

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. THOMAS AND ST. JOHN

THE PEOPLE OF THE VIRGIN ISLANDS **Plaintiff**)
)
 Vs.)
)
 DEVON DAVID CROOKE **Defendant**)

CASE NO. ST-09-CR-0000273

ACTION FOR: 19 V.I.C. 607(A)

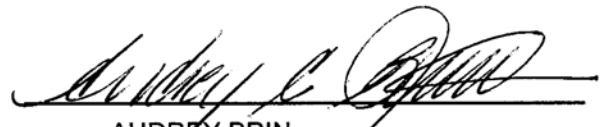
**NOTICE OF ENTRY OF
MEMORANDUM
OPINION AND ORDER**

TO: QUINCY MCRAE, ESQUIRE, AAG
GEORGE MARSHALL MILLER, ESQUIRE
VIRGIN ISLANDS SUPERIOR COURT JUDGES AND MAGISTRATES
VENETIA H. VELAZQUEZ, ESQUIRE, CLERK OF THE SUPERIOR COURT
LAW CLERKS, LOG BOOK, I. T.

Please take notice that on November 14, 2012 a(n) MEMORANDUM
OPINION AND ORDER dated November 14, 2012 was entered by the Clerk in the
above-entitled matter.

Dated: November 14, 2012

Venetia H. Velazquez, Esq.
CLERK OF THE SUPERIOR COURT


AUDREY BRIN
COURT CLERK II

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN**

PEOPLE OF THE VIRGIN ISLANDS,	)	
	)	
Plaintiff,	)	CASE NO. ST-09-CR-F273
	)	
vs.	)	JURY TRIAL DEMANDED
	)	
DEVON DAVID CROOKE,	)	
	)	
Defendant.	)	
_____	)	

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CHRISTIAN, ADAM G., Judge

MEMORANDUM OPINION
(Filed: November 14, 2012)

Before the Court is the “Defendant’s Motion to Suppress” filed by Defendant Devon D. Crooke. Mr. Crooke seeks an order of this Court prohibiting the People of the Virgin Islands (the “People”) from using items seized from him on June 7, 2009 as evidence in his trial. The People filed an opposition to Mr. Crooke’s motion. For the reasons which follow, the Court will deny Defendant Crooke’s motion in its entirety.

I. FACTUAL BACKGROUND.

The Court held an evidentiary hearing in this matter and testimony was taken from Virgin Islands Police Department (“VIPD”) Detective Cassandra Vincent and VIPD Officer Derrick Callwood.¹ According to the testimony of the VIPD officials, in the late morning of June 7, 2009, they were on patrol in the Pine Peace area of St. John, U.S. Virgin Islands, riding in an unmarked VIPD vehicle. Detective Vincent was driving and dressed in plain clothes, while Officer Callwood was in uniform and seated in the front passenger seat. At the time, they were

¹ At the evidentiary hearing the People were represented by Assistant Attorney General Lofton Holder, Esquire, and Defendant Devon David Crooke was represented by George Marshall Miller, Esquire. Attorney Miller continues to represent Defendant. However, the People are presently represented by Assistant Attorney General Quincy McRae, Esquire, as Attorney Holder has retired.

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not responding to any particular call. Rather, they were patrolling the vicinity due to repeated citizens' calls reporting drug use and/or sales in the area.

Detective Vincent stated that, while driving the vehicle on a downhill trajectory, she saw Defendant Crooke sitting on a wall. It appeared to her that he was fidgeting with or trying to conceal something. She had previously arrested Mr. Crooke on a burglary charge, and knew who he was. She stopped the vehicle on the road adjacent to where Defendant Crooke was seated and asked him how he was doing. In response, Defendant Crooke told Detective Vincent that they were harassing him. Then, Mr. Crooke stood up and told her that he was going to run away. Defendant made these statements even though the VIPD officers had not exited the car or displayed any force toward him. During this exchange, Mr. Crooke was holding his pants. Detective Vincent saw something sticking out of his pants, but could not identify the object.

True to his word, Mr. Crooke turned and ran through some bushes, prompting Officer Callwood to exit the vehicle and give chase. Detective Vincent did not chase Defendant. However, she exited the vehicle and noticed a cellular telephone box on the wall where Defendant had been seated. She opened the box and saw what appeared to be several "dime bags" of a green, leafy substance, a larger ziplock bag containing more green, leafy substance, and another substance that appeared to be tobacco. Detective Vincent believed that the green, leafy substances were marijuana. And, when she later field-tested the green leafy substance in two of the "dime bags" and the larger bag, the results positively identified the substances as marijuana.

Officer Callwood's testimony was similar in several respects, but there were some differences. Officer Callwood testified that while they were driving down the hill he did not see Defendant Crooke when Detective Vincent initially stopped the vehicle. Rather, he saw an unidentified black male walking away from the wall area. Although Officer Callwood testified that he felt that a drug transaction had taken place, he did not point to any specific facts which would justify such a conclusion at that point in time. Officer Callwood confirmed Detective Vincent's testimony that Defendant Crooke said that he was going to run, even though they had not alighted from the vehicle.

When Mr. Crooke ran, Officer Callwood exited the police car and gave chase. Rather than follow Mr. Crooke directly, Officer Callwood went around a corner and intercepted Mr. Crooke in front of an auto body shop. Mr. Crooke, upon seeing Officer Callwood, said "the weed was not mines (sic)." At that time, Officer Callwood patted Mr. Crooke down and felt a bulge in his back pants pocket. But, there was no further description of the item he felt. Nevertheless, Officer Callwood removed the object, which was a brown bag, from Defendant's pants pocket, opened it, and found that it contained a green leafy substance. He then advised Mr. Crooke of his *Miranda*² rights and returned him to the VIPD vehicle and Detective Vincent.

Upon their return to the wall area, Detective Vincent advised Officer Callwood and Defendant about the items she discovered where Mr. Crooke was sitting earlier. Officer Callwood performed another search of Defendant's person adjacent to the police vehicle, and

² See, *Miranda v. Arizona*, 384 U.S. 436 (1966).

obtained a cellular telephone and a receipt. Then, when he attempted to place handcuffs on Mr. Crooke, Defendant kicked Officer Callwood in the chest. Notwithstanding the resistance by Defendant, he was taken into custody and driven to the police station. At the police station the green leafy substances were tested, and positive results for marijuana were obtained. Further, an inspection of the cellular telephone taken from Defendant revealed that the identification number on it matched the identification numbers on the receipt and the box. Notwithstanding this discovery, however, Defendant continued to repeat that the box was not his. Mr. Crooke was re-advised of his rights at the police station. One of the handcuff shackles was removed so Defendant could sign the form acknowledging that he had been advised of his rights. But, Mr. Crooke used this as an opportunity to again attack Officer Callwood. Defendant was subdued and placed in a holding cell.

Based on these events, the People charged Mr. Crooke with unauthorized possession of marijuana,³ aggravated assault,⁴ and interfering with an office discharging his duty.⁵ Defendant now seeks to suppress the various items which were seized from him on June 7, 2009, claiming that they were taken in contravention of his rights under the Fourth Amendment to the United States Constitution.⁶ Specifically, Mr. Crooke seeks the suppression of all of the articles listed on a "Receipt for Cash or Other Items" dated June 7, 2009, and attached to his motion. By Order dated June 2, 2011, the Court directed the People to return to Defendant several objects listed thereon because the People conceded that those items would not be used as evidence in the trial of this criminal action.⁷ Therefore, this opinion addresses only the items which the People have retained and indicated will be used in their case-in-chief at trial.

II. LEGAL DISCUSSION.

a. Defendant lacked a privacy or property interest in the cellular telephone box and its contents which he abandoned on the wall.

With respect to the items found by Detective Vincent on the wall where Defendant Crooke was sitting before he attempted to abscond, the Court will deny the motion to suppress. The issues raised by Defendant implicate his right to be free from unreasonable, not all, searches

³ Despite the amount of marijuana seized, the language of Count One of the Information charges Mr. Crooke with simple possession of marijuana, which is a violation of V.I. CODE ANN. tit. 19 § 607(a). However, the statutory citation in Count One is to 19 V.I.C. § 604(a), which is the legal provision by which the People may charge possession of a controlled substance with an intention to distribute the same. Neither the People nor Defendant Crooke have filed any motion with respect to this discrepancy.

⁴ 14 V.I.C. § 298(1).

⁵ 14 V.I.C. § 1508.

⁶ Neither side briefed or argued whether the seizure of items and arrest of Mr. Crooke were authorized under Virgin Islands law. However, the Court notes that VIPD officers are statutorily authorized to make warrantless arrests of persons suspected of engaging in violations of the controlled substances laws of the Virgin Islands and also to seize property. *See*, 19 V.I.C. §§ 620(3), (4).

⁷ The items at issue for purposes of Defendant's motion are: 1) cash; 2) two cellular telephones; 3) a receipt from AT&T to Defendant; 4) one pack of bamboo rolling paper; 5) forty three Ziploc baggies containing a green leafy substance; 6) one Ziploc sandwich bag containing a green leafy substance; 7) a Ziploc bag with fifty seven small baggies; 8) one ounce of funta (a tobacco product); and 9) one brown paper bag containing a green leafy substance and seeds.

and seizures under the Fourth Amendment to the United States Constitution.⁸ The objective of the Fourth Amendment is to guard against unwarranted searches and seizures of objects in which people have legitimate privacy or property interests.⁹ It is settled that a person who abandons property lacks standing to complain about a subsequent search or seizure of the item by law enforcement officials.¹⁰ When determining whether a suspect has abandoned seized property, the Court looks at whether the defendant claims or disclaims ownership of the object, and whether the defendant relinquished possession of the item.¹¹ Additionally, it must be demonstrated that the abandonment was voluntary, and not due to any inappropriate conduct of law enforcement personnel.¹²

In this case, when Defendant Crooke ran from the wall area, with no apparent intention of returning, he clearly forsook the items he left behind on the wall where he previously sat. It is of note that when Officer Callwood was able to cut off Mr. Crooke's flight, Defendant spontaneously stated that the "weed" did not belong to him. Defendant also continued to repudiate any ownership interest in the cellular telephone box, and the objects contained therein, while at the police station. No testimony or other evidence was provided at the hearing to counter the testimony of Detective Vincent and Officer Callwood. Hence, the Court concludes that Mr. Crooke abandoned any privacy interest in the items left on the wall when he fled from Detective Vincent and Officer Callwood on June 7, 2009. Moreover, the abandonment in this case was voluntary because it was not the result of any improper law enforcement conduct. Detective Vincent stopped her vehicle on a purely chance encounter and merely asked Defendant how he was doing. Neither Detective Vincent nor Officer Callwood left the vehicle until after Mr. Crooke fled the scene. In view of these circumstances, Defendant, of his own volition, abandoned the cellular telephone box and its contents. Therefore, he lacks any cognizable property or privacy interest therein and his motion to suppress those items must be denied.¹³

b. The items obtained from the searches of the person of Defendant Crooke were incident to his lawful arrest.

As to the brown bag initially seized from the person of Mr. Crooke by Officer Callwood, and the receipts and telephone later taken, a different analysis is required. Clearly, and contrary to Defendant's argument, police officers may approach individuals in public without reasonable suspicion or probable cause, and may question such individuals without implicating the Fourth Amendment.¹⁴ An individual approached in this manner "...need not answer any question put to

⁸ The Fourth Amendment applies to the United States Virgin Islands by virtue of Section 3 of the Revised Organic Act. See, Revised Organic Act of the Virgin Islands 1954, as amended, § 3, 48 U.S.C. § 1561, *reprinted in* V.I. CODE ANN., Historical Documents, Organic Acts, and U.S. Constitution at 86-88 (1995) (preceding V.I. CODE ANN. tit. 1).

⁹ *Eiland v. Jackson*, 34 F. App'x 40, 41 (3d Cir. 2002). See also, *Simmonds v. People*, 53 V.I. 549, 574 (V.I. 2010) (Swan, J., dissenting).

¹⁰ *United States v. Ramos-Soto*, 304 F. App'x 578 (9th Cir. 2008); *United States v. Hawkins*, 116 F. App'x 776, 778 (8th Cir. 2004).

¹¹ *United States v. Hawkins*, 116 F. App'x at 778.

¹² E.g., *United States v. Payne*, 99 F. App'x 204, 207 (10th Cir. 2004)

¹³ See, e.g., *United States v. Smith*, 648 F.3d 654 (8th Cir. 2011) (defendant abandoned the car he was operating when he fled, leaving the vehicle with police officers in an alley), *cert. denied*, 132 S.Ct. 1069 (2012).

¹⁴ *Florida v. Royer*, 460 U.S. 491, 497 (1983).

him; indeed, he may decline to listen to the questions at all and may go on his way.”¹⁵ Moreover, a refusal to cooperate with the police in a consensual encounter, without more, cannot constitute reasonable suspicion for a stop.¹⁶ The Court concludes that the initial stopping of the VIPD vehicle by Detective Vincent adjacent to Defendant and the question posed by Detective Vincent to Mr. Crooke were entirely appropriate, and, under the circumstances found in the record, cannot be construed as a stop or seizure of Mr. Crooke. It was a casual encounter.

Once Mr. Crooke fled from this chance meeting, however, especially in light of his unwarranted nervousness, his grabbing at his pants, the unidentified object sticking out of his pants, and his presence in an area of high drug use and/or transactions, the officers then obtained a reasonable suspicion which authorized them to pursue Defendant to investigate this newly-arisen situation.¹⁷ In the course of his pursuit, Officer Callwood did not directly follow Mr. Crooke, but took a route by which he could intercept Defendant’s path. This course took him out of the line-of-sight of Defendant for a period of time. Given these circumstances, upon re-encountering Defendant, at the least, a pat-down search of him was appropriate to ensure that he was not a danger to Officer Callwood.¹⁸

When an officer conducts a pat-down search, he must limit the scope of the search to its purpose.¹⁹ In the course of such a protective search, an officer may seize an object that does not feel like a weapon without offending the Fourth Amendment if, upon its feel, its character as contraband is obvious.²⁰ In this instance, Officer Callwood testified that during the pat-down search he discovered a bulge, described as “just wrapped in a ball,” in Defendant’s back pants pocket. He removed it and discovered a green leafy substance in a brown bag. There was no testimony indicating that the bulge felt like contraband to Officer Callwood by his mere touch. A bulge wrapped like a ball does not, in and of itself, provide any reasonable inference that the object is contraband. Therefore, the actions of Officer Callwood in removing the bulge from Defendant’s pocket, opening it, and inspecting it exceeded the constitutional limits of a protective search.

Nevertheless, Defendant’s motion to suppress the brown bag and its contents, as well as the other items seized from his person, both initially and after he was returned to the VIPD vehicle, will be denied because there was probable cause to arrest Mr. Crooke at the time Officer Callwood intercepted him. Probable cause for a warrantless arrest is present when the officers, at the time of the arrest, know of sufficient facts and circumstances based upon trustworthy information that would lead a reasonable person to conclude that the suspect in question had committed or was committing a criminal offense.²¹ The determination of probable cause is fluid and must be assessed by law enforcement officers under the pressure of live action, and,

¹⁵ *Id.* at 498 (citing *Terry v. Ohio*, 392 U.S. 1, 32–33 (1968) (Harlan, J. concurring)).

¹⁶ *United States v. Bonner*, 363 F.3d 213, 217-218 (3d Cir. 2004).

¹⁷ *Illinois v. Wardlow*, 528 U.S. 119, 124-126 (2000).

¹⁸ *Minnesota v. Dickerson*, 508 U.S. 366, 373 (1993).

¹⁹ *Id.*

²⁰ *Id.* at 374-379.

²¹ *E.g.*, *United States v. McMillion*, 472 F. App’x 138, 141 (3d Cir. 2012), *cert. denied*, No. 11-11069, 2012 WL 3101328 (2012). *See also*, *Phipps v. People*, 54 V.I. 543, 559 (V.I. 2011) (Swan, J., concurring) (citation omitted).

therefore, a reviewing court must use a common sense approach and take into account the totality of all relevant circumstances.²²

As recited above, Detective Vincent found a cellular telephone box with several bags containing a green leafy substance where Defendant was seated during the initial counter. Finding what appeared to be marijuana in the box in that area provided sufficient facts to establish probable cause that criminal activity was afoot.²³ The fact that the substances in the bags were not positively field-tested and confirmed to be marijuana until later at the police station does not negate the conclusion that there was probable cause to conclude that the matter was marijuana.²⁴ The detective also stated that Defendant appeared to be trying to hide something when she initially stopped her vehicle. Both officers testified that, for no apparent reason, Defendant announced he was going to run, and did flee. Detective Vincent then exited the vehicle and found the contraband while her counterpart chased Mr. Crooke. Looking at the totality of these circumstances, Detective Vincent had probable cause to believe that Defendant Devon D. Crooke possessed marijuana with the intention of distributing the same.²⁵

Now, the record does not reflect that Officer Callwood knew of Detective Vincent's discovery at the time he stopped Defendant Crooke. However, the United States Supreme Court has declared that "...where law enforcement authorities are cooperating in an investigation, as here, the knowledge of one is presumed shared by all."²⁶ Under this proviso, known as the "collective knowledge doctrine,"²⁷ probable cause for a warrantless arrest can be established based on the cumulative knowledge of multiple law enforcement officers where they are cooperating in an investigation or in communication with one another.²⁸

²² E.g., *Paff v. Kaltenbach*, 204 F.3d 425, 436 (3d Cir. 2000).

²³ See, *Maryland v. Pringle*, 540 U.S. 366, 370 (2003).

²⁴ See, *United States v. Williams*, 413 F.3d 347, 352-353 (3d Cir. 2005) (probable cause existed to search a van based on officers' seeing a plastic bag with a green leafy substance, notwithstanding the defendant's contention that the substance was not conclusively known to the officers at the time and could have been oregano, basil, or spinach).

²⁵ See, *Maryland v. Pringle*, 540 U.S. at 370-372 (the trial court looks at events leading up to the arrest, and proximity to drugs when combined with other circumstances can lead to probable cause to arrest a person for narcotics violations); *United States v. Hernandez*, 322 F.3d 592, 596-599 (9th Cir. 2003) (the defendant's "...presence, his relationship to others in the vehicle, his behavior at the border and his proximity to a large amount of illegal drugs in the minivan gave officers sufficient probable cause to arrest him."); *State v. Zentner*, 5 P.3d 488, 491 (Idaho 2000) ("Suspicious behavior by a suspect when he becomes aware of a law enforcement officer's presence is a circumstance that can link him to drugs found on premises of which he is in non-exclusive possession.").

²⁶ *Illinois v. Andreas*, 463 U.S. 765, 771-772 n. 5 (1983) (citing *Whiteley v. Warden*, 401 U.S. 560, 568 (1971)).

²⁷ In *People v. Norton*, SX-09-CR-485, 2012 WL 5350372 * 6 (V.I. Super. Ct. Oct. 26, 2012) (Willocks, J.), this Court rejected the "police team" concept, which appears to be similar to the collective knowledge doctrine, in the context of a warrantless arrest for a misdemeanor because the alleged crime was not committed in the presence of the arresting officer. However, unlike misdemeanors, there is no statutory requirement that a felony be committed in the presence of law enforcement officers to justify a warrantless arrest. See, 5 V.I.C. §§ 3562(2), (3); 19 V.I.C. § 620(3). In this instance, based on the amount of the green, leafy substance found by Detective Vincent, and the nature of its packaging, there was probable cause to believe that Defendant was engaging in the possession of marijuana with the intent to distribute the same. This is a felony charge under Virgin Islands law. 19 V.I.C. 604(a). Therefore, the conclusion reached herein is not inconsistent with *People v. Norton*.

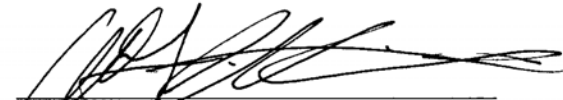
²⁸ *O'Connor v. City of Philadelphia*, 233 F. App'x 161, 165 (3d Cir. 2007).

In this matter, Detective Vincent and Officer Callwood were engaged in an investigation together. They were patrolling an area about which the citizenry had complained of drug usage and sales. Although the initial meeting with Defendant Crooke was very casual, once Mr. Crooke conducted himself in the fashion set out above, the chance encounter elevated into an investigation in which both Detective Vincent and Officer Callwood participated. While Officer Callwood pursued Mr. Crooke, Detective Vincent discovered the contraband where he was previously seated. Given the fluidity of events, the cooperative efforts of the officers, and the totality of the circumstances, Detective Vincent's discovery of the marijuana is imputed to Officer Callwood and he had probable cause to arrest Mr. Crooke.²⁹ Because the arrest of Mr. Crooke was constitutionally appropriate, the warrantless searches of his person were authorized searches incident to said arrest and consistent with the Fourth Amendment to the United States Constitution.³⁰ Therefore, the evidence seized from his person on June 7, 2009, will not be suppressed.

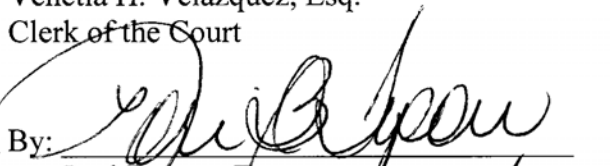
III. Conclusion.

Defendant Devon David Crooke abandoned the cellular telephone box found and seized by Detective Vincent on June 7, 2009. Therefore, he lacks any privacy or property interest in the box and its contents, and has no standing to challenge its seizure. Further, the items taken from Defendant's person were seized during searches incident to his lawful arrest on that date. Therefore, the Court will enter an order of even date denying his motion to suppress in its entirety.

Dated: November 14, 2012


Hon. Adam G. Christian
Judge of the Superior Court
of the Virgin Islands

ATTEST:
Venetia H. Velazquez, Esq.
Clerk of the Court

By: 
Lori Boynes-Tyson
Court Clerk Supervisor 11/14/12

²⁹ See, *Id* (“[i]t is not necessary that the arresting officer himself have personal knowledge of all of the facts probable cause can rest upon the collective knowledge of the police, rather than solely on that of the officer who actually makes the arrest, when there is some degree of communication between the two.”) (quoting *United States v. Kye Soo Lee*, 962 F.2d 340, 345 (5th Cir. 1992)).

³⁰ *United States v. Johnson*, 431 F. App'x 118, 120 (3d Cir. 2011) (citing *Arizona v. Gant*, 556 U.S. 332, 337 (2009)).

