For Publication

IN THE SUPREME COURT OF THE VIRGIN ISLANDS

EZRA THOMAS,	)	**S. Ct. Crim. No. 2016-0029**
Appellant/Defendant,	)	Re: Super. Ct. Crim. No. 864/2011 (STX)
	)	
v.	)	
	)	
PEOPLE OF THE VIRGIN ISLANDS,	)	
Appellee/Plaintiff.	)	
_____	)	

On Appeal from the Superior Court of the Virgin Islands
Division of St. Croix
Superior Court Judge: Hon. Harold W. L. Willocks

Considered: November 14, 2017
Filed: November 19, 2018

BEFORE: **RHYS S. HODGE**, Chief Justice; **MARIA M. CABRET**, Associate Justice; and **IVE A. SWAN**, Associate Justice.

APPEARANCES:

Kelechukwu C. Onyejekwe, Esq.
Office of the Territorial Public Defender
St. Thomas, U.S.V.I.
Attorney for Appellant,

Andrea J. Gosine, Esq.
Assistant Attorney General
St. Thomas, U.S.V.I.
Attorney for Appellee.

OPINION OF THE COURT

SWAN, Associate Justice.

Appellant, Ezra Thomas ("Thomas"), was found guilty of possession of stolen property in connection to the December 18, 2011 theft of a tablet computer ("iPad") from June Liebert

("Liebert"). On appeal, Thomas asserts that the Superior Court misinterpreted the statute under which he was charged. Thus, he contends that the evidence presented at trial was insufficient to support his conviction of possession of stolen property in violation 14 V.I.C. § 2101(a). For the reasons elucidated below, we affirm.

I. FACTUAL BACKGROUND AND PROCEDURAL POSTURE

Liebert, an Illinois resident, travelled to St. Croix with her husband and two daughters for a vacation. On the morning of December 18, 2011, the family took a trip to the Sandy Point National Wildlife Refuge ("Sandy Point Beach"). When they arrived at Sandy Point Beach, Liebert locked her family's personal items in the trunk of their car before they went for a walk. After Liebert and her family took a stroll and talked to some of the people who were present in the area, her daughter became thirsty and wanted a soda. Consequently, the family drove from Sandy Point Beach to downtown Frederiksted to purchase a soda.

When Liebert arrived at the store in downtown Frederiksted and opened her wallet to retrieve her money, she realized that $20 was missing. She immediately returned to her car to examine the trunk and discovered that her backpack, which contained all her family's personal items, was open and everything it contained was scattered around in the trunk of the car. Unfortunately, Liebert realized also that her iPad was missing.

Liebert immediately called the Virgin Islands Police Department ("VIPD"). She reported to the VIPD that earlier that morning, she, her husband, and two daughters took a trip to Sandy Point Beach, and someone unlawfully entered her vehicle and stole $20, an iPad, an iPhone, and four United States passports.[1]

[1] June Liebert testified during trial that she eventually found the iPhone and the four United States passports she thought was missing when she initially reported the incident to the VIPD.

In response to Liebert's call, the VIPD 911 Emergency Call Center dispatched Sergeant Lawrence James, Jr. ("Sergeant James") and Officer Danisha Samuel ("Officer Samuel") to travel to the area to investigate the incident. Approximately six more VIPD personnel including, but not limited to, Officers Dauda Samuel, Joel Tutein, Alexander Moorhead, Heraldo Richardson, Sharon Heywood, and Sergeant Ricky Hernandez responded to the call to assist with the investigation. During the VIPD's preliminary investigation, Liebert, who has a professional background in information technology, informed the VIPD officers that her iPad had cellular service, that it was tethered to her iPhone and that she could use the "Find My iPhone" application to locate and track her iPad that was stolen. However, before the VIPD officers were able to investigate the matter further, they were dispatched to the location of another crime.

Shortly thereafter, the VIPD officers returned to Sandy Point Beach and resumed where they had ceased investigating the matter of the stolen iPad. The VIPD officers used the iPad's Global Positioning System ("GPS") to locate its exact location in the area. The GPS tracking showed that the location of the iPad was moving along the Sandy Point Beach's shoreline in the direction of the Vincent Mason Pool. Moments later, the GPS tracking system revealed that the iPad was moving past the Vincent Mason Pool to Dorsch Beach, still tracking the area along the shoreline. Acting on the information provided by the GPS, all the VIPD officers present at the scene used the main road to travel to the Vincent Mason Pool to locate the iPad.

While Sergeant James and Officer Samuel were present at the Vincent Mason Pool, Sergeant James saw a male wearing light colored clothes, walking from the shoreline into the bushes in the area of Dorsch Beach, and he apprised the other officers of his observation. Similarly, Sergeant Hernandez, who was assisting the other VIPD officers to locate the iPad, also saw a male wearing light colored clothing who looked at him before running into the bushes. A

check of the iPad disclosed that the device was located within 10 feet of the location where officer Hernandez saw a male run into the bushes.

The VIPD officers quickly performed a search of the area in which Sergeant Hernandez reported seeing a male wearing light colored clothing run into the bushes. The search unearthed a green backpack on the top of some sea grape trees in the bushes close to the shoreline. Sergeant James searched the green backpack, and he found a black iPad wrapped in a plastic bag. Further, to confirm that the iPad belonged to Liebert, the VIPD officers used the GPS to activate the sound locator, which caused the iPad to emit an alarm. The VIPD's investigation further led to the apprehension of Thomas, who was arrested 10-15 feet from the location where the iPad was found. Sergeant James then transported Thomas to the local police department substation, the Wilbur H. Francis Command Bike Unit.

Sergeant James informed that Thomas was administered his *Miranda* rights, prior to his arrival at the substation but that he initially declined to give a statement. However, he later freely and voluntarily made certain statements after his arrest. Officer Samuel observed Thomas' first voluntary statement which came after Sergeant James explained to Thomas the reasons for his arrest and how he was located, to which he responded, "so you beat me with technology." (J.A. 339.) Sergeant James also observed Thomas freely and voluntarily asserted at the station that "you know I'm a thief, and I don't know why, you know, you're harassing me." (J.A. 311, 316.) Officer Samuel's account of Thomas' voluntary post arrest assertion while he was at the station is similar to Sergeant James' recollection that Thomas said, "I'm a thief, but I ain't kill nobody so this investigation is a waste of time." (J.A. 340.) The People subsequently charged Thomas with grand larceny and possession of stolen property.

Thomas filed several pretrial motions in the Superior Court, expressing concerns about the slow pace of the legal proceedings and his dissatisfaction with his court appointed attorneys.[2] Due to Thomas' dissatisfaction with his seventh court appointed attorney chosen to represent him, he requested permission from the court to represent himself, asserting that "there [were] enough documented evidence to show and prove that [his] appointed attorneys by this Court . . . have been misrepresenting [him] and continue to performed [sic] clear attorney professional misconduct against [him]." (J.A. 84.)

The Superior Court granted Thomas' request to represent himself at trial after it examined him and found that he had the mental capacity to represent himself. To further facilitate Thomas' presentation in court, the court appointed Attorney Renee Dowling ("Attorney Dowling") to assist him in his *pro se* defense. Thomas later expressed displeasure with Attorney Dowling and informed the court that Attorney Dowling had represented him in other matters which created a conflict in the trial. Upon consideration, the Superior Court relieved Attorney Dowling as counsel for Thomas in this case.

On November 30, 2015, the day of trial, Thomas informed the court that he did not request to represent himself, that he was being ordered to represent himself, and that although it was his first time selecting a jury he was ready to proceed with the case. Thomas also raised concerns about photographs which he wanted to enter into evidence that were not developed by his former attorneys. The Superior Court accommodated Thomas by developing those negatives of photos for his case at no cost to him.

[2] Thomas also filed a writ of mandamus with this Court in which he expressed his concern with the slow pace of the legal proceedings governing his case.

At trial, the People presented evidence in the form of testimony and at the close of its case, Thomas presented a motion for judgment of acquittal on all charges pursuant to Rule 29 of the Federal Rules of Criminal Procedure.[3] The court granted the motion on Count One for the charge of grand larceny and denied the motion with respect to the charge of possession of stolen property—Count Two.

Thomas presented his defense at the end of the People's presentation of its case. To prove his case, Thomas presented a sole witness, Luis Rivera ("Rivera"), who testified that he was on Dorsch Beach with Thomas on the day of the incident and that he did not see Thomas with a green backpack or an iPad. The People did not cross examine Rivera or otherwise rebut Thomas' case, and the court then made it known to Thomas that he was "allowed[,] once [he] ha[d] rested" his case, to "have a second opportunity to argue for . . . dismissal" of the case against him by "renew[ing] [his] argument" presented in his Rule 29 motion. (J.A. 405-6.) Thomas indicated that "of course," he "wish[ed] . . . to renew that argument." (*id.*) The court then stated on the record that "nothing has been added as a result of Thomas' case "to change the[e] court's mind" regarding its ruling on Thomas' Rule 29 motion, and that as a result, the court would "proceed with the count on the possession of stolen property." (*id.*) The case was then submitted to the jury on December 2, 2015, after instructions were given by the court.

The jury returned a guilty verdict on the charge of possession of stolen property. After the verdict, the court informed Thomas of his right to file a Rule 29 motion for judgment of acquittal and gave him a written explanation of the process and requirements for making a Rule

[3] At the time of Thomas' trial, Rule 29 of the Federal Rules of Criminal Procedure was incorporated through former Superior Court Rule 7. This Court adopted the Virgin Islands Rules of Criminal Procedure after the trial concluded in this matter. *In re Adoption of V.I.R of Crim. Proc*., Promulgation No. 2017 0010, 2017 WL 7361204 (V.I. Dec. 19, 2017). Rule 29 was therefore applicable to this case. *See Mills-Williams v. Mapp*, 67 V.I. 574, 586 (V.I. 2017).

29 motion. The Superior Court further accommodated Thomas by offering him an extension of time to prepare and file his motion. The court also informed Thomas that it would grant his motion requesting legal assistance in procuring the requirements for his motion.

At sentencing, Thomas requested counsel and the court appointed an attorney, who filed a motion arguing that Thomas' lack of professional legal representation and unfamiliarity with the court proceedings required that Thomas be granted a new trial. The court denied Thomas' motion on May 27, 2016 and orally sentenced him to five years of incarceration, with all of that time suspended. The court further gave Thomas credit for the 25 days he spent in jail, placed him on probation for four years, and ordered him to pay a $500 supervision fee and $75 in court costs. The Superior Court's judgment and commitment memorializing its May 27, 2016 rulings was entered on June 23, 2016, and Thomas timely appealed.

II. JURISDICTION

Title 4, section 32(a) of the Virgin Islands Code vests this Court with "jurisdiction over all appeals arising from final judgments, final decrees or final orders of the Superior Court or as otherwise provided by law." The Superior Court's June 23, 2016 judgment and commitment constitutes a final judgment in this case. *See, e.g., Jackson-Flavius v. People*, 57 V.I. 716, 721 (V.I. 2012) (citing *Potter v. People*, 56 V.I. 779, 787 (V.I. 2012) (written judgment embodying the adjudication of guilt and the sentence imposed based on that adjudication constitutes a final judgment for purposes of 4 V.I.C. § 32(a)). We, therefore, possess jurisdiction to hear this appeal.

III. STANDARD OF REVIEW

The standard of review in examining the trial court's application of the law is plenary. *St. Thomas-St. John Bd. of Elections v. Daniel*, 49 V.I. 322, 329 (V.I. 2007). Our review of a claim of insufficiency of the evidence is also plenary, and "we view the evidence at trial in the light most

favorable to the [People]." *Ramirez v. People*, 56 V.I. 409, 417 (V.I. 2012) (quoting *United States v. Holmes*, 607 F.3d 332, 335 (3d Cir. 2010)). Lastly, on a challenge to the Superior Court's denial of a Rule 29 motion for judgement of acquittal, we apply *de novo* review. *Id.* (citing *United States v. Carbo*, 572 F.3d 112, 113 (3d Cir. 2009)); *United States v. Boesen*, 491 F.3d 852, 855-57 (8th Cir. 2007) (a Rule 29 motion should be granted only if there is no interpretation of the evidence that would allow a reasonable jury to find the defendant guilty beyond a reasonable doubt)

IV. DISCUSSION

1. The plain meaning of Title 14, section 2101(a) of the Virgin Islands Code is clear and requires no interpretation aided by the canons of statutory construction.

Thomas contends that there is insufficient evidence of possession of stolen property to convict him under 14 V.I.C. § 2101(a). Specifically, Thomas argues that the People failed to meet its burden of proof because the plain meaning of 14 V.I.C. § 2101(a) requires proof that Liebert, a third person, or anyone other than him, stole the iPad and thereafter prove that he bought, received or possessed the stolen item. Thomas asserts that the absence of evidence identifying someone other than him as the perpetrator who stole the iPad was sufficient for the Superior Court to grant his Rule 29 motion for judgment of acquittal and that the court erred when it denied his motion. The People argue in response that Thomas' interpretation of 14 V.I.C. § 2101(a) is specious and fallacious, because it is not supported by law, and that there was sufficient evidence to convict him of possession of stolen property. Thomas' reply generally reiterated his earlier argument that 14 V.I.C. § 2101(a) requires proof that someone other than the defendant on trial for possession of stolen property either stole or unlawfully obtained the property.

In his appellate brief, Thomas cites to his *pro se* motion to set aside the verdict as proof that he raised this issue before the Superior Court, which addressed it and it is thus properly before this Court on appeal. In the motion to set aside the verdict, Thomas expressed his ignorance of the trial process and asserted that the Superior Court judge "controlled [the] entire court proceeding" and that "[a]t times [he] felt very much violated." (J.A. 59-60.) We conclude, based on a complete review of the record, that Thomas never raised or argued this issue before the Superior Court and now raises it for the first time on appeal.

When a defendant charged in a criminal case fails to object to an order or decision, this Court ordinarily only reviews for plain error. In other words, we consider all arguments made for the first time on appeal waived, unless the party raising the argument provides evidence of exceptional circumstances justifying their consideration. *See* V.I. R. APP. P. 4(h) ("Only issues and arguments fairly presented to the Superior Court may be presented for review on appeal; provided, however, that when the interest of justice so require, the Supreme Court may consider and determine any question not so presented."); *see also* V.I. R. APP. P. 22(m) ("Issues that were . . . not raised or objected to before the Superior Court . . . are deemed waived for purposes of appeal, except that the Supreme Court, at its option, may notice an error not presented that affects substantial rights."). Moreover "[f]or this Court to reverse the Superior Court under the plain error standard of review, there must be an error, that was plain, that affected the defendant's substantial rights." *Estick v. People*, 62 V.I. 604, 616 (V.I. 2015) (quoting *Webster v. People*, 60 V.I. 666, 672 (V.I. 2014) (internal quotation marks omitted)). The foregoing notwithstanding, we will only reverse the Superior Court "if the error seriously affect[s] the fairness, integrity, or public reputation of judicial proceedings." *Williams v. People*, 58 V.I. 341, 350 (V.I. 2013) (quoting *Francis v. People*, 52 V.I. 381, 390-91 (V.I. 2009)).

Thomas' argument that his conviction under 14 V.I.C § 2101(a) is improper because the statute requires the People to prove that Liebert, a third person or someone other than him stole the iPad and that he bought, received or possessed the stolen iPad is tantamount to arguing that the Superior Court misinterpreted and misapplied the applicable statute. As a threshold matter, we, therefore, analyze the statute to determine whether the Superior Court properly applied the law. Title 14 section 2101(a) of the Virgin Islands Code provides that

> *Any person who buys, receives or possesses any property which has been obtained in any unlawful manner, knowing or having cause to believe the property to have been so unlawfully obtained*, or who conceals, sells, withholds or aids in concealing, selling, or withholding any such property from the owner, knowing or having cause to believe the property to be so stolen or illegally obtained *shall—*
> (a) *if the property received, bought or possessed shall be of the value of $100 or upward, be imprisoned for not more than 10 years or be fined not more than $5,000, or both . . . .*

(emphasis added).[4]

It is well-settled that the interpretation of a statute begins with its plain meaning. *Markovski v. Gonzales*, 486 F.3d 108, 110 (4th Cir. 2007). "We thus begin and end our inquiry with the text, giving each word its 'ordinary, contemporary, common meaning.'" *Star Athletica, L.L.C. v. Varsity Brands, Inc.*, 137 S. Ct. 1002, 1010 (2017) (quoting *Walters v. Metropolitan Ed. Enterprises Inc.*, 519 U.S. 202, 207 (1997)) (internal quotation marks omitted), because "[w]ords and phrases [of a statute] shall be read with their context and shall be construed according to the common and approved usage of the English language." 1 V.I.C. § 42. "Technical words and phrases and such others as may have acquired a peculiar and appropriate meaning in the law, shall

[4] After the People charged Thomas with possession of stolen property in violation of 14 V.I.C. § 2101(a), the statute was amended by Act 7972, § 16 in which "$500" was substituted for "one hundred dollars" in subsection (a) and Act 6611, § 7 substituted "$7,000" for "$5,000" in subsection (a).

be construed and understood according to their peculiar and appropriate meaning." *Id.* "If the statutory language is unambiguous and the statutory scheme is coherent and consistent, no further inquiry is needed." *In re: L.O.F.* 62 V.I. 665, 661 (V.I. 2015) (quoting *In re: Reynolds*, 60 V.I. 330, 334 (V.I. 2013)). Overall, "we must give effect to every provision making sure to avoid interpreting any provision in a manner that would render it—or another provision—wholly superfluous and without an independent meaning or function of its own." *Defoe v. Phillip*, 56 V.I. 109, 129 (V.I. 2012).

The "ordinary, contemporary, [and] common meaning" of the words in the plain language of title 14 section 2101(a) of the Virgin Islands Code is unambiguous and requires no interpretation. The plain meaning of the statute imposes punishment upon any person who purchases, receives, accepts, or holds property which was obtained unlawfully, knowing or believing it to be illegally obtained or one who aids in withholding any such property knowing or believing the property to be illegally obtained. *See* 14 V.I.C. § 2101(a). Appropriately, the statute apprises the citizens of the crime, the specific conduct it prohibits, and the penalty it imposes. However, Thomas' argument that the statute requires that the People prove beyond a reasonable doubt that Liebert or a third person stole the iPad and prove that he subsequently possessed it to sustain his conviction is a disingenuous reading of the statute that does not comport with its plain meaning. We agree with the People's argument that 14 V.I.C. § 2101(a) does not require proof that someone other than Thomas stole or obtained the property unlawfully because there is no such requirement in the statute. Title 14 section 2101(a) of the Virgin Islands Code does not expressly or impliedly provide that someone other than the defendant charged with possession of stolen property must be the culprit who steals the property at issue in the case. The statute simply does not so state. Rather, pursuant to 14 V.I.C. § 2101(a), a conviction of possession of stolen property

may be based on the People's evidence that property was stolen, that the defendant possessed the stolen property and that the defendant knew or had cause to believe the property was stolen. We believe that if the Virgin Islands' Legislature intended to require that someone other than the defendant have stolen the property, the Legislature would have adroitly crafted the statute to reflect or include such an intent. But, it is obvious that the Legislature eschewed such an intent. This is clear because "it is proper to presume that a legislature knows the meaning of words, has used the words of a particular statute advisedly, and has expressed its intent by the words as found in the statute." *In re: Holcombe*, 63 V.I. 800, 835-36 (V.I. 2015) (quoting *In re: Estate of George*, 59 V.I. 913, 923 (V.I. 2013)) (brackets omitted). This "[C]ourt[ ] must presume that a legislature says in a statute what it means and means in a statute what it says there." *People v. Baxter*, 49 V.I. 384, 389 (V.I. 2008) (quoting *Connecticut Nat. Bank v. Germain*, 503 U.S. 249, 253-54 (1992)). Significantly, we have likewise observed that "add[ing] language into . . . [a] statute that does not currently appear in it . . . is an exercise [courts] cannot undertake under the guise of construing the statute." *Sonson v. People*, 59 V.I. 590-601-02 (V.I. 2012). Accordingly, because "the statutory language [of 14 V.I.C. § 2101(a)] is plain and unambiguous, no further interpretation is required." *Codrington v. People*, 57 V.I. 176, 185 (V.I. 2012). Additionally, because the Superior Court neither misinterpreted nor misapplied 14 V.I.C. § 2101(a), there was no error—much less a plain error—that affected Thomas' substantial rights.

2. There is sufficient evidence for a rational jury to have found Thomas guilty beyond a reasonable doubt of possession of stolen property in violation of 14 V.I.C. § 2101(a).

Thomas argues that the evidence presented at trial is insufficient evidence of possession of stolen property because there is no evidence that Liebert or a third party stole the items. In

reviewing the sufficiency of the evidence to sustain a conviction, this Court must determine whether the People proved each element of every crime charged beyond a reasonable doubt. *Francis v. People*, 63 V.I. 724, 733 (V.I. 2015). *See also Curry v. United States*, 520 A.2d 255, 263 (D.C. 1987) (emphasizing that in reviewing the sufficiency of the evidence to sustain a conviction, a court "must review the evidence in the light most favorable to the government, giving full play to the right of the jury to determine credibility, weigh the evidence, and draw justifiable inferences of fact, and making no distinction between direct and circumstantial evidence"); *United States v. Williams*, 549 F.3d 84, 92 (2d Cir. 2008) (conviction may be based entirely on circumstantial evidence); *United States v. Patel*, 370 F.3d 108, 111 (1st Cir. 2004) (noting that when circumstantial evidence is the basis for a guilty verdict the evidence must be such that it excludes every reasonable hypothesis except that of guilt) "Evidence is legally insufficient to support a conviction only where there is no evidence upon which a reasonable mind could infer guilt." *Moore v. United States*, 757 A.2d 78, 82 (D.C. 2000); *see also Cooper v. United States*, 28 A.3d 1132, 1135 (D.C. 2011) (noting that "[t]o prevail on an insufficiency claim, an appellant must establish that the government presented no evidence upon which a reasonable mind could find guilt beyond a reasonable doubt"). "[T]he standard of review is whether there is substantial evidence, when viewed in the light most favorable to the [People] . . . to support the jury's verdict." *McIntosh v. People*, 57 V.I. 669, 678 (V.I. 2012) (citing *Marcelle v. People*, 55 V.I. 536, 541 (V.I. 2011) (internal quotation marks omitted)). Accordingly, "[a]n appellant who seeks to overturn a conviction on insufficiency of the evidence grounds bears 'a very heavy burden.'" *Fontaine v. People*, 56 V.I. 571, 577 (V.I. 2012) (quoting *United States v. Losada*, 674 F.2d 840, 841 (3d Cir. 1957)).

To convict Thomas of possession of stolen property, the government was required prove beyond a reasonable doubt that (1) Thomas bought, received or possessed property; (2) that the property was obtained in an unlawful manner; (3) that the defendant knew or had cause to believe that the property was obtained in an unlawful manner; and (4) that the property had a minimum value of one hundred dollars. 14 V.I.C. § 2101(a); *see also Joseph v. People*, 50 V.I. 873, 886–87 (D.V.I. App. Div. 2008); *Gov't of the V.I. v. Joseph*, 465 Fed. Appx. 138, 141 (3d Cir. 2012); *Codrington*, 57 V.I. at 200. Succinctly, the People must prove beyond a reasonable doubt that Thomas knew or should have known that he possessed the stolen iPad, which had a minimum value of $100.

The issue of whether Liebert owned the iPad is largely uncontroverted. Liebert testified that she purchased the iPad for approximately $900 from Apple earlier in the year when it was newly released. She maintained that she recognized the iPad as her property, because she saw the uncommon, limited edition white rubber padlette that glowed in the dark that she attached to it. Liebert's ownership of the iPad is further corroborated by Sergeant James and Officer Heywood, who testified that Officer Tutein used Liebert's iPhone, which was tethered to her iPad, to direct them where to track the iPad's location on Sandy Point Beach. The VIPD officers also used Liebert's phone to activate the iPad's audible alarm signal when they located it in the bushes close to Thomas.

Similarly, there is sufficient evidence presented to prove that Liebert's iPad was stolen. The evidence presented shows that prior to discovering that her iPad was missing, Liebert had secured it inside her backpack that she locked inside the trunk of her car. There was no testimony that she loaned her car or her iPad to anyone. Liebert's initial report to the VIPD 911 Emergency Call Center is that her car was broken into, which was also evident from her testimony that Officer

Samuel drew her attention to damages to the body of the car which was not present when she was given a new rental car with no damages.

There was sufficient evidence that Thomas possessed the iPad that was stolen from Liebert. Possession is defined as "having or holding property in one's power." BLACK'S LAW DICTIONARY 1201 (8th ed. 2004). Further to the definition of possession is the fact that there are two types: constructive possession and actual possession. *See United States v. Alexander*, 331 F.3d 116, 127 (D.C. Cir. 2003) (criminal possession of stolen property may be actual or constructive.). Actual possession is exhibited when a person knowingly has direct physical control over a thing at a given time. *See* BLACK'S L. DICT., at 1201; *see also United States v. Gaines*, 295 F.3d 293, 300 (2nd Cir. 2002) (noting that proof of actual possession requires showing that a defendant physically possessed property) On the other hand, "a person who, although not in actual possession, knowingly has the power and intention at a given time to exercise dominion or control over a thing is then in constructive possession of it." BLACK'S L. DICT., at 1201-02; *See Codrington*, 57 V.I. at 199-200 (holding defendant constructively possessed stolen property). "A finding of constructive possession requires evidence establishing that the defendant had the ability to exercise 'knowing dominion and control' over the [stolen property] in question." *United States v. Morgan*, 393 F.3d 192, 197 (D.C. Cir. 2004).

There is no direct evidence that Thomas exhibited actual possession of the iPad. Nevertheless, the circumstantial evidence proffered by the People in this case allows for the conclusion that Thomas exercised dominion and control over Liebert's iPad or that he constructively possessed it within the intendment of 14 V.I.C. § 2101(a). *See Codrington*, 57 V.I. at 199-200. Here, the evidence shows the location of the iPad changed from in the bushes in the morning when it was first discovered to have been stolen, to an area south of the Vincent Mason

Pool, where several VIPD officers, including Sergeant James, reportedly saw Thomas wearing light colored clothes walking southward by himself in what was described as a "rocky and unpopular part of the beach where one can scuba dive but not necessarily swim." (J.A. 272, 353-54.) Additionally, Officer Heywood testified that the VIPD officers found the iPad 10-15 feet away from the location of Thomas' arrest, in a green backpack that they saw him with on previous occasions. The Superior Court gave the jury instructions that charged them "to treat direct and circumstantial evidence the same." (J.A. 435.) The court instructed the jury that "circumstantial or indirect evidence consists of facts that lead to a reasonable inference of the existence or nonexistence of another fact." (J.A. 434.) Viewing the evidence of Thomas' activity and location in the area in the light most favorable to the People, we believe there is ample evidence for a rational jury to conclude beyond a reasonable doubt that the changes in the location of the iPad were consistent with Thomas' movements in that remote secluded area of the beach, and that he therefore constructively possessed Liebert's iPad. *See e.g., United States v. Wynn*, 544 F.2d 786, 788 (5th Cir. 1977) (constructive possession exists when a person has knowledge of the thing possessed, coupled with the ability to maintain control over it or reduce it to his physical possession even though he does not have actual personal dominion.); *Poindexter*, 176 Fed. Appx. 957, 958 (11th Cir. 2006).

The People also presented sufficient evidence to support the jury's conclusion that Thomas knew or had cause to believe that the iPad was stolen. It is well-established that "[k]nowledge may be proven by circumstantial evidence alone; [because] it frequently cannot be proven in any other way." *United States v. Garcia*, 521 F.3d 898, 901 (8th Cir. 2008) (quoting *United States v. Erman*, 953 F.26 387, 390 (8th Cir. 1992)); *see also United States v. Long*, 952 F.2d 1520, 1525 (8th Cir. 1991) (noting that knowledge is determined solely by the jury which has the exclusive

province to assess the credibility of the witnesses at trial); *United States v. Reeves*, 730 F.2d 1189, 1195 (8th Cir. 1984). Pertinent to the element of whether Thomas knew or had cause to believe that the iPad was stolen are the voluntary statements he made after he was arrested that were admitted into evidence. Officers Samuel and Sergeant James testified about the voluntary statements Thomas made after he was arrested and advised of his rights. The evidence at trial discloses that when Officer James told Thomas that he was tracked and located by GPS tracking, Thomas responded by saying, "[o]h so technology beat me." (J.A. 311.) Additionally, Thomas' statement to Officer Samuel that "I'm a thief but I ain't kill nobody . . ." was admitted into evidence. (J.A. 340.) Moreover, Sergeant James testified that Thomas' response to his inquiry of the contents of the green backpack found on top of the sea grape trees is that "he doesn't know anything about what's in *his* bag." (J.A. 310) (emphasis added). Evidence that a defendant was in possession of recently stolen property, without a reasonable explanation, gives rise to a permissible inference of guilt. *Hardesty v. State*, 656 S.W. 2d 73, 76 (Tex. Crim. App. 1983). Crucially, there is no evidence in the record that explains Thomas' possession of Liebert's iPad. Viewing this evidence in the light most favorable to the People, a rational jury could infer guilty knowledge from Thomas' unexplained possession of Liebert's stolen iPad. *See, e.g.*, *Barnes v. United States*, 412 U.S. 837, 839 (1973) ("Possession of recently stolen property, if not satisfactorily explained, is ordinarily a circumstance from which you may reasonably draw the inference and find, in the light of the surrounding circumstances shown by the evidence in the case, that the person in possession knew the property had been stolen."). Accordingly, there is sufficient evidence for a rational jury to find beyond a reasonable doubt that Thomas knew or had cause to believe the iPad was stolen.

Finally, the last element of the charge of 14 V.I.C. § 2101(a) requires the value of the iPad to be worth a minimum of $100. Liebert testified during trial that she purchased the iPad from Apple for approximately $900. As the owner of the iPad, she was competent to testify as to its value. *See, e.g., United States v. Rivers*, 917 F.2d 369, 372 (8th Cir. 1990) ("We agree with the government that in general, the owner of property may testify as to the value of her property."); *United States v. 10.031.98 Acres of Land*, 850 F.2d 634, 639-41 (10th Cir. 1988) (holding that the district court erred in refusing to permit a land owner to testify as to the value of condemned property unless he complied with the standards required of an expert appraiser); *Town of Paradise Valley v. Laughlin*, 851 P.2d 109, 111 (Ariz. Ct. App. 1993) ("An owner may always testify as to the value of his property . . . because an owner of property has, by definition, knowledge of the components of value that are useful in ascertaining value, and an owner, no less than an expert, can base his opinion of value on that knowledge."); *Traynor v. Workhorse Custom Chassis, Inc.*, No. CV-03-2082-PHX-DGC, 2006 U.S. Dist. LEXIS 23229, at *5-6 (D. Ariz. Apr. 24, 2006) (unpublished) (opinion by the owner of an item of property as to its value is competent and proper, whether evaluated as lay testimony under Rule 701 of the Federal Rules of Evidence, or as expert testimony under Rule 702). During cross examination of Liebert and Sergeant James, Thomas quoted from Sergeant James' affidavit that was entered into evidence, which, among other things, averred that the iPad was valued at $500. In addition, no evidence was presented to prove that the iPad had a value less than $100, and the jury determined that the iPad had a value of $400. Based on this record, it is clear that sufficient evidence was presented to establish the last element of the crime. *See United States v. Saada*, 212 F.3d 210, 221 n.12 (3d. Cir. 2000). "[I]t is the jury's special province to weigh conflicting testimony, determine credibility and draw factual inferences." *See also Cavazos v. Smith*, 565 U.S. 1, 2 (2011) ("[I]t is the responsibility of the jury-

-not the court--to decide what conclusions should be drawn from evidence admitted at trial.") Viewing all the evidence in the light most favorable to the People, a rational jury could find Thomas guilty beyond a reasonable doubt of possession of stolen property in violation of 14 V.I.C. § 2101(a).

V. CONCLUSION

Thomas raises no viable legal issues that require this Court to reverse the jury's unanimous verdict. The plain meaning of Title 14 section 2101(a) of the Virgin Islands Code is clear, and the People presented sufficient evidence for a rational jury to find beyond a reasonable doubt that Thomas possessed stolen property. Accordingly, we affirm the Superior Court's June 23, 2016 judgment and commitment.

Dated this 19th day of November 2018

BY THE COURT:

/s/ Ive Arlington Swan
IVE ARLINGTON SWAN
Associate Justice

ATTEST:
VERONICA J. HANDY, ESQ.
Clerk of the Court