

NOT FOR PUBLICATION

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

PEOPLE OF THE VIRGIN ISLANDS,

PLAINTIFF,

v.

EZRA THOMAS

DEFENDANT.

SX-11-CR-864

CHARGES:

**POSSESSION OF STOLEN
PROPERTY**

14V.I.C. § 2101 (a)

MEMORANDUM OPINION

THIS MATTER comes before the Court on Defendant Ezra Thomas's (hereinafter "Thomas") Motion to Acquit or in the Alternative for a New Trial, filed on December 16, 2015. The People of the Virgin Islands (hereinafter "the People") filed their Opposition to Thomas's Motion on February 2, 2016. On April 4, 2016, Defendant's counsel submitted a Motion for a New Trial. For the reasons set forth, the Court shall deny both Thomas's Motion to Acquit and Motion for a New Trial.

FACTUAL AND PROCEDURAL HISTORY

On December 18, 2011, at about 1:26 p.m., Officer Lawrence James Jr. and Danisha Samuel were dispatched to investigate a report of a larceny in the Dorsch beach area in Saint Croix, Virgin Islands. Ms. June Liebert, the person filing the report, notified the officers that she was

missing \$20.00 in cash, an Ipad, an Iphone, and four US Passports.¹ Police utilized the Ipad Global Positioning System in the Ipad to locate the missing items which were found in the bushes near the Dorsch Beach area along the shoreline. While police were tracking the device, Officer Ricky Hernandez, who was there to assist in the locating of the device, stated he observed a male look at him, and then run into the bushes. The Ipad Global Positioning System showed the ipad to be within 10 feet or less of that exact location. Contact was made with Mr. Ezra Thomas who was on the shoreline heading towards the Vincent Mason Pool; no one else was in the area. Police Officer Hernandez identified Thomas as the man he saw run into the bushes. A green backpack containing the missing items was found in the bushes that Officers stated they saw Thomas run into. Thomas was arrested and charged with Grand Larceny in violation of 14 V.I.C. § 1083(1) and Possession of Stolen Property in violation of 14 V.I.C. § 2101(a).

Thomas, in several motions to the Court expressed his discontent with the speediness of his trial. This delay was based on Thomas's dissatisfaction with the attorneys that were appointed to his case. Thomas was appointed seven attorneys prior to trial. The Court granted each new attorney, when appointed the case, a sufficient time to prepare his defense. Thomas sent several letters to the Court, even when he had counsel, in which he was submitting Motions to Dismiss and arguing his case to the Court. In Thomas's Motion to Dismiss submitted to the Court dated 11/24/2014, Thomas stated:

Come Now, I Ezra L. Thomas, and with all due respect to the United States Virgin Islands Superior Court. I humbly and respectfully request your permission to address this court *pro se, on my own behalf*, as being the defendant in those cases concerning serious matters.

¹ During trial, June Liebert testified that the iPhone and passports that she believed were stolen at the time she reported the incident were found in her personal belongings. The only item stolen was the iPad.

Due to the fact that there are enough documented evidence to show and prove that my appointed attorneys by this Court in all (3) three of these cases have been misrepresenting me and continue to performed clear attorney professional misconduct against me. [emphasis added].²

The Court, based upon the Defendant's numerous requests to represent himself and conflict with six attorneys appointed to represent him, granted the Defendant's request to represent himself. The Court noted for the record that it found that Thomas had the mental capability of representing himself. This finding was based on the interactions with the Thomas, the *pro se* submissions filed to the court and the fact that there were six attorneys who were appointed to represent him in this matter prior to trial. The Court also noted that Thomas filed grievances against the six attorneys appointed to his case thus creating a conflict. In order to no longer prolong this 2011 case, and based the Court's finding that Thomas was able to proceed *pro se*. Upon Thomas's request, the Court appointed Attorney Renee Dowling to assist Thomas during trial as he proceeded *pro se*.

At the Final Pre-trial Conference held on July 10, 2015, Thomas expressed his discontent with Attorney Dowling based on his belief that Dowling was a conflict of interest. Thomas stated that Dowling was appointed to represent him on his other cases and that she would not be able to focus on the each case as needed.³ The Court inquired as to what Thomas propose be done to resolve this issue to which he responded that he did not need anyone to represent or assist him. The Court at that time relieved Dowling and advised Thomas if that is what he suggests, then he will represent himself. In Thomas's letter to the Court received August 31, 2015, pg. 10, Thomas

² This Court also notes that Thomas filed grievances against six of the Attorneys appointed to his case.

³ See Rec. of Proceeding dated July 10, 2015, in which Thomas stated Attorney Dowling was a conflict of interest due to her inability for her to concentrate solely on one case. The Court inquired of Thomas what he would suggest he do. Thomas advised the Court that he did not need anyone to represent or assist him. The Court at that time relieved Dowling and advised Thomas if that is what he suggests, then he will represent himself.

acknowledges that he requested to represent himself when stating “I did told the Judge that I don’t want no attorney to represent or assist me, who are also going to assist and represent the prosecutor at the same time.”

A Writ of Mandamus was filed at the Supreme Court in which Thomas expressed his discontent about the speediness of his trial and requested that the Supreme Court intervene in his case and order this Court to move this case expeditiously. The Supreme Court stated that the “underlying criminal cases had been actively litigated ...but the matter had not proceeded to trial due to Thomas’s dissatisfaction with all of his court appointed attorneys.”⁴

On the morning of trial, Thomas stated he did not request to be his own attorney, and that he is being ordered to represent himself. He further expressed this was his first time selecting a jury or representing himself, but he is “ready to go along.” Thomas raised some concerns, regarding photographs that he wanted to present to the jury that his prior attorneys failed to develop. The Court at this point took the negatives of the photos and had them processed on behalf of Thomas without cost to Thomas.

Jury selection and trial in this matter began on November 30, 2015 and ended on December 3, 2015. The facts presented at trial indicate that the backpack containing the stolen items was located within 10 feet from the shoreline at Dorsch Beach. Also at trial, the People’s key witness, Officer Lawrence James state that Thomas was identified as the person Officer Hernandez saw running into the bushes. Officer James further testified he was familiar with the backpack based on Thomas frequenting the area with the same bag several times before. Officer James further testified that once Thomas arrived at the police station, he refused to give a

⁴ *In Re Thomas*, S.Ct.Civ.No.2014-0055

statement and that while Thomas was in his cell he stated “You know, I’m just a thief, and I Don’t know why, you know, you’re you are harassing me”. Trial Tr. Of Witness Testimony Lawrence James 85:1-3, Dec. 01, 2015. James further stated that Thomas inquired how the bag was found, to which James responded GPS. Officer James stated that at this time Thomas replied “Oh, so technology beat me.” Trial Tr. Of Witness Testimony Lawrence James 85:9-10, Dec. 01, 2015.

At the close of the People’s case-in-chief, Thomas moved for a judgment of acquittal on all charges. The Court granted the motion as to Count I for Grand Larceny, stating that no witnesses, or evidence that placed Thomas as the one who stole the property. The court denied the Motion as to Count II because the Court finds that there was sufficient evidence that Thomas was in possession of stolen property. Thomas then called Luis Rivera who stated he was at the beach with Thomas on the date of the arrest. Rivera stated he did not see Thomas with a backpack or an iPad; Thomas rested at that time.

During his closing argument, Thomas raised questions about lack of fingerprinting on the bag, denying ownership, and also raised arguments about the absence of Officer Hernandez to testify since he was the one who saw Thomas allegedly run into the bush. On December 3, 2015, the jury found Thomas guilty of Count II, Possession of Stolen Property. The Court orally advised Thomas of his right to file a Rule 29 motion, and also sent an Order providing a thorough explanation of how to file the motion, date requirements, and provided Thomas with the option of getting an extension should he need more time to file his motions. Additionally, this Court advised Thomas that should he file a Motion to the Court requesting a transcript of the trial, the Court would grant his motion to assist him in having the necessary materials for his

motion. At his sentencing hearing, Thomas requested counsel. The Court appointed counsel to assist Thomas with Sentencing. On April 4, 2016, Defendant's counsel submitted a Motion for a New Trial arguing that Thomas was denied a fair trial based on his lack of representation. Thomas argues that the court overlooked Thomas's expression of being unfamiliar with the Court process and that Thomas should be granted a new trial in the interest of justice.

LEGAL STANDARD

Motion for Judgment of Acquittal

Federal Rule of Criminal Procedure 29(c)(1) permits a defendant to move for a judgment of acquittal, or renew such motion, within 14 days after a guilty verdict.⁵ "If the jury has returned a guilty verdict, the court may set aside the verdict and enter an acquittal." Fed. R. Crim. P. 29(c)(2). The Court must enter a judgment of acquittal for any offense for which the evidence is insufficient to sustain the conviction. Fed. R. Crim. P. 29(a).

The Defendant bears a heavy burden when moving for judgment of acquittal. *Lattadi v. People*, 51 V.I. 137, 145 (V.I. 2009). This is because the Court's standard for ruling on such motions is whether there is substantial evidence, viewed in the light most favorable to the People, to sustain the jury's verdict of guilt. *Phillip v. People*, 58 V.I. 569, 583 (V.I. 2013). If a rational trier of fact could have found the defendant guilty beyond a reasonable doubt, and there is substantial evidence to support the conviction then the Court must sustain the jury's finding. *Id.* When determining the sufficiency of the evidence, it is not the Court's duty to weigh

⁵ Federal Rule of Criminal Procedure 29(c)(1) states:

(1) Time for a Motion. A defendant may move for a judgment of acquittal, or renew such a motion, within 14 days after a guilty verdict or after the court discharges the jury, whichever is later.

evidence or determine the credibility of the witnesses. *Smith v. People*, 51 V.I. 396, 401 (V.I. 2009).

DISCUSSION

There Was Sufficient Evidence for a Jury to Convict Thomas of Reckless Endangerment

Thomas filed a timely Rule 29 Motion to Acquit on December 16, 2015, 13 days after the jury reached its verdict. In his Motion, Thomas argues that there was insufficient evidence to sustain a conviction for possession of stolen property. Thomas contends that there was no evidence that the bag was his based on lack of fingerprints, and the failure of the prosecution for calling Officer Hernandez or any Forensic Office to testify. These were the same arguments presented to the jury at trial, and this Court prior to trial. The People oppose Thomas's argument that there was no way the jury could have based its decision on the testimony of Officer Lawrence James and June Liebert. According to the People, the testimony of a single witness is sufficient to establish guilt. The People argue that it was within the jury's discretion to believe

The People's argument is correct, "the testimony of a single witness, if credited by the jury, is sufficient to sustain a conviction." *Francis v. People*, 57 V.I. 201, 211-12 (V.I. 2012); *see also Connor v. People*, 59 V.I. 286, 290-91 (V.I. 2013). To prove Thomas committed the possession of stolen property, the People had to provide evidence establishing:

did unlawfully buy, receive, or possess property which had been obtained in an unlawful manner, knowing or having cause to believe the property had been so lawfully obtained, or concealed, to wit an I-Pad, black I-Phone 4, and twenty-five dollars (\$25) belonging to June Leibert, said personal properties having a value in excess of one hundred dollars (\$100)

(Jury Instructions 26). To support its case, the People presented the testimony of June Liebert, who testified that she never gave authority to anyone to take her belongings. The

jury also heard the testimony of Officer James, who testified to the finding of the backpack with the stolen items inside, and the bags proximity to where Thomas was first identified from Officer Hernandez. The jury further heard testimony from Officer James stating that when Thomas was told he was tracked by GPS, he responded “Oh, so technology beat me.” “Oh, so technology beat me.” Trial Tr. Of Witness Testimony Lawrence James 85:9-10, Dec. 01, 2015. James also testified to identifying Thomas with the same backpack on prior occasions.

The testimony of James was enough to place Thomas at the scene of the crime. At the close of trial, the jurors were advised that “[t]he weight of the evidence is not necessarily determined by the number of witnesses testifying on either side” (Jury Instructions 23). The Court also instructed the jurors to consider each count separately (Jury Instructions 35). In addition to the aforementioned instructions, the jurors were also advised that when weighing witness credibility, they “may believe some, all or no part of any witness’ testimony” (Jury Instructions 18). The verdict suggests that the jurors did as they were instructed and properly assessed James’s testimony to decide whether they should believe all, some, or none of it. This Court finds that there is not an adequate reason for setting a verdict aside. *See Faulknor v. People*, 57 V.I. 327, 335 (V.I. 2013). The Court’s only concern is the sufficiency of the evidence. *People v. Fahie*, SX-2011-CR-448, 2014 WL 7186747 at *3 (V.I. Super. Ct. June 19, 2014) (unreported).

When viewing the evidence in the light most favorable to the People, this Court finds that the evidence presented at trial was sufficient to sustain a conviction of possession of stolen property.

Motion for New Trial

I. The Interest of Justice Requires that Thomas Not be Granted a New Trial

Unlike a motion for judgment of acquittal, the Court exercises its own judgment when considering a motion for new trial. *See Stevens v. People*, 52 V.I. 294, 306-7 (V.I. 2009). Pursuant to Rule 135 of the Rules of the Superior Court “[t]he court may grant a new trial to a defendant if required in the interest of justice.” Although the Court is permitted to weigh the evidence when considering a motion for new trial, it is not necessary for the Court to act as a thirteenth juror when deciding whether to grant a new trial. *Stevens*, 52 V.I. at 306. The Court may only order a new trial “if it believes that there is a serious danger that a miscarriage of justice has occurred—that is, that an innocent person has been convicted.” *Id.* at 305 (quoting *United States v. Silveus*, 542 F.3d 993, 1004-05 (3d Cir.2008)). The Court’s discretion in considering a motion for new trial “should be exercised with extreme caution. In other words, the power to grant a new trial should be invoked only in exceptional cases in which the evidence preponderates heavily against the verdict.” *Gov’t of the V.I. v. Grant*, 19 V.I. 440, 445 (Terr. Ct. 1983).

In his December 16, 2015 motion, Thomas suggests that the Court should sit as the thirteenth juror when deciding whether to grant a new trial. However, as previously explained, the Supreme Court of the Virgin Islands has stated that it is not necessary for the Court to act as a thirteenth juror when making its determination. *Stevens*, 52 V.I. at 306. The proper test is to grant a new trial if the Court determines that: (1) the verdict is contrary to the weight of the evidence, *and* (2) an innocent person has been convicted. *Id.* at 305.

In *Stevens*, the Supreme Court of the Virgin Islands determined that the Superior Court did not err in its denial of Stevens' motion for new trial. In that case, Stevens was charged and found guilty of the shooting of Jahlil Ward.⁶ At trial, Ward testified against Stevens and identified him as the person who shot him. *Id.* at 299. In his defense, Stevens and three other witnesses took the stand to provide alibi evidence. *Id.* at 301. In reaching its decision regarding the motion for new trial, the Superior Court found that "Ward appeared certain and unwavering in his identification of Stevens as the perpetrator," while "the alibi witnesses were impeached by inconsistencies." *Id.* at 306-7. The Supreme Court affirmed the Superior Court's decision to deny Stevens' motion for new trial, finding that the Superior Court used the correct standard and clearly articulated that it was exercising its own judgment in assessing witness credibility and weighing the evidence. *Id.* at 306.

Similar *Stevens*, here the verdict is consistent to the weight of the evidence. The People's evidence was sufficient to find Thomas guilty of possession of stolen property. This Court finds that when taking into account the testimony of Officer James regarding the statements made by Thomas at the station, the contents of the backpack found, the location of the backpack in proximity to the area in which Thomas was found, and the statement that Thomas has been seen with the backpack on prior occasions was sufficient to identify the bag as Thomas's backpack that contained the stolen goods.

⁶ Specifically, Stevens was convicted of attempted first degree murder; possessing an unlicensed firearm during the commission of a crime of violence, attempted first degree murder; first degree assault with intent to commit murder; possessing an unlicensed firearm during the commission of a crime of violence, first degree assault; and unauthorized possession of ammunition.

II. Thomas Knowingly, Intelligently, and Voluntarily Waived His Right to Counsel

The Sixth Amendment provides that in all criminal prosecutions, the accused shall enjoy the right to have the assistance of counsel for his defense. Although the right to counsel is a fundamental right that is necessary to provide fair adjudication, this right is not one that is absolute. The right to counsel is waivable through forfeiture or waiver. *U.S. Const. amend. VI.*⁷ “Waiver” involves a knowing, intelligent, and voluntary relinquishment of a known right whereas “forfeiture” results in the loss of a right regardless of a defendant's knowledge of, or intent to effect, such a relinquishment.” *People of the Virgin Islands v. Morton*, 2011 V.I. LEXIS 57 (2011).

Thomas was not forced to waive his right to counsel. This Court attempted to accommodate Thomas by appointing seven different attorneys, one of which he requested specifically. Thomas filed several grievances on his attorneys, and filed motions to the court on his own behalf even while having representation. In Thomas's letters to the court, he states that the representation given to him by the attorneys were unsatisfactory. When Thomas was asked at the final pre-trial conference held on July 10, 2015, what he suggest the Court do in order to assist Thomas, it was Thomas who stated that he did not need anyone to assist him or represent him. This Court did not suggest, nor coerce Thomas into saying he did not need an attorney to assist nor represent him. The Court found that Thomas knowingly, intelligently and voluntarily waived his right to counsel.

⁷ See *People of the Virgin Islands v. Morton*, 2011 V.I. LEXIS 57 (2011)

III. Thomas Was Provided Procedural Information and Extensions to Submit His Motions

On April 4, 2016, Thomas's Counsel argued that the Court should consider the ten day deadline in Superior Court Rule 135 to be a claims processing rule as held in *People v. Ventura*, 2014 V.I. LEXIS 53 (2014). Thomas further blindly argues that Thomas was not made aware of Superior Court Rule 135 until well after the ten day deadline.

At the close of trial, this Court told Thomas:

[Y]ou can file a motion to set aside the verdict. I believe you have 30 days in which to do so. You may request a copy of the transcript to assist you. The Court will notify you also upon the judgment and commitment the amount of days the amount of days that you have to file your appeal. Trial Tr. 7:13-19, Dec. 03, 2015.

On December 08, 2015, this Court issued an Order detailing both the process to file a Motion to Set Aside the Verdict pursuant to the Federal Rule of Criminal Procedure 29(c)(2) and a Motion for New Trial pursuant to Sup.Ct.R.135. This court provided Thomas:

A defendant may move for a judgment of acquittal, within **14** days after a guilty verdict or after the court discharges the jury, whichever is later. If Defendant would like to request a transcript of the trial in order to prepare his motion, he may do so by filing a motion to the court. These documents will be provided to at no cost based on this Court finding him indigent.⁸

Pursuant to Sup.Ct. R.135, Defendant also has the right to submit a Motion for a new trial. The Court may grant a new trial to a defendant if required in the interest of justice. The Court may vacate the judgment if entered, take additional testimony and direct the entry of a new judgment.

A motion for a new trial based on the ground of newly discovered evidence may be made only before, or within two years after, final judgment. A motion for a new trial based on other grounds shall be made within **10** days after finding guilty, or within such further time as the court may fix during the **10**-day period. In no event shall this rule be construed to limit the right of a defendant to apply to the court for a new trial on the ground of fraud or lack of jurisdiction.⁹

This Court not only addressed the filing requirements and deadlines, but in consideration of his pro se status stated "The Court acknowledges that Defendant is proceeding *pro se* and is

⁸ Sup.Ct.R.6

⁹ *People of the V.I. v. Brewley*, 2007 V.I. LEXIS 24, *5 (V.I. Super. Ct. 2007)

currently incarcerated, therefore it will give leave for the Defendant to file either of these Motions within 40 days from the issuance of this Order.”

Based on the information provided *supra* this Court finds the argument in Thomas’s motion to be without merit.

IV. Thomas’s Verdict Was Consistent With the Weight of the Evidence

In his December 16, 2015 motion, Thomas suggests that the Court should sit as the thirteenth juror when deciding whether to grant a new trial. However, as previously explained, the Supreme Court of the Virgin Islands has stated that it is not necessary for the Court to act as a thirteenth juror when making its determination. *Stevens*, 52 V.I. at 306. The proper test is to grant a new trial if the Court determines that: (1) the verdict is contrary to the weight of the evidence, *and* (2) an innocent person has been convicted. *Id.* at 305.

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Given the aforementioned, there is no serious danger that a miscarriage of justice occurred, thus this Court finds it necessary to deny Thomas's motion for a new trial.

CONCLUSION

Upon review of the evidence in the light most favorable to the verdict, this Court finds that the evidence presented by the People was sufficient to sustain a conviction for Possession of Stolen Property. This Court also finds that the verdict was consistent to the weight of the evidence required by the motion for new trial standard. Because the standard of review for a motion for new trial requires the Court to weigh the evidence and assess witness credibility, the Court finds it necessary to deny Thomas's Motion for New Trial. The Court will issue an Order consistent with this Opinion.

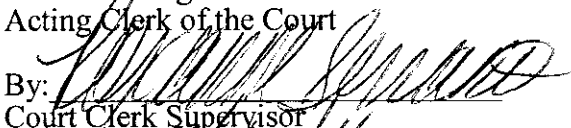
Dated: 5/19/16



Harold W.L. Willocks
Administrative Judge of the Superior Court

ATTEST:

Estrella George
Acting Clerk of the Court

By: 
Court Clerk Supervisor

Dated: 5/23/16