

10-3656  
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IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

CASE NO. S.CT. 2007/105  
SUPERIOR CASE NO.: F399/2005

PEOPLE OF THE VIRGIN :  
ISLANDS, :  
 :  
 Respondent, :  
 :  
 v. :  
 :  
 DARYL BLYDEN, :  
 :  
 Petitioner. :  
 :

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ON PETITION FOR WRIT OF CERTIORARI  
TO THE SUPREME COURT OF THE VIRGIN ISLANDS

---

Respectfully submitted,

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 DARYL BLYDEN. :

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CERTIFICATE OF INTERESTED PERSONS AND  
CORPORATE DISCLOSURE STATEMENT

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A. Corporate Disclosure Statement

This appeal does not involve a non-governmental corporate defendant. There are no parent companies, subsidiaries, or affiliate companies that have issued shares to the public.

B. Certificate of Interested Persons

Honorable Rhys S. Hodge, Chief Justice, Supreme Court of the V.I.  
Honorable Patricia D. Steele, Designated Justice, Supreme Court of the V.I.  
Honorable Vernon A. Hodge, Designated Justice, Supreme Court of the V.I.

Honorable Edgar Ross, Trial Judge, Superior Court Judge

Loftin P. Holder, Asst. Atty. Gen., St. Thomas, V.I.

Terryln M. Smock, Esq., Asst. Atty. Gen., St. Thomas, V.I.

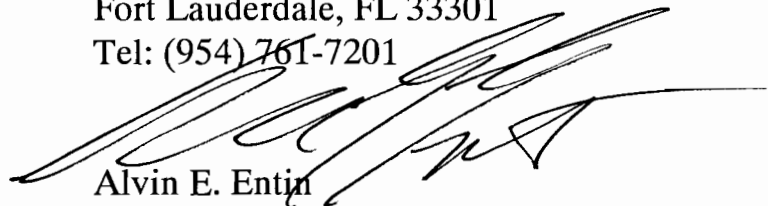
Julie Smith-Todman, Asst. Public Defendant, St. Thomas, V.I.

Natalie Nelson Tang-How, Esq, Appellate Counsel for Daryl Blyden

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**PETITION FOR WRIT OF CERTIORARI**

Daryl Blyden respectfully petitions this Court for a writ of certiorari to review the portion of the Judgment/Order of the Supreme Court of the Virgin Islands rendered and entered in case No. 2007-0105 on July 7, 2010, in *Blyden v. People of the Virgin Islands*, which affirmed his convictions for first degree murder, assault in the first degree, multiple counts of possession of an unlicensed firearm, and one count of buying, receiving, or possessing stolen property.

**STATEMENT OF THE JURISDICTIONAL GROUNDS  
OF THE THIRD CIRCUIT COURT OF APPEAL**

Petitioner's conviction in the Superior Court of the Virgin Islands was affirmed by the Supreme Court of the Virgin Islands on July 7, 2010. This instant petition, filed on September 2, 2010, is timely pursuant to 48 U.S.C. §1613 and L.A.R. Misc. 112.2. Jurisdiction of this Court is invoked under 48 U.S.C. §1613. This Court has discretion to grant review pursuant to L.A.R. MISC. 112.1 (a) (1) in that the Supreme Court of the Virgin Islands rendered a decision in a way that conflicts with the applicable decisions of this Court, other appellate courts, and the United States Supreme Court, in that the decision is contrary to *Crawford v. Washington*, 541 U.S. 36, 124 S.Ct. 1354, 158 L.Ed.2d 177 (2004), *United States v. Brown*, 448 F 3d 239 (3<sup>rd</sup> Cir 2006), and the U.S. Const. Amend. VI which

guarantees a defendant in a criminal prosecution the right to confront the witnesses against him. This Court also has discretion to grant review pursuant to L.A.R. MISC. 112.1 (a)(3) in that the Supreme Court of the Virgin Islands rendered a decision on an important question of federal law that has not been, but should be, decided by this court.

**STATEMENT OF THE BASIS OF JURISDICTION OF THE SUPREME COURT OF THE VIRGIN ISLANDS AND THE SUPERIOR COURT OF THE VIRGIN ISLANDS**

This case originated in the Superior Court for the Virgin Islands which has jurisdiction over all criminal matters pursuant to Act 5890 of the Legislature of the Virgin Islands. Petitioner was the defendant in a criminal prosecution and the Respondent was the prosecuting authority. The Supreme Court of the Virgin Islands had jurisdiction over the appeal below by virtue of Act 6687 of the Legislature of the Virgin Islands which directs that it has appellate jurisdiction in all matters arising from cases brought in the Superior Court. The appeal below followed the entry of a final order of judgment and conviction which disposes of all the claims between the parties. An oral sentence was imposed on August 31, 2007. The final order of judgment was entered by the clerk of the Superior Court on September 25, 2007. The notice of appeal to the Supreme Court of the Virgin Islands was filed on September 6, 2007. As stated above, the opinion of the Supreme Court of the Virgin Islands affirming Petitioner's conviction was

entered on July 7, 2010.

**QUESTIONS PRESENTED FOR REVIEW**

I. Whether the opinion of the Supreme Court of the Virgin Islands erroneously upheld the trial court’s denial of Petitioner’s Motion to Suppress in violation of Petitioner’s Fourth Amendment Rights and in contravention of *United States v. Brown*, 448 F 3d 239 (3<sup>rd</sup> Cir 2006).

II. Whether the opinion of the Supreme Court of the Virgin Islands erroneously denied Petitioner his right to confront the witnesses against him in upholding the trial court’s admission of the prior testimony of the arresting officer at trial in violation of his Sixth Amendment rights and in contravention of *Crawford v. Washington*, 541 U.S. 36, 124 S.Ct. 1354, 158 L.Ed.2d 177 (2004)?

**STATEMENT OF THE CASE**

Petitioner Daryl Blyden was the defendant in the Superior Court of the Virgin Islands and the Respondent, People of the Virgin Islands, the prosecuting authority or plaintiff. Defendant Daryl Blyden was arrested on September 24, 2005, and charged in Superior Court with nine counts related to the homicide of Kevin Walker and the shooting of Iba Matthews. Following his conviction, Blyden appealed to the Supreme Court of the Virgin Islands where he was the Appellant and the Respondent was the Appellee.

Prior to trial Blyden's Motion to Suppress was heard. During his Motion to Suppress hearing on May 3, 2007, Blyden called Officer Joel Dowdye. Because Blyden called Dowdye as his witness, Dowdye was questioned by Blyden on direct and re-direct examination. At that hearing, Blyden intended only to elicit testimony from Dowdye which was expected to be, and which was, consistent with Dowdye's report on the arrest, search and seizure. In other words, Blyden had no motive to attack Dowdye's veracity for truthfulness on his limited testimony. At the suppression hearing, Blyden was taking the position that Dowdye's report of the incident, taken as true, indicated a search and seizure in violation of Blyden's Fourth Amendment rights. At that hearing, the People cross-examined Dowdye. After hearing evidence on the Motion, the trial Court denied the Motion, finding the search and seizure to comport to constitutional standards and the matter thereafter went to trial in June, 2007.

When the People called Officer Dowdye to testify for trial on June 28, 2007, he refused. Appx. 051. The trial court assumed a contempt citation would be futile effort as he had, at that point, been sentenced to 40 years imprisonment for first degree murder. Appx. 057. Thus, pursuant to Federal Evidence Rule 804 (b) (1), the People moved to use Dowdye's prior testimony at the suppression hearing as substantive evidence at trial, arguing that the witness was clearly unavailable. Appx. 053. The defense objected on Sixth Amendment grounds.

Appx. 051,054-055. The trial court overruled the objection.

The testimony was read to the jury on July 10, 2007. Appx. 056. The testimony consisted of the Blyden's limited direct and re-direct examination. The direct examination was appropriate to the limited issues of a suppression hearing; that is, the examination was concerned only with issues relating to the stop of Blyden and the subsequent search. Also included was vigorous cross-examination by the Government through leading questions, which expanded the inquiry to statements made by the Defendant after his arrest. A brief redirect by Defendant was also read to the jury.

Dowdye's had testified at the suppression hearing that Defendant was detained by himself and Officer Rashid by virtue of his being placed in handcuffs. Appx. 058. Officer Dowdye testified that the Defendant was ordered to the ground by his partner **prior to any inquiry** and with police weapons drawn. Further, Officer Downdye testified that Defendant was not free to leave at any time. Appx. 059. Dowdye testified that while he recovered a weapon from the Defendant, he could not recall whether it was a revolver. Appx. 060.

The evidence at trial indicates why Dowdye's testimony was key to this Appellant's conviction, and why the lack of opportunity to impeach Dowdye about his conviction could not possible constitute harmless error. At trial, Sophia Rashid of the Virgin Islands Criminal Investigation Office testified that she and

her then partner, Joel Dowdye, were driving toward the hospital while investigating the shooting of Defendant's brother, Exodus Blyden, when they received a call on the radio to be on the lookout for a homicide suspect that was fleeing in the area of "White House". Appx. 045-046. The description of the suspect given by dispatch was only a black male wearing a blue shirt and blue jeans riding a bicycle. Ms. Rashid testified that she saw a person meeting that description (sans bicycle) near Nester Glade and walking at a brisk pace. Appx. 046-047. According to Officer Rashid, she and her partner, Officer Dowdye, stopped their vehicle, drew their weapons, and ordered the individual, Petitioner Blyden, to stop and to get down on the ground. Appx. 047. The Petitioner complied and was immediately handcuffed. Appx. 047-049. No inquiry was made of the Petitioner to identify himself or explain what he was doing prior to these actions. Appx. 047-049. Officer Rashid testified she went into the vehicle while Officer Dowdye stood the Petitioner up, still hand cuffed at the side of the car and frisked him. Appx. 047-049. Rashid testified that she did not see the removal of any items, but rather was advised by Officer Dowdye that he had recovered a gun, tam, money, and marijuana from the Petitioner. Appx. 050. Thus, no witness but Dowdye can allegedly tie the weapon at issue to this Appellant.

Blyden raised the Fourth Amendment violation regarding an improper

search and seizure based upon the nature of his arrest and the Sixth Amendment violation regarding the admission of Dowdye's prior testimony to the Supreme Court of the Virgin Islands. That Court reviewed the issues and arguments in its Opinion holding that no violation of Blyden's Fourth Amendment rights regarding unreasonable search and seizure or Sixth Amendment right to confrontation occurred.

### **ARGUMENT**

#### **I. THE SUPREME COURT OF THE VIRGIN ISLANDS ERRED IN AFFIRMING THE TRIAL COURT'S DENIAL OF THE MOTION TO SUPPRESS IN VIOLATION OF PETITIONER'S FOURTH AMENDMENT RIGHTS AND IN CONTRAVENTION OF *United States v. Brown*, 448 F 3d 239 (3<sup>rd</sup> Cir 2006).**

The first issue is of great importance, as the decision below being in violation of Petitioner's Fourth Amendment rights and in contravention of *United States v. Brown*, 448 F 3d 239 (3<sup>rd</sup> Cir 2006), the matter is appropriate for certiorari. Defendant/Appellant filed a Motion to Suppress on April 18, 2007, which sought the exclusion of all evidence seized by the police based on an illegal arrest of the Defendant. After a hearing, the motion was denied. It is respectfully submitted that the denial of the motion was error, and that the evidence in the case and all other fruits thereof, including statements and admissions later made, should have been suppressed consistent with this court's findings.

The facts presented at the suppression hearing established that there was a shooting on September 24, 2005, in the area of Levkoi Strade and as a result of which Kevin Walker was died. A call from Central Dispatch based on information received from 911 calls, was made to police units to be on the look out for an individual wearing a blue shirt and blue jeans who had fled the area on a bicycle in the direction of the "White House". Officer Joel Dowdye and his partner Officer Sophia Rashid were mobile in the area. They saw an individual in the Savan, near the basketball court proceeding rapidly by foot and wearing a blue shirt and blue jeans. Both Officers Dowdye and Rashid exited their vehicles with guns drawn, ordered Defendant Blyden to get on the ground, and handcuffed him. Defendant who had been ordered on the ground, and handcuffed, was then searched without any questions being asked by either officer. From the time the officers exited their vehicle, the Defendant was not free to go.

During the search of the Defendant's person, Officer Dowdye removed a weapon from Defendant's possession. However, Officer Dowdye was unable to recall whether it was a revolver or the weapons caliber. In order to search the Defendant, Officer Dowdye was required to lift the Defendant to a standing position and conduct the search on the hood of the police car.

The Fourth Amendment to the United States Constitution guarantees an individual's right of protection against unreasonable searches and seizures. The

Fourth Amendment states in pertinent part;

the right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated and no warrants shall issue but upon probable cause, supported by oath of affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

The validity of a stop is measured in terms of the information and circumstances known to a law enforcement officer. The justification for even an investigatory stop, much less an arrest, need not come from personal observation but must convey enough indicia of a reliable source to justify the action taken.

*Adams. Williams*, 407 U.S. 143, 145-47 (1972). If the information is not personally observed, but received from a concerned citizen or from an anonymous call, the speaker's veracity, reliability, and basis for knowledge are critical in establishing whether there existed reasonable suspicion for a stop or probable cause for arrest. *Alabama v. White*, 496 U.S. 325, 328-29 (1990).

Using these as benchmarks and applying the standards which were initially enunciated in *Terry v. Ohio*, 392 U.S. 1, 88 S. Ct. 1868, 20 L.Ed 2d 889 (1968), the determination which must necessarily be made, is whether the seizure of the defendant in this case is objectively reasonable . It is also important to note that information or evidence acquired subsequent to the initial seizure cannot be used to retroactively justify an arrest or a *Terry* stop. *Florida v. JL*, 529 U.S. 266, 271

(2000) (“... the reasonableness of official suspicion must be measured by what the officers knew before they conducted their search).

The courts have been clear in establishing the boundaries by which such searches are measured. This Court held in *Johnson v. Campbell*, 332 F 2d 199, 205 (3<sup>rd</sup> Cir 2003) as follows;

[ U ]nder *Terry*, in evaluating whether [the officers] interaction with [the defendant] prior to his arrest amounted to an unreasonable seizure, we must first determine at what moment [the defendant] was seized, and then whether that seizure was justified by reasonable articulable facts known [to the officers] as of that time.” See also *United States v. Valentine*, 232 F 3d 350, 358 (3<sup>rd</sup> Cir. 2000)

Here, the seizure made was based on an anonymous tip. A central issue also becomes whether the informant’s information was sufficiently reliable and complete to provide the police with reasonable suspicion in stopping a designated person for investigation. *Valentine* requires the court to consider both factors; the reliability of the tip must likewise provide a particularized and objective basis for 1) the particular person stopped and 2) of criminal activity. *Valentine*, 232 F.3d at 353-54.

Here, an individual had been shot. Based up 911 calls, a general, non-specific description of a black male with a blue shirt and blue jeans, traveling on a bicycle away from the scene was what was transmitted. Some time after the shooting (anywhere up to 45 minutes) the Defendant, wearing a blue shirt and

blue jeans, is seen walking rapidly in the area of a basketball court. No bicycle was seen. No further physical description of height, weight, or facial hair style had been transmitted to the officers who ultimately stopped Defendant. Cases which involved considerably more particularized information and evidence seized in far less intrusive investigatory stops, have resulted in suppression.

In *Florida v. J.L.*, *supra*, for example, there was a tip that a black male with a plaid shirt was standing at a bus stop with a gun. On this tip, officers approached three black males standing near a bus stop, one of whom was wearing a plaid shirt. The officers frisked each of them and found a gun concealed in the pocket of the plaid-shirted suspect. The Supreme Court, in upholding the suppression of the evidence, found that the stop (which was for less a intrusive search than the one in the instant case) was objectively unreasonable. *J.L.*, 529 U.S. at 274.

This Court decided, in a case quite similar to this one, *United States v. Brown*, 448 F 3d 239 (3<sup>rd</sup> Cir 2006), that a search was improper and evidence had been improperly seized. *Brown* involved an attempted armed robbery of two women. *Id.* at 241. One of the victims called 911 and gave the dispatcher a detailed description of the subjects as well as their general location. *Id.* The description of two African American males between 15 and 20 years of age, wearing dark hooded sweatshirts was broadcast. *Id.* at 241-42. The defendants in

their late 20's and early 30's, who were African American in dark clothing, were stopped in the location given by the victim. *Id.* at 242. The officer in that case told the Defendant's that he was holding them in place so that the victims could come and attempt to identify them. *Id.* at 243. The officer then said he was going to frisk the individuals for his own safety concerns. *Id.* at 243-44. At that time, one of the men commenced to struggle. *Id.* at 244. He was restrained and frisked and found to be carrying a firearm. *Id.* Neither man was later identified by the victims, but the individual with the gun (Brown) was found to be a convicted felon and was charged with the firearm offense. *Id.*

This Court reversed the trial Judge, finding that the search was unreasonable. This Court found a *Terry* seizure when the individuals were simply told they were not free to go<sup>1</sup>. *Id.* at 245. This Court found that a seizure occurs **when there is either a laying of hands, application of physical force, or submission to a show of authority.** *Id.* (citing *California v. Hodari*, 499 U.S. 621, 626, 111 S. Ct. 1547, 113 L Ed 2d 690 (1991)). [Emphasis added].

In the instant case, the seizure occurred when, **with guns drawn, defendant was ordered to the ground and handcuffed.** This encounter, significantly more intrusive, was not a mere Terry stop, but an actual arrest. The later pat down, which revealed items of evidentiary value, clearly occurred post

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<sup>1</sup>The lack of force was the only factor which did not ripen this encounter into an arrest.

seizure. The conclusion of the Court in *Brown, supra*, could well serve as the conclusion in this case. The Court said;

We conclude that Brown was seized before his abortive escape attempt, and each of the factors argued to support reasonable suspicion to stop and frisk him- the radio broadcast, the location tip, and the Officer SANGTIAGO'S observations...underwhelms... We are confident, however, that in this case an excessively general description, combined with an honest but unreliable location tip, in the absence of corroborating observations by the police does not constitute reasonable suspicion...<sup>2</sup>

*Id.* at 252.

The ruling of the Supreme Court of the Virgin Islands was contrary to the Fourth Amendment and in contravention of this Court's prior rulings, in that the affirmance of the denial of the Motion to Suppress was under a factual scenario much more exacerbated than that in *Brown*. First, the description given to the two officers in this case was more vague (or "excessively general") than that of the *Brown* case and coming from an unknown eyewitness. In *Brown*, the shirts, for instance, are described as a particular kind of shirt-shirts with hoods. In this instance, there is no description other than a blue shirt. Beyond that, when the Petitioner was seen by these officers, not only was he was not riding a bicycle-the transportation mode described by the eyewitness, but he was walking briskly, not

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<sup>2</sup>The Court in *Brown* was presented with a relatively benign stop. Defendant Blyden was subject to a complete seizure without any pretense or mere investigation.

running.

Further, contrary to the opinion of the court below, the treatment of the Petitioner did not comport with an investigatory stop, but rather with an arrest. The encounter in this instance started with police drawing guns and utilizing handcuffs prior to the utterance of any question. Moreover, because Petitioner was still handcuffed, Dowdye had to lift the Petitioner up to a standing position at the side of the police vehicle in order to take the seized items from Petitioner's person. Thus, there was a laying of hands and physical force. In light of this Court's prior holdings, the Supreme Court of the Virgin Islands is incorrect in its finding that no arrest occurred.

The standard for an arrest requires probable cause, and no such cause existed prior to the search. As a result, the search and seizure were the fruit of an illegal arrest and likewise should have caused the Trial Court to suppress. See *Draper v. U.S.* 358 U.S. 307, 79 S. Ct 329, 3 L Ed 2d 327 (1959). As a result, the exclusionary rule in *Wong Sun v. United States*, 371 U.S. 471 (1963), must be applied. *See also, United States v. Reyes*, 149 F 3d 192, 194 (3d Cir 1988). The decision of the Supreme Court of the Virgin Islands was contrary to the United States constitution and the decisions of this Court. Thus, certiorari is appropriate in this case.

**II. THE SUPREME COURT OF THE VIRGIN ISLANDS  
ERRONEOUSLY DENIED PETITIONER HIS RIGHT TO CONFRONT THE  
WITNESSES AGAINST HIM BY UPHOLDING THE TRIAL COURT'S  
ADMISSION OF THE PRIOR TESTIMONY OF ARRESTING OFFICER  
AT TRIAL IN VIOLATION OF PETITIONER'S SIXTH AMENDMENT  
RIGHTS AND IN CONTRAVENTION OF *Crawford v. Washington*, 541 U.S.  
36, 124 S.Ct. 1354, 158 L.Ed.2d 177 (2004).**

The question presented for review is of such importance as to warrant Certiorari review in this Court. The Supreme Court of the Virgin Islands affirmed the trial court's decision to allow the testimony of Officer Dowdye upon its belief that *Crawford v. Washington*, 541 U.S. 36, 124 S.Ct. 1354, 158 L.Ed.2d 177 (2004) only abrogated *Ohio v. Roberts*, 448 U.S. 56, 100 S.Ct. 2531, 65 L.Ed.2d 597 (198) "with respect to its rationale that former testimony is admissible where there are adequate indicia of reliability." This reading is absolutely incorrect.

The testimony read into the record, while prior testimony of the witness, does not comport with the teachings and holdings in *Crawford v. Washington*, 541 U.S. 36, 124 S.Ct. 1354, 158 L.Ed.2d 177 (2004). As a result, Defendant's Sixth Amendment rights to confrontation have been violated, certiorari is appropriate, and Defendant is entitled to a new trial. The United States Supreme Court held specifically in *Crawford*, supra;

. . . The framers would not have allowed admission of testimonial statements of a witness who did not appear at trial unless he was unavailable to testify and the **Defendant had a prior opportunity for cross examination. The text of the Sixth Amendment does not**

**suggest any open ended exceptions from the confrontation requirement to be developed by the Courts.** Rather, the right to be confronted with the witness against him . . . is most naturally read as a reference to the right of confrontation .

*Crawford*, 541 U.S. at 53-54 [Emphasis Added]. It further stated:

Where testimonial statements are at issue, the only indicium of reliability sufficient to satisfy constitutional demands is the one the Constitution actually prescribes; confrontation.

*Crawford*, 541 U.S. at 68-69.

In *Crawford, supra*, it is specifically noted that the holding abrogates the Supreme Court's decision in *Ohio v. Roberts*, 448 U.S. 56, 100 S.Ct. 2531, 65 L.Ed 2d 597 (1980) which had ". . . admitted testimony from a preliminary hearing at which the defendant has examined the witness." *Id.* at 58. This fact is and was clearly recognized by Chief Justice Rehnquist in his dissent, wherein he also concurred in the judgment, stating:

I dissent from the Court's decision to overrule *Ohio v. Roberts*, 448 U.S. 56, 100 S.Ct. 2531, 65 L.Ed. 2d 597 (1980). The Chief Judge, while disagreeing with the Court's overruling of *Ohio v.*

*Roberts, supra* still conceded that;

Indeed, cross examination is a tool used to flesh out the truth, not an empty procedure. The right to cross examination, protected by the confrontation clause, thus is essentially a functional right designed to promote reliability in the truth finding functions of a criminal trial.

*Id.* at 74. Here, the Supreme Court of the Virgin Islands has argued that Appellant Blyden knew Officer Dowdye had been convicted prior to the suppression

hearing, and that Appellant Blyden had similar motive and opportunity at the suppression hearing as he would have had a trial to cross-examine. The court is arguing that the confrontation clause requires not a literal opportunity to cross-examine, but an opportunity where the party has like motive. The court below believes that Appellant had that opportunity and squandered it. This is simply not the case.

In Defendant Blyden's case, the Government introduced the direct examination of the Defendant's attorney and the prosecution's cross-examination of Joel Dowdye's testimony at a suppression hearing. Clearly, the free and complete cross-examination by a Defendant as envisioned under the confrontation clause, was not satisfied by the testimony in this preliminary, limited, and truncated suppression hearing. In fact, the Defendant was not afforded any of the normal tools available in a cross-examination in that he was constrained to examine the witness subject to the strictures of a direct examination. Indeed, the suppression hearing testimony introduced was far less confrontational than that which had been afforded to the Defendant in *Ohio v. Roberts, supra*, which has been found to be constitutionally deficient under *Crawford, supra*. Specifically, Blyden's motive at the suppression hearing was to elicit testimony consistent with Dowdye's report of Blyden's arrest, so that Blyden could convince the trial court that, taking Dowdye's version of events as

true, it would amount to a violation of Blyden's Fourth Amendment rights against unreasonable search and seizure. It was not Blyden's intent on the limited issue of his motion to suppress, to begin attacking Dowdye's general veracity for truthfulness, as there was not belief at that hearing that Dowdye would testify in any manner inconsistent with his report.

This Court has followed the dictates of *Crawford, supra*, and has required a determination be made if the statements are "testimonial". In *United States v. Hendricks*, 395 F.3d 173, 179 (3d Cir. 2004), this Court defined "testimonial" as follows;

Crawford has suggested defining testimonial statements as "ex parte in Court testimony or its functional equivalent that is material such as affidavits, custodial examinations, prior testimony that the Defendant was unable to cross examine or similar pretrial statements that declarants would reasonably expect to be used prosecutory . . . The Court also referred to Justice Thomas' earlier definition of testimonial statements as extra judicial statements contained in formalized testimonial materials such as affidavits, depositions, prior testimony or confessions . . . Finally the Court provided several concrete examples of obviously testimonial statements referencing prior testimony given at a preliminary hearing, before a Grand Jury, or at a former trial and to police interrogations." (at 179-80) [Emphasis added].

Defendant Blyden's evidentiary suppression hearing is in the same category as a preliminary hearing, deposition, or prior trial. It is also clear that Appellant, being

the Movant in the suppression hearing, had no opportunity to cross examination the witness, Joel Dowdye.

Even under the application of the now mooted Federal Rule of Evidence 804 (b)(1), the requirement of the ability to adequately cross- examine, was a requisite to the admissibility of an unavailable witnesses prior testimony. In fact, in instances where a Defendant attempted to introduce prior grand jury testimony which had been sponsored by the Government, it was found to be inadmissible where no cross examination was had by the Government. *United States v. DiNapoli*, 8 F.3d 909, 914-15 (2<sup>nd</sup> Cir. 1993). In fact, analyzing Rule 804 (b)(1) in such a context the First Circuit Court of Appeals in *United States v. Omar*, 104 F.3d 519, 523 (1<sup>st</sup> Cir. 1997) said;

In the case at hand, we think that it is fair to apply the opportunity and similar motive test “test to the specific portion of the testimony at issue” there might be a motive to develop some testimony of a witness but not other parts . . . Our main concern is whether in the prior proceeding the Government (which had been the sponsor of the testimony) had an opportunity and **similar motive** to undermine it. [emphasis added].

This is why in overruling *Ohio v. Roberts*, *supra*, the clear determination of the Court was to validate a parties ability to actually cross examine testimony through the real crucible, cross examination, of the adversary system. Clearly, in admitting Joel Dowdye’s testimony from the suppression hearing, the trial court

ran afoul of the *Crawford* mandates. The testimony of the disgraced former officer was presented to the jury without any of the protections the adversary system affords. As previously stated, defense counsel was unable to even impeach the credibility of the witness by establishing his felony conviction, an event which would have entitled Defendant to a jury instruction concerning the weight to be applied to the testimony of a witness who had such a conviction<sup>3</sup>.

Moreover, the Supreme Court of the Virgin Islands erroneously goes on to state that even if it were to conclude that the trial court erred in admitting the officer's testimony, "such error was nevertheless harmless." Clearly, where the use of the testimony:

- a. Prevented Appellant from impeaching Dowdye on the basis of his felony conviction,
- b. Prevented Appellant from obtaining a jury instruction on the weight of Dowdye's testimony as a result of the conviction, and
- c. Gave the government the only witness who could allegedly tie the weapon at issue to this Appellant, there was tremendous harm.

---

<sup>3</sup>It is important to note that during the colloquy with the trial Judge while making the availability determination, the witness, Joel Dowdye, made clear that his only concern was what benefit his testimony might afford him. While the record is silent as to what Dowdye's personal circumstances may have been at the time of the suppression hearing, it is possible that even that testimony might have been an attempt to curry favor.

Defendant Blyden, as a result of this improperly-used testimony, was denied a fair trial. The decision of the Supreme Court of the Virgin Islands to affirm that trial court action was contrary to established law in this Circuit and certiorari should be granted.

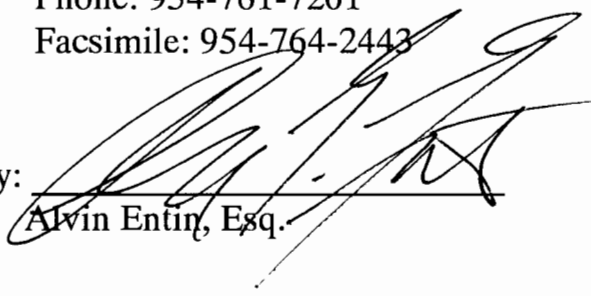
**CONCLUSION**

Based upon the foregoing points and authorities, Daryl Blyden, respectfully requests that this Court accept certiorari and vacate his conviction and sentence.

Respectfully Submitted,

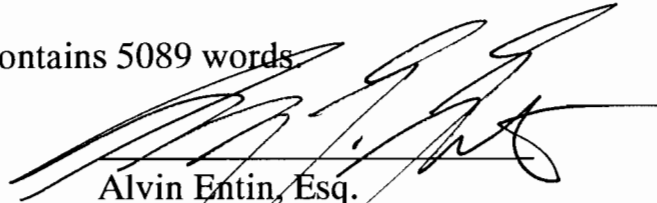
Alvin Entin, Esquire  
110 SE 6<sup>th</sup> Street, Suite 1970  
Ft. Lauderdale, Florida 33301  
Phone: 954-761-7201  
Facsimile: 954-764-2443

By:

  
Alvin Entin, Esq.

**CERTIFICATE OF COMPLIANCE - FRAP RULE 32**

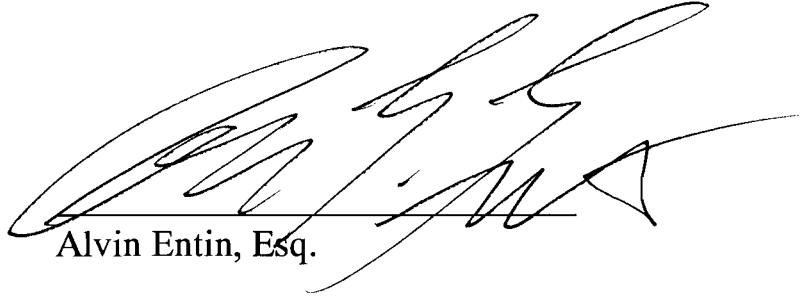
I certify that this brief complies with the type-volume limitation set forth in FRAP 32(a)(7)(B). This brief contains 5089 words.



Alvin Entin, Esq.

**CERTIFICATION OF BAR MEMBERSHIP**

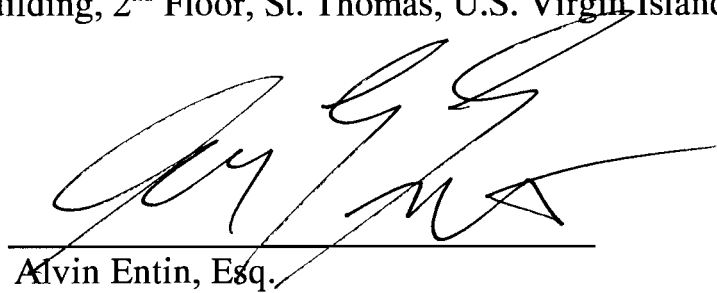
It is certified that Appellant's counsel Alvin Entin, Esq. is a member in good standing of the bar of this Honorable Court and has been since June 12, 1986.



Alvin Entin, Esq.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY a true and correct copy of the foregoing was deposited by United States mail on September 1, 2010, with adequate postage thereon, to Terryln Smock, Esquire, Office of the Attorney General, 34-38 Kronprindsens Gade, GERS Building, 2<sup>nd</sup> Floor, St. Thomas, U.S. Virgin Islands, 00802.



Alvin Entin, Esq.

APPENDIX

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

PEOPLE OF THE VIRGIN ISLANDS  
VS.

CASE NO: ST-2005-CR-0000399

FILING DATE: September 26, 2005

DARYL E. BLYDEN

JUDGE: Hon. Edgar D. Ross

| <u>COUNT</u> | <u>STATUTE</u>      | <u>STATUTE DESCRIPTION</u>                        |
|--------------|---------------------|---|
| 001          | 14 V.I.C. 922(A)(1) | FIRST DEGREE MURDER, PREMEDITATED                 |
| 002          | 14 V.I.C. 2253(A)   | POSSESSION OF AN UNLICENSE FIREARM                |
| 003          | 14 V.I.C. 295(1)    | Assault 1st. Degree with intent to commit murder  |
| 004          | 14 V.I.C. 2253(A)   | POSSESSION OF AN UNLICENSE FIREARM                |
| 005          | 14 V.I.C. 295(1)    | Assault 1st. Degree with intent to commit murder  |
| 006          | 14 V.I.C. 2253(A)   | POSSESSION OF AN UNLICENSE FIREARM                |
| 007          | 14 V.I.C. 2253(A)   | POSSESSION OF AN UNLICENSE FIREARM                |
| 008          | 14 V.I.C. 2256      | POSSESSION OR SALE OF AMMUNITION(A)               |
| 009          | 14 V.I.C. 2101(A)   | BUYING, RECEIVING OR POS. STOLEN PROP; IMPRISONED |

**PARTY NAME**

**PARTY TYPE**

|                           |                              |
|---------------------------|------------------------------|
| RACHID , SOFIA            | WITNESS FOR PROSECUTION      |
| ROUSE-CARTY , DAPHNE      | WITNESS FOR PROSECUTION      |
| CANNONIER , DAVID A.      | WITNESS FOR PROSECUTION      |
| HAMDAN , MAHA             | WITNESS FOR PROSECUTION      |
| PRICE , MARGARET          | WITNESS FOR PROSECUTION      |
| POTTER , MICHELLE         | WITNESS FOR PROSECUTION      |
| BEDMINSTER , ROSELYN      | WITNESS FOR PROSECUTION      |
| HOLDER , LOFTON P.        | PROSECUTING ATTORNEY         |
| DOWDYE , JOEL B.          | WITNESS FOR DEFENDANT        |
| JOSEPH , PATRICIA         | WITNESS FOR PROSECUTION      |
| GEORGE , AGNES            | VIRGIN ISLANDS GOVERNMENT    |
| COMMISSIONG M.D. , SIDNEY | WITNESS FOR PROSECUTION      |
| SMITH-TODMAN , JULIE      | ATTORNEY FOR ANY OTHER PARTY |
| BLYDEN , DARYL E.         | DEFENDANT                    |
| STOUT , KAREN             | WITNESS FOR PROSECUTION      |
| PHIPPS SR., DELBERT       | WITNESS FOR PROSECUTION      |
| BEDMINSTER , PIERRE       | WITNESS FOR PROSECUTION      |
| LANDRON DR., FRANCISCO    | WITNESS FOR PROSECUTION      |
| MATTHEW , IBA J.          | WITNESS FOR PROSECUTION      |
| WEEKS , TRISTON           | WITNESS FOR PROSECUTION      |

**DOCKETS ENTERED ON THIS CASE:**

| <u>DOCKET DATE</u> | <u>DESCRIPTION</u>  |
|--------------------|---|
| 08/26/2010         | FINE/COURT COST PAID<br>RECEIPT # - 00091511  |
| 08/24/2010         | LETTER TO THE CLERK OF THE COURT FROM ALVIN ENTIN, ESQ., WITH A<br>CHECK FOR A CERTIFIED COPY OF THE DOCKET SHEET   |
| 08/20/2010         | FAXED COPY OF LETTER TO THE CLERK'S OFFICE REQUESTING CERTIFIED<br>DOCKET SHEET, COPY OF CHECK AND FAX COVERSHEET RECEIVED FROM<br>ALVIN ENTIN, ESQ.  |
| 10/01/2009         | NOTICE OF ENTRY OF ORDER SETTING CALENDAR OF CASES FOR ORAL ARGUMENT<br>DATED SEPTEMBER 29, 2009 FROM THE SUPREME COURT OF THE VIRGIN<br>ISLANDS. (5PGS.)   |
| 05/15/2009         | NOTICE OF ENTRY OF ORDER AND ORDER DATED MAY 12, 2009 RECEIVED FROM<br>THE SUPREME COURT OF THE VIRGIN ISLANDS. (5 PGS.)  |
| 05/15/2009         | NOTICE OF ENTRY OF ORDER AND ORDER DATED MAY 11, 2009 RECEIVED FROM<br>THE SUPREME COURT OF THE VIRGIN ISLANDS. (2 PGS.)  |
| 04/24/2009         | NOTICE OF ENTRY OF ORDER AND ORDER DATED APRIL 21, 2009 RECEIVED<br>FROM THE SUPREME COURT OF THE VIRGIN ISLANDS. (5PGS.)   |
| 04/20/2009         | NOTICE OF ENTRY OF ORDER AND ORDER DATED APRIL 8, 2009 RECEIVED FROM<br>THE SUPREME COURT OF THE VIRGIN ISLANDS. (4 PGS.)   |
| 04/15/2009         | NOTICE OF ENTRY OF ORDER AND ORDER DATED MARCH 26, 2009 RECEIVED<br>FROM THE SUPREME COURT OF THE VIRGIN ISLANDS. (3PGS.)   |
| 03/16/2009         | NOTICE OF ENTRY OF ORDER AND ORDER DATED MARCH 13, 2009 RECEIVED<br>FROM THE SUPREME COURT OF THE VIRGIN ISLANDS. THE APPELLANT'S<br>MOTION TO WAIVE ORAL ARGUMENT IS GRANTED; AND IT IS FURTHER<br>ORDERED THAT THE INSTANT MATTER SHALL BE BE DECIDED WITHOUT ORAL<br>ARGUMENT BASED ON THE CONTENTS OF THE PARTIES' FILINGS. |
| 01/12/2009         | DOCUMENTS RECEIVED--NOTICE OF ENTRY OF JUDGMENT/ORDER AND ORDER OF<br>THE COURT DATED DECEMBER 4, 2008 FORM THE SUPREME COURT OF THE<br>VIRGIN ISLANDS.   |
| 12/03/2008         | NOTICE OF ENTRY OF ORDER AND ORDER DATED NOVEMBER 26, 2008 FROM THE<br>SUPREME COURT OF THE VIRGIN ISLANDS.   |
| 11/26/2008         | NOTICE OF ENTRY OF ORDER AND ORDER DATED NOVEMBER 24, 2008 FROM THE<br>SUPREME COURT OF THE VIRGIN ISLANDS.   |
| 09/09/2008         | TRANSCRIPT OF ADVISE OF RIGHTS AND PROBABLE CAUSE HEARING PREPARED<br>BY AVLYNE ADAMS, OFFICIAL COURT REPORTER II   |
| 07/07/2008         | CERTIFIED DOCKET FORWARDED TO THE SUPREME COURT OF THE<br>VIRGIN ISLANDS.   |
| 06/30/2008         | RETURN OF RETURN OF SERVICE DOCUMENT FOR DARYL BLYDEN RETURNED<br>SERVED ON 06/27/2008.   |
| 06/26/2008         | CERTIFIED DOCKET FORWARDED TO THE SUPREME COURT OF THE VIRGIN<br>ISLANDS.   |
| 06/25/2008         | RETURN OF SERVICE ISSUED TO DARYL BLYDEN WITH CERTIFIED COPY OF<br>ORDER DATED 06/24/2008.  |
| 06/25/2008         | NOTICE OF ENTRY OF ORDER DATED<br>06/24/2008<br>BRENDA SCALES, ESQUIRE<br>JULIE SMITH TODMAN, ESQUIRE<br>DARYL E. BLYDEN, PRO SE  |
| 06/24/2008         | ORDER SIGNED-ORDER DENYING MOTION FOR JUDGMENT OF ACQUITTAL, MOTION<br>FOR A NEW TRIAL AND MOTION TO ARREST JUDGMENT. ENTERED BY JUDGE<br>MICHAEL C. DUNSTON.   |
| 02/01/2008         | LETTER TO THE COURT FROM DEFENDANT RECEIVED DATED JANUARY<br>28, 2008.  |
| 01/31/2008         | DOCUMENTS RECEIVED--OFFICIAL TRANSCRIPTS OF THE JURY TRIAL IN THIS<br>MATTER FILED BY PERSHA WARNER, RPR, OFFICIAL COURT REPORTER II.   |

10/16/2007 MOTION FOR JUDGMENT OF ACQUITTAL ALTERNATIVELY AND MOTION FOR NEW TRIAL ALTERNATIVELY MOTION TO ARREST JUDGMENT RECEIVED

10/04/2007 RETURN OF RETURN OF SERVICE DOCUMENT FOR V.I. POLICE DEPARTMENT RECORDS RETURNED SERVED ON 10/01/2007.

10/01/2007 LETTER ADDRESSED TO JULIE S. TODMAN, ESQ. FROM THE SUPREME COURT OF THE VIRGIN ISLANDS.

10/01/2007 RETURN OF SVC FOR JUDGMENT DATED SEPTEMBER 24, 2007 SERVED ON CORRECTIONS OFC. R. DONASTORG FOR THE BUREAU OF CORRECTIONS.(SERVED ON 9-28-07)

10/01/2007 RETURN OF SVC FOR JUDGMENT DATED SEPTEMBER 24, 2007 SERVED ON CORRECTIONS OFC. R. DONASTORG FOR DARYL E. BLYDEN. (SERVED ON 9-28-07)

09/26/2007 APPEAL COVER LETTER PREPARED AND FORWARDED TO THE SUPREME COURT OF THE VIRGIN ISLANDS.

09/25/2007 RETURN OF SERVICE ISSUED TO V.I. POLICE DEPT. RECORDS.

09/25/2007 RETURN OF SERVICE ISSUED TO BUREAU OF CORRECTIONS.

09/25/2007 RETURN OF SERVICE ISSUED TO DARYL BLYDEN.

09/25/2007 NOTICE OF ENTRY OF JUDGMENT DATED 09/24/2007  
LOFTON HOLDER, ESQUIRE, JULIE SMITH TODDMAN, ESQUIRE AND OFFICE OF PROBATION

09/25/2007 COURT COSTS IMPOSED  
335 75.00

09/25/2007 FINE IMPOSED  
225 5,000.00

09/25/2007 FINE IMPOSED  
225 25,000.00

09/25/2007 FINE IMPOSED  
225 25,000.00

09/25/2007 FINE IMPOSED  
225 25,000.00

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225 25,000.00

09/25/2007 FINE IMPOSED  
225 25,000.00

09/25/2007 FINE IMPOSED  
225 25,000.00

09/25/2007 SENTENCED TO INCARCERATION  
1113 WEAPONS  
DT IMPOS: 09/24/2007 EFF DATE: 09/24/2007  
CONFIN: JAIL  
TERM MIN: 005 000 000

09/25/2007 SENTENCED TO INCARCERATION  
1113 WEAPONS  
DT IMPOS: 09/24/2007 EFF DATE: 09/24/2007  
CONFIN: JAIL  
TERM MIN: 015 000 000

09/25/2007 SENTENCED TO INCARCERATION  
1113 WEAPONS  
DT IMPOS: 09/24/2007 EFF DATE: 09/24/2007  
CONFIN: JAIL  
TERM MIN: 015 000 000

09/25/2007 SENTENCED TO INCARCERATION  
1013 ASSAULT AND BATTERY  
DT IMPOS: 09/24/2007 EFF DATE: 09/24/2007  
CONFIN: JAIL  
TERM MIN: 015 000 000

005

09/25/2007 SENTENCED TO INCARCERATION  
1113 WEAPONS  
DT IMPOS: 09/24/2007 EFF DATE: 09/24/2007  
CONFIN: JAIL  
TERM MIN: 015 000 000

09/25/2007 SENTENCED TO INCARCERATION  
1013 ASSAULT AND BATTERY  
DT IMPOS: 09/24/2007 EFF DATE: 09/24/2007  
CONFIN: JAIL  
TERM MIN: 015 000 000

09/25/2007 SENTENCED TO INCARCERATION  
1113 WEAPONS  
DT IMPOS: 09/24/2007 EFF DATE: 09/24/2007  
CONFIN: JAIL  
TERM MIN: 015 000 000

09/25/2007 DEFENDANT SENTENCED TO LIFE IMPRISONMENT  
1045 HOMICIDE  
DT IMPOS: 09/24/2007 EFF DATE: 09/24/2007  
CONFIN: JAIL  
TERM MIN: 999 000 000

09/24/2007 JUDGMENT SIGNED AND ENTERED BY JUDGE MICHAEL C. DUNSTON FOR JUDGE  
EDGAR D. ROSS.

09/24/2007 GUILTY BY THE JURY AFTER TRIAL COUNT 008

09/24/2007 GUILTY BY THE JURY AFTER TRIAL COUNT 007

09/24/2007 GUILTY BY THE JURY AFTER TRIAL COUNT 006

09/24/2007 GUILTY BY THE JURY AFTER TRIAL COUNT 005

09/24/2007 GUILTY BY THE JURY AFTER TRIAL COUNT 004

09/24/2007 GUILTY BY THE JURY AFTER TRIAL COUNT 003

09/24/2007 GUILTY BY THE JURY AFTER TRIAL COUNT 002

09/06/2007 CASE ON APPEAL.

09/06/2007 NOTICE OF APPEAL RECEIVED

09/06/2007 NOTICE TO THE COURT REGARDING THE FILING OF A NOTICE OF APPEAL  
RECEIVED

08/31/2007 RECORD OF PROCEEDING COMPLETED. MATTER CAME ON FOR SENTENCING.  
DEFENDANT WAS SENTENCED AS FOLLOWS: CT. I-REMAINED OF HIS NATURAL  
LIFE WITHOUT PAROLE; CT. II- 15 YEARS TO RUN CONSECUTIVE WITH  
CT. I & \$25,000.00 FINE; CT. III-15 YEARS TO RUN CONCURRENT WITH  
CT. I & \$25,000.00 FINE; CT. IV-15 YEARS TO RUN CONCURRENT WITH  
CT. I & \$25,000.00 FINE; CT. V-15 YEARS TO RUN TO CONSECUTIVE WITH  
CT. I & \$25,000.00 FINE; CT. VI-15 YEARS TO RUN CONSECUTIVE WITH  
CT. I & \$25,000.00 FINE; CT. VII-15 YEARS TO RUN CONCURRENT WITH  
CT. I & \$25,000.00 FINE & CT. VIII-5 YEARS TO RUN CONCURRENT WITH  
CT. I & \$5,000.00 FINE. DEFENDANT WAS ADVISED OF HIS RIGHTS TO APPEAL  
DOCUMENTS RECEIVED--PRESENTENCE REPORT FILED.

08/30/2007

07/23/2007 NOTICE OF ENTRY OF ORDER DATED  
07/23/2007  
LOFTON HOLDER, ESQUIRE  
JULIE SMITH TODMAN, ESQUIRE  
& GLENDA L. LAKE, ESQUIRE, COURT ADMINISTRATOR

006

07/23/2007

ORDER SIGNED--WHEREAS, KISHMA IS A MATERIAL WITNESS IN THIS MATTER & IS NEEDED TO TESTIFY AT THE TRIAL OF THIS MATTER ON TEUSDAY, JULY 10, 2007; AND WHEREAS, KISHMA HODGE RESIDES ON THE ISLAND OF ST. CROIX; AND WHEREAS, DEFENDANT IS INDIGENT AND CANNOT ASSUME THE COST OF HER APPEARANCE, NOW THEREFORE, IT IS HEREBY, ORDERED THAT THE COSTS OF MS. HODGE'S TRAVEL TO ST. THOMAS FROM ST. CROIX, ALONG WITH THAT OF HER ESCORT FROM HUMAN SERVICES, SHALL BE THE RESPONSIBILITY OF THE SUPERIOR COURT OF THE VIRGIN ISLANDS DURING THE DURATION OF THE JURY TRIAL SCHEDULED IN THIS MATTER. ENTERED BY JUDGE EDGAR ROSS.

07/17/2007

RECEIPT OF DENISE D. ABRAMSEN, CLERK OF THE COURT ACKNOWLEDGING RECEIPT OF EXHIBIT NOS. 2, 2a THROUGH 11 AND 7A FILED.

07/11/2007

RECORD OF PROCEEDING COMPLETED. MATTER CAME ON FOR JURY DELIBERATION & VERDICT. THE MATTER RECONVENED FOR THE READING OF THE VERDICT AND THE DEFENDANT WAS FOUND GUILTY ON ALL COUNTS OF THE REDATED AMENDED INFORMATION. AT THE REQUEST OF ATTY. SMITH TODMAN, THE JURY WAS POLLED IN REGARDS TO THEIR INDEPENDENT VERDICT. THE COURT THEN REQUESTED A PRESENTENCE INVESTIGATIVE REPORT IN THIS MATTER AND ORDERED THE DEFENDANT TO ASSIST WITH ITS PREPARATION. THE MATTER WAS CONTINUED FOR SENTENCING ON AUGUST 31, 2007 @ 9:00 A.M. REDATED AMENDED INFORMATION RECEIVED FROM LOFTON HOLDER, ESQUIRE.

07/10/2007

DISMISSAL SIGNED COUNT 009 PURSUANT TO RULE 29 MOTION MADE BY ATTY. JULIE SMITH-TODMAN, ESQUIRE.

07/10/2007

RECORD OF PROCEEDING COMPLETED. MATTER CAME ON FOR TRIAL BY JURY. THE COURT & JURY HEARD THE SWORN TESTIMONY OF THE REMAINING WITNESSES FOR THE PEOPLE & ATTY. HOLDER RESTED THE PEOPLE'S CASE IN CHIEF. ATTY. SMITH TODMAN MADE AN ORAL RULE 29 MOTION & PLACE ARGUMENTS ON THE RECORD IN SUPPORT OF HER MOTION. THE COURT HEARD ATTY.HOLDER'S OPPOSITION TO SAID MOTION & DENIED THE MOTION IN PART & GRANTED THE MOTION IN PART. DEFENSE PRESENTED IT CASE IN CHIEF & COURT & JURY HEARD SWORN TESTIMONY OF THIER WITNESSES & RESTED. COURT & JURY HEARD CLOSING ARGUMENT FROM COUNSELS & GAVE THE JURY THEIR FINAL INSTRUCTIONS. MATTER CONTINUED TO 7/11/07. ORAL ORDER SIGNED SCHEDULING HEARING 07/11/2007 09:00 A.M.

07/10/2007

07/06/2007

SUBPOENA ISSUED TO  
SGT. DAPHNE ROUSE-CARTY  
VIRGIN ISLANDS POLICE DEPARTMENT, ST. THOMAS  
340-774-2211

07/06/2007

RETURN OF SERVICE FOR SUBPOENA SERVED ON OFFICER KAREN STOUT  
(NOT SERVED)

07/02/2007

DOCUMENTS RECEIVED--TRANSCRIPT OF SUPPRESSION HEARING HELD ON MAY 3, 2007 THE TESTIMONY OF JOEL DOWDYE FILED.

06/28/2007

NOTICE OF ENTRY OF ORDER DATED  
06/25/2007  
PUB. DEF. JULIE SMITH TODMAN, ESQUIRE

06/28/2007

ASST. ATTY. GEN. LOFTON P. HOLDER, ESQUIRE  
RECORD OF PROCEEDING COMPLETED. CT. REPORTER P. WARNER WAS PRESENT. ATTY. GEN. L. HOLDER WAS PRESENT, PUB. DEF. J. SMITH-TODMAN WAS PRESENT. PEOPLE RESUMED ITS CASE CHIEF AND PROCEEDED TO CALL FOUR WITNESSES WHO WAS SWORN AND TESTIFIED. EXHIBIT'S 20-A AND 11 WERE IDENTIFIED AND ADMITTED INTO EVIDENCE. ATTY. HOLDER MADE 2 APPLI-CATIONS OUTSIDE THE PRESENCE OF THE JURORS AND ATTY. TODMAN OBJECTED TO BOTH APPLICATIONS. BASED ON ATTY. HOLDER'S APPLICATIONS, THE THE COURT STATED THAT IT WILL CONTINUE THE MATTER FOR TRIAL ON JULY 10, 2007 AT 9:00 A.M. TO ALLOW AN ABSENCE WITNESS THE OPPORTUNITY TO TESHIFY. JURORS WERE ADMONISHED NOT TO DISCUSS THE MATTER. ORAL ORDER SIGNED SCHEDULING HEARING 07/10/2007 09:00 A.M.

06/28/2007

06/27/2007 DEFENDANT'S EXHIBIT LIST SUBMITTED AT HEARING AND ADMITTED DURING THE JURY TRIAL FILED.

06/27/2007 PEOPLE'S EXHIBIT NUMBERS 1 THROUGH 21 THAT WERE IDENTIFIED AND ADMITTED DURING THE JURY TRIAL FILED.

06/27/2007 RECORD OF PROCEEDING COMPLETED. MATTER CAME ON FOR TRIAL BY JURY. JURORS & MARSHALS WERE SWORN. THE COURT GAVE THE JURY THEIR PRELIMINARY INSTRUCTIONS. THE COUR & JURY HEARD THE OPENING STATEMENTS OF BOTH COUNSELS FOR EITHER SIDES. THEREAFTER, ATTY. HOLDER PRESENTED THE PEOPLE'S CASE IN CHIEF & THE COURT & JURY HEARD THE SWORN TESTIMONY OF SEVERAL WITNESSES ON THIER BEHALF. DURING THE PEOPLE'S CASE SEVERAL EXHIBITS WERE IDENTIFIED & ADMITTED. THE COURT THEN DECLARED AN OVERNIGHT RECESS & THE JURY WAS ADMONISHED NOT TO DISCUSS THE CASE WITH ANYONE. THE MATTER WAS CONTINUED TO THURSDAY JUNE 28, 2007 @ 9:00 A.M.

06/27/2007 ORAL ORDER SIGNED SCHEDULING HEARING 06/28/2007 09:00 A.M.

06/27/2007 RETURN OF SERVICE FOR SUBPOENA ISSUED TO OFC. KAREN STOUT SERVED ON 6-22-07.

06/26/2007 RETURN OF RETURN OF SERVICE DOCUMENT RETURNED NOT SERVED ON KISHMA HODGE.

06/26/2007 RETURN OF RETURN OF SERVICE DOCUMENT RETURNED NOT SERVED ON CLEFRIN HODGE.

06/26/2007 ORAL ORDER SIGNED SCHEDULING HEARING 06/27/2007 09:00 A.M.

06/25/2007 ORDER SIGNED--ORDERED, THAT DEFENDNAT'S MOTION FOR PEOPLE TO PROVIDE UN-REDACTED STATEMENTS TO DEFENSE AT COMMENCEMENT OF TRIAL IS GRANTED; AND IT IS FURTHER ORDERED THAT THE PEOPLE WILL PROVIDE ALL UN-REDACTED STATEMENTS OF WITNESSES AT THE COMMENCEMENT OF THIS TRIAL. ENTERED BY JUDGE EDGAR D. ROSS.

06/25/2007 RECORD OF PROCEEDING COMPLETED. PRIOR TO JURY SELECTION BEING CONDUCTED, THE COURT DEALT WITH ALL OUTSTANDING MOTION FOR EITHER SIDES AND THOSE MOTIONS WERE GRANTED. THEREAFTER, THE MATTER RECONVENED FOR JURY SELECTION. THE COURT CONDUCTED VOIR DIRE AND THE PANEL WAS SELECTED AND ORDERED BACK FOR TRIAL ON WEDNESDAY, JUNE 27, 2007 @ 9:00 A.M.

06/25/2007 WITNESS LIST RECEIVED--THE PEOPLE'S WITNESS LIST FILED BY LOFTON P. HOLDER, ESQUIRE.

06/25/2007 RETURN OF SERVICE AND ORDER DATED JUNE 25, 2007 ISSUED TO DARYL BLYDEN  
C/O BUREAU OF CORRECTIONS, ST. THOMAS VI  
340-774-3531

06/25/2007 RETURN OF SERVICE FOR SUBPOENA ISSUED TO PATRICIA JOSEPH NOT FOUND. ATTEMPT WAS MADE ON JUNE 22, 2007, BUT NOT SUCCESSFUL

06/25/2007 RETURN OF SERVICE FOR SUBPOENA ISSUED TO SGT. ATHENIA BROWN SERVED ON JUNE 22, 2007

06/25/2007 RETURN OF SERVICE FOR SUBPOENA ISSUED TO IBA MATTHEW SERVED ON JUNE 22, 2007

06/25/2007 RETURN OF SERVICE FOR SUBPOENA ISSUED TO TRISTON WEEKS NOT FOUND. CELL PHONE THAT IS LISTED IS NOT WORKING AND NO NAME LISTED IN TELEPHONE DIRECTORY FOR TRISTON WEEKS

06/25/2007 RETURN OF SERVICE FOR SUBPOENA ISSUED TO OFFICER DAVID CANNONIER SERVED ON JUNE 22, 2007

06/25/2007 RETURN OF SERVICE FOR SUBPOENA ISSUED TO PIERRE BEDMINISTER SERVED ON JUNE 22, 2007

06/25/2007 RETURN OF SERVICE FOR SUBPOENA ISSUED TO DR. SIDNEY COMMISSIONG SERVED ON JUNE 22, 2007

06/25/2007 RETURN OF SERVICE FOR SUBPOENA ISSUED TO SGT. DAPHNE ROUSE-CARTY SGT. ROUSE-CARTY STATED THAT SHE WILL BE OFF-ISLAND ON JUNE 25, 2007 TO A MEDICAL APPT. THAT SHE HAS

06/25/2007 RETURN OF SERVICE FOR SUBPOENA ISSUED TO DETECTIVE MAHA HAMDAN  
SERVED ON JUNE 22, 2007

06/25/2007 RETURN OF SERVICE FOR SUBPOENA ISSUED TO DR. FRANCISCO LANDRON  
UNABLE TO EXECUTE DOCUMENT ON JUNE 22, 2007. DR. LANDRON LEAVES ON  
12 NOON ON FRIDAYS.

06/25/2007 RETURN OF SERVICE FOR SUBPOENA ISSUED TO CPL. MICHELLE POTTER, VIPD  
SERVED ON JUNE 22, 2007

06/25/2007 RETURN OF RETURN OF SERVICE DOCUMENT ISSUED TO DARYL E. BLYDEN  
SERVED ON JUNE 22, 2007

06/25/2007 SUBPOENA ISSUED TO CLEFRIN HODGE

06/25/2007 SUBPOENA ISSUED TO KISHMA HODGE

06/22/2007 NOTICE TO THE COURT WITH PROPOSED JURY INSTRUCTIONS ATTACHED FILED  
BY JULIE SMITH TODMAN, ESQUIRE.

06/22/2007 REDATED AMENDED INFORMATION RECEIVED FROM LOFTON HOLDER, ESQUIRE.

06/22/2007 PROPOSED JURY INSTRUCTIONS RECEIVED  
FILED BY ASST. ATTY. GEN. LOFTON P. HOLDER, ESQ.

06/22/2007 NOTICE TO THE COURT REGARDING PROPOSED JURY INSTRUCTIONS RECEIVED  
FILED BY LOFTON P. HOLDER, ESQ.

06/22/2007 SUPPLEMENTAL DEMAND FOR NOTICE OF ALIBI DISCOVERY AND RECIPROCAL  
DEMAND RECEIVED

06/22/2007 PROPOSED VOIR DIRE RECEIVED FROM JULIE SMITH TODMAN, ESQUIRE

06/22/2007 SUBPOENA ISSUED TO  
SGT. ANTHENIA BROWN  
V.I. POLICE DEPARTMENT, FIREARMS UNIT  
ST. THOMAS, VIRGIN ISLANDS

06/22/2007 SUBPOENA ISSUED TO  
CPL. MICHELLE POTTER  
V.I. POLICE DEPARTMENT  
ST. THOMAS, VIRGIN ISLANDS

06/22/2007 SUBPOENA ISSUED TO  
OFFICER KAREN STOUT  
V.I. POLICE DEPARTMENT, FIREARMS UNIT  
ST. CROIX, VIRGIN ISLANDS

06/22/2007 SUBPOENA ISSUED TO  
DR. FRANCISCO LANDRON, MEDICAL EXAMINER  
ROY L. SCHNEIDER HOSPITAL  
ST. THOMAS, VIRGIN ISLANDS

06/22/2007 SUBPOENA ISSUED TO  
DR. SIDNEY COMMISSIONG 777-8520  
PARAGON BUILDING SUITE 207  
ST. THOMAS, VIRGIN ISLANDS

06/22/2007 SUBPOENA ISSUED TO  
PIERRE BEDMINISTER 777-7902  
WKS: FEDERAL BUILDING SECURITY  
ST. THOMAS, VIRGIN ISLANDS

06/22/2007 SUBPOENA ISSUED TO  
DETECTIVE MAHA HAMDAN  
V.I. POLICE DEPARTMENT, FORENSIC UNIT  
ST. THOMAS, VIRGIN ISLANDS

06/22/2007 SUBPOENA ISSUED TO  
DETECTIVE SGT. DAPHNE CARTY  
V.I. POLICE DEPARTMENT, FORENSIC UNIT  
ST. THOMAS, VIRGIN ISLANDS

06/22/2007 SUBPOENA ISSUED TO  
TRISTON WEEKS 642-0546  
ST. THOMAS, VIRGIN ISLANDS

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06/22/2007 SUBPOENA ISSUED TO  
IBA MATTHEW 771-4986 // 777-5910  
10 BERGER GADE #2  
ST. THOMAS, VIRGIN ISLANDS

06/22/2007 SUBPOENA ISSUED TO  
OFFICER DAVID CONNONIER  
GOVERNMENT HOUSE SECURITY  
ST. THOMAS, VIRGIN ISLANDS

06/22/2007 SUBPOENA ISSUED TO  
PATRICIA JOSEPH  
7A-B3 LEVKOI STRADE WKS: DEPT. OF FINANCE  
ST. THOMAS, VIRGIN ISLANDS

06/21/2007 SUPPLEMENTAL DEMAND FOR NOTICE OF ALIBI DISCOVERY AND RECIPROCAL  
DEMAND FILED BY LOFTON HOLDER, ESQUIRE.

06/21/2007 AMENDED INFORMATION RECEIVED FROM LOFTON HOLDER, ESQUIRE.

06/21/2007 MOTION TO AMEND RECEIVED FROM LOFTON HOLDER, ESQUIRE.

06/21/2007 PRAECIPE RECEIVED FROM LOFTON HOLDER, ESQUIRE.

06/20/2007 MOTION TO CONTINUE RECEIVED FROM LOFTON P. HOLDER, ESQ., ASST. ATTY.  
GENERAL.

06/20/2007 PROPOSED ORDER REGARDING DEFENDANT'S EMERGENCY MOTION FOR SANCTIONS  
RECEIVED

06/20/2007 AMENDED EMERGENCY MOTION FOR SANCTIONS RECEIVED

06/20/2007 NOTICE TO THE COURT REGARDING AMENDED EMERGENCY MOTION FOR SANCTIONS  
RECEIVED

06/20/2007 PROPOSED ORDER REGARDING MOTION TO PROVIDE STATEMENTS TO DEFENSE  
RECEIVED

06/20/2007 MOTION FOR PEOPLE TO PROVIDE UN-REDACTED STATEMENTS TO DEFENSE AT  
COMMENCEMENT OF TRIAL

06/20/2007 NOTICE TO THE COURT REGARDING MOTION TO PROVIDE STATEMENT TO DEFENSE  
RECEIVED

06/20/2007 DEFENSE RESPONSE TO PEOPLE'S MOTION TO CONTINUE RECEIVED

06/20/2007 SUPPLEMENTAL DEMAND FOR NOTICE OF ALIBI DISCOVERY AND RECIPROCAL  
DEMAND RECEIVED

06/18/2007 RETURN OF SERVICE AND ORDER DATED JUNE 14, 2007 ISSUED TO  
DARYL BLYDEN  
C/O BUREAU OF CORRECTIONS, ST. THOMAS VI  
340-774-3531

06/14/2007 NOTICE OF ENTRY OF ORDER DATED  
06/14/2007  
ASST. ATTY. GEN. LOFTON P. HOLDER  
PUB. DEF. JULIE SMITH-TODMAN

06/14/2007 ORDER SIGNED BY JUDGE EDGAR D. ROSS. DEFENDANT'S EMERGENCY MOTION  
TO COMPEL DISCOVERY IS GRANTED.

06/13/2007 FILE FORWARDED TO JUDGE EDGAR D. ROSS CHAMBERS WITH MOTION

06/11/2007 PROPOSED ORDER FROM DEFENDANT FILED BY JULIE SMITH-TODMAN, ESQ.

06/11/2007 EMERGENCY MOTION FOR SANCTIONS RECEIVED FILED BY JULIE SMITH-  
TODMAN, ESQ.

05/17/2007 RETURN OF RETURN OF SERVICE DOCUMENT ISSUED TO DARYL E. BLYDEN  
SERVED ON MAY 16, 2007

05/14/2007 RETURN OF SERVICE ISSUED TO  
DARYL BLYDEN

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05/14/2007 NOTICE OF ENTRY OF ORDER ISSUED TO  
05/11/2007  
JULIE SMITH TODMAN, ESQ.  
LOFTON P. HOLDER, ESQ.

05/11/2007 ORDER DENYING THE DEFENDANT'S MOTION TO SUPPRESS SIGNED  
BY JUDGE EDGAR D. ROSS.

05/07/2007 SUPPLEMENTAL DEMAND FOR NOTICE OF ALIBI DISCOVERY  
AND RECIPROCAL DEMAND FILED BY LOFTON P. HOLDER, ESQ.

05/03/2007 RECORD OF PROCEEDING COMPLETED..CT. REPORTER P. WARNER WAS PRESENT.  
COURT LISTENED TO SWORN TESTIMONIES OF THE PEOPLE'S WITNESSES,  
DETECTIVE SOPHIA RACHID, DETECTIVE DELBERT PHIPPS AND DETECTIVE  
MARGARET PRICE AND GRANTED ATTORNEY HOLDER'S REQUEST TO HAVE  
EXHIBIT NUMBER TWO ADMITTED INTO EVIDENCE. THE COURT THEN  
LISTENED TO SWORN TESTIMONY OF DEFENDANT'S ONLY WITNESS, JOEL  
DOWDYE AND BASED ON THE TESTIMONIES OF ALL WITNESSES AND  
ARGUMENTS OF BOTH COUNSELS, THE COURT DENIED DEFENDANT'S MOTION  
TO SUPPRESS.

05/03/2007 SUPPLEMENTAL DISCOVERY FILED LOFTON P. HOLDER, ESQ.

05/02/2007 SUBPOENA RECEIVED. MARSHAL WESSELHOFT SERVED JOEL B. DOWDYE  
WITH SUBPOENA DATED MAY 3, 2007.

05/02/2007 SUPPLEMENTAL DISCOVERY FILED LOFTON P. HOLDER, ESQ.

05/02/2007 SUBPOENA ISSUED TO  
JOEL B. DOWDYE  
C/O BUREAU OF CORRECTIONS  
ST. THOMAS, VIRGIN ISLANDS

05/01/2007 PRAECIPE RECEIVED FROM THE DEFENDANT FILED BY JULIE SMITH TODMAN,  
ESQUIRE.

04/19/2007 PROPOSED ORDER RECEIVED FROM JULIE SMITH TODMAN, ESQUIRE.

04/19/2007 MEMORANDUM OF LAW IN SUPPORT OF MOTION TO SUPPRESS PHYSICAL EVIDENCE  
FILED BY JULIE SMITH TODMAN, ESQUIRE.

04/19/2007 MOTION TO SUPPRESS PHYSICAL EVIDENCE FILED BY JULIE SMITH TODMAN,  
ESQUIRE.

03/30/2007 PROPOSED ORDER FROM DEFENDANT/RESPONDENT FILED BY JULIE SMITH  
TODMAN, ESQUIRE.

03/30/2007 MOTION RECEIVED--EMERGENCY MOTION TO COMPEL DISCOVERY FILED BY JULIE  
SMITH-TODMAN, ESQUIRE.

03/28/2007 REPLY TO PEOPLE'S OPPOSITION TO MOTION TO DISMISS FILED BY JULIE  
SMITH-TODMAN, ESQUIRE.

03/27/2007 OPPOSITION TO MOTION TO DISMISS FILED  
BY LOFTON P. HOLDER, ESQ.

03/23/2007 FILE FORWARDED TO JUDGE EDGAR D. ROSS' CHAMBERS WITH MOTION TO  
DISMISS

03/22/2007 MOTION TO DISMISS BY DEFENDANT RECEIVED FILED BY JULIE SMITH-  
TODMAN, ESQ.

03/12/2007 RETURN OF SERVICE SUBPOENA FOR CORPORAL ROSELYN BEDMINISTER  
RETURNED NOT FOUND

03/01/2007 SUPPLEMENTAL DISCOVERY RECIPROCAL DEMAND FILED BY JULE SMITH TODMAN,  
ESQUIRE.

03/01/2007 AFFIDAVIT OF DETECTIVE JOEL DOWDYE.

03/01/2007 NOTICE TO THE COURT FILED BY JULIE SMITH-TODMAN, ESQ.

02/21/2007 RETURN OF SERVICE SUBPOENA FOR DETECTIVE MARGARET PRICE  
SERVED ON 02/20/2007

02/21/2007 RETURN OF SERVICE SUBPOENA FOR DETECTIVE MARGARET PRICE  
SERVED ON 02/20/2007

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02/21/2007 RETURN OF SERVICE SUBPOENA FOR DETECTIVE SOPHIA RACHID  
SERVED ON 02/20/2007

02/20/2007 RETURN OF SERVICE SUBPOENA FOR CORPORAL ROSELYN BEDMINSTER  
RETURNED NOT FOUND

02/16/2007 RETURN OF SERVICE FOR SUBPOENA TO DET. SOPHIA RACHID  
(SERVED 2/15/07)

02/15/2007 RETURN OF SERVICE FOR SUBPOENA TO DET. DELBERT PHIPPS  
(SERVED 2/14/07)

02/15/2007 RETURN OF SERVICE FOR SUMMONS TO DARYL E. BLYDEN  
(SERVED 2/14/07)

02/15/2007 RETURN OF SERVICE FOR SUBPOENA TO DET. DELBERT PHIPPS  
(SERVED 2/14/07)

02/15/2007 RETURN OF SERVICE FOR SUMMONS TO DARYL E. BLYDEN  
(SERVED 2/14/07)

02/12/2007 SUBPOENA ISSUED TO CORPORAL ROSELYN BEDMINSTER  
CORPORAL ROSELYN BEDMINSTER  
MAJOR CRIME UNIT  
V.I. POLICE DEPARTMENT, ST. THOMAS

02/12/2007 SUBPOENA ISSUED TO DETECTIVE DELBERT PHIPPS FOR TRIAL  
DETECTIVE DELBERT PHIPPS  
MAJOR CRIME UNIT  
V.I. POLICE DEPARTMENT, ST. THOMAS

02/12/2007 SUBPOENA ISSUED TO DETECTIVE SOPHIA RACHID FOR TRIAL  
DETECTIVE SOPHIA RACHID  
INVESTIGATION BUREAU  
V.I. POLICE DEPARTMENT, ST. THOMAS

02/12/2007 SUBPOENA ISSUED TO DETECTIVE MARGARET PRICE FOR TRIAL  
DETECTIVE MARGARET PRICE  
INVESTIGATION BUREAU  
V.I. POLICE DEPARTMENT, ST. THOMAS

02/12/2007 SUMMONS ISSUED TO DARYL E. BLYDEN FOR TRIAL

02/12/2007 NOTICE OF ENTRY OF ORDER DATED  
02/08/2007  
LOFTON P. HOLDER, ESQ., ASSISTANT ATTORNEY GENERAL  
JULIE SMITH-TODMAN, ESQ., OFFICE OF THE PUBLIC DEFENDER

02/12/2007 SUMMONS ISSUED TO DARYL E. BLYDEN

02/12/2007 SUBPOENA ISSUED TO CORPORAL ROSELYN BEDMINSTER  
CORPORAL ROSELYN BEDMINSTER  
MAJOR CRIME UNIT  
V.I. POLICE DEPARTMENT, ST. THOMAS

02/12/2007 SUBPOENA ISSUED TO DETECTIVE DELBERT PHIPPS  
DETECTIVE DELBERT PHIPPS  
INVESTIGATION BUREAU  
V.I. POLICE DEPARTMENT, ST. THOMAS

02/12/2007 SUBPOENA ISSUED TO DETECTIVE SOPHIA RACHID  
DETECTIVE SOPHIA RACHID  
INVESTIGATION BUREAU  
V.I. POLICE DEPARTMENT, ST. THOMAS

02/12/2007 SUBPOENA ISSUED TO DETECTIVE MARGARET PRICE  
DETECTIVE MARGARET PRICE  
INVESTIGATION BUREAU  
V.I. POLICE DEPARTMENT, ST. THOMAS

02/12/2007 NOTICE OF ENTRY OF ORDER DATED  
02/08/2007  
LOFTON P. HOLDER, ESQ., ASSISTANT ATTORNEY GENERAL  
JULIE SMITH-TODMAN, ESQ., OFFICE OF THE PUBLIC DEFENDER

02/08/2007 ORDER SIGNED BY JUDGE EDGAR D. ROSS. ORDERED THAT THE ABOVE CAPTIONED MATTER IS SCHEDULED FOR JURY SELECTION AND TRIAL ON 6/25/07 AT 9:00 A.M. CTRM. III SUPERIOR COURT. ORDERED THAT THE PARTIES SHALL PREPARE AND FILE PROPOSED JURY INSTRUCTIONS CONSISTENT WITH THEIR THEORY OF THE CASE OR DEFENSE ON OR BEFORE ONE WEEK PRIOR TO THE TRIAL DATE ABOVE-NOTED.

02/08/2007 ORDER SIGNED BY JUDGE EDGAR D. ROSS. ORDERED THAT THE ABOVE CAPTIONED CASE BE AND IS HEREBY SCHEDULE FOR SUPPRESSION HEARING ON MAY 3, 2007 AT 1:00 P.M. CTRM. III, SUPERIOR COURT.

02/02/2007 RECORD OF PROCEEDING PREPARED. THE MATTER CAME ON FOR STATUS HEARING. ATTY. HOLDER STATED THAT HE IS READY FOR TRIAL. ATTY. SMITH TODMAN STATED THAT SHE HAS AN OUTSTANDING MOTION TO SUPPRESS AND THEREFORE SHE IS NOT READY FOR TRIAL. THE COURT ADVISED THE PARTIES THAT IT WILL ISSUE AN ORDER WITH DATES FOR THE SUPPRESSION HEARING AND JURY SELECTION/TRIAL.

01/22/2007 RENEWED MOTION FOR RELEASE AND PROPOSED ORDER RECEIVED FROM JULIE MITH TODMAN, ESQUIRE.

01/03/2007 RETURN OF RETURN OF SERVICE DOCUMENT FOR DARYL BLYDEN RETURNED SERVED ON 12/29/2006.

12/27/2006 NOTICE OF ENTRY OF ORDER DATED DECEMBER 21, 2006 ISSUED TO ASST. ATTY. GEN. LOFTON P. HOLDER, ESQ.  
PUB. DEF. JULIE SMITH-TODMAN, ESQ.

12/27/2006 RETURN OF SERVICE AND ORDER DATED DECEMBER 21, 2006 ISSUED TO DEFENDANT, DARYL E. BLYDEN

12/27/2006 STATUS HEARING/CONFERENCE SCHEDULED 02/02/2007 09:00 A.M.

12/21/2006 ORDER ENTERED. MATTER IS SCHEDULED FOR A STATUS CONFERENCE ON FEBRUARY 2, 2007 AT 9:00 A.M.

12/19/2006 FILE FORWARDED TO JUDGE'S CHAMBERS PER HIS REQUEST.  
(JUDGE EDGAR D. ROSS)

11/09/2006 NOTICE OF ENTRY OF ORDER DATED  
11/08/2006  
LOFTON HOLDER, ESQUIRE  
JULIE SMITH TODMAN, ESQUIRE

11/08/2006 ORDER SIGNED--ORDERED THAT THE NOVEMBER 3rd, 2006 HEARING ON THE DEFENDANT'S MOTION TO SUPPRESS IS CONTINUED WITHOUT DATE. ENTERED BY JUDGE IVE ARLINGTON SWAN.

11/02/2006 NOTICE TO THE COURT WITH MOTION FOR CONTINUANCE FILED BY ALAINE LOCKHART-MOLLAH, ESQUIRE FOR JULIE SMITH TODMAN, ESQUIRE FILED.

10/31/2006 SUBPOENA RECEIVED. MARSHAL D. LAMBERT SERVED DET. DELBERT PHIPPS WITH SUBPOENA SCHEDULING A SUPPRESSION HEARING ON NOVEMBER 3, 2006 AT 9:30 A.M.

10/31/2006 SUBPOENA RECEIVED. MARSHAL D. LAMBERT SERVED DET. SOPHIA RACHID WITH SUBPOENA SCHEDULING A SUPPRESSION HEARING ON NOVEMBER 3, 2006 AT 9:30 A.M.

10/31/2006 SUBPOENA RECEIVED. MARSHAL D. LAMBERT SERVED DET. MARGARET PRICE WITH SUBPOENA SCHEDULING SUPPRESSION HEARING ON NOVEMBER 3, 2006 AT 9:30 A.M.

10/27/2006 SUBPOENA ISSUED TO DETECTIVE DELBERT PHIPPS

10/27/2006 SUBPOENA ISSUED TO DETECTIVE SOPHIA RACHID

10/27/2006 SUBPOENA ISSUED TO DET. MARGARET PRICE.

10/26/2006 PRAECIPE RECEIVED FROM LOFTON HOLDER, ESQUIRE.

10/23/2006 SUBPOENA RECEIVED. MARSHAL D. LAMBERT SERVED CPL. R. BEDMINISTER WITH SUBPPONA SCHEDULING A SUPPRESSION HEARING ON NOVEMBER 3, 2006 AT 9:30 A.M.

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10/18/2006 FILE FORWARDED TO JUDGE'S CHAMBERS PER HIS REQUEST.

10/12/2006 RETURN OF RETURN OF SERVICE DOCUMENT ISSUED TO AGNES GEORGE AT THE B.C.O. MARSHAL SERVED BY MARSHAL C. PICKERING.

10/12/2006 RETURN OF RETURN OF SERVICE DOCUMENT ISSUED TO DARYL E. BLYDEN AT THE B.O.C. DOCUMENT SERVED AT CELL BLOCK TO OFC. R. DONASTORG BY MARSHAL C. PICKERING.

10/11/2006 SUBPOENA ISSUED FOR CPL. ROSELYN BEDMINISTER FOR SUPPRESSION HEARING DATE.

10/02/2006 RETURN OF SERVICE ISSUED FOR WARDEN, AGNES GEORGE

10/02/2006 RETURN OF SERVICE ISSUED FOR DEF. DARYL E. BLYDEN

10/02/2006 NOTICE OF ENTRY OF ORDER ISSUED TO BRENDA SCALES, ESQ.  
ROBERT A. LEYCOCK, ESQ.

10/02/2006 ORDER ENTERED AND SIGNED BY JUDGE IVE A. SWAN SCHEDULING SUPPRESSION HEARING ON FRIDAY, NOVEMBER 3RD, 2006 AT 9:30 AM, COURTROOM NO. III.

07/12/2006 PRETRIAL RELEASE ORDER RECEIVED FILED BY PUBLIC DEFENDER ROBERT LEYCOCK, ESQUIRE.

07/12/2006 RENEWED MOTION FOR RELEASE RECEIVED FILED BY PUBLIC DEFENDER ROBERT LEYCOCK, ESQUIRE.

05/03/2006 DEMAND FOR A SPEEDY TRIAL RECEIVED FILED BY PUBLIC DEFENDER LESLIE PAYTON, ESQ.

04/21/2006 RETURN OF RETURN OF SERVICE DOCUMENT SERVED THROUGH FOR AGNES GEORGE (WARDEN).

04/21/2006 RETURN OF RETURN OF SERVICE DOCUMENT RETURNED SERVED ON DEFENDANT.

04/20/2006 MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT'S MOTION TO DISMISS COUNTS FOUR, FIVE, SIX SEVEN, AND TEN OF THE INFORMATION FILED BY LESLIE L. PAYTON, ESQUIRE.

04/20/2006 DEFENDANT'S MOTION TO DISMISS COUNTS FOUR, FIVE, SIX, SEVEN AND TEN OF THE INFORMATION RECEIVED FILED BY PUBLIC DEFENDER LESLIE PAYTON, ESQUIRE.

04/20/2006 COUNSEL'S RESPONSE TO THIS HONORABLE COURTS'S ORDER DATED MARCH 29, 2006 FILED BY LESLIE L. PAYTON, ESQUIRE.

04/03/2006 RETURN OF SERVICE ISSUED FOR AGNES GEORGE, WARDEN

04/03/2006 NOTICE OF ENTRY OF ORDER  
LOFTON P. HOLDER, ESQ.  
LESLIE L. PAYTON, ESQ.  
AGNES GEORGE, WARDEN

04/03/2006 RETURN OF SERVICE ISSUED FOR DEF. DARYL E. BLYDEN

03/29/2006 ORDER SIGNED--ORDERED THAT ATTORNEY LESLIE PAYTON SHALL BY NO LATER THAN APRIL 21, 2006 RESPOND SPECIFICALLY ABOUT THE LACK OF COMMUNICATION. ENTERED BY JUDGE AUDREY L. THOMAS.

03/21/2006 RETURN OF RETURN OF SERVICE DOCUMENT RETURNED SERVED ON ALCEDOS LETTSOME.

03/21/2006 RETURN OF RETURN OF SERVICE DOCUMENT RETURNED SERVED ON DEFENDANT.

03/20/2006 LETTER RECEIVED FROM THE DEFENDANT, DARYL BLYDEN TO JUDGE AUDREY L. THOMAS FILED.

03/16/2006 RETURN OF SERVICE ISSUED FOR ALCEDOS LETTSOME, ACTING WARDEN

03/16/2006 RETURN OF SERVICE ISSUED FOR DARYL BLYDEN

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03/15/2006 NOTICE OF ENTRY OF ORDER ISSUED FOR  
LOFTON P. HOLDER, ESQUIRE,  
LESLIE L. PAYTON, ESQUIRE AND  
OFFICE OF PROBATION

03/15/2006 ORDER SIGNED--ORDERED THAT THE PEOPLE'S MOTION FOR INCREASE IN BAIL  
IS HEREBY DENIED;& IT IS FURHTER ORDERED THAT DEFENDANT'S MOTION FOR  
RECONSIDERATION OF BAIL IS HEREBY DENIED; & IT IS FURTHER ORDERED  
THAT DFENDANT'S MOTION FOR RELEASE IS HEREBY DENIED; & IT IS FURTHER  
ORDERED THAT DEFENDANT'S RENEWED MOTION FOR RELEASE IS HEREBY  
DENIED. ENTERED BY JUDGE AUDREY L. THOMAS.

02/10/2006 RETURN OF RETURN OF SERVICE DOCUMENT RETURNED SERVED ON DEFENDANT.

02/10/2006 BILL OF PARTICULARS FILED BY ASSISTANT ATTORNEY GENERAL LOFTON  
HOLDER, ESQUIRE.

02/10/2006 SUPPLEMENTAL DEMAND FOR ALIBI DISCOVERY AND RECIPROCAL DEMAND FILED  
BY LOFTON P. HOLDER, ESQUIRE.

02/02/2006 RETURN OF SERVICE AND ORDERS ISSUED TO DARYL BLYDEN.

02/02/2006 NOTICE OF ENTRY OF ORDERS ISSUED TO LOFTON P. HOLDER AND LESLIE L.  
PAYTON, ESQS.

02/02/2006 OPPOSITION TO MOTION TO SUPPRESS RECEIVED, FILED BY LOFTON P.  
HOLDER, ESQUIRE, ASSISTANT ATTORNEY GENERAL.

02/01/2006 ORDERS ENTERED AND SIGNED BY JUDGE AUDREY L. THOMAS DENYING THE  
DEF.'S MOTION TO RELIEVE COUNSEL OF FURTHER REPRESENTATION AND  
DEF.'S MOTION TO COMPEL DISCOVERY.

01/30/2006 DOCUMENTS RECEIVED--MOTION FOR BILL OF PARTICULARS RECEIVED, FILED  
BY LESLIE L. PAYTON ESQUIRE, TERRITORIAL PUBLIC DEFENDER.

01/30/2006 DOCUMENTS RECEIVED--DEFENDANT'S MOTION TO HAVE THE JURY VIEW THE  
ALLEGED CRIME SCENE RECEIVED, FILED BY LESLIE L. PAYTON ESQUIRE  
TERRITORIAL PUBLIC DEFENDER.

01/25/2006 MOTION TO SUPPRESS DEFENDANT'S STATEMENT AND MEMORANDUM OF POINT AND  
AUTHORITIES INSUPPORT OF DEFENDANT'S MOTION TO SUPPRESS STATEMENT  
AND SEIZED EVIDENCE FILED BY LESLIE L. PAYTON, ESQUIRE.

01/25/2006 NOTICE TO THE COURT RECEIVED, FILED BY LESLIE L. PAYTON ESQUIRE  
TERRITORIAL PUBLIC DEFENDER.

01/20/2006 DEFENDANT'S MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT'S MOTION FOR  
RECONSIDERATION OF BAIL FILED BY LESLIE L. PAYTON, ESQUIRE.

01/20/2006 DEFENDANT'S MOTION FOR RECONSIDERATION OF BAIL RECEIVED, FILED BY  
LESLIE L. PAYTON ESQ. TERRITORIAL PUBLIC DEFENDER.

12/29/2005 NOTICE TO THE COURT WITH MOTION FOR COPY OF 911 TAPE ATTACHED FILED  
BY LESLIE L. PAYTON, ESQUIRE.

12/27/2005 LETTER RECEIVED FROM THE DEFENDANT, DARYL BLYDEN TO JUDGE AUDREY L.  
THOMAS FILED.

12/06/2005 MEMORANDUM OF LAW IN SUPPORT OF COUNSEL'S MOTION TO GRANT THE  
DEFENDANT'S MOTION TO RELIEVED COUNSEL OF FURTHER REPRESENTATION  
FILED BY LESLIE L. PAYTON, ESQUIRE.

12/06/2005 COUNSEL'S MOTION TO GRANT THE DEFENDANT'S MOTION TO RELIEVE COUNSEL  
OF FURTHER REPRESENTATION RECEIVED, FILED BY LESLIE L. PAYTON,  
ESQUIRE TERRITORIAL PUBLIC DEFENDER

11/29/2005 TWO LETTERS FROM JUDGE AUDREY THOMAS WRITTEN TO THE DEFENDANT & THE  
OTHER WRITTEN TO ATTY. LESLIE L. PAYTON, ESQUIRE FILED.

11/16/2005 MOTION RECEIVED--MOTION TO RETURN DEFENDNA TO THE BUREAU OF  
CORRECTIONS DIVISION OF ST. THOMAS AND ST. JOHN AND MEMORANDUM OF  
LAW IN SUPPORT OF DEFENDANT'S MOTION TO RETURN DEFENDANT TO THE  
BUREAU OF CORRECTIONS DIVISION OF ST. THOMAS AND ST. JOHN FILED BY  
LESLIE L. PAYTON, ESQUIRE.

11/16/2005 DEMAND FOR NOTICE OF ALIBI, DISCOVERY & RECIPROCAL DEMAND RECEIVED  
FROM LOFTON HOLDER, ESQUIRE.

11/16/2005 DEMAND FOR NOTICE OF ALIBI DISCOVERY AND RECIPROCAL DEMAND RECEIVED  
LOFTON P. HOLDER, ESQ., ASSISTANT ATTORNEY GENERAL.

11/16/2005 DOCUMENTS RECEIVED--PEOPLE'S RECIPROCAL DEMAND FOR DISCOVERY MATERIAL PURSUANT TO RULES 16(b) AND 12.1 OF THE FEDERAL RULES OF CRIMINAL PROCEDURE RECEIVED, FILED BY LOFTON P. HOLDER ESQ. ASSISTANT ATTORNEY GENERAL

11/16/2005 NOTICE OF APPEARANCE FOR THE GOVERNEMENT RECEIVED, FILED BY LOFTON P. HOLDER ESQ. ASSISTANT ATTOTNEY GENERAL.

11/15/2005 LETTER RECEIVED FROM THE DEFENDANT, DARYL BLYDEN TO JUDGE AUDREY L. THOMAS FILED.

11/14/2005 RENEWED MOTION FOR RELEASE AND PROPOSED ORDER RECEIVED FROM LESLIE L. PAYTON, ESQUIRE.

11/14/2005 MOTION TO COMPEL DISCOVERY AND MEMORANDUM OF LAW IN SUPPORT OF THE DEFENDANT'S MOTION TO COMPEL DISCOVERY FILED BY LESLIE L. PAYTON, ESQUIRE.

10/31/2005 LETTER RECEIVED FILED BY DEFENDANT.

10/24/2005 LETTER RECEIVED FROM DAHLIA PARRIS ON BEHALF OF THE DEFENDANT FILED.

10/20/2005 NOTICE OF APPEARANCE RECEIVED FROM LESLIE PAYTON, ESQUIRE OF THE PUBLIC DEFENDER'S OFFICE.

10/20/2005 NOTICE TO THE COURT RECEIVED, FILED BY LESLIE L. PAYTON ESQ. TERRITORIAL PUBLIC DEFENDER

10/13/2005 LETTER RECEIVED, FILED BY JOYCE BLYDEN WIFE OF THE DEFENDANT

10/11/2005 FILE FORWARDED TO JUDGE'S CHAMBERS WITH PEOPLE'S MOTION TO INCREASE BAIL, AND OPPOSITION TO DEFENDANT'S MOTION FOR RELEASE, FILED BY BRENDA SCALES, ASST. ATTY. GENERAL.  
MOTION FOR RELEASE AND PROPOSED ORDER FILED BY DARREN JOHN-BAPTISTE, ESQUIRE.

10/11/2005 CASE FILE RECEIVED BY JURY TRIAL DIVISION

10/07/2005 CASE SENT FROM NON-JURY TO JURY

10/06/2005 PEOPLE'S MOTION TO INCREASE BAIL, AND OPPOSITION TO DENFENDANT'S MOTION FOR RELEASE FILED BY BRENDA SCALES, ESQ. ASST. ATTY GENERAL.

10/06/2005 ARRAIGNMENT CONCLUDED BEFORE JUDGE RHYS S. HODGE. ASST. ATTORNEY GENERAL BRENDA SCALES AND PUBLIC DEFENDER JULIE TODMAN WERE PRESENT. ALSO COURT REPORTER A. ADAMS. DEADLINE TO FILE DISCOVERY IS OCTOBER 20, 2005. DEADLINE TO FILE MOTIONS IS NOVEMBER 3, 2005. DEADLINE FOR RESPONSES TO MOTIONS IS NOVEMBER 11, 2005. DEADLINE FOR CHANGE OF PLEA IS NOVEMBER 11, 2005.

10/05/2005 RECORD OF PROCEEDING PREPARED. THE MATTER CAME ON FOR ARRAIGNMENT. THE DEFENDANT WAIVED READING OF THE INFORMATION, ENTERED A PLEA OF NOT GUILTY AND DEMANDED A TRIAL BY JURY. THE COURT IMPOSED THE DEALIN DATES FOR DISCOVERY, MOTIONS, PLEA AND MOTIONS IN LIMINE AND CONTINUED THE MATTER SINE DIE FOR JURY TRIAL.

10/05/2005 INFORMATION/COMPLAINT RECEIVED WITH SWORN AFFIDAVIT OF DETECTIVE ROSELYN BEDMINISTER ATTACHED.

10/04/2005 MOTION FOR RELEASE AND PROPOSED ORDER FILED BY DARREN JOHN-BAPTISTE, ESQUIRE ON BEHALF OF THE DEFENDANT.

09/28/2005 ARRAIGNMENT HEARING RESCHEDULED 10/06/2005 09:00 A.M.

09/28/2005 ARRAIGNMENT SCHEDULED 10/06/2005 09:30 A.M.

09/26/2005 ORDER APPOINTING COUNSEL SIGNED & ENTERED BY JUDGE LEON A. KENDALL.

016

09/26/2005 MEMORANDUM RECORD OF PROCEEDING/INITIAL HEARING--THE MATTER CAME ON FOR PROBABLE CAUSE AND ADVICE OF RIGHTS HEARING BEFORE JUDGE LEON A. KENDALL. ASST. ATTY. GEN. B. SCALES, APPEARED ON BEHALF OF THE PEOPLE & THE DEFENDANT APPEARED PERSONALLY AND WAS REPRESENTED BY DARREN JOHN-BAPTISTE, ESQUIRE. THE COURT FOUND PROBABLE CAUSE TO HOLD THE DEFENDANT FOR THE ALLEGED CRIME BASED UPON THE SWORN TESTIMONY OF DET. ROSELYN BEDMINISTER. THE DEFENDANT WAS ADVISED OF HIS RIGHTS AND HIS BAIL WAS SET AT \$100,000.00 BY THE COURT. THE COURT APPOINTED THE PUBLIC DEFENDER TO REPRESENT THE DEFENDANT & CONTINUED THE MATTER TO 10/6/05 @ 9:00 A.M. FOR ARRAIGNMENT.  
09/26/2005 PROBABLE CAUSE FACT SHEET RECEIVED  
09/26/2005 ADVICE OF RIGHTS COMPLETED  
09/26/2005 ADVICE OF RIGHTS HEARING HELD  
09/26/2005 AFFIDAVIT OF FINANCIAL STATUS PREPARED/EXECUTED  
09/26/2005 NATIONAL CRIME INFORMATION CENTER CRIM. RECORD REC  
09/26/2005 BUREAU OF CRIM. IDENTIFICATION - CRIM. RECORD REC.  
09/26/2005 VIPD POLICE ARREST REPORT RECEIVED  
09/26/2005 ADVICE OF RIGHTS HEARING SCHEDULED 09/26/2005 11:00 A.M.  
09/24/2005 AWAITING SWORN TO COMPLAINT  
09/24/2005 CRIMINAL CASE FILED

TOTAL NUMBER OF ENTRIES 284  
PREPARED BY: DTURNB  
\*\*\*\*\*END OF REPORT\*\*\*\*\*

CERTIFIED A TRUE COPY  
Date: 8/26/10  
Veretia H. Velazquez, Esq.  
Clerk of the Court  
By: Diane M. Turnbull  
Court Clerk

017

**IN THE SUPREME COURT OF THE VIRGIN ISLANDS**

**DARYL BLYDEN,**  
Appellant/Defendant,

**S. Ct. Crim. No. 2007-0105**  
Re: Super. Ct. Crim. No. F399/2005

v.

**PEOPLE OF THE VIRGIN ISLANDS,**  
Appellee/Plaintiff.

**NOTICE OF ENTRY OF JUDGMENT/ORDER**

**TO:**

**Justices of the Supreme Court**  
**Hon. Verne A. Hodge, Designated Justice**  
**Hon. Patricia D. Steele, Designated Justice**  
**Judges and Magistrates of the Superior Court**  
**Natalie Nelson Tang How, Esq.**  
**Terryln M. Smock, Esq., AAG**  
**Veronica J. Handy, Esq., Clerk of the Court**  
**Venetia H. Velazquez, Esq., Clerk of the Superior Court**  
**Supreme Court Law Clerks**  
**Supreme Court Secretaries**  
**Order Book**  
**Westlaw**  
**Website**  
**Lexis/Michie**

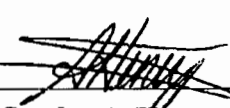
SUPREME COURT  
JUL 07 2010 7:17 PM

Please take notice that on July 7, 2010, an **OPINION and ORDER OF THE COURT** dated July 7, 2010 were entered by the Clerk in the above-entitled matter.

**Dated: July 7, 2010**

**VERONICA J. HANDY, ESQ.**  
**Clerk of the Court**

By: \_\_\_\_\_

  
**Sandra A. Henry**  
**Deputy Clerk II**

For Publication

IN THE SUPREME COURT OF THE VIRGIN ISLANDS

DARYL BLYDEN,  
Appellant/Defendant,

v.

PEOPLE OF THE VIRGIN ISLANDS,  
Appellee/Plaintiff.

) S. Ct. Crim. No. 2007-0105  
) Re: Super. Ct. Crim. No. 399/2005  
)  
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2010 JUL -7 PM 1:17  
SUPREME COURT

On Appeal from the Superior Court of the Virgin Islands  
Argued: October 27, 2009  
Filed: July 7, 2010

BEFORE: RHYS S. HODGE, Chief Justice; PATRICIA D. STEELE, Designated Justice;  
and VERNE A. HODGE, Designated Justice.<sup>1</sup>

ATTORNEYS:

Natalie Nelson Tang How, Esq.  
St. Croix, U.S.V.I.  
*Attorney for Appellant*

Terryln M. Smock, Esq.  
Assistant Attorney General  
St. Thomas, U.S.V.I.  
*Attorney for Appellee*

OPINION OF THE COURT

Hodge, Chief Justice.

Appellant, Daryl Blyden (“Blyden”), appeals from the Superior Court’s September 25, 2007 Judgment which sentenced him to incarceration for life without parole plus forty-five additional years. For the reasons which follow, we will reverse Blyden’s conviction as to the

<sup>1</sup> Associate Justices Maria M. Cabret and Ive Arlington Swan are recused from this matter. Verne A. Hodge, a retired Presiding Judge of the Superior Court, and the Honorable Patricia D. Steele, a sitting Judge of the Superior Court, respectively, have been designated in their place pursuant to title 4, section 24(a) of the Virgin Islands Code.

unauthorized possession of ammunition count but will affirm his conviction as to all other counts.

### I. FACTUAL AND PROCEDURAL BACKGROUND

At approximately 7:30 p.m. on September 24, 2005, Virgin Islands police officers were dispatched to the scene of a shooting in the Savan neighborhood of St. Thomas. At the scene, officers discovered the body of an individual, later identified as Kevin Walker (“Walker”), who exhibited no signs of life. Police subsequently discovered that another individual, Iba Matthews (“Matthews”), had been wounded in the same shooting incident and had ridden his bicycle to his car and then driven himself to the hospital. The police investigation revealed that Matthews had been shot in the back and had not seen the person who shot him or Walker.

Shortly after the shooting, the police department’s central dispatch transmitted an eyewitness’s description of the suspect as a black male wearing a blue shirt and jeans and riding a bicycle. At the time of the transmission, two detectives, who were driving in the vicinity of the shooting, observed a black male wearing a blue shirt and jeans walking from the “gut” area at a fast pace and noticeably sweating. The detectives—Joel Dowdye (“Dowdye”) and Sophia Rashid (“Detective Rashid”)—immediately exited their unmarked police vehicle, drew their guns, identified themselves as police, and ordered the individual down on the ground. The individual, subsequently identified as Blyden, got down on the ground and was placed in handcuffs. While Detective Rashid went into the vehicle to transmit that they had a suspect, Dowdye patted Blyden down and recovered a firearm, money, marijuana, and a black tam. Detective Rashid testified at trial that she did not see Dowdye remove the items from Blyden but she heard him say “gun” and saw him place the gun and other items on the hood of the car.

Thereafter, Blyden was transported to the Criminal Investigation Division of the police

station, where his photograph was taken. Detective Margaret Price (“Detective Price”), who was off-duty but present at the station, testified at trial that Blyden:

was handcuffed to a chair, and while he was sitting in the chair he made several statements. He stated that he passed in the area . . . the guy looked at him in his face. Then he proceeded to say he doubled back, and he put the shot in the guy the same way the guy put the shots in his brother, and if it takes 20 years he’s going to get the other two.

(Trial Tr. vol. IV, 269, July 10, 2007.) Detective Price further testified that Dowdye was also present when Blyden made these statements. (*Id.* at 270.) On cross-examination, the detective stated that she did not know whether Blyden had been advised of his rights at that time or whether Dowdye may have asked Blyden a question earlier that had prompted Blyden’s statements.

The People of the Virgin Islands (“the People”) filed an Amended Information which charged Blyden with first degree murder pursuant to V.I. CODE ANN. tit. 14 § 922(a)(1), two counts of assault in the first degree pursuant to 14 V.I.C. § 295(1), multiple counts of possession of an unlicensed firearm pursuant to 14 V.I.C. § 2253(a), one count of possession or sale of ammunition pursuant to 14 V.I.C. § 2256, and one count of buying, receiving, or possessing stolen property pursuant to 14 V.I.C. § 2101(a). On April 19, 2007, Blyden filed his Motion to Suppress Physical Evidence, arguing that all of the evidence seized from his person had been obtained pursuant to an illegal arrest. Blyden’s accompanying Memorandum of Law in Support of Motion to Suppress Physical Evidence sought suppression of the seized items as well as his inculpatory statements. The trial court held a suppression hearing on May 3, 2007. Concluding from Dowdye<sup>2</sup> and Detective Rashid’s testimonies that there was reasonable suspicion to stop

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<sup>2</sup> Because Blyden called Dowdye as his witness at the suppression hearing, Dowdye was questioned by Blyden on direct and re-direct examination, and the People questioned Dowdye on cross-examination.

and search Blyden and that Blyden's inculpatory statements were made voluntarily and not as a result of custodial interrogation, the trial court denied the motion to suppress on May 14, 2007.

Blyden's trial began on June 25, 2007. Near the conclusion of its case-in-chief, the People called Dowdye as a witness. Having been convicted of first degree murder and attempted first degree murder in an unrelated homicide, Dowdye was no longer a detective and was serving a sentence of life imprisonment without parole plus forty years. Dowdye refused to testify at trial regarding his arrest of Blyden, stating "I don't have nothing to say to nobody . . ." (Trial Tr. vol. III, 40, June 28, 2007.) Dowdye stated that he would not testify because the community and the people he had worked with as a detective had turned their backs on him. The trial judge asked Dowdye whether an order holding him in contempt would change his mind about testifying, and Dowdye replied that it would not.<sup>3</sup> After concluding that Dowdye could not be compelled to testify, the court granted the People's request to have Dowdye declared unavailable and permitted the People to read into the trial record Dowdye's full testimony from the May 3, 2007 pre-trial suppression hearing.

After the People rested its case, Blyden moved for a judgment of acquittal as to all counts. Because the trial court found that the People had not proven the possession of stolen property count, the trial court dismissed that count but denied Blyden's motion as to the other counts. During the defense's case-in-chief, Blyden took the stand and testified, *inter alia*, that he was not carrying a firearm when he was arrested, that Dowdye questioned him at the police station without reading him his *Miranda* rights, and that he did not respond to Dowdye's questions. At the conclusion of his case, Blyden renewed his motion for a judgment of acquittal

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<sup>3</sup> The judge also confirmed that Dowdye did not own any property that might be used to induce his testimony.

as to the remaining eight counts, which was again denied by the trial court.

On July 11, 2007, the jury returned its verdict finding Blyden guilty of each of the remaining eight counts. On August 31, 2007, the trial court orally sentenced Blyden to life imprisonment without parole plus forty-five years and ordered him to pay a large fine. Blyden filed a timely notice of appeal on September 6, 2007, and the Superior Court memorialized its oral sentence in a September 25, 2007 Judgment.<sup>4</sup>

## II. DISCUSSION

### A. Jurisdiction and Standards of Review

“The Supreme Court [has] jurisdiction over all appeals arising from final judgments, final decrees [and] final orders of the Superior Court.” 4 V.I.C. § 32(a) (Supp. 2008). Our review of the Superior Court’s application of law is plenary, while findings of fact are reviewed only for clear error. *St. Thomas-St. John Bd. of Elections v. Daniel*, 49 V.I. 322, 329 (V.I. 2007). “In reviewing the trial court’s decision on [a] motion to suppress, ‘we review its factual findings for clear error and exercise plenary review over its legal determinations.’” *People v. John*, Crim. No. 2008-091, 2009 WL 2043872, at \*3 (V.I. July 1, 2009) (quoting *United States v. Shields*, 458 F.3d 269, 276 (3d Cir. 2006)) (internal quotations omitted). Moreover, “[t]he standard of review for challenges under the Sixth Amendment’s Confrontation Clause is plenary.” *Latalladi v. People*, 51 V.I. 137, 141 (V.I. 2009). Finally, our review of the trial court’s admission of evidence is only for abuse of discretion. *Corriette v. Morales*, 50 V.I. 202, 205 (V.I. 2008).

### B. The Trial Court Did Not Err in Denying Blyden’s Motion to Suppress

As his first ground for appeal, Blyden argues that the trial court erred in denying his

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<sup>4</sup> “A notice of appeal filed after the announcement of a decision, sentence, or order – but before entry of the judgment or order – is treated as filed on the date of and after the entry of judgment.” V.I.S.C.T.R. 5(b)(1).

motion to suppress all evidence seized from his person, including the unlicensed firearm, and all inculpatory statements because the evidence was obtained pursuant to an illegal arrest without probable cause in violation of the Fourth Amendment. The People counter that the police had reasonable suspicion to stop Blyden and frisk him for weapons. In denying Blyden's motion to suppress, the trial court held that it was reasonable for the officers to stop Blyden and search him under the totality of the circumstances, particularly because Blyden matched the description of the suspect and was sweating and walking quickly in the area immediately after the shooting. (Hr'g Tr., 77-78, May 2, 3007.)

The Fourth Amendment<sup>5</sup> "applies to all seizures of the person, including seizures that involve only a brief detention short of traditional arrest." *Brown v. Texas*, 443 U.S. 47, 50, 99 S.Ct. 2637, 61 L.Ed.2d 357 (1979) (internal quotations omitted). "[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.'" *Id.* (alteration in original) (internal quotations omitted). Importantly, the Supreme Court of the United States has distinguished between arrests and investigative stops. The Court has explained that "in appropriate circumstances the Fourth Amendment allows a properly limited 'search' or 'seizure' on facts that do not constitute probable cause to arrest or to search for contraband or evidence of crime." *United States v. Brignoni-Ponce*, 422 U.S. 873, 882, 95 S.Ct. 2574, 45 L.Ed.2d 607 (1975). In particular, in the seminal case of *Terry v. Ohio*, the Court held that a police officer may stop a suspect on the street and conduct a limited search, i.e. a frisk, of the suspect without probable

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<sup>5</sup> The Fourth Amendment of the United States Constitution is applicable in the Virgin Islands pursuant to § 3 of the Revised Organic Act of 1954, as amended, 48 U.S.C. § 1561. The complete Revised Organic Act of 1954 is found at 48 U.S.C. §§ 1541-1645, reprinted in V.I. CODE ANN., Historical Documents, Organic Acts, and U.S. Constitution at 73-177 (1995 & Supp. 2003) (preceding V.I.CODE ANN. tit. 1).

cause:

where a police officer observes unusual conduct which leads him reasonably to conclude in light of his experience that criminal activity may be afoot and that the persons with whom he is dealing may be armed and presently dangerous, where in the course of investigating this behavior he identifies himself as a policeman and makes reasonable inquiries, and where nothing in the initial stages of the encounter serves to dispel his reasonable fear for his own or others' safety.

392 U.S. 1, 30, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968).

First, we address Blyden's contention that he was arrested at the time the detectives stopped him because he was handcuffed and was not free to go. It is well established that during an investigative stop, police officers may take measures "reasonably necessary to protect themselves and maintain the status quo." *United States v. Hensley*, 469 U.S. 221, 235, 105 S.Ct. 675, 83 L.Ed.2d 604 (1985). Consequently, "[t]here is no per se rule that pointing guns at people, or handcuffing them, constitutes an arrest." *Baker v. Monroe Tp.*, 50 F.3d 1186, 1193 (3d Cir. 1995) (collecting cases). *See, e.g., United States v. Goode*, 309 Fed.Appx. 651, 653 (3d Cir. 2009) (unpublished) (use of guns and handcuffs did not transform investigate stop to illegal arrest when defendant "was suspected of dealing drugs, a crime with which weapons and violence are frequently associated" (internal quotations omitted)); *United States v. Shareef*, 100 F.3d 1491, 1507 (10th Cir. 1996) (placing handcuffs on suspect does not transform detention into unlawful arrest so long as officers have reasonable suspicion that suspect is the wanted felon). Accordingly, the fact that the police immediately drew their weapons, ordered Blyden to the ground, and handcuffed him did not transform his detention into an illegal arrest if the officers had reasonable suspicion "that criminal activity [was] afoot and that the persons with whom [they were] dealing [was] armed and presently dangerous." *Terry*, 392 U.S. at 27, 30 ("[T]here must be a narrowly drawn authority to permit a reasonable search for weapons for the protection

of the police officer, where he has reason to believe that he is dealing with an armed and dangerous individual, regardless of whether he has probable cause to arrest the individual for a crime.”). *See also Sibron v. New York*, 392 U.S. 40, 63, 88 S.Ct. 1889, 1904, 20 L.Ed.2d 917 (1968) (“If [the policeman] lacked probable cause for an arrest, however, his seizure and search of [defendant] might still have been justified at the outset if he had reasonable grounds to believe that [defendant] was armed and dangerous.”).

Although “[r]easonable suspicion is an ‘elusive concept’ . . . it unequivocally demands that ‘the detaining officers must have a particularized and objective basis for suspecting the particular person stopped of criminal activity.’” *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)).

The 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.

*United States v. Nelson*, 284 F.3d 472, 478 (3d Cir. 2002) (citations omitted) (collecting cases).

In this case, a witness, whose identity was known to the police,<sup>6</sup> described the suspect as a black male wearing a blue shirt and jeans and riding a bicycle. Arriving in the vicinity of the shooting five minutes later, the officers personally observed Blyden wearing clothing that matched the witness’s description, emerging from the gut, and walking from the area of the shooting at a fast

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<sup>6</sup> Although Blyden argues in his appellate brief that the witness was anonymous, the record indicates that the identities of all witnesses were known to the People. In fact, the transcript from jury selection reveals that Blyden was provided with the names and addresses of all witnesses who had made statements after he raised concerns about certain redacted statements. (Trial Tr. vol. I, 22-24, 67-68, June 25, 2007.)

pace while visibly sweating. Under these circumstances, we conclude that the police had reasonable grounds to believe that Blyden was the person who had committed the crime involving gunfire, which had resulted in a fatality, and that he was likely armed and dangerous. *See, e.g., 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). Thus, the Fourth Amendment permitted the officers to stop Blyden and conduct a limited search of his person in order to determine whether he was carrying a weapon. As a result, the officers' actions in handcuffing and ordering Blyden to the ground did not transform the initial stop into an arrest requiring probable cause, and, because the firearm recovered during the *Terry* stop was not excludable as the fruit of an illegal arrest, the trial court properly denied Blyden's motion to suppress the firearm. *See Wong v. United States*, 371 U.S. 471, 488, 83 S.Ct. 407, 9 L.E.2d 441 (1963) (holding that evidence derived from a Fourth Amendment violation must be excluded from trial as "fruit of the poisonous tree").

In addition to seeking suppression of the firearm, Blyden's motion to suppress sought suppression of all other physical evidence seized from his person as well as his subsequent inculpatory statements made at the police station. In support thereof, Blyden similarly argued that the physical evidence and statements were obtained as a result of an illegal arrest. At trial, Detective Rashid testified that Dowdye had patted Blyden down and recovered a firearm. (Trial Tr. vol. II, 111, June 27, 2007.) As we have held above, such a search and seizure under the circumstances of this case was clearly permissible under *Terry*. However, Detective Rashid's testimony reveals that Dowdye continued to search Blyden's person after recovering the firearm and recovered various other items, including marijuana and money. Following seizure of the

additional physical evidence, the officers placed Blyden in their vehicle and transported him to the police station. While at the station awaiting transfer to the Major Crimes Unit, Blyden, who was handcuffed to a chair at the time, began making incriminating statements.

Importantly, “[t]he search for weapons approved in *Terry* consisted solely of a limited patting of the outer clothing of the suspect for concealed objects which might be used as instruments of assault [against the officer].” *Sibron*, 392 U.S. at 65. The continued search of Blyden’s person and seizure of the additional physical evidence undoubtedly exceeded the scope of the search sanctioned by *Terry* because no reasonable officer would have believed that those items could be another weapon. *See, e.g., United States v. Campa*, 234 F.3d 733, 739 (1st Cir. 2000) (“Although we recognize that searching by means of a pat-down is not an exact science, the government does not even argue that [the officer] thought appellant’s wallet—the item particularly at issue here—could be a weapon. He simply removed every bulging object as he searched, undoubtedly a convenient method for detecting weapons, but one that goes beyond the limited invasion of privacy authorized by *Terry* and its progeny.”). Therefore, some additional justification was required for the further intrusion upon Blyden’s rights.

After reviewing the record in this case, we conclude that the Fourth Amendment was not violated by Dowdye’s seizure of the additional items because probable cause arose to arrest Blyden at the time Dowdye recovered the firearm during the lawful *Terry* stop. “Probable cause exists 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.” *United States v. Cruz*, 910 F.2d 1072, 1076 (3d Cir. 1990). As we have concluded above, it was reasonable for Dowdye to conclude that Blyden had just committed a crime involving gunfire in light of his presence in the vicinity of the crime very

soon after the shooting as well as his overall physical appearance. With this knowledge, the recovery of a firearm from Blyden, a person suspected of having recently committed a shooting, ripened Dowdye's reasonable suspicion to stop and frisk Blyden into probable cause to arrest him as a suspect in the shooting.<sup>7</sup> See, e.g., *United States v. Martinez*, 462 F.3d 903, 908 (8th Cir. 2006) (discovery of wad of money during *Terry* stop provided probable cause for arrest of person suspected of committing bank robbery); *United States v. Wilson*, 2 F.3d 226, 232 (7th Cir. 1993) ("The [marijuana] baggies [found during the initial *Terry* stop] supplied the probable cause that indisputably converted the encounter into a full arrest. At this point, it is without question that the officer had probable cause to arrest Mr. Wilson."); *United States v. Thomas*, 74 Fed.Appx. 189, 191-92 (3d Cir. 2003) (unpublished) (probable cause to support arrest after officers recovered firearm, suspected to be unlicensed, during *Terry* stop because police had information that criminal activity was afoot).

As the Supreme Court expressly held in *Chimel v. California*, 395 U.S. 752, 763, 89 S.Ct. 2034, 23 L.Ed.2d 685 (1969), "[t]here is ample justification [following an arrest] . . . for a search of [an] arrestee's person . . . ." Therefore, Dowdye was justified under the search incident to arrest doctrine in continuing to search Blyden after recovery of the firearm and in seizing the additional items found during the continued search.<sup>8</sup> As a consequence, it follows that Blyden's inculpatory statements made at the police station were not excludable as the fruit of an unlawful arrest. Finally, we note that the officers' actions in subsequently transporting Blyden to the

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<sup>7</sup> We note that the officers were not required to formally advise Blyden immediately after recovering the firearm that he was "under arrest" in order for the arrest to be properly effectuated. See *Dunaway v. New York*, 442 U.S. 200, 212-13, 99 S.Ct. 2248, 60 L.Ed.2d 824 (1979) (stating that defendant need not be told he is under arrest for arrest to be valid).

<sup>8</sup> Blyden was not charged in the Amended Information with, or ultimately convicted of, any offense involving the marijuana or other seized items.

police station, taking his photograph, and otherwise booking him were taken in accordance with the lawful arrest which had occurred after Dowdye's recovery of the firearm.

Accordingly, we conclude that Blyden's Fourth Amendment rights were not violated and that Blyden's motion to suppress all physical evidence and his inculpatory statements was properly denied.

**C. The Trial Court Did Not Err in Admitting Dowdye's Pre-Trial Testimony**

As his second ground for appeal, Blyden contends that the trial court violated the Sixth Amendment's Confrontation Clause by permitting the People to read Dowdye's suppression hearing testimony into the record at trial. In support, Blyden argues that he did not have an adequate opportunity to confront Dowdye at the pre-trial suppression hearing because Blyden conducted only a limited direct examination of Dowdye. The People counter that Blyden's direct examination of Dowdye satisfies the right to confront adverse witnesses guaranteed by the Sixth Amendment. At trial, the court admitted Dowdye's prior testimony, finding that Dowdye was unavailable and that Blyden had an opportunity and similar motive at the suppression hearing to develop Dowdye's testimony.

The plain text of "[t]he Sixth Amendment's Confrontation Clause provides that, '[i]n all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him.'"<sup>9</sup> *Crawford v. Washington*, 541 U.S. 36, 42, 124 S.Ct. 1354, 158 L.Ed.2d 177 (2004) (quoting U.S. CONST. AMEND. VI). As the United States Supreme Court recognized in *Crawford*, "the principal evil at which the Confrontation Clause was directed was the civil-law mode of criminal procedure, and particularly its use of *ex parte* examinations as evidence against

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<sup>9</sup> The Sixth Amendment to the United States Constitution is applicable in the Virgin Islands pursuant to § 3 of the Revised Organic Act of 1954, as amended, 48 U.S.C. § 1561.

the accused,” and thus “[t]he Sixth Amendment must be interpreted with this focus in mind.” *Id.* at 50. Accordingly, the *Crawford* court held that “[t]estimonial statements of witnesses absent from trial have been admitted only where the declarant is unavailable, *and only where the defendant has had a prior opportunity to cross-examine.*” *Id.* at 59 (emphasis added).

In this case, the parties do not dispute the trial court’s decision to declare Dowdye unavailable.<sup>10</sup> Instead, the parties dispute whether Blyden had a prior opportunity to cross-examine Dowdye. During the May 3, 2007 hearing on Blyden’s motion to suppress, Blyden called Dowdye as a witness and questioned him on direct and re-direct examination rather than cross-examination. Contrary to Blyden’s contention, however, “[t]he opportunity to cross-examin[e] is not construed literally; rather the party must have the opportunity to develop the testimony through questioning.” 2 Kenneth S. Broun, *McCormick on Evidence* § 302 (6th ed.). In *Ohio v. Roberts*, 448 U.S. 56, 100 S.Ct. 2531, 65 L.E.2d 597 (1980), the United States Supreme Court was similarly faced with the admission of pre-trial suppression hearing testimony at trial. The defendant in *Roberts*, like Blyden, challenged the admission of the prior testimony on grounds that he had questioned the witness on direct examination rather than cross-examination. *See* 448 U.S. at 70. The *Roberts* Court concluded that the defendant’s questioning of the witness “afforded ‘substantial compliance with the purposes behind the confrontation requirement’ no less so than classic cross-examination.”<sup>11</sup> *Id.* (quoting *California v. Green*, 399

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<sup>10</sup> We note that courts have deemed a witness unavailable when a witness is already incarcerated and it is clear that the threat of contempt would be futile. *See, e.g., Gregory v. Sheldon County*, 220 F.3d 433, 449 (6th Cir. 2000) (“Any pressure upon the witness, or any pressure of threat applied to the witness by the trial court would undoubtedly have been unavailing as the witness is already serving a life sentence.”); *Rychart v. State*, 778 P.2d 229, 231 (Alaska Ct. App. 1989) (“In a case where the declarant is already incarcerated, it is not unreasonable for the trial judge to conclude that contempt proceedings would not motivate a witness to testify.”).

<sup>11</sup> Blyden argues that *Crawford* overruled *Roberts*’s acceptance of such prior testimony. However, as the People correctly argue, Blyden misconstrues *Crawford*’s impact on *Roberts*. *Crawford* abrogated *Roberts* only with respect

U.S. 149, 166, 90 S.Ct. 1930, 26 L.Ed.2d 489 (1970)). Specifically, the Court held that, although the defendant did not technically cross-examine the witness, the defendant partook of cross-examination as a matter of form, because his direct examination was replete with leading questions and because the defendant's questioning of the witness comported with the main purpose of cross-examination—i.e. to challenge the veracity of the witness's testimony and to determine whether the witness accurately perceived the matter testified to and whether the witness's statements convey their intended meaning. *See id.*

In this case, although he did not technically cross-examine Dowdye, we consider whether Blyden nevertheless partook of cross-examination as a matter of form. First, as in *Roberts*, a review of the suppression hearing testimony reveals numerous leading questions by defense counsel on direct and re-direct examination.<sup>12</sup> Indeed, the record indicates that counsel for the

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to *Roberts*'s rationale that former testimony is admissible where there are adequate indicia of reliability. *See Crawford*, 541 U.S. at 68-69. It is clear from a reading of *Crawford* that the United States Supreme Court in fact approved of the ultimate holding in *Roberts*. *See id.* at 58 ("Even our recent cases, in their outcomes, hew closely to the traditional line. [*Roberts*] admitted testimony from a preliminary hearing at which the defendant had examined the witness."), and 60 ("Although the results of our decisions have generally been faithful to the original meaning of the Confrontation Clause, the same cannot be said of our rationales." (citing *Roberts*)). *Accord Commonwealth v. Wholaver*, 989 A.2d 883, 903 (Pa. 2010) ("Thus, although the reliability of a prior statement is no longer an inquiry for purposes of satisfying the Confrontation Clause, the Court's rationale [in *Roberts*] that the preliminary hearing questioning served the function of cross-examination remains persuasive for purposes of evaluating whether *Crawford*'s cross-examination requirement has been met.").

<sup>12</sup> The following colloquies represent a few of the instances in which Blyden's counsel undertook leading questioning of Dowdye at the suppression hearing:

Q: Did you have any conversation with that individual before you placed handcuffs on him?

A: Only my partner. She ordered him down on the ground, and he complied.

Q: And that was not a conversation that was an order, correct?

.....

Q: So the individual that you detained could not leave?

A: No.

(Hr'g Tr., 51-52, May 3, 2007.)

Q: When you went upstairs with Mr. Blyden at that time did you give him any documents to sign for his advice of rights?

A: No, I didn't.

Q: Don't you believe that would have been prudent, sir?

People objected to the leading nature of Blyden's questions on at least one occasion. (Hr'g Tr., 53.) As to whether Blyden's examination of Dowdye comported with the main purposes of cross-examination, we note that Blyden's counsel was not required to question Dowdye rigorously regarding his veracity or credibility because Dowdye's suppression hearing testimony was largely favorable to Blyden. The suppression hearing transcript demonstrates that Blyden's counsel extensively questioned Dowdye concerning the manner of the arrest and whether Blyden had been read his rights prior to making certain inculpatory statements to the police. The transcript also illustrates that the majority of Dowdye's responses clearly benefited Blyden's motion to suppress. The following colloquy is illustrative:

Q: Did you have any conversation with that individual before you placed handcuffs on him?

A: Only my partner. She ordered him down on the ground, and he complied.

Q: And that was not a conversation that was an order, correct?

A: Yes.

Q: And were - - when he was ordered down on the ground were guns drawn at that time?

A: Yes.

Q: So the individual that you detained could not leave?

A: No.

Q: After the individual was placed in handcuff was he read his rights?

A: Not at that time.

....

Q: Was a document - - is there a document that you signed and the individual signed evidencing that you read him his rights?

A: No.

(Hr'g Tr. 51-53.) More importantly, there is no indication in the hearing transcript of any ruling

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....

Q: Isn't it normal procedure when you advise someone of their rights for them to sign knowing that they have been advised of their rights?

A: Yes.

Q: So you did not follow normal procedure with Mr. Blyden to ensure that he signs saying that you read him his rights?

A: No, I did not.

(Hr'g Tr. 56.)

review of the trial testimony leads us to conclude that, most, if not all, of Dowdye's prior testimony was cumulative. *See, e.g., Bertrand v. State*, 214 S.W.3d 822, 826 (Ark. 2005) ("[I]t is clear to this court [the witness's] testimony in placing [defendant] at the crime scene was cumulative. . . . Hence, even had it been error to read [the] prior testimony to the jury, the error was harmless."); *People v. Horton*, 358 N.E.2d 1121, 1124 (Ill. 1976) ("We have examined the transcript of [the witness's] testimony and find nothing therein which was not covered by testimony of other witnesses." (considering confrontation issue)). Specifically, the inculpatory statements allegedly made by Blyden were testified to at trial by Detective Delbert Phipps and Detective Price. Additionally, numerous witnesses indicated on cross-examination by defense counsel that Blyden may not have been read his rights prior to making at least one of the inculpatory statements. Moreover, the jury was presented with expert testimony that Blyden had tested positive for gunshot residue and that the firearm allegedly seized from Blyden matched the bullets and casings recovered from the victims and the crime scene. Thus, clearly there was ample other evidence, including testimonial and physical evidence, corroborating Dowdye's pre-trial testimony. Furthermore, it does not appear that Dowdye's testimony was particularly important to the People's case.<sup>14</sup>

Accordingly, this Court holds that the trial court did not err in admitting Dowdye's prior testimony, and that, even if such admission was in error, it was nevertheless harmless.

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<sup>14</sup> We note that Blyden argues in his brief that the admission of Dowdye's prior testimony prevented him from impeaching Dowdye's credibility with his felony conviction. However, a jury had already convicted Dowdye on March 4, 2007, two months prior to the May 3, 2007 suppression hearing. Although Dowdye's Judgment and Commitment was not entered until May 9, 2007, he was orally sentenced on April 4, 2007. Nevertheless, Blyden chose not to question Dowdye at the suppression hearing concerning his recent conviction. Nor did Blyden attempt to introduce the record of Dowdye's conviction at trial or request that the trial judge take judicial notice of Dowdye's conviction.

**D. Admission of the Firearm Was Not an Abuse of Discretion**

As his third ground for appeal, Blyden maintains that, pursuant to Federal Rule of Evidence 901(a), the firearm should not have been admitted into evidence because no witness testified that the firearm removed from Blyden was the same firearm offered at trial. The People counter that the trial court did not abuse its discretion in admitting the firearm because a chain of custody was properly established. Specifically, the People presented testimony establishing that Dowdye gave the firearm to Forensic Investigator Daphne Rouse-Carty (“Rouse-Carty”) which she promptly marked with her initials, that Rouse-Carty sent the firearm, the bullets recovered from Walker’s body and multiple spent casings from the crime scene to the Federal Bureau of Investigation (“FBI”) for testing, and that the firearm, bullets and casings were otherwise securely locked in her office prior to trial. Additionally, an expert witness—a firearms and toolmarks examiner from the FBI—testified that he had returned the firearm admitted at trial to Rouse-Carty after testing it and determining that it functioned properly and that it positively matched numerous bullets and spent casings recovered from the crime scene. (Trial Tr. vol. II, 191-98.)

As we have repeatedly stated, the 1953 version of the Uniform Rules of Evidence (“URE”), codified as 5 V.I.C. §§ 771-956, apply to evidentiary issues in local Virgin Islands courts.<sup>15</sup> See, e.g., *Phillips v. People*, Crim. No. 2007-037, 2009 WL 707182, at \*7-9 (V.I. Mar. 12, 2009). Although the Federal Rules of Evidence (“FRE”) require the authentication of

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<sup>15</sup> We note that on March 26, 2010 the Legislature approved, and on April 7, 2010 the Governor signed into law, Act No. 7161, section 15 which repealed the local URE. However, because Blyden’s trial concluded before the URE was repealed, this Court applies on appeal the evidentiary rules that were in effect at the time Blyden was tried in the Superior Court. See, e.g., *Black v. M&W Gear Co.*, 269 F.3d 1220, 1228 n.3 (10th Cir. 2001) (declining to apply amended rules of evidence on appeal when prior rules had been in effect during trial); *State v. Myers*, 958 P.2d 187, 191 (Or. Ct. App. 1998) (explaining that applying amended rules of evidence to appeals of trial court orders decided when prior rules were in effect constitutes “a moving of the proverbial goal posts after the contest is over” that “raises serious questions of due process.”).

writings and non-writings, the 1953 version of the URE provide only for the authentication of writings. Specifically, FRE 901(a) has a general requirement of authentication of any piece of evidence—whether a writing or non-writing. *See, e.g., Elkin v. Fauver*, 969 F.2d 48, 51-52 (3d Cir. 1992) (analyzing whether chain of custody evidence was sufficient for admission of physical evidence under FRE 901). In addition, FRE 902, 903, and 1001-1007 govern the authentication of writings, recordings, and photographs. In contrast, the local rules of evidence governing authentication are found in 5 V.I.C. §§ 951-956 and govern only writings.<sup>16</sup>

However, 5 V.I.C. § 778 provides that a party may “introduce before the jury evidence relevant to weight and credibility.” As noted above, the People presented testimony establishing the manner in which the police collected, marked, and maintained the firearm prior to trial. Thus, even though the local rules of evidence did not require authentication of the firearm prior to its admission, the People nevertheless presented ample evidence concerning the weight the jury should give to the firearm offered into evidence, including expert testimony that the firearm admitted at trial matched bullets and casings recovered from the crime scene and the bodies of the shooting victims. Additionally, section 778 also permitted Blyden to introduce evidence to the jury tending to show that the People had failed to adequately prove that the firearm admitted into evidence was the firearm Dowdye seized from him. In this case, the transcript reveals that Blyden’s counsel amply expressed to the jury that the People had failed to connect the firearm to Blyden. In her closing argument, counsel stated:

Detective Dowdye took up Mr. Blyden. Detective Rashid went around; she heard “gun.” She did not see where the gun was retrieved. She did not see what type of gun was retrieved. . . . And she did not see Dowdye retrieve the weapon. Crucial. She did not see it.

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<sup>16</sup> We observe that the URE were heavily amended in 1974 and 1986 to bring the rules into near conformity with the FRE. Currently, URE 901(a), like FRE 901(a), has a general requirement of authentication of any piece of evidence.

(Trial Tr. vol. IV, 153.) Defense counsel again pointed out the purportedly tenuous connection to the firearm when she commented on the property receipt Blyden had signed: “I think the Government’s hoping this form signed by Mr. Blyden is proof that the weapon is his. . . . It is not proof that it is his.” (*Id.* at 158-59.) Additionally, defense counsel avidly maintained that the People had failed to connect the firearm to Blyden through Dowdye’s testimony:

The weapon that the Government has been publishing to you and showing to you was here on island and available, but never shown to Detective Dowdye. But the Government wants to make a leap from the alleged weapon that was taken by Mr. Dowdye to say that is that weapon, when they had the opportunity to present it to the only person that knows what weapon was recovered, if a weapon was recovered. They choose not to do that. Why? Because they didn’t want to call Detective Dowdye, because he is tainted. . . . His testimony was, I recovered a weapon but to be honest with you I can’t remember whether it was a revolver or what. . . . They had an opportunity to confirm that weapon. We don’t know where it came from. We don’t know if that’s the weapon because Detective Dowdye did not identify it . . . .

(*Id.* at 161-62.) Most importantly, on cross-examination of Rouse-Carty—upon whose testimony the firearm was admitted into evidence—Blyden’s counsel elicited testimony showing that there was no confirmation that the weapon given to the witness and placed in the police evidence locker was actually the firearm recovered from Blyden.<sup>17</sup> Despite defense counsel’s cross-examination of Rouse-Carty and her fervent arguments concerning the weight the jury should give to the firearm, the jury clearly chose to believe the People’s evidence concerning the authenticity of the firearm and convicted Blyden of all counts related to the firearm.

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<sup>17</sup> The following colloquy took place:

Q: You indicated that you received Exhibit Number 2 from Detective Dowdye. You do not know where Detective Dowdye received that firearm from; isn’t that correct?

A: Correct.

Q: And you were not present when Detective Dowdye retrieved that firearm?

A: No, I was not.

Q: And you have no knowledge, no direct knowledge, as to where that firearm came from?

A: No.

(Trial Tr. vol. IV, 64.)

Accordingly, because the local rules of evidence do not require specific authentication of non-writings and because both the People and Blyden made full use of the procedure suggested in 5 V.I.C. § 778, we hold that the trial court did not abuse its discretion in admitting the firearm into evidence.

**E. Admission of Blyden's Inculpatory Statements Did Not Violate the Fifth Amendment**

As his final ground for appeal, Blyden argues that the trial court improperly admitted several inculpatory statements he had made after being transported to the police station. Blyden maintains that Dowdye did not read him his rights after taking him into custody and that he did not knowingly and voluntarily waive his Fifth Amendment rights.<sup>18</sup> The People counter that any statements Blyden made while in police custody were admissible spontaneous utterances because Blyden had earlier been informed of his *Miranda*<sup>19</sup> rights.

At the outset, we note that Blyden admits on appeal that he never objected *at trial* to the admission of the inculpatory statements. (Appellant Br. 26, 29.) The record reveals, however, that Blyden's pre-trial motion to suppress sought suppression of his inculpatory statements, in addition to all of the physical evidence seized by the police. At the suppression hearing, the trial

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<sup>18</sup> The Fifth Amendment to the United States Constitution is applicable in the Virgin Islands pursuant to § 3 of the Revised Organic Act of 1954, as amended, 48 U.S.C. § 1561.

<sup>19</sup> In *Miranda v. Arizona*, 384 U.S. 436, 478-79, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966), the United States Supreme Court held that:

when an individual is taken into custody or otherwise deprived of his freedom by the authorities in any significant way and is subjected to questioning, the privilege against self-incrimination is jeopardized. Procedural safeguards must be employed to protect the privilege and unless other fully effective means are adopted to notify the person of his right of silence and to assure that the exercise of the right will be scrupulously honored, the following measures are required. He must be warned prior to any questioning that he has the right to remain silent, that anything he says can be used against him in a court of law, that he has the right to the presence of an attorney, and that if he cannot afford an attorney one will be appointed for him prior to any questioning if he so desires. Opportunity to exercise these rights must be afforded to him throughout the interrogation. After such warnings have been given, and such opportunity afforded him, the individual may knowingly and intelligently waive these rights and agree to answer questions or make a statement. But unless and until such warnings and waiver are demonstrated by the prosecution at trial, no evidence obtained as a result of interrogation can be used against him.

court held that the statements were admissible because they were made voluntarily and not as a result of in-custody interrogation. (H'rg Tr. 78-79.) "Generally . . . the overruling of a pretrial motion to suppress the use at the trial of particular evidence preserves the point and renders it unnecessary again to object when such evidence is offered at the trial." *Lawn v. United States*, 355 U.S. 339, 353, 78 S.Ct. 311, 320, 2 L.E.2d 321 (1958). Thus, despite Blyden's failure to object to the admission of his statements at trial, this issue was properly preserved for appellate review when the trial court denied Blyden's pre-trial motion to suppress the inculpatory statements after the suppression hearing. See, e.g., *State v. Van Ackeren*, 265 N.W.2d 675, 678 (Neb. 1978) ("Where a defendant has filed a timely pretrial motion to suppress evidence, and such motion is denied by the District Court after hearing, an objection at trial to the introduction of the evidence, or the renewal of the motion to suppress, is not essential to preserve the question for review."); *State v. Hazleton*, 330 A.2d 919, 922 (Me. 1975) ("[W]e decide that a pre-trial ruling denying a . . . motion to suppress ipso facto saves defendant's point for appellate review in terms of the record of the pretrial suppression hearing; defendant need raise no further objection at trial when the matters previously sought to be suppressed are offered (sic) as evidence . . .").

Having established that this issue is properly before this Court, we must determine whether the trial court's admission of the inculpatory statements at trial violated Blyden's rights under the Fifth Amendment. Importantly, it is well established that a spontaneous utterance, not prompted by a police interrogation, made by a suspect who is plainly in custody is admissible even if the suspect has not waived his *Miranda* rights. See *Miranda v. Arizona*, 384 U.S. 436, 478, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966) ("Any statement given freely and voluntarily without any compelling influence is, of course, admissible into evidence. . . . Volunteered statements of any kind are not barred by the Fifth Amendment and their admissibility is not affected by our

holding today.”); *see also United States v. Avery*, 717 F.2d 1020, 1025 (8th Cir. 1983) (collecting cases). Indeed, “a suspect who has received and understood the *Miranda* warnings, and has not invoked his *Miranda* rights, waives the right to remain silent by making an uncoerced statement to the police.” *Berghuis v. Thompkins*, \_\_ S.Ct. \_\_, 2010 WL 2160784, at \*14 (June 1, 2010).

As we have held above, Blyden was lawfully arrested when the recovery of the firearm ripened the officers’ reasonable suspicion to stop and frisk into probable cause for an arrest. According to Dowdye’s suppression hearing testimony, which was read at trial, Dowdye informed Blyden of his *Miranda* rights in the police station parking lot but did not have Blyden sign an advice of rights form. At the police station, Blyden was seated at Dowdye’s desk waiting to be taken to the Major Crimes Unit when Dowdye asked Blyden some questions about the previous, unrelated shooting of Blyden’s brother. Significantly, Blyden testified at trial that he did not respond to Dowdye’s questions about his brother’s shooting. (Trial Tr. vol. IV, 107.)<sup>20</sup> However, sometime thereafter, Blyden uttered that “he saw one of the guys who had shot his younger brother looking at him so he doubled back and put some shots in him just like they did his brother.” (Trial Tr. vol. IV, 33.) Blyden also uttered that “if it takes him [twenty] years he is going to murder those mother fuckers himself.” (*Id.* at 35.) The record clearly establishes that, after being transported to the Major Crimes Unit, Corporal Pierre Bedminster (“Bedminister”) read Blyden his *Miranda* rights, and also had Blyden sign an advice of rights form confirming that he had been warned of his rights. (*Id.* at 118-19.) Thereafter, the police were preparing to transfer Blyden from the Major Crimes Unit to the prison when he stated without prompting, “To see that I could have been going home to sleep in my warm bed tonight instead of this stinking

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<sup>20</sup> When asked at the suppression hearing whether he “ha[d] any conversations while Detective Dowdye was questioning [him],” Blyden testified “No.”

jail cell . . . it's worth it because the fucker violated." (Trial Tr. vol. II, 253-54.)

Under the circumstances of this case, the statements made by Blyden while he was waiting to be transferred to the Major Crimes Unit and while he was being prepared for transfer to the prison were admissible at trial under *Miranda* even though Blyden did not waive his rights. See 384 U.S. at 478. It is evident from the record that the second inculpatory statement was entirely spontaneous and not made in response to any police questioning. There is nothing in the record to indicate that Blyden did not understand his *Miranda* rights. Additionally, although the record reveals that Dowdye asked Blyden questions concerning his brother's unrelated shooting, Blyden himself testified that he did not respond to Dowdye's questions. Notably, Blyden's initial silence may be viewed as evidence that he in fact understood his right to remain silent. Consequently, Blyden's first inculpatory statement was also clearly spontaneous and not made in response to any police interrogation. Accordingly, we conclude that the trial court did not err in finding that Blyden's statements were made voluntarily and not as a result of custodial interrogation.<sup>21</sup>

**F. Blyden's Conviction for Unauthorized Possession of Ammunition Requires Reversal**

The People charged Blyden with, and the jury found him guilty of, unauthorized possession or sale of ammunition pursuant to 14 V.I.C. § 2256. However, this Court has previously observed that, although "Virgin Islands law proscribes possession of ammunition

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<sup>21</sup> However, even if Blyden's earlier statement was not clearly admissible, "[w]here a subsequent confession is obtained constitutionally, the admission of prior inadmissible confessions may constitute harmless error." *United States v. Johnson*, 816 F.2d 918, 923 (3d Cir. 1987). See also *Bryant v. Vose*, 785 F.2d 364, 922-23 (1st Cir. 1986) (holding that admission of oral statement in violation of *Miranda* was harmless error because it was cumulative of subsequent properly-admitted written statement); *United States v. Packer*, 730 F.2d 1151, 1157 (8th Cir. 1984) (holding that admission of statements obtained in violation of *Miranda* was harmless error given overwhelming evidence of guilt, including constitutionally-obtained subsequent statements and physical evidence). Thus, even if, as Blyden contends, he was not read his rights prior to him making his first statement, Blyden's first statement would be cumulative of his properly-admitted subsequent statement. Moreover, it is clear from our review of the trial transcript that the People presented other overwhelming evidence of Blyden's guilt, including ample physical and testimonial evidence. Therefore, any error in the admitting the first statement would have been harmless.

without authorization . . . it does not establish a mechanism for authorizing possession of ammunition.” *Smith v. People*, Crim. No 2007-078, 2009 WL 1530694, at \*4 (V.I. May 19, 2009) (citing *United States v. Daniel*, 518 F.3d 205, 208 (3d Cir. 2008)) (reversing conviction for unauthorized possession of ammunition); *see also Mulley v. People*, Crim. No. 2007-071, 2009 WL 1810918, at \*1 (V.I. June 23, 2009) (same). Significantly, “[w]ithout any such mechanism . . . the People could not show that [Blyden] was not authorized to possess ammunition.” *Smith*, 2009 WL 1530694, at \*4. Furthermore, although Blyden has not challenged the sufficiency of the evidence on appeal, the People’s failure to prove an essential element of a crime is a “fundamental error which may be noticed by an appellate court notwithstanding the defendant’s failure to raise it . . . .” *Stevens v. People*, Crim. No. 2007-126, 2009 WL 2984057, at \*9 (V.I. Sept. 15, 2009) (quoting *United States v. Gaydos*, 108 F.3d 505, 509 (3d Cir. 1997)) (reversing conviction for unauthorized possession of ammunition). Accordingly, we reverse Blyden’s conviction for unauthorized possession of ammunition.


### III. CONCLUSION

First, this Court holds that Blyden’s Fourth Amendment rights were not violated by the admission of the physical evidence at trial, because the firearm was obtained pursuant to a valid *Terry* stop and the additional seized items were obtained pursuant to a search incident to a lawful arrest. Second, we do not find any Sixth Amendment error in admitting Dowdye’s suppression hearing testimony at trial; however, any error would have been harmless because the pre-trial testimony was, at most, cumulative of other testimony properly admitted at trial. Third, we hold that the admission of the firearm into evidence was not an abuse of discretion. Fourth, we hold that there was no Fifth Amendment violation in the admission of Blyden’s inculpatory statements, because both statements were voluntarily and spontaneously made after Blyden was

advised of his rights. Finally, we hold that our prior decisions require us to reverse Blyden's conviction for unauthorized possession of ammunition. Accordingly, we affirm the Superior Court's September 25, 2007 Judgment as to all counts, except that we reverse Blyden's count eight conviction for unauthorized possession of ammunition pursuant to 14 V.I.C. § 2256 and vacate the portion of his sentence related thereto.<sup>22</sup>

Dated this 7th day of July, 2010.

BY THE COURT:

  
\_\_\_\_\_  
RHYS S. HODGE  
Chief Justice

ATTEST:

VERONICA J. HANDY, ESQ.  
Clerk of the Court

By:   
\_\_\_\_\_  
Deputy Clerk

Dated: July 7, 2010

<sup>22</sup> Our reversal of the unauthorized possession of ammunition charge does not require a remand to the trial court for resentencing because Blyden's five-year prison sentence for the improper ammunition conviction runs concurrent to his sentence of life imprisonment without parole for his first degree murder conviction which we have affirmed herein.

1           A. It was an unmarked police  
2 vehicle.

3           Q. Were you in uniform?

4           A. No, plain clothes.

5           Q. Where were you going at that  
6 particular point in time?

7           A. We were traveling to the  
8 Schneider Regional to follow up on a  
9 victim that was shot.

10          Q. And who was that victim?

11          A. The victim is -- I know him  
12 as Exodus.

13          Q. What is his last name?

14          A. Blyden.

15          Q. Any relationship to Daryl  
16 Blyden?

17          A. Yes.

18                    ATTORNEY TODMAN: Objection,  
19 Your Honor.

20                    THE COURT: What's the  
21 objection?

22                    ATTORNEY TODMAN: Your  
23 Honor, I take back my objection.

24                    THE COURT: Very well.  
25 Objection withdrawn.

*Persha S. Warner, RPR*

*Official Court Reporter II*

045

1 BY ATTORNEY HOLDER:

2 Q. Now, while you were on the  
3 way to the hospital what happened?

4 A. While traveling towards the  
5 hospital there was a transmission via  
6 radio from Central Dispatch saying there  
7 was some shots fired, someone had gotten  
8 shot in the area of Savan. Since we  
9 were the detectives on duty at that  
10 time, we decided to travel to that area.  
11 Upon arrival to the area of the  
12 community center by Savan, Central  
13 Dispatch stated again that the suspect  
14 that fired the shots was running in the  
15 area of the White House. Detective  
16 Dowdye, who was the driver at the time,  
17 reversed the vehicle and as we reversed  
18 we traveled on Vester Gade northward.  
19 While traveling northward, Central gave  
20 us a description of the suspect stating  
21 that it was a black male wearing a blue  
22 shirt, jeans, took off riding on a  
23 bicycle. ✓

24 While traveling on Vester  
25 Gade, we observed a black male coming

*Persha S. Warner, RPR*

*Official Court Reporter II*

1 from in the bush area, the gut area,  
2 walking at a fast pace. He also had on  
3 the clothing, a blue shirt and a jeans  
4 pants. At that point Detective Dowdye  
5 and myself got out of the police vehicle  
6 with our guns drawn. We told, we  
7 identified ourselves. We told the  
8 individual "Police. Get down on the  
9 ground. Get down on the ground.  
10 Police." The individual got down on the  
11 ground. Detective Dowdye covered me.  
12 While he had me covered, I went and I  
13 was going to put the handcuffs on him.  
14 I placed one handcuff on him. While I  
15 was going to place the second cuff on  
16 the individual, he jerked away his arm.  
17 I stepped away. And at that point  
18 Detective Dowdye and myself indicated  
19 and ordered him to put his hand back on  
20 his back. And I went back again,  
21 Detective Dowdye covered me, and I  
22 placed the handcuffs on his other arm.  
23 Detective Dowdye then got  
24 the individual off the ground, and I  
25 went into the vehicle and transmitted

*Persha S. Warner, RPR*

*Official Court Reporter II*

047

1 that we had the suspect in custody and  
2 we needed a cage unit. Detective Dowdye  
3 then patted down, conducted a search of  
4 the individual who was now identified --

5 ATTORNEY TODMAN: Objection,  
6 Your Honor. Narrative. There is no  
7 question before the witness.

8 BY ATTORNEY HOLDER:

9 Q. Tell the jury what happened  
10 when Detective Dowdye patted the  
11 individual down.

12 A. When Detective Dowdye patted  
13 down the individual, he recovered a gun,  
14 along with some money. I think there  
15 was some marijuana and a black tam.

16 Q. Now, I show you what's been  
17 marked as Government's Exhibit 2. What  
18 is that?

19 THE COURT: Put it back in  
20 the bag.

21 ATTORNEY TODMAN: Objection,  
22 Your Honor. This witness has virtually  
23 shown the item to the jury.

24 THE COURT: Very well. You  
25 may continue.

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1 ATTORNEY HOLDER: Okay.

2 BY ATTORNEY HOLDER:

3 Q. I show you -- without  
4 showing it to the jury, would you please  
5 look at Government's Exhibit 2.

6 A. Uhm-hmm.

7 Q. What is that?

8 A. It's a black .38 caliber  
9 gun.

10 Q. Have you ever seen that gun  
11 before?

12 A. On the night that Mr. Blyden  
13 was apprehended Detective Dowdye had it,  
14 had taken it off of him.

15 Q. Do you see the person that  
16 Detective Dowdye took that gun from in  
17 this courtroom?

18 A. Yes, I do.

19 Q. Would you please point to  
20 him and describe an article of clothing  
21 that he's wearing.

22 A. He's sitting by defense's  
23 counsel's table. He's an  
24 African-American rasta male, goatee salt  
25 and pepper, wearing a grey jacket,

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1           A. Correct.

2           Q. And while you were inside of  
3 the vehicle Officer or Detective Dowdye  
4 was with Mr. Blyden?

5           A. In front of the vehicle.

6           Q. In front of the vehicle.  
7 Which part of the vehicle were you?

8           A. I was inside on the radio  
9 transmitting. Detective Dowdye was  
10 outside with Mr. Blyden on the hood of  
11 the vehicle searching him.

12          Q. Okay. And you could see  
13 Detective Dowdye with Mr. Blyden?

14          A. Yes, because at the time it  
15 was just both of us, so I had to make  
16 sure Dowdye was covered as well.

17          Q. And you heard -- you didn't  
18 see Detective Dowdye pull out a weapon  
19 off of Mr. Blyden; isn't that correct?  
20 You just heard Detective Dowdye say  
21 "gun"; isn't that correct?

22          A. That's correct.

23          Q. So, you did not see him  
24 retrieve a weapon? You heard Detective  
25 Dowdye say "gun"?

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1 Judge, I think that the record should be  
2 clear. And I believe, Judge, in order  
3 to protect this defendant's right to  
4 confrontation, which we're talking about  
5 here, Mr. Dowdye should have the right  
6 to consult with an attorney appointed by  
7 the Court and then make his decision as  
8 to whether or not he will testify. I  
9 think he should not be deprived of  
10 counsel at this time.

11 THE COURT: Whether he is  
12 being deprived of counsel he has  
13 indicated to me it makes no difference,  
14 he will not testify even after  
15 consulting with counsel.

16 Is that your position, Mr.  
17 Dowdye?

18 THE WITNESS: Yes, sir.

19 ATTORNEY HOLDER: Okay.  
20 Then I have nothing further. I will  
21 renew my application.

22 THE COURT: Attorney  
23 Todman?

24 CROSS-EXAMINATION

25 BY ATTORNEY TODMAN:

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1           Q. Mr. Dowdye, for the record,  
2 you were not subpoenaed by the  
3 Government of the Virgin Islands now  
4 known as the People of the Virgin  
5 Islands to testify in the matter of the  
6 People of the Virgin Islands versus Mr.  
7 Daryl Blyden; is that correct?

8           A. No, I wasn't given anything.  
9 I was in my bed sleeping yesterday when  
10 they call me. No, sorry. I was going  
11 to rec yesterday when they call me down  
12 here. I was in my bed sleeping this  
13 morning when they call me to come here  
14 just now.

15           Q. So, you were not subpoenaed?

16           A. No.

17           ATTORNEY TODMAN: Thank  
18 you, sir.

19           THE COURT: A person in  
20 custody is not subject to subpoena  
21 unless by order of the Court. Very  
22 well. Anything else of Mr. Dowdye?

23           ATTORNEY HOLDER: Judge, I  
24 renew my application based on a --

25           THE COURT: Thank you, Mr.

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1 Dowdye, you may be excused.

2 THE WITNESS: Thank you,  
3 Your Honor.

4 THE COURT: Okay.

5 ATTORNEY HOLDER: Judge,  
6 Mr. Dowdye formally testified in this  
7 proceeding, People of the Virgin Islands  
8 versus Daryl Blyden. There was a  
9 suppression hearing held to determine  
10 the issues surrounding the facts and  
11 circumstances of the seizure of this  
12 weapon by Joel Dowdye. At that  
13 particular point in time counsel had an  
14 opportunity to fully cross-examine this  
15 witness. Counsel had an opportunity to  
16 fully cross-examine this witness. I  
17 think pursuant to my application, Judge,  
18 pursuant to Rule 804(b)(1), I would like  
19 to have an opportunity to have Mr.  
20 Dowdye's testimony, his direct and cross  
21 and recross and redirect, whatever, his  
22 entire testimony, of that proceeding on  
23 May 3, 2007 read to the jury.

24 THE COURT: May I hear your  
25 objection, Attorney.

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1                   ATTORNEY TODMAN: Your  
2 Honor, the only hearsay exception would  
3 be former testimony, would be the  
4 testimony given as a witness at another  
5 hearing of the same or a different  
6 proceeding, or in a deposition taken in  
7 compliance with law in the course of the  
8 same or another proceeding.

9                   It appears that that  
10 hearsay exception may have, may or could  
11 have applied. However, the Government  
12 never chose to seek the testimony of the  
13 witness that they are attempting to  
14 call, Your Honor, never consulted with  
15 that witness. It is only -- they had no  
16 plans of calling that witness, Your  
17 Honor, until yesterday afternoon when  
18 they called him from the Bureau of  
19 Corrections and this morning, as he  
20 stated, when they took him from his bed.

21                   The Government failed to do  
22 what they needed to have done, Your  
23 Honor, and now they are attempting to do  
24 it through the back door, Your Honor.  
25 They had no intention of using the

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1 testimony of Joel Dowdye.

2 THE COURT: I find that the  
3 witness, Mr. Joel Dowdye, is unavailable  
4 in that he persists in refusing to  
5 testify concerning his investigation on  
6 the charges against Mr. Blyden. I find  
7 that there is no compulsion that the  
8 Court can use to compel the testimony of  
9 Mr. Dowdye. And under the circumstances  
10 I declare him as an unavailable witness.  
11 And pursuant to 804(b)(1) I would permit  
12 the former testimony because the Court  
13 finds that at the suppression hearing  
14 the defendant had an opportunity and  
15 similar motive to develop the testimony  
16 by direct, cross or redirect  
17 examination. And in fact the testimony  
18 of Mr. Dowdye was challenged and  
19 explored through cross-examination at  
20 the hearing. And the Court will permit  
21 the testimony to be introduced.

22 Do you have the transcript?

23 ATTORNEY HOLDER: No, I  
24 don't, Judge. I have inquired of the  
25 stenographer who is present here in

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1 THE COURT: Ladies and  
2 gentlemen of the jury, the witness, Joel  
3 Dowdye, is unable to be present  
4 personally in court today. However,  
5 Detective Joel Dowdye did testify in a  
6 prior proceeding before the Court, and  
7 the Court has permitted the Government  
8 to present his testimony to you.

9 You may call Joel Dowdye.

10 ATTORNEY HOLDER: Judge,  
11 I'm going to instruct the case agent to  
12 start reading from the swearing in of  
13 Mr. Dowdye or the colloquy.

14 THE COURT: You may  
15 proceed.

16 ATTORNEY HOLDER: With the  
17 colloquy, Judge, or just from the  
18 swearing in?

19 THE COURT: After being  
20 sworn.

21 As you may have gathered,  
22 Ladies and gentlemen of the jury, Mr.  
23 Dowdye was sworn before giving this  
24 testimony. You may proceed.

25 MS. BEDMINISTER: Good

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1 morning.

2 THE JURORS: Good morning.  
3 [Whereupon, the transcript  
4 is being read into the record by  
5 Attorney Holder and Case Agent Roselyn  
6 Bedminister.]

7 "DIRECT EXAMINATION

8 BY ATTORNEY TODMAN:

9 Q. Good afternoon, Mr. Dowdye.  
10 Could you please state your name.

11 A. Joel Dowdye.

12 ATTORNEY TODMAN: Objection,  
13 Your Honor.

14 THE COURT: You have to  
15 read exactly as it states. What page  
16 are you on?

17 ATTORNEY HOLDER: Page  
18 three.

19 THE COURT: You should be  
20 on page three.

21 ATTORNEY HOLDER: This is  
22 questioning by Attorney Todman.

23 Q. "Good afternoon, Mr. Dowdye.  
24 Could you please state your name.

25 A. Joel Benjamin Dowdye.

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1 Q. Okay. Well, you state, well  
2 you said detained. I asked if you made  
3 an arrest, you said detained. How did  
4 you detain that individual?

5 A. Oh, okay. I detained the  
6 individual in the area of Savan by the  
7 basketball court.

8 Q. How did you do that  
9 detention?

10 A. Handcuffs.

11 Q. Did you have any  
12 conversation with that individual before  
13 you placed handcuffs on him?

14 A. Only my partner. She  
15 ordered him down on the ground and he  
16 complied.

17 Q. And that was not a  
18 conversation, that was an order,  
19 correct?

20 A. Yes.

21 Q. And when he was ordered down  
22 on the ground were guns drawn at that  
23 time?

24 A. Yes.

25 Q. So, the individual that you

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1       *detained could not leave?*

2             A.   *No.*

3             Q.   *After the individual was*  
4 *placed in handcuffs was he read his*  
5 *rights?*

6             A.   *Not at that time.*

7             Q.   *When was the individual read*  
8 *his rights?*

9             A.   *I advised him of his rights*  
10 *down in the parking lot where he exited*  
11 *the police unit, a marked police unit.*

12            Q.   *Was a document -- is there a*  
13 *document that you signed and the*  
14 *individual signed evidencing that you*  
15 *read him his rights?*

16            A.   *No.*

17            Q.   *Do you remember who*  
18 *transported the individual when he was*  
19 *placed in handcuffs to the police*  
20 *station?*

21            A.   *No, I can't recall.*

22            Q.   *Did you see --*

23                    THE COURT:   *You may*  
24 *continue the question.*

25            BY ATTORNEY HOLDER:

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1 BY ATTORNEY HOLDER:

2 Q. Officer Dowdye, when you  
3 took this defendant, when you detained  
4 this defendant, you removed certain  
5 property from him; is that correct?

6 A. Yes.

7 Q. Would it be correct you  
8 removed the .38 special caliber  
9 revolver?

10 A. I removed a weapon, but to  
11 be honest with you I can't remember  
12 whether it was a revolver or what.

13 Q. Okay. Did you remove a .38  
14 special? Did you remove spent casings  
15 from that revolver?

16 A. No.

17 Q. Did you remove a plastic bag  
18 containing eight small plastic baggies  
19 of green, leafy substance which appeared  
20 to be marijuana?

21 A. Yes.

22 Q. What happened to the  
23 marijuana?

24 A. I don't know.

25 Q. Did you remove any United

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