

NOT FOR PUBLICATION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
CONTROLLED SUBSTANCE WITH INTENT TO
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MEMORANDUM OPINION

This Matter is before the Court on the Defendant Omari Hardcastle's (hereafter "O. Hardcastle") Motion To Stay the Court's Memorandum Opinion and Order that had been entered on January 12, 2012 on the People's Motion for Search Warrant. For the reasons set forth below, the Defendant's Motion to Stay shall be granted.

FACTUAL AND PROCEDURAL BACKGROUND

Defendant O. Hardcastle and his brother, the Defendant Charles Hardcastle (hereafter "C. Hardcastle" and together "Defendants"), have been charged with possession of a controlled substance with intent to distribute and various firearm charges. The charges resulted from a search conducted on July 17, 2010 pursuant to a search warrant of property located at #280 Work and Rest. The search warrant was issued on July 15, 2010 by Magistrate Jessica Gallivan for evidence pertaining to an ongoing investigation into a robbery and second and aggravated assault reported on July 11, 2010 involving Leo Jackson. On April 20, 2011, the People filed a Motion for Saliva Specimen Warrant, which Defendant O. Hardcastle opposed. On January 12, 2012, the Court entered an order granting the People's Motion for Saliva Specimen Warrant as it pertained to Defendant O. Hardcastle. Following the Court's decision, Defendant O. Hardcastle filed a Motion to Suppress evidence obtained during the search conducted on July 17, 2010 at #280 Work and Rest that was used to support the Magistrate's findings of probable cause for the charges

brought against Defendants in this case. Defendant O. Hardcastle's underlying basis for requesting suppression of the evidence is on grounds that the evidence are fruits of an unlawful search of his home at #280 Work and Rest that violated his constitutional rights. In conjunction with his Motion to Suppress, Defendant O. Hardcastle filed this Motion to Stay the Court's order for Saliva Specimen Warrant. Defendant submits a stay is warranted given the likelihood that Defendant O. Hardcastle's Motion to Suppress will be granted and to avoid the irreparable injury that will result if Defendant O. Hardcastle's DNA is obtained without probable cause.

ANALYSIS

Standard for Motion to Stay

The motion for stay will be granted only if it would be appropriate after a balancing of the four traditional factors usually weighed in the context of a discretionary stay. These are:

- (1) Whether the applicant has made a strong showing that he is likely to prevail on the merits of the appeal;
- (2) Whether the applicant will be irreparably harmed absent a stay;
- (3) Whether the issuance of a stay would substantially harm other parties in the litigation; and
- (4) the public interest.

Hilton v. Braunskill, 481 U.S. 770, 107 S.Ct. 2113, 95 L.Ed.2d 724 (1987); *Republic of Philippines v. Westinghouse Electric Corp.*, 949 F.2d 653, 658 (3d Cir. 1991). The four factors are not designed to serve as a rigid formula. *Id.* Rather, the issuance of a stay should be analyzed on a case-by-case basis by examining the particular facts of the case presented and balancing the different factors. *Hilton*, 481 U.S. at 777, 107 S.Ct. at 2119–20; *Republic of Philippines*, at 658. *Territorial Court of the Virgin Islands v. Richards*, 674 F. Supp. 180, 181 (D.V.I. 1987).

After balancing these factors, the Court finds that the circumstances here clearly tip in favor of the granting of Defendant O. Hardcastle's motion for a stay of the Court's order for DNA testing pending the Court's disposition on Defendants' Motion to Suppress. The Court finds that Defendant O. Hardcastle has demonstrated a sufficient likelihood of success on its underlying Motion to Suppress the evidence obtained during the search of #280 Work and Rest. Defendant has also shown that he will suffer irreparable injury if forced to submit to a buccal swab while his Motion to Suppress is pending under the circumstances. Most critically, not only have the

People failed to present any argument or evidence to support that they would be substantially injured by the granting of the stay, but more importantly, the Court does not find under the circumstances that the People would be substantially injured by the delay. This is especially so, where the stay of the injunctive order for the DNA testing would avoid unnecessary expenses in the event the Motion to Suppress were to be granted. Lastly, the Court agrees that the public interest will be best served in taking the time to ensure that Defendant's constitutional rights were not violated.

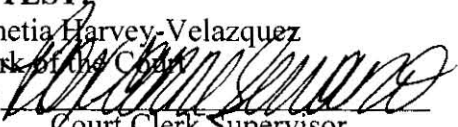
CONCLUSION

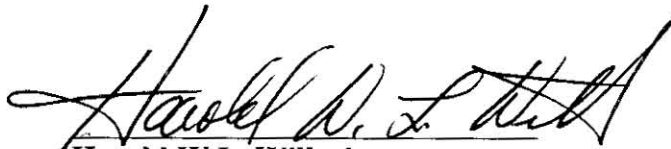
For the foregoing reasons, the Defendant O. Hardcastle's Motion to Stay will be granted.

Dated: 4-11-12

ATTEST:

Venetia Harvey-Velazquez
Clerk of the Court

By: 
Court Clerk Supervisor


Harold W.L. Willocks
Judge of the Superior Court

Dated: 4-12-12