

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. THOMAS AND ST. JOHN

THE PEOPLE OF THE VIRGIN ISLANDS **Plaintiff**)
)
 Vs.)
)
 ARIEL J. MARTIN BENYEHUDAH **Defendant**)

CASE NO. ST-15-CR-0000183

ACTION FOR: 19 V.I.C. 604(A)(1)

**NOTICE OF ENTRY OF
MEMORANDUM
OPINION & ORDER**

TO: TRETSON E. MOORE, ESQ.
OFFICE OF PROBATION FOR DEFENDANT
JUDGES, MAGISTRATES, LAW CLERKS, IT
EUGENE JAMES CONNOR, JR., ESQ., AAG.
ESTRELLA H. GEORGE, ACTING CLERK OF THE COURT

Please take notice that on November 23, 2016 a(n) MEMORANDUM
OPINION & ORDER dated November 18, 2016 was entered by the Clerk in the
above-entitled matter.

Dated: November 23, 2016

Estrella H. George
ACTING CLERK OF THE SUPERIOR

COURT



CAMEIL A. CLARKE
COURT CLERK II

SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. THOMAS AND ST. JOHN

PEOPLE OF THE VIRGIN ISLANDS,

Plaintiff,

vs.

ARIEL J. MARTIN BENYEHUDAH

Defendant.

)
)
)
)
)
) **CASE NO. ST-15-CR-183**
)
)
)
)
)

MEMORANDUM OPINION

Pending before the Court is Defendant's May 8, 2015, Motion to Suppress Evidence. For the following reasons, Defendant's motion will be granted in part.

FACTUAL AND PROCEDURAL HISTORY

On May 8, 2015, Benyehudah was arrested and on May 27, 2015, an Information charged Benyehudah with unauthorized possession of a controlled substance with intent to distribute in violation of 19 V.I.C. § 604(a)(1).¹ On July 17, 2015, Benyehudah filed a Motion to Suppress Evidence pertaining to his arrest and the search of his vehicle and residence on May 8, 2015,² to which the People filed an Opposition on August 10, 2015. Though Benyehudah moved for an extension of time to reply to the People's Opposition to his Motion to Suppress on August 12, 2015, a reply was not filed.

¹ May 27, 2015, Information. A probable cause hearing was held on May 11, 2015, where the Court determined that probable cause existed to arrest Benyehudah on May 8, 2015, for the offense of possession of a controlled substance with intent to distribute in violation of 19 V.I.C. § 604(a)(1). *See* May 11, 2015, Order. Benyehudah pled not guilty to the offense at an arraignment on May 28, 2015. *See* May 28, 2015, Record of Proceeding.

² One of the grounds raised by Benyehudah in his Motion to Suppress pertained to suppression of "any evidence or statements overheard or gleaned from [Benyehudah's] confidential treatment conversation with his physician[.]" but at the October 13, 2015, suppression hearing, counsel for Defendant advised that Defendant would no longer pursue suppression on these grounds. Hr'g Tr., pp. 6-7, 173; Def.'s Mot. to Suppress, p. 4. Consequently, the Court will not address this argument, as it has been waived.

A suppression hearing was held on October 13, 2015, where testimony was taken from: (1) Virgin Islands Police Department (“VIPD”) Officer Kendall Wharton of the Special Operations Division; (2) VIPD Officer Ecedro Lindquist, Jr.; (3) VIPD Officer Johnathan Rey of the Special Operations Division; (4) VIPD Detective Shawn Querrard of the Drug Enforcement Administration High Intensity Drug Tracking Area Task Force (“DEA HIDTA Task Force”); (5) Carolyn Wattley, 911 District Manager of Virgin Islands Emergency Management Agency (“VIEMA”); and (6) Benyehudah.³ The 911 call history record for May 8, 2015, (People’s Exhibits 1-2) and photographs of the crime scene (People’s Exhibits 3-32) were admitted into evidence.⁴ The following was discerned at the suppression hearing:

At around 12:41 p.m. on May 8, 2015, the VIEMA 911 call center received a report of gun shots fired in the Bonne Esperance area of St. Thomas, U.S. Virgin Islands.⁵ Benyehudah testified, for the limited purpose of the suppression hearing, that a shooting had occurred on May 8, 2015, at 17 Estate Bonne Esperance, a residence Benyehudah had been “staying” at for “about two years,” after individuals forcibly broke open his front door and assaulted him.⁶ Having previously purchased and installed locks on the two back bedroom doors, Benyehudah testified that the bedroom doors and locks were not damaged in the assault and that he locked both bedroom doors prior to leaving his residence in a vehicle shortly after the assault.⁷ Benyehudah testified that while leaving his residence, he observed police driving down the hill towards his residence.⁸

³ At the evidentiary hearing the People were represented by Assistant Attorney General Eugene James Conner, Jr., Esq., and Defendant Ariel J. Martin Benyehudah was represented by Treston E. Moore, Esq.

⁴ Hr’g Tr., pp. 10, 31, 61.

⁵ Hr’g Tr., pp. 10-14 (Test. of Wattley); Pl.’s Ex. 1.

⁶ Hr’g Tr., pp. 148-149, 154-155, 158-159 (Test. of Benyehudah).

⁷ Hr’g Tr., pp. 148-151, 153, 156 (Test. of Benyehudah).

⁸ Hr’g Tr., pp. 148-151, 153, 156 (Test. of Benyehudah).

Officer Lindquist testified that he was traveling to the area of Bonne Esperance where shots were reportedly fired when he observed a vehicle, described as a four door silver SUV with heavily tinted windows, exiting the driveway of a residence located on a dead end road and leave the vicinity.⁹ When this vehicle passed Officer Lindquist on the road, Officer Lindquist testified that he observed there were two occupants in the vehicle, one of whom “had blood on him and ... his shirt off.”¹⁰ Officer Lindquist then asked a passerby whether “she heard any shots fired,” to which she responded by pointing in the direction of the vehicle and informed Officer Lindquist that the vehicle “just left from the house.”¹¹ Officer Lindquist then began pursuing the vehicle.¹² Upon seeing the vehicle again, which was identified by Officer Lindquist in open court as a silver Mitsubishi SUV with tag number TEH-687,¹³ Officer Lindquist activated his blue lights and pulled the vehicle over at about 1:17 p.m. in the Bordeaux area.¹⁴ According to Officer Lindquist, the purpose of this stop was to inquire as to the reported gun fire and “to see if anyone was injured” since he had observed the vehicle leaving the vicinity of the reported shooting.¹⁵

After stopping the vehicle, Officer Lindquist and Officer Frett approached the vehicle with at least one firearm drawn and instructed the driver, the only occupant of the vehicle, who Officer Lindquist identified in open court as Benyehudah, to exit the vehicle. Officer Lindquist observed that the driver “was not wearing a shirt” and was injured and bleeding.¹⁶ Officer Lindquist then instructed Benyehudah to “walk back towards [him,]” but when Benyehudah hesitated, Officer

⁹ Hr’g Tr., pp. 54-59, 68 (Test. of Lindquist); *See also* Hr’g Tr., p. 153 (Test. of Benyehudah).

¹⁰ Hr’g Tr., pp. 54-55, 68 (Test. of Lindquist); *See also* Hr’g Tr., p. 153 (Test. of Benyehudah).

¹¹ Hr’g Tr., pp. 55, 77 (Test. of Lindquist).

¹² Hr’g Tr., p. 55 (Test. of Lindquist).

¹³ Hr’g Tr., p. 61-63 (Test. of Lindquist); Pl.’s Ex. 27.

¹⁴ Hr’g Tr., pp. 56-57, 79-80 (Test. of Lindquist).

¹⁵ Hr’g Tr., pp. 82-83 (Test. of Lindquist).

¹⁶ Hr’g Tr., pp. 56-60, 63, 81-83 (Test. of Lindquist).

Lindquist instructed Benyehudah to “get down on his knees and get on his stomach,” at which point Benyehudah was handcuffed by Officer Frett, patted down by Officer Lindquist, and detained.¹⁷ Officer Lindquist questioned Benyehudah, but discontinued after Benyehudah “said he would like to exercise his rights.”¹⁸

At some point, other VIPD officers assigned to the case arrived and took photographs of Benyehudah,¹⁹ and the vehicle was searched.²⁰ Meanwhile, an ambulance arrived at 2:13 p.m., and transported Benyehudah, along with a VIPD officer, to Roy Lester Schneider Regional Hospital for medical treatment.²¹ Benyehudah testified that he was not advised why he was handcuffed or detained until he was “at the hospital later on in the evening, around six [o’]clock, seven[,]” at which time officers informed him that he was being detained for “marijuana possession.”²²

At 1:28 p.m., about eleven minutes after Benyehudah was stopped, the first of several police units radioed that they intended to travel to the residence.²³ At 1:35 p.m., these officers, namely Officers Monsanto, Callwood, Rey, and Wharton, arrived at Benyehudah’s residence,²⁴ where they observed shell casings in the driveway and a partially open front door that appeared to have been “kicked” or “smashed” in, revealing blood on the floor of the residence’s entryway.²⁵ Officers Monsanto and Callwood set up a perimeter outside of the apartment,²⁶ while Officers

¹⁷ Hr’g Tr., pp. 57, 83-84, 88, 90 (Test. of Lindquist), 114 (Test. of Rey).

¹⁸ Hr’g Tr., p. 63 (Test. of Lindquist).

¹⁹ Hr’g Tr., pp. 60-61, 82-83, 85-87 (Test. of Lindquist); Pl.’s Ex. 1 & Ex. 27-32.

²⁰ Hr’g Tr., p. 62 (Test. of Lindquist); Pl.’s Ex. 1.

²¹ Hr’g Tr., pp. 82-83, 85-88 (Test. of Lindquist); 19 (Test. of Wattley); Pl.’s Ex. 1; Pl.’s Ex. 2, p. 4.

²² Hr’g Tr., pp. 152-153 (Test. of Benyehudah).

²³ Pl.’s Ex. 1, p. 5; Hr’g Tr., pp. 115-117, 125 (Test. of Rey), 161-162 (Test. of Monsanto).

²⁴ Hr’g Tr., pp. 22-23, 29-30 (Test. of Wharton), 116-118, 125 (Test. of Rey), 161-162, 164-165 (Test. of Monsanto); Pl.’s Ex. 1, p. 5.

²⁵ Hr’g Tr., pp. 23-25, 43-44 (Test. of Wharton), 98, 105 (Test. of Rey); *but see* Hr’g Tr., p. 168 (Test. of Monsanto) (stating she noticed “several spent casings in the driveway,” but that she did not make “contact with the front door”); *See also* Hr’g Tr., 132-133 (Test. of Querrand).

²⁶ Hr’g Tr., pp. 23-24, 43-44 (Test. of Wharton), 165 (Test. of Monsanto).

Wharton and Rey, both members of the Special Operations Division, conducted a protective sweep of the premises with the intent of “clearing the scene” and searching for any potential victims.²⁷ The officers did not have a warrant to search the residence, nor did they attempt to obtain one prior to their search.²⁸

Officers Wharton and Rey both testified that they announced themselves by shouting “police,” in approaching the front door and throughout their search, but received no response or indication that other persons remained in the residence.²⁹ Upon entering the residence, Officers Wharton and Rey observed “blood on the ground,” “spent casings,” “a bullet through the porch window,” and signs of a violent struggle.³⁰ Officers Rey and Wharton then checked the master bedroom, which appeared to be “ransacked,”³¹ and proceeded down a hallway towards the two back bedrooms.³² Neither officer noticed any blood in the hallway where the bedrooms were located,³³ though Officer Wharton testified that he observed “spent casings near the kitchen area and the master bedroom.”³⁴

A factual dispute exists as to whether the doors of the two back bedrooms were locked or left open. As discussed, Benyehudah testified that he had previously purchased and installed locks on the bedroom doors, that the doors and locks were intact after the assault, and that he locked the doors before leaving his residence.³⁵ Officer Rey testified that both back bedroom doors were

²⁷ Hr’g Tr., pp. 23-25, 32, 37-38 (Test. of Wharton), Hr’g Tr., pp. 94, 99-100, 126-127 (Test. of Rey), 169-170 (Test. of Monsanto).

²⁸ Hr’g Tr., pp. 44, 46, 51 (Test. of Wharton), 104, 118, 121 (Test. of Rey), 166-167 (Test. of Monsanto).

²⁹ Hr’g Tr., pp. 49 (Test. of Wharton), 119 (Test. of Rey), 169 (Test. of Monsanto).

³⁰ Hr’g Tr., pp. 25, 32-33 (Test. of Wharton), 93, 100, 105, 119-120 (Test. of Rey); *See also* Hr’g Tr., 132-133 (Test. of Querrand).

³¹ Hr’g Tr., pp. 105-106 (Test. of Rey).

³² Hr’g Tr., pp. 25-26 (Test. of Wharton), 101 (Test. of Rey).

³³ Hr’g Tr., p. 48 (Test. of Wharton).

³⁴ Hr’g Tr., pp. 52 (Test. of Wharton), 119-120 (Test. of Rey).

³⁵ Hr’g Tr., pp. 149-151, 156 (Test. of Benyehudah).

damaged, but that the bedroom door on the right was “smashed” and partially open, while the left bedroom door was closed and locked.³⁶ In contrast, Officer Wharton testified that both bedroom doors were closed and that they were opened by Officer Rey.³⁷ Both Officers Wharton and Rey testified that Officer Rey did not damage the doors while conducting the search.³⁸

Officer Rey testified that he approached the bedroom on the right first because the door was partially open, and, upon entering the bedroom, observed “marijuana trees everywhere.”³⁹ Officer Rey then checked the closet, but did not find anyone and exited the bedroom.⁴⁰ Officer Rey then approached the bedroom on the left, and, although the door was locked, he was able to open the door by pushing it with his shoulder, finding no victims.⁴¹ Officer Rey testified that, after checking the back bedrooms, he and Officer Wharton continued to clear the residence by checking the downstairs portion that was under construction.⁴² According to the VITEMA call history records between VIPD, the residence was reported as “cleared” over the police radio at 1:53 p.m.⁴³

After Officers Wharton and Rey completed the sweep, Officer Querrand, a detective assigned to the DEA HIDTA Task Force, arrived at the residence.⁴⁴ Officer Querrand testified that many VIPD officers were present at the scene by the time he arrived and that he entered the residence at the request of scene supervisor Forensic Officer Sergeant Daphne Rouse, where he observed a “sophisticated marijuana grow operation” in the back bedrooms.⁴⁵ The parties do not dispute that VIPD then collected evidence from the home, which included, *inter alia*, photographs

³⁶ Hr’g Tr., pp. 101-103, 106-107 (Test. of Rey).

³⁷ Hr’g Tr., pp. 37-38, 50-51 (Test. of Wharton).

³⁸ Hr’g Tr., pp. 37-38, 50-51 (Test. of Wharton), 101 (Test. of Rey).

³⁹ Hr’g Tr., pp. 102, 107 (Test. of Rey).

⁴⁰ Hr’g Tr., p. 102 (Test. of Rey).

⁴¹ Hr’g Tr., p. 103 (Test. of Rey).

⁴² Hr’g Tr., p. 104 (Test. of Rey).

⁴³ Pl.’s Ex. 1, p. 6.

⁴⁴ Hr’g Tr., pp. 130-134 (Test. of Querrand).

⁴⁵ Hr’g Tr., pp. 130-134, 146 (Test. of Querrand).

of the interior of the residence, the marijuana plants, and Benyehudah's identifying documents.⁴⁶

Based on these events, the People charged Benyehudah with unauthorized possession of a controlled substance with intent to distribute in violation of 19 V.I.C. § 604(a)(1).⁴⁷

By Order entered on October 14, 2015, the Court directed the parties to file and serve post-hearing briefs by October 30, 2015, to which responsive briefs could be filed and served by November 13, 2015.⁴⁸ On October 30, 2015, Benyehudah moved to extend the deadline within which to file and serve his post-hearing brief to November 2, 2015. On November 3, 2015, Benyehudah filed his post-hearing brief.

The suppression hearing was conducted by the Honorable Adam G. Christian.⁴⁹ However, upon the expiration of Judge Christian's term in 2016, the Honorable Renee Gumbs-Carty recused herself due to her prior position with the Virgin Islands Attorney General's Office,⁵⁰ and this case was transferred to the undersigned.

On July 28, 2016, Benyehudah filed an Informational Motion in response to the Court's inquiry regarding whether Benyehudah would object to this Court ruling on his Motion to Suppress when the suppression hearing had been held before Judge Christian. In his motion, Benyehudah asserts that he "would favorabl[y] consider this Court reviewing the transcript of the suppression hearing ... [only i]f Judge Christian left legible 'bench notes' pertaining to the credibility and testimony of each witness" heard at the suppression hearing.⁵¹ The People did not file a response.

⁴⁶ See Pl.'s Ex. 3-32; Def.'s Post-Hearing Brief, p. 6; Pl.'s Post-Hearing Brief, pp. 7-9; See also Hr'g Tr., pp. 28, 30 (Test. of Wharton) (testifying that he did not take the photographs while conducting the protective sweep), 146 (Test. of Querrand).

⁴⁷ May 27, 2015, Information.

⁴⁸ October 14, 2015, Order.

⁴⁹ The suppression hearing was originally scheduled for August 18, 2015, but was continued to October 13, 2015. See September 14, 2015, Order.

⁵⁰ See August 11, 2016, Order.

⁵¹ Def.'s July 28, 2016, Informational Mot., pp. 1-2.

STANDARD

I. Motion for Extension of Time.

“When an act is required or allowed to be done at or within a specified time,” Super. Ct. R. 10(a)(1) provides “[t]he court for cause shown may at any time in its discretion . . . [w]ith or without notice, order the period enlarged if application therefor is made before the expiration of the period originally prescribed or as extended by a previous order of the court.”⁵²

II. Motion to Suppress.

“The Fourth Amendment of the United States Constitution guarantees ‘[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures’”⁵³ and “generally protects individuals from ‘governmental intrusion not authorized by a warrant.’”⁵⁴ “[S]earches conducted outside the judicial process, without prior approval by judge or magistrate, are *per se* unreasonable under the Fourth Amendment — subject only to a few specifically established and well-delineated exceptions.”⁵⁵ Consequently,

[a]lthough ordinarily it is the defendant who bears the burden of proving that evidence should be suppressed, this is not the case if a defendant has moved to suppress evidence on grounds that it was obtained without a warrant in violation of the Fourth Amendment. In such cases, although it is the defendant who has made the motion, it is the prosecution that bears the burden of proving that the warrantless search was reasonable.⁵⁶

⁵² SUPER. CT. R. 10(a)(1).

⁵³ *Gumbs v. People of the V.I.*, 64 V.I. 491, 508 (V.I. 2016) (citing *Simmonds v. People of the V.I.*, 53 V.I. 549, 555 (V.I. 2010)). “The Fourth Amendment of the United States Constitution, which protects persons, houses, papers, and effects, against unreasonable searches and seizures, is made applicable to the Virgin Islands pursuant to section 3 of the Revised Organic Act of 1954.” *Thomas v. People*, 63 V.I. 595, 605 n.3 (V.I. 2015) (citing 48 U.S.C. § 1561).

⁵⁴ *Simmonds*, 53 V.I. at 555-556.

⁵⁵ *Browne v. People*, 56 V.I. 207, 217 (V.I. 2012) (quoting *Katz v. United States*, 389 U.S. 347, 357, 88 S. Ct. 507, 19 L. Ed. 2d 576 (1967)) (internal quotation marks omitted).

⁵⁶ *People of the V.I. v. Armstrong*, 64 V.I. 528, 537 (V.I. 2016) (citing *United States v. Ritter*, 416 F.3d 256, 261 (3d Cir. 2005)) (other citations omitted).

To satisfy this burden, the prosecution must demonstrate that the search or seizure was permissible under one of the well-delineated exceptions to the Fourth Amendment's warrant requirement.⁵⁷ These exceptions include, *inter alia*, the exigency doctrine,⁵⁸ the "plain view" doctrine,⁵⁹ the "Terry" stop doctrine,⁶⁰ the search incident to arrest doctrine,⁶¹ and the automobile exception.⁶²

If the prosecution is unable to satisfy its burden, the warrantless search or seizure is "constitutionally invalid[.]"⁶³ in which case the Court must determine whether the evidence must be excluded as the "fruit of the poisonous tree". Under this doctrine, "[w]hen evidence is obtained as a result of an unconstitutional search, the exclusionary rule requires that the fruits of that search be excluded from evidence at trial."⁶⁴

[I]n determining the "fruit of the poisonous tree" question, we ask "whether, granting establishment of the primary illegality, the evidence to which instant objection is made has been come at by exploitation of that illegality or instead by means sufficiently distinguishable to be purged of the primary taint ... [T]he exclusionary rule has no application where the verbal or tangible evidence was obtained from an 'independent source' or where the 'connection between the lawless conduct of the police and the discovery of the challenged evidence has become so attenuated as to dissipate the taint.'⁶⁵ ... Accordingly, ... in finding that evidence is the "fruit of the poisonous tree," it is insufficient to simply say that the evidence would not have come to light except for the illegal action of the police,

⁵⁷ *People of the V.I. v. Schulterbrandt*, 2016 V.I. LEXIS 121, *6 (V.I. Super. Ct., Aug. 22, 2016).

⁵⁸ See *Thomas*, 63 V.I. at 605 (citing *Simmonds*, 53 V.I. at 559-560).

⁵⁹ *Gumbs*, 64 V.I. at 508. Under the plain view doctrine,

an officer may "make a warrantless seizure of any item that he or she has viewed from a place or position in which he or she was lawfully entitled to be, provided it is immediately apparent that the item observed is evidence of a crime, contraband, or otherwise subject to seizure." ... Therefore, an officer may seize potential evidence in plain view when conducting an arrest or executing a search warrant or making a lawful warrantless search. *Id.* at 508-509 (citing *Texas v. Brown*, 460 U.S. 730, 739, 103 S. Ct. 1535, 75 L. Ed. 2d 502 (1983)) (internal and other citations omitted).

⁶⁰ *Id.* at 508; *Terry v. Ohio*, 392 U.S. 1, 20 L. Ed. 2d 889, 88 S. Ct. 1868 (1968).

⁶¹ *Blyden v. People of the V.I.*, 53 V.I. 637, 652 (V.I. 2010) (citing *Chimel v. California*, 395 U.S. 752, 763, 89 S. Ct. 2034, 23 L. Ed. 2d 685 (1969)).

⁶² *Browne*, 56 V.I. at 217.

⁶³ See *Gumbs*, 64 V.I. at 508 (citing *Browne*, 56 V.I. at 217).

⁶⁴ *Castillo v. People of the V.I.*, 59 V.I. 240, 255-256 (V.I. 2013) (citing *Simmonds*, 53 V.I. at 561) (other citations omitted).

⁶⁵ *Id.* at 256 (quoting *Wong Sun v. United States*, 371 U.S. 471, 487-488, 83 S. Ct. 407, 9 L. Ed. 2d 441 (1963)) (internal citation omitted).

but rather whether the evidence was obtained by subsequently exploiting the primary illegality.⁶⁶

ANALYSIS

I. Defendant's Motions for Extension of Time.

Prior to the expiration of the deadline, defense counsel moved for an extension of time to file Defendant's post-hearing brief, asserting that an emergency in a different criminal case pending before the United States District Court for the Virgin Islands prevented defense counsel from meeting with Benyehudah to review and approve the brief prior to filing.⁶⁷ Because defense counsel has shown sufficient cause warranting an extension and the People have not objected to the untimeliness of Defendant's post-hearing brief, the Court will grant Defendant's October 30, 2015, Motion to Extend and deem Defendant's post-hearing brief filed as of November 3, 2015, *nunc pro tunc*.⁶⁸

Defendant also moved for an extension of time within which to reply to the People's Opposition to his Motion to Suppress on August 12, 2015, but since Defendant did not file a reply, that motion will be denied as moot.⁶⁹

II. Defendant's Informational Motion.

According to Benyehudah's July 28, 2016, Informational Motion, Benyehudah does not object to this Court ruling on his Motion to Suppress if Judge Christian, who presided over the

⁶⁶ *Id.* (quoting *Wong Sun*, 371 U.S. at 488).

⁶⁷ Def.'s October 30, 2015, Mot. to Extend, p. 2.

⁶⁸ *Destin v. People of the Virgin Islands*, 2016 V.I. Supreme LEXIS 10, *3 n. 1 (V.I. 2016) ("Although the Superior Court failed to provide an explanation for considering the defendant's untimely motion, the record reflects that the People did not move to strike Destin's motion as being untimely, and therefore it waived any objection to its timeliness") (citing *Joseph v. People*, 60 V.I. 338, 347 n.7 (V.I. 2013)) (other citation omitted).

⁶⁹ *See Der Weer v. Hess Oil V.I. Corp.*, 2014 V.I. LEXIS 22, *11-13 (V.I. Super. Ct. 2014) ("A motion becomes moot when something occurs after a motion is filed that resolves the issues raised in that motion") (internal and other citations omitted).

evidentiary hearing on the motion, left legible ‘bench notes’ pertaining to the credibility and testimony of each witness.”⁷⁰ Otherwise, Benyehudah objects to “[t]he use of the hearing transcript without bench notes” or any ruling based on the motion and briefs alone.⁷¹ At the outset, the Court notes that Benyehudah’s motion is not properly before the Court because he fails to cite any authority in support of his argument.⁷²

Notwithstanding, the Court concludes it is not necessary to hold another evidentiary hearing to replicate that held before Judge Christian. Neither party has suggested that the evidence or arguments have changed since the evidentiary hearing was held before Judge Christian. To hold another hearing “would serve absolutely no purpose other than [to impose] additional expense and delay, since almost certainly the parties would produce the same evidence [and make the same arguments] and the Superior Court would issue the same decision” following a new hearing as it would in relying on the evidence and testimony presented in the hearing before Judge Christian.⁷³ Consequently, in the interests of judicial economy and efficacy, the Court will not hold a new evidentiary hearing on Benyehudah’s Motion to Suppress.

III. Defendant’s Motion to Suppress.

First, Benyehudah moves for the suppression of “[a]ll evidence collected as a result of the initial traffic stop or [Benyehudah’s] arrest” on the grounds that this evidence is “tainted” because “there was no probable cause for the initial traffic stop or [Benyehudah’s] arrest.”⁷⁴ In contrast,

⁷⁰ Def.’s July 28, 2016, Informational Mot., pp. 1-2.

⁷¹ Def.’s July 28, 2016, Informational Mot., p. 2.

⁷² *infra* n. 139; *Simpson v. Golden*, 56 V.I. 272, 280 (V.I. 2012) (“The rules that require a litigant to brief and support his arguments ... before the Superior Court, are not mere formalistic requirements. They exist to give the Superior Court the opportunity to consider, review, and address an argument”).

⁷³ *Mahabir v. Heirs of George*, 63 V.I. 651, 666 (V.I. 2015) (quoting *Hansen v. O'Reilly*, 62 V.I. 494, 511 (V.I. 2015)).

⁷⁴ Def.’s Mot. to Suppress, p. 3.

the People argue that this was reasonable under the automobile exception to the warrant requirement because the officers had probable cause to stop and search Benyehudah's vehicle, but the people are silent as to the legality of Benyehudah's arrest.⁷⁵

A. Investigatory stop and frisk and warrantless arrest of Defendant.

"The Fourth Amendment 'applies to all seizures of the person, including seizures that involve only a brief detention short of traditional arrest.'"⁷⁶ "[W]henver a police officer accosts an individual and restrains his freedom to walk away, he has seized that person, and the Fourth Amendment requires that the seizure be 'reasonable.'"⁷⁷ "[N]ot all seizures of the person must be justified by probable cause to arrest for a crime[.]" the reasoning being that in appropriate circumstances "law enforcement interests warrant a limited intrusion on the personal security of the suspect."⁷⁸ For example, under *Terry v. Ohio*,⁷⁹ "[i]nvestigatory stops, such as a traffic stop, are lawful when justified by a reasonable suspicion that an individual is engaged in criminal activity."⁸⁰ In conducting an investigatory stop under *Terry*, an officer may also "conduct a limited search, *i.e.* a frisk, of the ... [individual] without probable cause[.]" if the officer has reasonable suspicion that the individual is "armed and presently dangerous."⁸¹ According to the Supreme Court of the Virgin Islands,

Although "[r]easonable suspicion is an 'elusive concept' ... it unequivocally demands that 'the detaining officers must have a particularized and objective basis

⁷⁵ Pl.'s Opp'n to Def.'s Mot. to Suppress, pp. 2-3; Pl.'s Post-Hearing Brief, pp. 10-11.

⁷⁶ *Blyden*, 53 V.I. at 647 (citing *Brown v. Texas*, 443 U.S. 47, 50, 99 S. Ct. 2637, 61 L. Ed. 2d 357 (1979)).

⁷⁷ *Id.* (citing *Brown v. Texas*, 443 U.S. at 50) (quotation marks omitted).

⁷⁸ *Florida v. Royer*, 460 U.S. 491, 498, 500, 103 S. Ct. 1319, 1325-26 (1983) (plurality).

⁷⁹ 392 U.S. at 30.

⁸⁰ *People of the V.I. v. Smith*, 2015 V.I. LEXIS 121, *4-5 (V.I. Super. Ct. Sept. 29, 2015) (citing *Maryland v. Wilson*, 519 U.S. 408, 410, 117 S. Ct. 882, 137 L. Ed. 2d 41 (1997)) (other citations omitted); *See also People of the V.I. v. Charles*, 2014 V.I. LEXIS 7, *7 (V.I. Super. Ct. Feb. 26, 2014); *See Blyden*, 53 V.I. at 648-649 (citing *Terry*, 392 U.S. at 27, 30).

⁸¹ *Blyden*, 53 V.I. at 648-649 (citing *Terry*, 392 U.S. at 27, 30) (internal and other citations omitted) (emphasis added).

for suspecting the particular person stopped of criminal activity.”⁸² ... The [United States] Supreme Court has repeatedly recognized that a reasonable suspicion may be the result of any combination of one or several factors: specialized knowledge and investigative inferences, personal observation of suspicious behavior, information from sources that have proven to be reliable, and information from sources that — while unknown to the police — prove by the accuracy and intimacy of the information provided to be reliable at least as to the details contained within that tip.⁸³

Importantly, an investigatory stop under *Terry* and its progeny, even when “justified at its inception,” must also be “reasonably related in scope to the circumstances which justified the interference in the first place.”⁸⁴ If the search and seizure exceeds that permitted for an investigatory stop and frisk, it is constitutional only if there is “some additional justification ... for the further intrusion upon [the individual’s] rights.”⁸⁵

The facts at issue here resemble those in *Blyden v. People of the Virgin Islands*,⁸⁶ where the Supreme Court of the Virgin Islands concluded that the police, who were investigating a shooting, had reasonable suspicion to conduct an investigatory stop and frisk of an individual who was “walking from the area of the shooting at a fast pace while visibly sweating” and wearing clothing that matched the description given by a known witness, reasoning that “[u]nder these circumstances, ... the police had reasonable grounds to believe that [the individual] was the person who had committed the crime involving gunfire, which had resulted in a fatality, and that he was

⁸² *Id.* at 647 (citing *United States v. Brown*, 448 F.3d 239, 246 (3d Cir. 2006) (quoting *United States v. Cortez*, 449 U.S. 411, 417-18, 101 S. Ct. 690, 66 L. Ed. 2d 621 (1981))).

⁸³ *Id.* (citing *United States v. Nelson*, 284 F.3d 472, 478 (3d Cir. 2002) (collecting cases)); *See also Smith*, 2015 V.I. LEXIS 121, at *4-5 (“The reasonable suspicion standard is met when an officer can point to specific and articulable facts, which when taken together with rational inferences from the facts, reasonably warrant the intrusion. 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”) (citing *United States v. Polanco*, 48 V.I. 744, 750 (D.V.I. 2007)) (other citations omitted); *People of the V.I. v. Heath*, 63 V.I. 80, 87 (V.I. Super. Ct. 2015).

⁸⁴ *United States v. Sharpe*, 470 U.S. 675, 682, 105 S. Ct. 1568, 1573 (1985) (citations omitted).

⁸⁵ *Blyden*, 53 V.I. at 651.

⁸⁶ 53 V.I. 637.

likely armed and dangerous.”⁸⁷ The Supreme Court further concluded that since the officers had reasonable suspicion to conduct the stop and frisk, “the fact that the police immediately drew their weapons, ordered [the individual] to the ground, and handcuffed him did not transform his detention into an illegal arrest” because “[i]t is well established that during an investigative stop, police officers may take measures ‘reasonably necessary to protect themselves and maintain the status quo.’”⁸⁸ Further, the Supreme Court found that the officer’s reasonable suspicion ripened “into probable cause to arrest him as a suspect in the shooting” when the officer recovered a firearm while performing the valid *Terry* frisk.⁸⁹ Because the officer had probable cause to arrest the individual, the Supreme Court concluded that the officer’s further search of the individual’s person and seizure of evidence was constitutional under the search incident to arrest doctrine, notwithstanding that the individual had yet to be formally arrested.⁹⁰

Here, Officer Lindquist was responding to a 911 call of shots fired when he observed a vehicle driving away from the vicinity of the reported gunfire with an occupant that did not have a shirt on and appeared injured. Officer Lindquist was then informed by a witness that this vehicle had just left from the residence where the gun shots were fired.⁹¹ Officer Lindquist pursued the vehicle, but lost sight of it for a short period of time. When Officer Lindquist spotted a vehicle resembling the one he had seen fleeing the crime scene, he conducted an investigatory stop. When

⁸⁷ *Id.* at 649-650 (citing *United States v. Harple*, 202 F.3d 194, 196-97 (3d Cir. 1999) (holding that, when other factors, such as the suspect’s geographic proximity to the crime scene, are present, the fact that a suspect matches a witness description may give rise to reasonable suspicion)).

⁸⁸ *Id.* at 648 (citing *United States v. Hensley*, 469 U.S. 221, 235, 105 S. Ct. 675, 83 L. Ed. 2d 604 (1985)).

⁸⁹ *Bylden*, 53 V.I. at 651.

⁹⁰ *Id.*

⁹¹ “[T]he average citizen who is thrust into the position of being ... a witness to criminal conduct and who thereafter reports what he saw and heard to the police is generally presumed to be reliable[.]” 2 WAYNE R. LAFAYE, SEARCH AND SEIZURE § 3.5(a), at 331 (5th ed. 2012) (footnotes omitted).

the driver exited the vehicle, Officer Lindquist observed that, like the occupant in the car fleeing the crime scene, the driver was shirtless, injured, and bleeding.

Similar to the Supreme Court's conclusion in *Blyden*, the Court finds that, under these circumstances, Officer Lindquist had a reasonable suspicion that Benyehudah "was the person who had committed the crime involving gunfire ... and that [Benyehudah] was likely armed and dangerous."⁹² Consequently, the Fourth Amendment permitted the officers to stop Benyehudah, order him to the ground, handcuff him, and pat him down in order to "conduct a limited search of his person in order to determine whether he was carrying a weapon."⁹³ As a result, any evidence recovered during the valid investigatory stop and frisk of Benyehudah, would not be excludable as fruit from an illegal arrest.⁹⁴

The next question, then, is whether the officers had probable cause to further detain or arrest Benyehudah after conducting the valid *Terry* stop and frisk. An officer has probable cause to arrest an individual "where facts and circumstances within the arresting officer's knowledge are sufficient in themselves to warrant a reasonable person to believe that an offense has been ... committed by the person to be arrested."⁹⁵ "It is axiomatic that hindsight may not be employed in determining whether a prior arrest or search was made upon probable cause."⁹⁶ "If the action was taken without a warrant, the information to be considered is the 'totality of the facts' available to the officer at the time of the arrest or search[.]"⁹⁷

⁹² *Blyden*, 53 V.I. at 649.

⁹³ *Id.* at 650; *See People of the V.I. v. Lloyd*, 2015 V.I. LEXIS 122, *14-15 n. 11 (V.I. Super. Ct., Sept. 29, 2015) (citing *Nelson*, 284 F.3d at 482-483).

⁹⁴ *Accord Blyden*, 53 V.I. at 650.

⁹⁵ *Bylden*, 53 V.I. at 651 (citing *United States v. Cruz*, 910 F.2d 1072, 1076 (3d Cir. 1990)).

⁹⁶ 2 SEARCH AND SEIZURE, *supra* n. 91, § 3.2(d), at 57 (footnotes omitted).

⁹⁷ *Id.*

Considering the aforementioned circumstances, the Court finds that the totality of facts available to Officer Lindquist at the time Benyehudah was detained amounted to probable cause to arrest Benyehudah as a suspect in the shooting. Once Benyehudah exited the vehicle and was handcuffed, Officer Lindquist observed in more detail that Benyehudah was shirtless, injured, and bleeding. Having personally observed a vehicle leaving the vicinity of the reported gun fire with a shirtless occupant that was bleeding, and a witness having informed Officer Lindquist that the vehicle had just left from the location of the shooting, it was reasonable for Officer Lindquist to believe that Benyehudah had been involved in the gunfire because Benyehudah' vehicle and physical state matched that of the vehicle and occupant seen fleeing the crime scene no more than thirty minutes prior.⁹⁸ These similarities, which were confirmed during the valid investigatory stop and frisk of Benyehudah, ripened Officer Lindquist's reasonable suspicion into probable cause, thus permitting the officers to arrest or further detain Benyehudah without a warrant and to conduct a further warrantless search Benyehudah's person under the search incident to arrest doctrine.⁹⁹

The search incident to arrest doctrine, an exception to the Fourth Amendment's warrant requirement, permits an officer that has probable cause to arrest an individual to search for and seize any evidence on the individual's person "in order to prevent its concealment or

⁹⁸ *C.f. State v. Travis*, 568 A.2d 316 (R.I. 1990) (probable cause to arrest person by car generally described as used to flee scene of attempted murder, as "fact that the suspect was bleeding would support an inference that he had recently been involved in a violent encounter"); *Commonwealth v. Wilder*, 461 Pa. 597, 600-01, 337 A.2d 564, 566 (Pa. 1975) ("Wilder's presence in the car so shortly after the shooting led to the reasonable inference by police that he was the same person seen in the car fleeing the crime and a probable participant in the shooting") (citations omitted); *United States v. Hurt*, 476 F.2d 1164, 1170 (D.C. Cir. 1973) (probable cause to arrest person who "was ... five blocks from the murder scene approximately an hour after the stabbing wearing a red T-shirt and brown pants, both described in the radio 'lookout' ... in the presence of a suspect who not only fit the 'lookout' description quite accurately but answered to the name given and had visible blood on his clothes and shoes").

⁹⁹ Though the record is unclear as to the exact time Benyehudah was formally arrested, both a formal arrest and a detention that exceeds the scope and duration of a valid investigative seizure require probable cause to arrest the individual. *See Royer*, 460 U.S. at 499 ("Detentions may be 'investigative yet violative of the Fourth Amendment absence probable cause').

destruction[,]” as well as “to remove any weapons that the ... [individual] might seek to use in order to resist arrest or effect his [or her] escape.”¹⁰⁰ Because the officers had probable cause to arrest Benyehudah as a suspect in the shooting,¹⁰¹ VIPD was justified under the search incident to arrest doctrine to further search Benyehudah and seize evidence, including the photographs taken of Benyehudah and the “swabs [taken] off [Benyehudah’s] hands[,]” which according to Benyehudah “pertain[ed] to his proximity to firearms.”¹⁰² As a result, this evidence is also not excludable as the fruit of an unlawful arrest.¹⁰³

B. Warrantless search of Defendant’s vehicle.

At some point after Benyehudah was detained, VIPD officers searched and seized his vehicle without a warrant. As previously mentioned, the People contend that the warrantless search and seizure of Benyehudah’s vehicle was permissible under the automobile exception to the Fourth Amendment’s warrant requirement.¹⁰⁴ Under the automobile exception,

law enforcement may seize and search an automobile without a warrant if probable cause exists to believe it contains evidence of criminal activity.¹⁰⁵ “Probable cause exists when, under the totality of the circumstances, a reasonable person could believe there is a fair probability that contraband or evidence of a crime will be

¹⁰⁰ *Chimel*, 395 U.S. at 763; *See also* *Bylden*, 53 V.I. 651-652; *Smith*, 2015 V.I. LEXIS 121, at *10-12 n. 13 (noting that “the Third Circuit found that a search incident to arrest was valid because the police had probable cause to arrest a defendant for drug trafficking”) (citing *U.S. v. Lampkin*, 464 F.2d 1093, 1098 (3d Cir. 1972)).

¹⁰¹ The search incident to arrest doctrine applies even though the record is unclear as to the approximate time Benyehudah was advised he was “under arrest.” *See* *Bylden* 53 V.I. at 651 n. 7 (citing *Dunaway v. New York*, 442 U.S. 200, 212-13, 99 S. Ct. 2248, 60 L. Ed. 2d 824 (1979)); *See id.* at 651; *See also* *Rawlings v. Kentucky*, 448 U.S. 98, 110-111, 100 S. Ct. 2556, 2564 (1980) (citations omitted).

¹⁰² Def.’s Mot. to Suppress, p. 2; *See also* May 27, 2015, Information (Aff. of VIPD Detective Elesia Francis ¶ 15 (“The Forensic Unit conducted an instant Blue View which is a GSR (gun shot residue) test on Mr. Benyehudah’s left and right hand and the particles on his left hand tested positive for gunshot residue”)).

¹⁰³ *Accord* *Bylden*, 53 V.I. at 650-652.

¹⁰⁴ Pl.’s Opp’n to Def.’s Mot. to Suppress, pp. 2-3; Pl.’s Post-Hearing Brief, pp. 10-11.

¹⁰⁵ *Browne*, 56 V.I. at 217 (citing *Pennsylvania v. Labron*, 518 U.S. 938, 940, 116 S. Ct. 2485, 135 L. Ed. 2d 1031 (1996); *United States v. Burton*, 288 F.3d 91, 100 (3d Cir. 2002)).

found in a particular place.”¹⁰⁶ “The test of reasonableness cannot be fixed by *per se* rules; each case must be decided on its own facts.”¹⁰⁷

Considering the facts underlying the finding that the officers had probable cause to arrest Benyehudah as a suspect in the shooting, the Court also finds that the officers had probable cause to search Benyehudah’s vehicle. As previously discussed, it was reasonable for Officer Lindquist to believe that he had seen Benyehudah’s vehicle driving away from the vicinity of the gunfire shortly after the shooting was reported to 911. It was also therefore reasonable for VIPD to believe that there was a fair probability that Benyehudah brought evidence of the shooting with him in the vehicle before fleeing the scene, such as a firearm.¹⁰⁸ As a result, the warrantless search of Benyehudah’s vehicle was justified and any evidence seized as a result of that search will not be excluded.

C. Warrantless search of Defendant’s residence.

“It is beyond debate that individuals have a reasonable expectation of privacy in their homes.”¹⁰⁹ It is undisputed that Benyehudah resided at 17 Bonne Esperance, and, therefore, Benyehudah is afforded Fourth Amendment protection regarding this residence.¹¹⁰ “A search or seizure of a residence without a warrant is *per se* unreasonable absent the applicability of one of a few, well-delineated exceptions.”¹¹¹

¹⁰⁶ *Id.* (quoting *United States v. Fladten*, 230 F.3d 1083, 1085 (8th Cir. 2000) (per curiam) (citing *Illinois v. Gates*, 462 U.S. 213, 238, 103 S. Ct. 2317, 76 L. Ed. 2d 527 (1983))).

¹⁰⁷ *Id.* (citing *Coolidge v. New Hampshire*, 403 U.S. 443, 510, 91 S. Ct. 2022, 29 L. Ed. 2d 564 (1971)); *See Lloyd*, 2015 V.I. LEXIS 122, at *9-12 (V.I. Super. Ct., Sept. 29, 2015) (discussing the automobile exception to the Fourth Amendment’s warrant requirement).

¹⁰⁸ *C.f. Chambers v. Maroney*, 399 U.S. 42, 47-48, 90 S. Ct. 1975, 1979 (1970) (“[T]he police had probable cause to believe that the robbers, carrying guns and the fruits of the crime, had fled the scene in a light blue compact station wagon which would be carrying four men, one wearing a green sweater and another wearing a trench coat. As the state courts correctly held, there was probable cause to arrest the occupants of the station wagon that the officers stopped; just as obviously was there probable cause to search the car for guns and stolen money”).

¹⁰⁹ *Thomas*, 63 V.I. at 605 (citing *Simmonds*, 53 V.I. at 555).

¹¹⁰ *Accord id.*

¹¹¹ *Id.* (citing *Browne*, 56 V.I. at 217).

Benyehudah moves to suppress “[a]ll evidence collected as a result of the search of [Benyehudah’s] residence[,]” arguing there were no exigent circumstances justifying the entry and search of the residence without a warrant and that no exigency justified the officers’ entry and search of “the two locked bedrooms in [Benyehudah’s] residence.”¹¹² In contrast, the People argue the warrantless entry and search of the residence is reasonable under the exigency and plain view doctrines.¹¹³

The exigency doctrine provides that “the exigencies of the situation make the needs of law enforcement so compelling that the warrantless search is objectively reasonable.”¹¹⁴ Exigent circumstances that justify a warrantless search or seizure include, *inter alia*, “when officers are in hot pursuit of a fleeing suspect,”¹¹⁵ when officers reasonably believe there is “an imminent risk of evidence being removed or destroyed[,]”¹¹⁶ when “the nature of the crime or character of the suspect(s) pose a risk of [imminent] danger to the arresting officers or third persons[,]”¹¹⁷ and when there is a “need to assist persons who are seriously injured or threatened with ... injury.”¹¹⁸ “The common thread is imminence — ‘the existence of a true emergency.’”¹¹⁹ “A finding regarding the presence or absence of exigent circumstances is a factual one”¹²⁰, and, even when

¹¹² Def.’s Mot to Suppress, pp. 2-3.

¹¹³ See Pl.’s Opp’n to Def.’s Mot. to Suppress, pp. 3-7; Pl.’s Post-Hearing Brief, pp. 4-9.

¹¹⁴ *Thomas*, 63 V.I. at 605 (quoting parenthetically *Mincey v. Arizona*, 437 U.S. 385, 393-94, 98 S. Ct. 2408, 57 L. Ed. 2d 290 (1978)).

¹¹⁵ *United States v. Mallory*, 765 F.3d 373, 384 (3d Cir. Pa. 2014) (citing *Coles*, 437 F.3d at 366).

¹¹⁶ *Thomas*, 63 V.I. at 607 (citing *Cupp v. Murphy*, 412 U.S. 291, 296, 93 S. Ct. 2000, 36 L. Ed. 2d 900 (1973)) (other citation omitted).

¹¹⁷ *Simmonds*, 53 V.I. at 560 (citing *United States v. Coles*, 437 F.3d 361, 366 (3d Cir. Pa. 2006)) (other citations omitted); See *Nicholas v. People of the V.I.*, 56 V.I. 718, 740 (V.I. 2012) (“Circumstances involving the protection of a child’s welfare, even absent suspicions of criminal activity, may present an exigency permitting warrantless entry, but only if the officer reasonably believes that ‘someone is in imminent danger’”) (citing *Ray v. Twp. of Warren*, 626 F.3d 170, 177 (3d Cir. 2010)) (other citation omitted).

¹¹⁸ *Thomas*, 63 V.I. at 606 (citing *Brigham City v. Stuart*, 547 U.S. 398, 403, 126 S. Ct. 1943, 164 L. Ed. 2d 650 (2006)) (internal quotation marks omitted).

¹¹⁹ *Mallory*, 765 F.3d at 384 (citing *United States v. Simmons*, 661 F.3d 151, 157 (2d Cir. 2011)).

¹²⁰ *Nicholas*, 56 V.I. at 739 (citations omitted).

exigent circumstances justify a warrantless search, the search “must be strictly circumscribed by the exigencies which justify its initiation.”¹²¹ Consequently, “once the exigencies of the initial entry have dissipated, the police must obtain a warrant for any further search of the premises.”¹²²

Notably, “there is no ‘murder scene exception’ to the warrant requirement of the Fourth Amendment”¹²³ and “[n]o exigency is created simply because there is probable cause to believe that a serious crime has been committed.”¹²⁴ However, “when the police come upon the scene of a homicide they may make a prompt warrantless search of the area to see if there are other victims or if a killer is still on the premises.”¹²⁵ During this “victim-or-suspect” search, “the police may seize any evidence that is in plain view during the course of their legitimate emergency activities[,]”¹²⁶ but if the evidence is not seized during the emergency justifying the warrantless search, the police cannot reenter the residence to seize the evidence without a warrant.¹²⁷ Instead, the officer’s observation of the evidence “— in addition to anything else he [or she] might have seen during the course of rendering emergency aid — ... [should be] used to support probable cause for a warrant[.]”¹²⁸

The parties dispute the applicability and breadth of the ruling of the Supreme Court of the Virgin Islands in *Thomas v. People of the Virgin Islands*.¹²⁹ In *Thomas*, the Supreme Court concluded that the VIPD violated the defendant’s Fourth Amendment rights by searching the defendant’s apartment after “the exigent circumstances that permitted the initial warrantless entry

¹²¹ *Thomas*, 63 V.I. at 606 (citing *Mincey*, 437 U.S. at 393) (internal quotation marks omitted).

¹²² *Mallory*, 765 F.3d at 384 (citing *United States v. Murphy*, 516 F.3d 1117, 1121 (9th Cir. 2008)) (internal quotation marks omitted).

¹²³ *Thomas*, 63 V.I. at 606 (citing *Mincey*, 437 U.S. at 394-395).

¹²⁴ *Id.* (citing *Welsh v. Wisconsin*, 466 U.S. 740, 745, 104 S. Ct. 2091, 80 L. Ed. 2d 732 (1984)).

¹²⁵ *Mincey*, 437 U.S. at 392 (citation omitted).

¹²⁶ *Mincey*, 437 U.S. at 393 (citations omitted).

¹²⁷ See *Thomas*, 63 V.I. at 606 n. 4, 609 n. 5, 608.

¹²⁸ *Id.* at 606 n. 5.

¹²⁹ 63 V.I. 595.

and associated search of [the defendant's] apartment ceased.”¹³⁰ There, the defendant called emergency services to report that his cousin had committed suicide in the defendant's apartment.¹³¹ Upon arriving on the scene, the first responding officer saw an individual with a gunshot wound to the head and a gun in his lap, but since the individual was still breathing, the first responding officer moved the gun to the nearby bed and conducted a “victim-or-suspect” search to secure the apartment.¹³² After the defendant left his apartment to go to the hospital, an officer with the Forensic Unit arrived and conducted an extensive search of the apartment and returned the following morning to conduct yet another search, but “[a]t no time was a search warrant ever obtained for the apartment.”¹³³ The Court suppressed all of the evidence obtained by the Forensic Unit as a result of the search because “the VIPD never obtained a search warrant and no valid exception to the warrant requirement existed.”¹³⁴ The Court explained that, while the first responding officer “clearly had a right to enter and search [the defendant's] apartment for the limited purpose of rendering aid without a search warrant because of the exigent circumstances[,]” once the apartment had been fully secured, VIPD “had ample time to obtain a search warrant.”¹³⁵ The Supreme Court specifically noted that, while the first responding officer “had the right to seize any evidence — such as the gun on [the individual's] lap — under the plain-view doctrine” during the course of the officer's legitimate “victim-or-suspect” search, the evidence had to be seized “at that point in time.”¹³⁶ Since the first responding officer did not seize the gun, the mere fact that the officer observed it in plain view during his legal entry of the

¹³⁰ *Id.* at 606.

¹³¹ *Id.* at 598-599, 605-606.

¹³² *Id.* at 599, 605-606.

¹³³ *Id.* at 600.

¹³⁴ *Id.* at 608.

¹³⁵ *Id.* at 606-608 (citations omitted).

¹³⁶ *Id.* at 606 n. 4, 609 n. 5 (citations omitted).

apartment “did not allow police to later return to the house and retrieve the gun without a warrant.”¹³⁷

The People attempt to distinguish *Thomas* in a variety of ways. First, the People suggest that *Thomas* does not apply because the *Thomas* decision was not issued until after the warrantless search was conducted in this case, but they cite no authority whatsoever to support this contention.¹³⁸ Notwithstanding that unsupported arguments are not properly before the Court,¹³⁹ this argument obviously lacks merit since the Supreme Court’s ruling in *Thomas* is consistent with the United States Supreme Court’s interpretation of the Fourth Amendment, which was well established and constituted binding precedent at all material times at issue here.¹⁴⁰

Next, the People argue that “[i]f the [o]fficers had to get a warrant simply because they could have or may have, even though the contraband was in plain view, while they were legally on the premises but did not cart it all away at the very instant they saw it, would lead to an absurd result of there really being no plain view exception to the warrant requirement.”¹⁴¹ The People urge the Court from taking “a hyper-technical or ultra-narrow view of the holding in *Thomas*” because the gun in *Thomas* could have easily been seized during the “exigent circumstances search[,]”¹⁴² while the “116 [sic] large marijuana plants are not something Officers Rey and Wharton could have physically seized by themselves the very moment they laid eyes upon the

¹³⁷ *Id.* (citations omitted).

¹³⁸ Pl.’s Post-Hearing Brief, p. 2.

¹³⁹ See *In re Catalyst Litig.*, 2015 V.I. LEXIS 145, *3-6 n. 12 (V.I. Super. Ct. 2015) (“The Supreme Court of the Virgin Islands has established that in order for a motion to be properly before the court, parties must support their arguments by citing the proper legal authority, statute or rule”) (citing *Bernhardt v. Bernhardt*, 51 V.I. 341, 345-346 (V.I. 2009); *Davis v. Varlack Ventures, Inc.*, 59 V.I. 229, 238-239 (V.I. 2013)).

¹⁴⁰ *Antilles School, Inc. v. Lembach*, 2016 V.I. Supreme LEXIS 7, *25 (V.I. 2016) (“Clearly, state and territorial courts must follow, as binding precedent, decisions of the United States Supreme Court that interpret the United States Constitution, federal statutes, and federal treaties”) (citing *Chesapeake & O. Ry. Co. v. Martin*, 283 U.S. 209, 221, 51 S. Ct. 453, 75 L. Ed. 983 (1931)).

¹⁴¹ Pl.’s Post-Hearing Brief, pp. 7-8.

¹⁴² Pl.’s Post-Hearing Brief, p. 8 (emphasis added).

plants in plain view.”¹⁴³ The People warn that a narrow interpretation of *Thomas* “would lead to the dangerous situation” because “it would turn first responding officers into evidence gatherers” that are “more concerned with seizing any evidence ... in plain view” than “finding perpetrators or victims that may need medical assistance[.]”¹⁴⁴ These arguments lack merit, as they are antithetical to the purpose of the Fourth Amendment’s warrant requirement.

The People’s logic suggests that evidence observed in plain view during a legal warrantless search cannot be subsequently seized, when all that is required to ensure that the subsequent search and seizure is constitutionally valid under the Fourth Amendment is that a warrant first be issued.

It is well established that

the mere fact that law enforcement may be made more efficient can never by itself justify disregard of the Fourth Amendment. The investigation of crime would always be simplified if warrants were unnecessary. But the Fourth Amendment reflects the view of those who wrote the Bill of Rights that the privacy of a person’s home and property may not be totally sacrificed in the name of maximum simplicity in enforcement of the criminal law. For this reason, warrants are generally required to search a person’s home or his person unless “the exigencies of the situation” make the needs of law enforcement so compelling that the warrantless search is objectively reasonable under the Fourth Amendment.¹⁴⁵

If responding officers observe evidence in plain view but, for whatever reason, are unable to seize it during the emergency that justifies the warrantless search, the officers need only request a warrant in order to reenter the premises to seize the evidence, the probable cause for which will be supported by the officers’ observations. If there is “an imminent risk of evidence being removed or destroyed[.]”¹⁴⁶ exigent circumstances will justify the officers reentering the premises to seize

¹⁴³ Pl.’s Post-Hearing Brief, p. 8.

¹⁴⁴ Pl.’s Post-Hearing Brief, p. 8.

¹⁴⁵ *Mincey*, 437 U.S. at 393 (internal citations omitted).

¹⁴⁶ *Thomas*, 63 V.I. at 607 (citing *Cupp*, 412 U.S. at 296) (other citation omitted).

evidence without a warrant. Any contrary interpretation belies the underpinnings of the Fourth Amendment and is contrary to the Supreme Court's ruling in *Thomas*.¹⁴⁷

In responding to the 911 call reporting gunfire, Officers Wharton and Rey entered the residence after observing shell casings in the driveway and the partially open front door that appeared damaged by forcible entry, through which the officers saw blood in the entryway of the residence. Upon entering the residence, the officers saw signs of a violent struggle, including shell casings and bullet holes. Clearly, exigent circumstances justified Officers Wharton and Rey's warrantless entry and "victim-or-suspect" search of the residence "for the limited purpose of rendering aid[.]"¹⁴⁸ However, as in *Thomas*, once the "victim-or-suspect" search was complete and Benyehudah's residence secured, the VIPD officers had ample time to obtain a search warrant before further searching the residence and seizing evidence.¹⁴⁹ Indeed, the observations of Officer Rey of the marijuana grow operation in the back bedroom would certainly support probable cause for a search warrant, and "[t]here was also no indication that evidence would be lost, destroyed, or removed during the time required to obtain a search warrant because the police had secured [Benyehudah's] residence."¹⁵⁰ For this same reason, there is also no indication that VIPD was in "hot pursuit" of a suspect once the residence was secured. Given this, the Court finds that the exigencies justifying Officers Wharton and Rey's initial warrantless entry and search of the

¹⁴⁷ It does not escape the Court's attention that Officers Monsanto, Wharton, and Rey each testified that they had never "personally" requested a warrant during their tenure as VIPD officers, which is troubling given that warrantless searches and seizures are the exception, not the rule. Hr'g Tr., pp. 40 (Test. of Wharton), 121 (Test. of Rey), 166 (Test. of Monsanto).

¹⁴⁸ *Thomas*, 63 V.I. at 606.

¹⁴⁹ *Id.* at 608 (A search warrant was necessary where "the VIPD had fully secured [the defendant's] apartment, and thus had ample time to obtain a search warrant") (citing *Walter v. United States*, 447 U.S. 649, 657, 100 S. Ct. 2395, 65 L. Ed. 2d 410 (1980) (search unreasonable where warrant was easily obtainable); *Mincey*, 437 U.S. at 394 (no indication that authorities could not have easily obtained search warrant); *McDonald v. United States*, 335 U.S. 451, 454-55, 69 S. Ct. 191, 93 L. Ed. 153 (1948) (no reason for failure to obtain warrant)).

¹⁵⁰ *Id.* at 606.

residence ceased once the residence was secured upon the completion of the “victim-or-suspect” search by Officers Wharton and Rey, at which time VIPD was required to obtain a warrant before further searching the residence and seizing evidence. The plain view doctrine does not justify the warrantless search and seizure performed after the residence was secured merely because Officers Wharton and Rey observed, but did not seize, the marijuana plants in plain view while conducting the legal “victim-or-suspect” search. The Supreme Court made clear in *Thomas* that evidence such as this may be seized only during the legal warrantless search, and all the evidence here was collected after the completion of Officer Wharton and Rey’s “victim-or-suspect” search.

Because VIPD did not obtain a search warrant and no valid exception to the warrant requirement existed, it was unreasonable for VIPD to search Benyehudah’s residence without a warrant after the residence was secured. Consequently, similar to the outcome in *Thomas*, all evidence obtained after the legal entry and search of the residence by Officers Wharton and Rey must be suppressed as fruits of an unconstitutional search.¹⁵¹ The exclusionary rule requires that the evidence obtained as a result of VIPD’s unconstitutional search “be excluded from evidence at trial.”¹⁵² As a result, the Court will exclude the unconstitutionally obtained evidence, which “includes all of the photographs taken of the crime scene,” any testimony of VIPD officers regarding observations made after the residence was secured with respect to what was “observed in and around the [residence],” and “any physical evidence obtained from the [residence],” including the marijuana plants that were seized during the illegal search.¹⁵³ Of course, the Court will not suppress the testimony of Officers Wharton and Rey regarding what they observed in and

¹⁵¹ The People have presented no facts or argument, nor has the Court discerned any, that suggest the taint of the unconstitutional search is so attenuated that the exclusionary rule is inapplicable here.

¹⁵² *Id.* at 608-609.

¹⁵³ *Id.* at 609 (citing *Simmonds*, 53 V.I. at 556 (observing that “[t]he Fourth Amendment’s shield from unreasonable government intrusion ... extends to the curtilage”).

around the residence during their constitutional “victim-or-suspect” search, since that warrantless entry and search was not illegal.

CONCLUSION

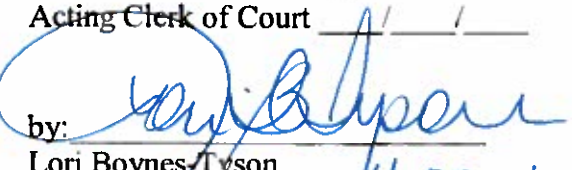
The Court will grant Defendant’s October 30, 2015, Motion to Extend, but deny Defendant’s August 12, 2015, Motion to Extend as moot. The Court will also deny Defendant’s January 28, 2016, Informational Motion. Defendant’s May 8, 2015, Motion to Suppress will be granted in part as to the evidence obtained as a result of the warrantless search of Defendant’s residence after it was secured by VIPD, but denied as to any other evidence because that evidence was not obtained in violation of Defendant’s constitutional rights under the Fourth Amendment.

An Order consistent with this Memorandum Opinion shall follow.

Dated: November , 2016

ATTEST: Estrella George
Acting Clerk of Court

by:


Lori Boynes-Tyson
Court Clerk Supervisor

11/23/16


HON. MICHAEL C. DUNSTON
JUDGE OF THE SUPERIOR COURT
OF THE VIRGIN ISLANDS

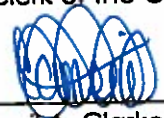
CERTIFIED A TRUE COPY

DATE:

11-23-16

ESTRELLA H. GEORGE
Acting Clerk of the Court

By:


Camell A. Clarke
Court Clerk II

SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. THOMAS AND ST. JOHN

PEOPLE OF THE VIRGIN ISLANDS,

Plaintiff,

vs.

ARIEL J. MARTIN BENYEHUDAH

Defendant.

)
)
)
)
)
) **CASE NO. ST-15-CR-183**
)
)
)
)
)

ORDER

The Court having issued a Memorandum Opinion on this date, it is

ORDERED that Defendant's October 30, 2015, Motion to Extend is **GRANTED** and Defendant's post-hearing brief regarding Defendant's Motion to Suppress is deemed filed as of November 3, 2015, *nunc pro tunc*; and it is

ORDERED that Defendant's August 12, 2015, Motion to Extend is **DENIED AS MOOT**; and it is

ORDERED that Defendant's July 28, 2016, Informational Motion is **DENIED**; and it is

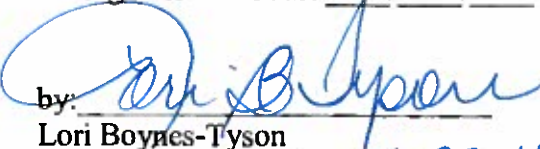
ORDERED that Defendant's May 8, 2015, Motion to Suppress is **GRANTED IN PART** as to the evidence obtained as a result of the warrantless search of Defendant's residence after it was secured by the Virgin Islands Police Department, as detailed in the accompanying Memorandum Opinion; and it is

ORDERED that Defendant's May 8, 2015, Motion to Suppress is **DENIED** as to all other evidence challenged in the motion; and it is

ORDERED that copies of this Order shall be directed to the IT Division of the Superior Court of the Virgin Islands and all counsel of record.

Dated: November 18, 2016

ATTEST: Estrella George
Acting Clerk of Court

by: 

Lori Boynes-Tyson

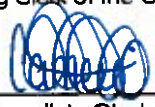
Court Clerk Supervisor 11/23/16


HON. MICHAEL C. DUNSTON
JUDGE OF THE SUPERIOR COURT
OF THE VIRGIN ISLANDS

CERTIFIED A TRUE COPY

DATE: 11-23-16

ESTRELLA H. GEORGE
Acting Clerk of the Court

By: 

Cameil A. Clarke
Court Clerk II