

**NOT FOR PUBLICATION**

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

**People of the Virgin Islands,**  
  
**Plaintiff,**  
  
**v.**  
  
**Charles Hardcastle,**  
**Defendant.**

**SX-10-CR-404**

**CHARGES: UNAUTHORIZED POSSESSION  
OF A FIREARM/ PRINCIPAL; FAILURE TO  
REPORT FIREARMS OBTAINED OUTSIDE  
OR BROUGHT INTO VIRGIN ISLANDS/  
PRINCIPAL; POSSESSION OF A  
CONTROLLED SUBSTANCE WITH INTENT  
TO DISTRIBUTE/PRINCIPAL**

**People of the Virgin Islands,**  
  
**Plaintiff,**  
  
**v.**  
  
**Omari Hardcastle,**  
**Defendant.**

**SX-10-CR-405**

**CHARGES: UNAUTHORIZED POSSESSION  
OF A FIREARM/ PRINCIPAL; FAILURE TO  
REPORT FIREARMS OBTAINED OUTSIDE  
OR BROUGHT INTO VIRGIN ISLANDS/  
PRINCIPAL; POSSESSION OF A  
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**MEMORANDUM OPINION**

This Matter is before the Court on the People's Motion For Saliva Specimen Warrant from Defendants Charles Hardcastle (hereafter "C. Hardcastle") and Omari Hardcastle (hereafter "O. Hardcastle"). For the reasons set forth below, the People's motions shall be denied as to C. Hardcastle and granted as to O. Hardcastle.

**FACTUAL AND PROCEDURAL BACKGROUND**

C. Hardcastle and O. Hardcastle have been charged with possession of a controlled substance with intent to distribute and various firearm charges. The People have filed a motion requesting a search warrant in order to obtain saliva buccal samples from the defendants. The Affidavit of Assistant Attorney General, Kippy Roberson filed in support of the search warrant asserts in relevant part:

On or about July 17, 2010, police officers executed a search warrant at the home of the defendants, Omari and Charles Hardcastle. The residence is located at #280 Work and Rest, St. Croix, VI. During the search of the premises, police found a firearm, a Colt .38 Caliber revolver under the mattress in the bedroom of Omari Hardcastle. The firearm had swabs taken from it for the purposes of DNA testing.

It is of evidentiary significance if the People can demonstrate what individual left DNA on the gun. Since it was in the Defendants' home, it stands to reason that at least one of them can be proven to have handled the gun if their DNA matches the samples from the gun. Therefore, it is necessary for the People to get buccal

saliva samples from the Defendants to compare with the positive DNA results from the firearm.

Defendant O. Hardcastle opposes on grounds that the affidavit fails to set forth any basis to believe that Defendant O. Hardcastle's DNA can link him to a criminal act. As basis Defendant O. Hardcastle purports that 1) the People's "claim that the firearm was discovered during the execution of a search warrant for the home of O. Hardcastle is patently false;" and 2) the circumstances set forth in Attorney Roberson's affidavit fail to establish that a crime was even committed as it is not illegal in the Virgin Islands to possess a firearm or to have a firearm in one's bedroom.

Defendant C. Hardcastle opposes on grounds that—given that the firearm was alleged to have been found in O. Hardcastle's bedroom and there is no contention that C. Hardcastle had access to or dominion over O. Hardcastle's bedroom—the People have not provided the Court with any information that would allow the Court to reasonably conclude that the requested saliva specimen could link C. Hardcastle to the firearm charges filed against him.

#### ANALYSIS

The Fourth Amendment protects citizens against unreasonable searches and seizures by imposing a warrant requirement and further requiring that such warrant shall not issue but upon probable cause. U.S. Const. amend. IV. It is well-established law that the Fourth Amendment is implicated when a search involves an intrusion into the human body. *United States v. Flanders*, 2010 WL 3702512, at 2 (D.Virgin Islands) (citing *Skinner v. Ry. Labor Executives' Ass'n*, 489 U.S. 602, 616-17 (1989) (breathalyzer and urine sample); *Cupp v. Murphy*, 412 U.S. 291, 295 (1973) (finger nail scrapings); *Schmerber v. California*, 384 U.S. 757, 767-71 (1966) (blood); *Friedman v. Boucher*, 580 F.3d 847, 852-53 (9th Cir.2009) ( buccal swab); and *Banks v. United States*, 490 F.3d 1178, 1183 (10th Cir.2007) (same).

The proper standard in granting an application for a search warrant to determine whether probable cause exists is "where 'given all the circumstances set forth in the affidavit ...there is a fair probability that contraband or *evidence of a crime* will be found in a particular place.'" *Id.* at \*3 (citing *United States v. Vosburgh*, 602 F.3d 512, 525-26 (3dcir.2010). "Thus, the issuance of a search warrant for DNA is only proper where the affidavit supporting the application provides a basis for believing that the individual's DNA can link the individual to a criminal act." *Id.* (citing as an e.g., *United States v. Bonds*, 12 F.3d 540, 549 (6<sup>th</sup> Cir.1993) (affirming magistrate finding of probable cause to issue a search warrant for blood and hair samples when affidavit

established that DNA could link the suspect to blood stains found in a car used in connection with a homicide).

In this case, the criminal acts charged in the information for which the Magistrate has already found probable cause and to which this Court must determine the saliva specimen of the defendants could link them to—are *the firearm charges of unauthorized possession of a firearm and failure to report firearms obtained outside or brought into the Virgin Islands*—for the .38 Caliber revolver discovered by the police under the mattress in the bedroom of O. Hardcastle.

In reviewing the affidavit supporting the application for saliva specimen, the Court finds that—where the firearm was alleged to have been found by police officers under the mattress in O. Hardcastle's bedroom at #280 Work and Rest while executing a valid search warrant—there are clearly sufficient facts alleged to reasonably support a finding that the saliva specimens requested could link O. Hardcastle to the firearm charges against him.

The Court finds, however, that the affidavit fails to support that C. Hardcastle had access to O. Hardcastle's bedroom.<sup>1</sup> Despite defendants' blood relationship, their co-habitation together in the white trailer located at No. 280 Work and Rest wherein the firearm was found, and the People's assertion that the lab results from the firearm show "there is a positive DNA result from the firearm and it has the DNA of two people on it, with at least one of them being male," the affidavit is devoid of any facts that reasonably support that C. Hardcastle had constructive possession of the firearm in his brother's bedroom. Therefore, the Court finds that there do not exist sufficient facts in the affidavit to reasonably support a basis for believing that the saliva specimen requested could link C. Hardcastle to the firearm charges against him.

#### CONCLUSION

For the foregoing reasons, the People's motions to compel saliva specimens from C. Hardcastle and O. Hardcastle will be denied as to C. Hardcastle and granted as to O. Hardcastle.

Dated: 1-10-12  
**ATTEST:**  
Venetia Harvey-Velazquez  
Clerk of the Court  
By: *James M. Miranda*  
Court Clerk Supervisor

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

Dated: 1 / 12 / 12

<sup>1</sup> The affidavit states only: "on or about July 17, 2010, the firearm was discovered by the police under the mattress in O. Hardcastle's bedroom. The firearm was seized subject to execution of the search warrant for the white trailer located at No. 280 Work and Rest.