

DISTRICT COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX

UNITED STATES OF AMERICA,

Plaintiff,

v.

LELAND DOWE and MISAEL ORTIZ,

Defendants.

2007-CR-0056

**TO: Rhonda Williams-Henry, Esq., AUSA
Patricia Schrader-Cooke, Esq., AFPD
Martial A. Webster, Sr., Esq.**

ORDER DENYING GOVERNMENT'S MOTION FOR SALIVA SAMPLES

THIS MATTER came before the Court for consideration upon Government's Motion For Saliva Samples (Docket No. 45). A hearing was held on February 20, 2008. The government was represented by Rhonda Williams-Henry, Esq., AUSA. Patricia Schrader-Cooke, Esq., AFPD, appeared on behalf of Defendant Leland Dowe and Martial A. Webster, Sr., Esq., appeared on behalf of Defendant Misael Ortiz. Defendants also were present.

The government asserts that swabbing samples and vacuumed debris were taken from the vehicle which Defendants are charged with using without authorization, and it is necessary to take saliva samples from Defendants to compare the DNA from said saliva

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samples to the samples and debris found in the vehicle. Defendants maintain that they are ready to go to trial and will not waive their right to a speedy trial.

The Court finds that the testing sought would result in the delay of trial. This case is not unusual or complex. In addition, trial is not impossible without the evidence sought; the evidence is not material either to inculcate or exculpate Defendants. *U.S. v. Drapeau*, 978 F.2d 1072, 1073 (8th Cir. 1992). The Court finds that a continuance is not justifiable in view of the fact that the underlying incident giving rise to the indictment occurred on November 4, 2007. Had the government exercised due diligence, the requested testing could have been completed prior to the current trial date of March 3, 2008. *See, e.g., Synder v. Donato*, 118 P.2d 632, 637 (Ariz. App. 2005).

Based upon the foregoing, it is now hereby **ORDERED** that Government's Motion For Saliva Samples is **DENIED**.

ENTER:

Dated: February 20, 2008

_____/s/
GEORGE W. CANNON, JR.
U.S. MAGISTRATE JUDGE