

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

PEOPLE OF THE VIRGIN ISLANDS,

Plaintiff,

v.

CALVIN W. LLOYD,

Defendant.

CRIM NO. SX-14-CR-080

UNAUTHORIZED POSSESSION OF A FIREARM
14 V.I.C. §2253(a)

POSSESSION OF AMMUNITION
14 V.I.C. §2256(a)

FAILURE TO REPORT FIREARM OBTAINED
OUTSIDE OR BROUGHT INTO VIRGIN ISLANDS
23 V.I.C. §470(a)

MEMORANDUM OPINION AND ORDER

THIS MATTER is before the Court on Defendant's Motion to Suppress Illegal Search ("Motion to Suppress"), filed January 13, 2015;¹ People's Response to Defendant's Motion to Suppress ("Response"), filed March 6, 2015; and Defendant's Memorandum of Law in Support of Defendant Calvin Lloyd Motion to Suppress ("Memo"), filed March 18, 2015.

Following a March 18, 2015 evidentiary hearing on the Motion to Suppress, by Order entered March 24, 2015, the Court ordered Defendant to supplement his Motion to Suppress to address the "threshold issue" of whether, as a passenger in the subject vehicle, Defendant had a Constitutionally cognizable reasonable expectation of privacy in the area searched. Defendant filed his Memorandum [sic] for Court's Order Dated March 24th 2014 [sic], filed May 7, 2015. The People filed its Supplemental Response to Motion to Suppress ("Supp. Response") on May 21, 2015. Defendant also filed on April 17, 2015 his Motion to Exclude Oral Testimony & Reports of Virgin Islands Police Department K-9 Officers as it Relates to K-9 Jeff and to Dismiss ("Motion to Exclude").

For the reasons set forth below, the Court finds that Defendant has failed to show any violation of his rights under the Fourth Amendment. Therefore, Defendant's Motion to Suppress will be DENIED. Defendant's Motion to Exclude will also be DENIED WITHOUT PREJUDICE.

¹ On January 29, 2015, Defendant filed a substantially identical Motion to Suppress Illegal Search which is considered herein jointly with and as a part of the Motion to Suppress.

I. BACKGROUND

On or about 12:46 p.m., on February 28, 2014, the VITEMA 911 dispatcher transmitted via radio an all-points bulletin for a red Ford Fiesta vehicle that had been involved in a robbery at EZ Tool Rentals located at 949 Estate Williams Delight, Frederiksted, which included the information that one suspect wore a green tee shirt. Probable Cause Fact Sheet, at 1; testimony of Officer Haraldo Charles. Officer Haraldo Charles set up a “choke point” in the open field to the west of H&H Tire and Battery at 61B Estate Castle Coakley where, at approximately 1:32 p.m., he observed a red Ford Fiesta traveling westbound, turning south onto the paved road adjacent to the Red Cross building, heading toward the residential area of Castle Coakley. Officer Charles followed the vehicle at a safe distance in his marked police unit while awaiting the assistance of other officers. *Id.*

The vehicle suddenly began to increase its speed, traveled over speed humps without slowing down, and began swerving into the right lane, causing vehicles to pull off onto the shoulder of the road. *Id.* After observing several traffic violations, the officer engaged his emergency lights and siren with the intent to conduct a traffic stop. *Id.* The suspect vehicle stopped and the officer exited his vehicle and shouted verbal commands, at which time the red Ford Fiesta then drove away. *Id.*, at 2. Officer Charles testified that the suspect vehicle stopped a total of four times as he pursued, and drove away each time he approached the vehicle. Without signaling, the vehicle turned left, heading eastbound onto Castle Coakley residential road, then turned left heading north on Peter’s Rest Road (Rte. 81). Officer Charles briefly lost sight of the red Ford Fiesta as it began to descend downhill. *Id.* As he approached the crest of the hill, Officer Charles heard a loud bang and thereafter observed that the suspect vehicle had collided with a marked police vehicle. *Id.* The officer approached the accident scene and used his K-9 dog, Bili, to prevent the driver from fleeing the scene. *Id.*

As he arrived at the scene, Officer Charles observed the driver and passenger being removed from the vehicle by several VIPD officers. *Id.* The passenger was identified as Defendant Calvin Lloyd.

Id. EMTs arrived and treated Defendant Calvin Lloyd who was seated on the ground. The driver side and passenger side doors of the Ford Fiesta were left open, and Officer Lionel Benjamin had his K-9 dog, Jeff, conduct an external sniff check of the vehicle. As a result of the external sniff, Jeff sat adjacent to the front passenger door. Officer Benjamin testified that he advised Officer Charles that he had a positive alert for a firearm inside the vehicle. From outside the red Ford Fiesta, Officer Charles observed a green tee shirt on the floor of the front passenger side and, upon closer inspection, the officer observed the barrel of a handgun protruding out from under the shirt. *Id.* The vehicle was processed at the scene by forensic technician Julisha Lansiquot, who recovered a Smith and Wesson .38 caliber revolver, serial number X6246. *Id.* The driver and the passenger of the red Ford Fiesta were transported to Juan Luis Hospital by ambulance for medical treatment needed as a result of the vehicular accident. *Id.* Neither the driver nor the passenger had been issued a license to own, purchase, possess, or carry a firearm in the Virgin Islands, and were charged accordingly. *Id.* at 3.

Defendant Calvin Lloyd was arrested and originally charged with co-Defendant Shamal Reviere with one count of Unauthorized Possession of a Firearm (14 V.I.C. §§ 2253 (a) and 11(a)), one count of Possession of Ammunition (14 V.I.C. §§ 2256 (a) and 11(a)), one count of Failure to Report Firearms Obtained Outside or Brought into the Virgin Islands (23 V.I.C. §§ 470 (a) and 11(a)), and one count of Operating a Motor Vehicle in a Reckless Manner (20 V.I.C. §§ 492 and 11(a)).² Motion, at ¶1.

II. LEGAL STANDARD FOR A MOTION TO SUPPRESS

The Fourth Amendment to the United States Constitution protects an individual's right to security in his person, home, papers and effects and specifically against “unreasonable searches and seizures.”³ The burden of proof is on a defendant seeking to suppress evidence under a Fourth

² The People filed its Motion to Amend the Information on May 21, 2015, granted by Order entered this date, wherein only Defendant Calvin Lloyd is charged and Count Four (Reckless Driving) is stricken.

³ The Fourth Amendment of the United States Constitution is applicable in the U.S. Virgin Islands pursuant to the Revised Organic Act of 1954, §3, 48 U.S.C. §1561, *reprinted in* V.I. CODE ANN., Historical Documents, Organic Facts, and U.S. Constitution at 87–88 (1995) (preceding V.I. CODE ANN. tit. 1).

Amendment challenge. See *United States v. Acosta*, 965 F.2d 1248, 1256, n. 9 (3d Cir. 1992) (citations omitted). However, once the defendant establishes that the search occurred without a warrant, the burden shifts to the government to show that each act of the warrantless search was reasonable under the Fourth Amendment. *United States v. Johnson*, 63 F.3d 242, 245 (3d Cir. 1995).

The Fourth Amendment and the Revised Organic Act's Bill of Rights afford a reasonable expectation of privacy from intrusion by illegal searches and seizures. *Kimmelman v. Morrison*, 477 U.S. 365, 374 (1986). However, in order to assert a Fourth Amendment right to be free from an unreasonable search and seizure, a defendant must demonstrate standing. To demonstrate that he has standing to contest the allegedly illegal search, it is not sufficient to show that the defendant merely resided on the subject premises or was otherwise physically present in the area searched. Rather he must "establish that he had a reasonable expectation of privacy" in the area searched. *Government of the V.I. v. Joseph*, 45 V.I. 132, 136 (V.I. Super. Ct. 2002).⁴

⁴ The Court finds the First Circuit's analysis persuasive in clarifying the relationship between "standing" and "reasonable expectation of privacy," in the context of a warrantless vehicle search:

More than a decade ago the Supreme Court laid to rest the persistent notion that Fourth Amendment "standing" and "reasonable expectation of privacy" are interchangeable concepts. See *Rawlings v. Kentucky*, 448 U.S. 98, 104, 65 L. Ed. 2d 633, 100 S. Ct. 2556 (1980); *Rakas v. Illinois*, 439 U.S. 128, 140-48 (1978). *Rawlings* restructured the substantive analysis in search and seizure cases by dispensing with "standing" as a discrete analytic element apart from the merits. Prior to *Rakas*, petitioner might have been given 'standing' in such a case to challenge a 'search' that netted those drugs [owned by defendant, but in plain view] but probably would have lost his claim on the merits. After *Rakas*, the two inquiries merge into one: whether governmental officials violated any legitimate expectation of privacy held by petitioner. *Rawlings*, 448 U.S. at 106 (emphasis added). . . .

The Supreme Court reformulated in substantive terms the appropriate Fourth Amendment inquiry. The question is whether the challenged search and seizure violated the Fourth Amendment rights of a criminal defendant who seeks to exclude the evidence obtained during it. That inquiry in turn requires a determination of whether the disputed search and seizure has infringed an interest of the defendant which the Fourth Amendment was designed to protect. We are under no illusion that by dispensing with the rubric of standing used in *Jones* we have rendered any simpler the determination of whether the proponent of a motion to suppress is entitled to contest the legality of a search and seizure. But by frankly recognizing that this aspect of the analysis belongs more properly under the heading of substantive Fourth Amendment doctrine than under the heading of standing, we think the decision of this issue will rest on sounder logical footing. *Rakas*, 439 U.S. at 140. The Court concluded that there was no need to determine whether the investigatory stop and search of the vehicle in *Rakas* violated any constitutional right of its owner-driver, who was not a party to the proceeding, because mere "legitimate presence" on the part of the defendant passengers, although relevant, was insufficient to demonstrate that their Fourth Amendment rights had been violated. *Id.* at 148, 150.

United States v. Bouffard, 917 F.2d 673, 675-76 (1st Cir. 1990).

III. DISCUSSION

Generally, the Fourth Amendment does not require that police obtain a warrant to search an automobile when they have probable cause to believe it contains contraband or evidence of criminal activity. *See United States v. Burton*, 288 F.3d 91, 100-101 (3d Cir. 2002) (warrantless vehicle search was valid because police had probable cause after observing defendant complete drug transaction and place proceeds in vehicle trunk). This exception to the warrant requirement is the “automobile exception” and stems from the inherent mobility of automobiles⁵ and their pervasive regulation.⁶ The United States Supreme Court has held that even when a vehicle’s mobility has been restricted and drivers have been secured, warrantless searches may still be valid. *See Pa. v. Labron*, 518 U.S. 938, 939-940 (1996) (Subsequent to defendants’ arrest, the truck of one was lawfully searched, although no exigent circumstances were present, and drugs recovered were not subject to suppression). Courts must look to the totality of the circumstances of each case to determine whether officers have a particularized, objective basis for suspecting that criminal activity is afoot. *United States v. Polanco*, 48 V.I. 744, 750-51 (D.V.I. 2007) (citing *United States v. Arvizu*, 534 U.S. 266, 273-74 (2002)).⁷

Defendant seeks to suppress all evidence retrieved and all statements he made at the time of his arrest. Motion, at 1. Defendant argues that “the People [have] not presented any evidence that supports probable cause that Defendant Calvin Lloyd, committed any crime. No evidence [was] presented that Defendant, Calvin Lloyd, was driving the vehicle.” Memorandum, at 6. Defendant has presented no

⁵ “[P]olice may search a vehicle without a warrant if they have probable cause to do so. The rationale behind this automobile exception to the warrant requirement is that ‘the “ready mobility” of automobiles permits their search based only on probable cause.’... [A] policeman’s on-the-scene assessment of probable cause provides legal justification for arresting a person suspected of crime, and for a brief period of detention to take the administrative steps incident to arrest.” *United States v. Polanco*, 48 V.I. 744, 749-50 (D.V.I. 2007) (citing *Ornelas v. United States*, 517 U.S. 690, 693 (1996); quoting *United States v. Burton*, 288 F.3d 91, 100-01 (3d Cir. 2002); and *Gerstein v. Pugh*, 420 U.S. 103, 113-14 (1975)).

⁶ *See California v. Carney*, 471 U.S. 386, 390-91 (1985); *Pa. v. Labron*, 518 U.S. 938, 940 (1996).

facts or case law that the Court finds persuasive.⁸ The Court finds that Officer Charles had probable cause to conduct a search of the vehicle.

Probable cause to search a vehicle exists when, “viewing the totality of the circumstances, there is a fair probability that contraband or evidence of a crime will be found in a particular place.” *Gresh v. Godshall*, 170 Fed. Appx. 217, 220 (3d Cir. 2006) (citing *Illinois v. Gates*, 462 U.S. 213, 238 (1983)); see also *U.S. v. Rickus*, 737 F.2d 360, 367 (3d Cir. 1984) (holding that “objective facts of this case certainly justified the officers in concluding that there was a fair probability that evidence of a burglary would be found in the car”). The evidence presented clearly shows that Officer Charles would have had reasonable suspicion to stop the vehicle for multiple traffic violations, had it not stopped itself by crashing into a police car.⁹ The totality of existing circumstances gave officers probable cause to search

⁷ Passengers of a vehicle do not have a greater expectation of privacy than the driver/owner of a vehicle. See *Rakas v. Ill.*, 439 U.S. 128, 148-49 (1978); *V.I. v. Williams*, 739 F.2d 936, 938-39 (3d Cir. 1984); *Wyo. v. Houghton*, 526 U.S. 295, 302 (1999); *United States v. Ross*, 456 U.S. 798 (1982). When a valid search based on probable cause occurs, the driver and any passenger and their belongings may be equally searched. Neither driver nor passenger is immune from a search. Thus, the threshold question is whether a valid stop occurred, based on reasonable suspicion that a traffic violation occurred, and then whether a valid search occurred, based on probable cause to believe that the vehicle contains contraband or evidence of criminal activity.

⁸ Defendant argues that the evidence should be suppressed because Officer Charles did not ask the occupants to exit the vehicle nor did he ask them for their license, registration, and proof of insurance. Instead, he and fellow officers removed the occupants from the vehicle. Motion at ¶¶6, 7, 10. Defendant cites the January 29, 2014 Order entered in *People v. Alvin Hilaire*, SX-11-CR 642. That case is not relevant to the issues at hand, as it relates solely to whether the driver of a vehicle detained for a legitimate traffic consented to the search of the vehicle. Probable cause to search, not the driver's consent, provides the justification for the search in the instant matter. Defendant also cites *People v. Matthew, et al*, 55 V.I. 380 (V.I. Super. Ct. 2011). *Matthew* also determined a traffic stop to be valid, but held that the arrest of the occupants of a vehicle where a firearm was found in plain view was illegal as police did not inquire or otherwise have probable cause to believe that defendants had no license to possess a firearm prior to effectuating the arrest. 55 V.I. at 395. In this case, Defendant's argument focuses on the purported lack of validity of the vehicle search, not the arrest. According to Officer Charles, Defendant was not charged until after police had established that he had no license to possess a firearm. Probable Cause Fact Sheet, at 2-3.

⁹ *People of the V.I. v. Charles*, 2014 V.I. LEXIS 7 (V.I. Super. Ct. February 26, 2014) explains lawful stops by stating:

In *Arizona v. Johnson*, the U.S. Supreme Court held that a police officer may be justified in stopping a vehicle due to a traffic violation without an additional requirement of believing that the occupant is involved in criminal activity. An officer's inquiries into matters unrelated to the justification for the traffic stop does not convert the encounter into something other than a lawful seizure, so long as those inquiries do not measurably extend the duration of the stop. After a justified and lawful traffic stop, an officer who develops a reasonable, articulable suspicion of criminal activity may inquire beyond the reason for the traffic stop and may detain the vehicle and its occupants for further investigation. While reasonable suspicion must be more than an inchoate hunch, the Fourth Amendment only requires that the police articulate some minimal objective justification for an investigatory stop.

Charles, 2014 V.I. LEXIS, at *7-8.

the vehicle. Moreover, it is clear that even if the officers had not discovered the weapon onsite, they would have, once the vehicle had been impounded and they had conducted an inventory search.¹⁰

The totality of the circumstances includes the following facts: (1) the 911 dispatcher initiated an all-points bulletin that a red Ford Fiesta had been involved in a robbery in Frederiksted; (2) as Officer Charles set up a choke point, he observed and followed a car matching the description of the car involved in the robbery; (3) the vehicle sped off at a high rate of speed, over speed bumps, and swerving into the other lane (sufficient to justify a traffic stop); (4) when Officer Charles engaged his lights and siren, the vehicle stopped, only to speed off when the officer approached the vehicle, an action that was repeated several times, leading to a chase; (5) the suspect driver drove recklessly and crashed into a marked police car.¹¹ The officers in this case behaved reasonably by removing the driver and the passenger from the vehicle and transporting them via ambulance to the hospital for treatment. Even without investigative assistance of K-9 Jeff, the officers had the lawful option to conduct an

¹⁰ Warrantless search and seizure at a police station was constitutional because there was probable cause at the time of the stop to justify an immediate search. *Chambers v. Maroney*, 399 U.S. 42, 52 n.10 (1970). Conducting a search of a lawfully impounded vehicle was not an unreasonable search or seizure and was a part of valid standard police protocol. *South Dakota v. Opperman*, 428 U.S. 364, 369 (1976). A warrantless search of an impounded car that had already been subject to a valid inventory search is constitutional. *Florida v. Meyers*, 466 U.S. 380 (1984).

¹¹ The Third Circuit has held that similarly to the instance case, a tip from an unnamed 911 caller describing an armed hold up, the color and make of defendant's car, the number, race, gender, and clothing of the occupants, and the vehicle's location, corroborated by police observation was sufficient to give rise to reasonable suspicion for a valid stop. *U.S. v. Nelson*, 284 F. 3d 472, 482-483 (3d Cir. 2002). At this point, a warrantless arrest of the driver would have been lawful because the Officer Charles observed the driver driving in excess of the speed limit. *See Lockett v. New Orleans City*, 607 F. 3d 992, 998 (5th Cir. 2010); *Atwater v. City of Lago Vista*, 532 U.S. 318, 350 (2001) (rejecting a contention that it would not be reasonable to arrest a driver for speeding unless the speeding rose to the level of reckless driving). Furthermore, Officer Charles had probable cause to arrest both defendants because a warrantless arrest, in a public place, of a defendant suspected of committing a felony, such as a robbery, as in this case, is constitutionally permissible. *See U.S. v. Watson*, 423 U.S. 411, 418 n. 6 (1976); *Devenpeck v. Alford*, 543 U.S. 146, 152 (2004); *Carroll v. U.S.*, 267 U.S. 132, 156, 161-162 (1925). A search preceding arrest can also be valid. *See Rawlings v. Ky.*, 448 U.S. 98, 111 (1980) (the U.S. Supreme Court reasoned that it was not particularly important that the search preceded the arrest when the police had probable cause to arrest the defendant before the search). *See also Riley v. California*, 134 S. Ct. 2473, 2484 (2014) (a warrantless search of a vehicle's passenger compartment is constitutionally permissible when it is reasonable to believe evidence relevant to the crime of the arrest might be found in the vehicle).

investigative search of the vehicle, without a warrant.¹² Further, had the officers determined to impound the vehicle before conducting an inventory search, discovery of the firearm on the floor of the passenger's front seat area was inevitable.¹³

The officers first had reasonable suspicion to stop the vehicle when Officer Charles observed numerous traffic violations—speeding, swerving, reckless driving, failing to stop at the officer's lawful command, and the vehicle accident. Officer Charles then had probable cause to search the vehicle based

¹² Defendant's focus on the allegation that the police dog, Jeff, was not properly trained or qualified is misguided. The issue of K-9 training and qualification is not relevant because the officers already had probable cause to conduct a warrantless search without the assistance of a K-9 partner. Moreover, the evidence is that after the accident Officer Charles observed the gun on the passenger side floor under a green tee shirt through the open front passenger door. Yet, even if officers had required the use of a K-9, since a warrantless exterior sniff to a car during a *routine traffic stop* cannot be considered a violation of the Fourth Amendment, it would not follow that a warrantless exterior sniff during a *traffic accident* that occurred *while in pursuit of suspects* could be a violation of the Fourth Amendment.

The Third Circuit has explained:

Consistently the Supreme Court has held that an *exterior* canine sniff of a car during a lawful traffic stop does *not* amount to a "search" under the Fourth Amendment. *Illinois v. Caballes*, 543 U.S. 405, 410 (2005) ("A dog sniff conducted during a concededly lawful traffic stop that reveals no information other than the location of a substance that no individual has any right to possess does not violate the Fourth Amendment."); *Indianapolis v. Edmond*, 531 U.S. 32, 40 (2000) (stating that a dog sniff of the exterior of a car is "much less intrusive than a typical search") (quotation omitted). The federal courts have followed suit. See e.g., *United States v. Branch*, 537 F.3d 328 (4th Cir. 2008) (a dog sniff is not a search and therefore requires no additional justification if it occurs during a lawful traffic stop); *United States v. Olivera-Mendez*, 484 F.3d 505 (8th Cir. 2007) (exterior sniff taking place during a traffic stop did not amount to a search even though the dog jumped and placed his paws on the car several times; sniff took less than a minute, the dog's contact with car was minimal and incidental, and the sniff did not involve entering the car); *United States v. Jensen*, 425 F.3d 698 (9th Cir. 2005), *cert. denied*, 547 U.S. 1056 (2006) (use of a drug-sniffing dog during a valid traffic stop does not itself constitute a "search"); *United States v. Holloman*, 113 F.3d 192 (11th Cir. 1997) (appellate court affirmed the denial of defendant's motion to suppress drugs seized because the dog sniff was not a "search;" the defendant had refused to permit a search after he was lawfully stopped). It is also well-established that, looking at the totality of the circumstances, a dog's positive alert while sniffing the exterior of the car provides an officer with the probable cause necessary to search the car without a warrant. E.g., *Karnes v. Skrutski*, 62 F.3d 485, 498 (3d Cir. 1995) ("[I]t is clear that the drug dog's alert would present probable cause for a search."); *United States v. Massac*, 867 F.2d 174, 176 (3d Cir. 1989) ("When the alert was given by the dog, we are satisfied that, at least when combined with the other known circumstances, probable cause existed to arrest."); *United States v. Williams*, 2006 U.S. Dist. LEXIS 81010, at *25 (W.D. Pa. 2006) ("Once the 'hit' occurred, the officers had probable cause").

United States v. Pierce, 622 F.3d 209, 213 (3d Cir. 2010) (emphasis in original).

¹³ "The inevitable discovery doctrine provides that 'if the government can prove that the evidence would have been obtained inevitably and, therefore, would have been admitted regardless of any overreaching by the police, there is no rational basis to keep that evidence from the jury in order to ensure the fairness of the trial proceedings.'" *United States v. Sinkler*, 267 Fed. Appx. 171, 172, n.1 (3d Cir. 2008) (holding that when defendant initiated a high-speed car chase, which ended when his Jeep collided with a police vehicle, spun and turned over onto its driver's side, causing defendant's backpack to land fifteen feet from defendant's vehicle, that the search of the backpack at the scene of the accident, and its subsequent inventory at the police station was admissible under the inevitable discovery doctrine; thus, defendant's motion to suppress was properly denied) (citing *Nix v. Williams*, 467 U.S. 431, 447 (1984)).

on the matching red Ford Fiesta and green shirt from the 911 dispatch call, and his personal observations of the suspects' attempts to flee his pursuit. Based on the driver's actions, a reasonable officer could conclude that there was a reasonable probability that the driver was or had been committing a crime or that contraband or evidence of a crime would be found in the vehicle. As a passenger in the vehicle of the driver observed acting in a manner consistent with someone officers would suspect had committed a crime, Defendant was equally subject to a lawful search of the vehicle and seizure of any illicit fruits derived from the search. Defendant has not presented any argument or case law to support a contention that a passenger of a vehicle is afforded a greater reasonable expectation of privacy than the driver, such that the evidence obtained in the vehicle should be suppressed. In fact, case law establishes that a vehicle passenger has no such expectation of privacy.¹⁴

The People has met its burden to demonstrate that the police officers acted with reasonable suspicion to stop the vehicle and with probable cause to conduct the vehicle a search. As such, the Court finds that the search and seizure of the vehicle and any items inside were lawful and must deny Defendant's Motion to Suppress.

Because no evidence relative to purported findings of K-9 Jeff is necessary to reach the conclusions herein, Defendant's Motion to Exclude will be denied at this time, without prejudice to Defendant's future right to move to exclude any evidence relative to the K-9 partners of the officers in the event that the People seek to introduce oral testimony or reports relative to the K-9 partners of the officers without sufficiently establishing their training and qualifications.

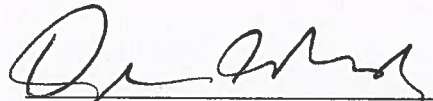
¹⁴ "In the context of a vehicle search, a passenger who has 'asserted neither a property nor a possessory interest in the automobile, nor an interest in the property seized,' has made no showing that he or she has a legitimate expectation of privacy in, for example, the area under the seat of the car in which he or she was 'merely a passenger.' Under such circumstances, a vehicle search does not infringe upon the passenger's Fourth Amendment rights." *United States v. Symonevich*, 688 F. 3d 12, 19 (1st Cir. 2012) (citing *Rakas*, 439 U.S. at 148).

In accordance with the foregoing, it is hereby

ORDERED that Defendant's Motion to Suppress is DENIED. It is further

ORDERED that Defendant's Motion to Exclude is DENIED WITHOUT PREJUDICE.

DATED: September 29, 2015.

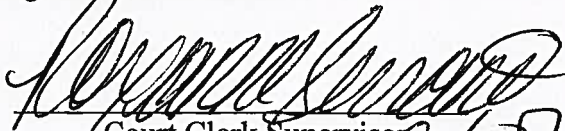

DOUGLAS A. BRADY, Judge

CERTIFIED TO BE A TRUE COPY
This 2nd day of October 2015

ATTEST:
Estrella H. George
Acting Clerk of the Court


Acting CLERK OF THE COURT

By:


Court Clerk Supervisor
9/30/15

By  Court Clerk II