconds, Officer Sorres had positioned himself at the Corolla's passenger side door, while Officer
11 Ignacio positioned himself at the Corolla's driver side door. (Ex. 2).

12 The responding officers testified that all the windows were tinted and rolled-up and that they
13 knocked on the Corolla's windows and told the Defendant and Mr. Matsunaga to exit the car. The
14 Defendant and Mr. Matsunaga did not immediately comply and remained in the car for several
15 minutes, during which time the officers leaned close to the Corolla's windows multiple times and
16 shielded their eyes from the sun to try and see what was happening inside the locked vehicle more
17 clearly. (Ex. 2). Both officers testified that they saw what looked to be the destruction of possible
18 evidence and drug paraphernalia. After several minutes, the Defendant and Mr. Matsunaga exited
19 the Corolla and were immediately taken into custody. Officer Sorres testified that as he moved to
20 restrain the Defendant, he found a Ziploc baggie containing a white crystalline substance under the
21 Defendant's foot.

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24 ² The Court notes that Officer Ignacio testified that the clock used by DPS was approximately 10 minutes slower than the time stamp shown in the surveillance video, which accounts for discrepancies between the times in Ex. 1 and Ex 2.

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III. LEGAL STANDARD

The Fourth Amendment of the U.S. Constitution and Article I, section 3 of the Commonwealth Constitution protect citizens from unreasonable search and seizure. These protections include protection against unreasonable “[b]rief investigatory stops of persons or vehicles that fall short of traditional arrest.” *Commonwealth v. Fu Zhu Lin*, 2014 MP 6 ¶ 13 (quoting *United States v. Arvizu*, 534 U.S. 266, 273 (2002)). “To make an investigatory stop, the officer must have a reasonable suspicion that criminal activity may be afoot.” *Commonwealth v. Arurang*, 2017 MP 1 ¶ 15 (citing *Commonwealth v. Crisostomo*, 2014 MP 18 ¶ 18).

When evidence has been obtained as a result of an unreasonable search or seizure, that evidence must be suppressed. *Crisostomo*, 2014 MP 18 ¶ 22 (citation omitted).

IV. DISCUSSION

The instant Motion to Suppress Evidence turns on the unique circumstances of the encounter between the Defendant and the DPS officers responding to an anonymous tip of possible criminal activity. The Defendant argues the evidence gathered at Royal Poker must be suppressed because the anonymous tip alone did not create reasonable suspicion that would justify the responding officers immediately restraining her freedom when they arrived at the location identified by an anonymous phone call—that the investigatory stop was an unreasonable search and seizure. The Commonwealth counters that the anonymous tip and corroboration efforts by the responding officers established reasonable suspicion and justified the stop that lead to the drug-related evidence.

1. Classifying Encounters with Law Enforcement

The United States Supreme Court recognizes that meetings between law enforcement officers and members of the public generally occur in one of three ways: First, law enforcement may stop an individual for questioning at any time, so long as that citizen is objectively free to

1 leave. *Florida v. Bostick*, 501 U.S. 429, 434 (1991) (citing *Terry v. Ohio*, 392 U.S. 1, 19 n. 16
2 (1968)). As long as the individual is objectively free to leave, or—in certain circumstances—to
3 disregard the officer's request for information, he is not “seized,” and the protections against
4 unreasonable searches and seizures do not apply. *Id.*; *Florida v. Royer*, 460 U.S. 491, 498 (1983).

5 Second, the law enforcement may “seize” an individual for brief, investigatory stops
6 (temporary detentions). These occur when a reasonable person in the individual’s circumstances
7 would not feel free to either refuse to comply or leave. *Brendlin v. California*, 551 U.S. 249, 255
8 (2007) (citations omitted). The key here however is that investigatory stops are not consensual and
9 must be supported by *reasonable suspicion*. *Commonwealth v. Arurang*, 2017 MP 1 ¶ 15 (citation
10 omitted); *Adams v. Williams*, 407 U.S. 143, 145-46 (1972). Finally, police stops may be full-scale
11 arrests. These stops, of course, are seizures, and must be supported by probable cause. *Adams*, 407
12 U.S. at 148-49; *see also Commonwealth v. Ogumoro*, 2017 MP 17 ¶ 40.

13 In this case, based solely on an anonymous tip, DPS officers responded to the location
14 where alleged drug users may have been and parked their police car directly behind the suspect
15 vehicle making it physically impossible for the vehicle to move. Two officers then approached and
16 blocked the exits to the two sides of the vehicle and ordered the occupants to follow their
17 instructions. In the Court’s opinion, a reasonable person in the Defendant’s position would not feel
18 free to leave at this point and the Court must therefore conclude that the Defendant was subject to
19 an investigatory stop under the totality of the circumstances as set during the testimony at the
20 suppression hearing. *See Ornelas v. United States*, 517 U.S. 690, 693 (1996) (finding the defendants
21 were subjected to an investigatory stop when an officer approached their parked vehicle and
22 questioned them).

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1 As such, the officers needed reasonable suspicion that criminal activity was or may be afoot
2 before making the temporary detention (widely described as a ‘Terry Stop’). *See Arurang*, 2017
3 MP 1 ¶¶ 14, 15; *citing Terry v. Ohio*, 392 U.S. 1, 30-31 (1968).³

4 2. Reasonable Suspicion for the Investigatory Stop

5 Accordingly, under CNMI precedent, to have reasonable suspicion to stop or detain a
6 member of the general public, officers must have “more than a hunch, but much less than a
7 preponderance of the evidence” that criminal activity is afoot. *Crisostomo*, 2014 MP 18 ¶ 19 (citing
8 *Fu Zhu Lin*, 2014 MP 6 ¶ 13). Courts look to the totality of the circumstances to determine whether
9 officers have “a particularized and objective basis for suspecting legal wrongdoing.” *Arurang*, 2017
10 MP 1 ¶ 16 (quoting *Crisostomo*, 2014 MP 18 ¶ 19) (internal quotation marks omitted); *Navarette v.*
11 *California*, 134 S. Ct. 1683, 1687 (2014) (citation omitted). Reasonable suspicion need not be based
12 solely on officers’ own observations, but may be based on information provided to officers by other
13 people. *Navarette*, 134 S. Ct. at 1688 (quoting *Adams*, 407 U.S. at 147).

14 The Commonwealth argues that the “anonymous tip” and the officers’ own observations at
15 the scene provided the necessary reasonable suspension to make the investigatory stop which led
16 the Defendant’s arrest. The question is then whether (i) the anonymous tip; and (ii) any
17 corroboration of information in the tip by the responding officers conducted before the
18 investigatory stop provided reasonable suspicion for the officers to detain the Defendant. The
19 Court considers these two questions in turn:

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23 ³ Key to understanding the Court’s ultimate decision—and the reason for which the following detailed analysis
24 contained herein is necessary—is the physically dominating fact that the responding officers arrived at the location
mentioned in the anonymous tip and immediately parked their police vehicle directly behind the car and approached the
car in which the Defendant was an occupant. By blocking in the vehicle and the vehicle’s exit points, officers initiated
a detention-in-fact because in reality the occupants were not free to leave.

1 ***A. The anonymous tip was neither sufficiently reliable by itself nor***
2 ***sufficiently corroborated to provide reasonable suspicion.***

3 “In certain circumstances, an anonymous tip can serve as the basis for reasonable
4 suspicion.” *United States v. Morales*, 252 F.3d 1070, 1074 (9th Cir. 1990) (citing *Alabama v.*
5 *White*, 496 U.S. 325, 327-328 (1990)). However, to provide reasonable suspicion, the anonymous
6 tip must exhibit “sufficient indicia of reliability.” *White*, 496 U.S. at 327. To determine whether the
7 anonymous tip provides reasonable suspicion, courts look to “both the quantity of the information it
8 conveys as well as the quality, or degree of reliability, of that information, viewed under the totality
9 of the circumstances.” *United States v. Wheat*, 278 F.3d 722, 726 (8th Cir. 2001) (citing *White*, 496
10 U.S. at 330 (1990)). An anonymous tip may be sufficiently reliable alone or may be corroborated
11 by officers to increase its indicia of reliability. *White*, 496 U.S. at 332. However, an anonymous tip
12 that provides “virtually nothing from which one might conclude that [the caller] is either honest or
13 his information reliable [and which] gives absolutely no indication of the basis for the caller’s
14 predictions regarding [the alleged criminal activity]” is insufficient by itself and requires further
15 corroboration before a lawful investigatory stop can take place. *Id.* at 329 (emphasis added).

16 Here, the tip transmitted to the responding officers was that two persons were possibly
17 smoking methamphetamine in a red Corolla at Afetna Supermarket. The DPS officers responded to
18 that location, but the Corolla was not there and had in fact moved to the Royal Poker parking lot
19 across the street. The Commonwealth nonetheless maintains that this tip and the corroboration
20 efforts of the officers provide reasonable suspicion as the facts and anonymous tip in this case are
21 like those in *Navarette*, *supra* 134 S. Ct. 1683 and *White*, *supra* 496 U.S. 325.

22 In contrast, the Defendant argues that the tip alone was not enough to provide reasonable
23 suspicion and was insufficiently corroborated to justify a temporary detention by the DPS officers
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1 immediately upon their arrival to the location provided by the anonymous tip. Defendant contends
2 the facts in this case are more akin to those in *Florida v. J.L.*, 529 U.S. 266 (2000).

3 In considering the reliability of the tip and the officers' corroboration efforts, the Court will
4 analogize to the U.S. Supreme Court decisions extensively relied on by the parties.

5 ***i) Reliability of the Tip***

6 In *Navarette*, an anonymous caller reported that a Silver Ford 150 Pickup, with plate
7 number 8D94925, had ran the caller off the road and into a ditch on southbound Highway 1 at mile
8 marker 88 and was last seen heading south approximately five minutes before the call. *Navarette*,
9 134 S. Ct. 1686-1687. Officers were able to find a truck thirteen minutes later near mile marker 69
10 on southbound Highway 1 that matched the exact description given. In a 5-4 decision, the *Navarette*
11 court found that the tip and the officer's ability to find the exact vehicle with the same plate number
12 at a location that corroborated the tip provided by the victim and was sufficiently reliable enough to
13 provide reasonable suspicion for an investigatory stop. *Id.* at 1688-1692. Critically important to the
14 court's decision were factors like the possible repercussions the anonymous tipster faced in that
15 case because the tipster could be identified by the identification information and voice recording of
16 the call; the dangerous and alarming nature of the crime the tipster had witnessed; the amount of
17 accurate detail given; and the fact that the caller was the victim of the criminal activity. *Id.*

18 In stark contrast, the same factors have less strength in this case. Here, the repercussions
19 faced by the anonymous caller are greatly less as CNMI DPS does not have the on-going capacity
20 for voice recording all of the calls it receives and the notational details of 911 calls are minimal at
21 best, making possible repercussions for making false reports more difficult. More importantly, the
22 criminal activity at issue in this case did not pose an immediate or direct danger to members of the
23 general public—such as reckless driving on a high-speed roadway or driving under the influence—
24

1 and therefore the activity was not of such a startling nature that it would prompt excited statements
2 in anonymous tip phone calls, unlike the facts in *Navarette*.

3 Further, the caller here did not provide a plate number or any other distinctive characteristic
4 to distinguish the “red Corolla” from any other red Corolla, again, unlike in *Navarette* where the
5 vehicle’s license plate number, make, and model were provided. Finally, the caller here reported
6 only that a “possible” crime was taking place as reported by the dispatch officer—as opposed to a
7 victim reporting definite criminal activity in *Navarette*. Taken together, all these factors weigh
8 against finding the tip inherently reliable enough to provide reasonable suspicion by itself.

9 Instead, this Court finds that the facts and anonymous tip in this case are more similar to
10 those set out in *J.L.*, 529 U.S. 266. In *J.L.*, an anonymous caller reported that a young black man
11 wearing a plaid shirt was standing at a bus stop, carrying a gun. *Id.* at 268. The police went to the
12 bus stop and saw three young black men, one wearing a plaid shirt. Acting solely on the tip (the
13 officers did not observe any criminal or suspicious behavior), they detained and immediately
14 searched all three men, and found a pistol in the pocket of the man wearing the plaid shirt.
15 Ultimately, the *J.L.* court found that this “bare-bones tip” was not sufficiently reliable enough by
16 itself to support an investigatory stop as the caller did not explain how they knew of the concealed
17 criminal activity and reported only readily observable, commonly occurring, non-criminal
18 information. *Id.* at 272.

19 Similarly, here the tip provided generic details that criminal conduct concealed behind the
20 Corolla’s tinted windows was ‘possibly’ occurring. While the tipster’s second call may have
21 indicated that the caller was actually watching a red Corolla, this only confirmed readily observable
22 and commonly occurring non-criminal information. Nothing in the tip increased the reliability of
23 the caller’s alleged knowledge of on-going criminal activity.

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1 Therefore, in the totality of the circumstances the anonymous tip by itself was insufficient to
2 give the officers reasonable suspicion. The Court must thus next consider the responding officers’
3 corroborative efforts, as discussed in *White* and *J.L.*, to determine whether the tip was sufficiently
4 corroborated to provide reasonable suspicion in this case.

5 ***ii) Officers’ Corroboration of the Tip***

6 In *White*, an anonymous caller reported that at 3:00 p.m. a woman named Vanessa White
7 would leave apartment 235 C of Lynwood Terrace Apartments and drive a brown Plymouth station
8 wagon with a broken right taillight to Dobey’s Motel with an ounce of cocaine in her brown attaché
9 case. *White*, 496 U.S. at 327. Officers corroborated through actual observation that Ms. White left
10 building 235 of Lynwood Terrace around the time specified and drove the described station wagon
11 to Dobey’s Motel *before they detained and searched her for the reported cocaine.* *Id.* The detailed
12 corroboration of non-criminal information the anonymous tip, including corroborated predictive
13 behavior, was found sufficient to provide reasonable suspicion to perform an investigatory stop in
14 what the Supreme Court nonetheless described as a “close decision.” *Id.* at 332.

15 In contrast, here the officers did not corroborate any detailed information about the
16 Defendant’s identity, vehicle, alleged criminal conduct, or predicted movements because no such
17 details were provided. Instead, they merely located a vehicle in the parking lot of the Royal Poker
18 that matched the generalized description given in the anonymous tip and immediately initiated an
19 investigatory stop as discussed above. Again, the unusual fact that the officers arrived at the
20 location and immediately blocked-in the Defendant’s vehicle with their decision of where to park
21 makes this an extremely close case and difficult decision. Nonetheless, the amount of corroboration
22 undertaken and/or completed by the responding police officers was insufficient to establish
23 reasonable suspension and nowhere near the amount of corroboration in *White*. Instead the
24 corroboration in this case is much more analogous to that in *J.L.*

1 In *J.L.*, the officers responded to the location and immediately approached the defendant
2 because he was a black young man wearing a plaid shirt, standing at a bus stop with a group of
3 other young men. *J.L.*, 529 U.S. at 268. The officers saw no suspicious or criminal activity taking
4 place, but immediately conducted an investigatory stop and searched the defendant without further
5 corroboration. *Id.* The corroboration made by the officers related to ‘bare-bones’ non-criminal
6 activity information and was found legally insufficient to provide reasonable suspicion for the
7 investigatory stop and search. *Id.* at 274.

8 As already described, here, the officers simply corroborated that a red Corolla was at Royal
9 Poker and that at least two individuals were in the car—before initiating an investigatory stop.⁴
10 Accordingly, with all due respect to the difficult and dangerous work our DPS officers undertake,
11 the corroboration of an anonymous tip is exactly one of the types of work our officers must
12 undertake when they received bare-bones anonymous phone calls from unknown sources claiming
13 knowledge of possible criminal activity. To be clear, officers are always entitled and probably
14 should investigate anonymous tips. Under slightly different facts—the outcome of this case could
15 easily have gone the other way. However, DPS officers must undertake and establish sufficient
16 corroboration of a bare-bones tip to form reasonable suspicion of criminal activity before making an
17 investigatory stop/detaining a member of the general public.

18 Under the totality of the circumstances present in this case, the responding officers did not
19 have reasonable suspicion to perform an investigatory stop of the Defendant because the
20 anonymous tip was unreliable by itself. Because the Defendant was not free to leave or disregard
21 the police instructions when the responding officers blocked the ability of the Defendant’s red
22 Corolla to move and surrounded the Corolla’s two exit points before sufficiently corroborating

23 _____
24 ⁴ Although not considered or relied on in this Court’s decision, the surveillance video tape shown during the
suppression hearing actually revealed that the Corolla in question contained or had four passengers in it when it arrived
at the Royal Poker parking lot. The anonymous tip that there were two people in a red Corolla was incorrect.

1 possible criminal activity—Defendant’s temporary detention was without reasonable suspicion. The
2 stop was therefore unlawful under the Constitutional prohibition against unreasonable searches and
3 seizures.

4 ***B. The Exclusionary Rule requires suppression of the evidence.***

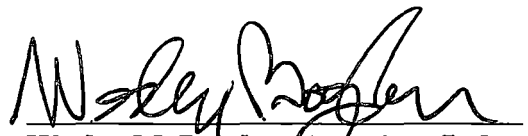
5 When evidence has been obtained as a result of an unreasonable search or seizure, that
6 evidence must be suppressed. *Crisostomo*, 2014 MP 18 ¶ 22 (citation omitted). This exclusionary
7 rule applies not only to evidence directly found from the unlawful search or seizure, but also to the
8 ‘fruit of the poisonous tree’—evidence that would not have been discovered but for the unlawful
9 police conduct. *Commonwealth v. Pua*, 2006 MP 19 ¶ 25 (citing *Wong Sun v. U.S.*, 371 U.S. 471,
10 487-488 (1963)). Here, as the investigatory stop did not have the requisite reasonable suspicion, it
11 was unlawful and any evidence produced from the unlawful stop must be suppressed.

12 As the Ziploc baggie and evidence related to the baggie would not have been discovered but
13 for the officer’s unlawful stop, the baggie and all related evidence are fruit of the poisonous tree and
14 must be suppressed.

15 **V. CONCLUSION**

16 For the foregoing reasons, the Defendant’s motion to suppress the evidence of the Ziploc
17 baggie and other evidence relating to the baggie is hereby **GRANTED**.

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19 **IT IS SO ORDERED** this 18th day of May, 2018.

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22 **Wesley M. Bogdan, Associate Judge**

FOR PUBLICATION

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SUPERIOR COURT
FILED

2018 MAY 18 PM 3:11

BY
CLERK OF COURT

IN THE SUPERIOR COURT
FOR THE

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

COMMONWEALTH OF THE
NORTHERN MARIANA ISLANDS,

Plaintiff,

v.

REMEDI0 SABLAN ISLAM
D.O.B.: 12/18/1966

Defendant.

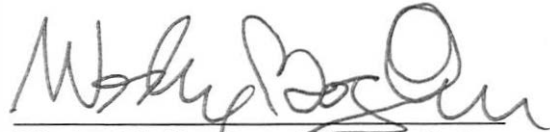
) CRIMINAL CASE NO. 17-0146

) ERRATA ORDER

The Court is hereby correcting the Order Granting Defendant's Motion to Suppress Evidence filed on May 18, 2018.

IT IS HEREBY ORDERED that the Order Granting Defendant's Motion to Suppress Evidence dated May 18, 2018 is amended to read *Saures* in lieu of *Sorres* throughout the order. The published opinion shall reflect this change.

IT IS SO ORDERED this 18th day of May, 2018.


Wesley M. Bogdan, Associate Judge