

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

UNITED STATES OF AMERICA, )  
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 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 GELEAN MARK, )  
 VERNON FAGAN, ) Criminal No. 2006-80  
 WALTER ELLS, )  
 DORIAN SWAN, )  
 KELVIN MOSES, )  
 HENRY FREEMAN, and )  
 EVERETTE MILLS, )  
 )  
 Defendants. )  
 )  
 \_\_\_\_\_ )

**ATTORNEYS:**

**Delia L. Smith, AUSA**  
St. Thomas, U.S.V.I.  
*For the plaintiff,*

**Pamela L. Colon, Esq.**  
St. Croix, U.S.V.I.  
*For defendant Gelean Mark,*

**Kevin D'Amour, Esq.**  
St. Thomas, U.S.V.I.  
*For defendant Vernon Fagan,*

**Carl R. Williams, Esq.**  
St. Thomas, U.S.V.I.  
*For defendant Walter Ells,*

**Jesse Gessin, AFPD**  
St. Thomas, U.S.V.I.  
*For defendant Dorian Swan,*

**Andrew L. Capdeville, Esq.**  
St. Thomas, U.S.V.I.  
*For defendant Kelvin Moses,*

**Dale L. Smith, Esq.**

New York, NY

*For defendant Henry Freeman,*

**Arturo R. Watlington, Jr., Esq.**

St. Thomas, U.S.V.I.

*For defendant Everette Mills.*

**MEMORANDUM OPINION**

**GÓMEZ, C.J.**

Before the Court are the suppression motions of defendants Gelean Mark ("Mark"), Vernon Fagan ("Fagan"), Walter Ells ("Ells"), Dorian Swan ("Swan"), Kelvin Moses ("Moses"), Henry Freeman ("Freeman"), and Everette Mills ("Mills") (the "defendants"). Each defendant seeks suppression of any communications intercepted by wiretap pursuant to Title III of the Omnibus Crime Control and Safe Streets Act, 18 U.S.C. §§ 1810 *et. seq.*, ("Title III"). Additionally, defendant Fagan seeks suppression of the physical evidence uncovered pursuant to a search of his vehicle and his residence by law enforcement. Freeman also moves to suppress currency seized from him by law enforcement. A suppression hearing was held on this matter on August 22, 2007.

**I. FACTS**

On November 17, 1998, defendant Freeman traveled on a one way ticket from Atlanta, Georgia to St. Thomas, U.S. Virgin Islands. The airline ticket was purchased with cash. Upon arrival in Atlanta, Drug Enforcement Administration ("DEA")

agents interviewed Freeman. Freeman consented to be searched by the agents. The agents found approximately \$6,000 in cash on Freeman's person and seized it.

While conducting a related investigation of narcotics trafficking in St. Thomas, in November, 2004, when Drug Enforcement Administration ("DEA") agents received information from confidential sources that a street level, open-air drug market was operating in the Savan neighborhood.

The DEA agents conducted surveillance of Savan from vehicles parked in covert locations. The agents stationed vehicles on steep hills in the surrounding area in order to look down upon the streets without being detected. However, buildings and other obstructions often interfered with the view of the neighborhood from these high locations. The agents also conducted surveillance from vehicles on the streets in Savan.

In addition to the ground surveillance, from November 16, 2004, until February 15, 2005, the agents used a confidential informant to conduct several controlled purchases of narcotics. Agents were stationed in the area nearby when these transactions were conducted. Each deal was recorded and video-taped.

Beginning on January 17, 2005, the agents also recorded a series of consensual phone calls between the confidential informant and Allan Dinzey ("Dinzey"), an individual alleged to

be a mid-level drug dealer.<sup>1</sup> During these calls, the informant would request his desired quantity of drugs, and the two would agree on a time and place to conduct the transaction. Most of the consensual conversations were followed by controlled purchases as planned.

During the course of those consensual phone calls, the agents obtained Dinzey's telephone number. The agents then obtained orders authorizing the use of both pen register and trap and trace devices on Dinzey's phone. The agents monitored Dinzey's phone with these devices from January 12, 2005, through April 7, 2005.

By approximately March, 2005, investigatory techniques such as ground surveillance, controlled buys, pen registers, and recorded consensual conversations had become unsuccessful. At this time, the government decided to seek authorization for a Title III wiretap investigation.

The government sought and received authorization from this Court for wiretaps on three different cellular phone numbers used by defendants in this action.<sup>2</sup> The applications were accompanied

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<sup>1</sup> That individual is named as a defendant in a case assigned Criminal No. 2005-76, which is currently pending in this Court.

<sup>2</sup> The phone numbers associated with Mark and Fagan were actually subscribed to individuals who are not parties to this action. However, the agents learned through surveillance that defendants Fagan and Mark were the only people placing calls from those cellular phones.

by affidavits, which described the techniques used and information obtained during the investigation. Each order required that all monitoring of wire communications be limited to communications relevant to the suspected drug trafficking activity pursuant to the minimization requirement of Title III. See 18 U.S.C. § 2518(3). Each order terminated upon the attainment of the authorized objective, or in any event, at the end of thirty days after the order was entered.

The first wiretap order was issued on April 19, 2005, for the interception of communications occurring over Dinzey's phone number. The government identified Mark (amongst others) as a "target subject" of the electronic surveillance. Agent Goldfinger's affidavit described all targets except for Mark. Through this initial wiretap on Dinzey's phone, the agents intercepted a number of communications that they characterized as related to drug trafficking. Based on their interpretations of these conversations, the Agents identified Fagan as Dinzey's suspected supplier.

On May 24, 2005, the government received an extension of the initial wiretap, as well as authorization for a separate wiretap on Fagan's cellular phone number. Fagan was added as a "target subject" to both Dinzey's extension and the Fagan wiretap.

Through the Fagan wiretap, the agents identified Mark as a suspected source of supply. With the help of a confidential

informant, the agents used the Fagan wiretap to determine Mark's cellular phone number.

On June 8, 2005, the government intercepted a call between Mark and Fagan, in which Mark instructed Fagan to check whether the vessel used by the United States Customs and Border Patrol Marine Enforcement officers ("Marine Enforcement") was docked or out on patrol in the waters off of St. Thomas. At approximately 8:00 p.m. Fagan called Mark and told him that "[e]verything is safe," to which Mark replied, "Ok[ay], I'll call him and tell him to leave now." Toll records revealed that Mark then called defendant Ells (who was in the British Virgin Islands) and advised him that it was safe to transport drugs from the British Virgin Islands to Coki Beach, St. Thomas, by boat. At approximately 8:36 p.m., Mark called Fagan and told him that Ells would be leaving "in about five minutes." Suspecting that Fagan planned to meet Ells at Coki beach to pick up a delivery of drugs, the agents set up surveillance near the Coki Beach area.

At approximately 9:05 p.m. on June 8, 2005, agents observed a white 1998 Mazda Millenia (the "Mazda"), driven by Fagan, travel to the Coki Beach. The agents observed no drug transaction or meeting between Fagan and any other person at Coki Beach. At 9:10 p.m., the Mazda exited the Coki Beach area at a high rate of speed. The agents followed the Mazda traveling north on Coki Beach Road, toward Smith Bay. However, by

9:16 p.m., the agents had lost sight of the Mazda. At 9:19 p.m., agents intercepted a call in which Fagan told a friend of his that he was going to hide out for awhile, and expressed concern about where his Mazda would be parked for a day or two.

At approximately 10:30 p.m., the agents located in the Paul M. Pearson housing projects in St. Thomas, U.S. Virgin Islands. The vehicle was unoccupied. Additionally, neither Fagan nor any other person was present in the vicinity of the Mazda at that time. The agents later searched the vehicle and found approximately one ounce of cocaine.

The final wiretap order was issued on July 7, 2005, covering Mark's cellular phone.

On December 19, 2006, the Grand Jury returned an indictment against the defendants. Count One charges all of the defendants with conspiracy to possess with intent to distribute cocaine. Count Two charges Mark, Ells, and Fagan with conspiracy to import cocaine into the United States from Tortola, British Virgin Islands. Counts Three through Thirteen charge Mark, Freeman, Moses, and Mills with possession of cocaine on board an aircraft departing from the United States. Count Fourteen alleges possession with intent to distribute cocaine against Mark alone.

## II. DISCUSSION

### A. Fourth Amendment Standard

The exclusionary rule prohibits the introduction at trial of evidence obtained in violation of the Fourth Amendment, for the purposes of proving a defendant's guilt. *See, e.g., Sanchez-Llamas v. Oregon*, 126 S. Ct. 2669, 2680 (2006) ("[T]he Constitution requires the exclusion of evidence obtained by certain violations of the Fourth Amendment.").

The Fourth Amendment protects citizens from "unreasonable searches and seizures" of "their persons, houses, papers and effects." U.S. CONST. amend. IV.<sup>3</sup> The first clause protects citizens from governmental intrusions where they have a reasonable expectation of privacy. There is a presumptive requirement that searches or seizures be carried out pursuant to a warrant. *See Katz v. United States*, 389 U.S. 347, 357 (1967) ("[S]earches conducted outside the judicial process, without prior approval by judge or magistrate, are *per se* unreasonable under the Fourth Amendment - subject only to a few specifically established and well - delineated exceptions." (internal citations omitted)). Warrant-less searches or seizures must generally be based on probable cause in order to be considered

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<sup>3</sup> "The Fourth Amendment is made applicable to the Virgin Islands by the Revised Organic Act of 1954, [section] 3." *United States v. Charles*, 290 F. Supp. 2d 610, 614 (D.V.I. 1999).

reasonable. See *Hill v. California*, 401 U.S. 797, 804 (1971) (“[S]ufficient probability, not certainty, is the touchstone of reasonableness under the Fourth Amendment . . . .”)

The Supreme Court has explained the distinction between searches and seizures:

A “search” occurs when an expectation of privacy that society is prepared to consider reasonable is infringed. A “seizure” of property occurs when there is some meaningful interference with an individual's possessory interests in that property.

*United States v. Jacobson*, 466 U.S. 109, 113 (1984). Moreover, the Supreme Court has stated that “seizures of property are subject to Fourth Amendment scrutiny even though no search within the meaning of the Amendment has taken place.” *Soldal v. Cook County*, 506 U.S. 56, 68 (1992).

**B. The Statutory Exclusionary Rule of Title III**

Title III contains a statutory exclusionary rule. See 18

U.S.C. § 2518(10)(a).<sup>4</sup> However, Congress did not intend to expand the scope of existing search and seizure law when it included an explicit statutory suppression remedy in Title III. *United States v. Giordano*, 416 U.S. 505, 527 (1974). Indeed,

[S]uppression is required only for a failure to satisfy any of those statutory requirements that directly and substantially implement the congressional intention to limit the use of intercept procedures to those situations clearly calling for the employment of this extraordinary investigative device.

*United States v. Donovan*, 429 U.S. 413, 433-434 (1977) (quoting *Giordano*, 416 U.S. at 527).

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<sup>4</sup> Section 2518(10)(a) provides, in part:

Any aggrieved person in any trial, hearing, or proceeding in or before any court, department, officer, agency, regulatory body, or other authority of the United States, a State, or a political subdivision thereof, may move to suppress the contents of any wire or oral communication intercepted pursuant to this chapter, or evidence derived therefrom, on the grounds that--

- (i) the communication was unlawfully intercepted;
- (ii) the order of authorization or approval under which it was intercepted is insufficient on its face; or
- (iii) the interception was not made in conformity with the order of authorization or approval.

. . . .

### **III. ANALYSIS**

The items sought to be suppressed in this matter include the Title III wiretaps, the cocaine obtained from Fagan's vehicle, and the currency seized from Freeman. The admissibility of each item of proffered evidence is discussed separately below.

#### **A. Title III Wiretaps**

The defendants move to suppress all communications intercepted through the Title III wiretaps.

##### **1. Standing**

All of the defendants have joined in the motion to suppress the Title III wiretaps. As a threshold matter, each defendant's claim may proceed only if he has standing to contest the government action. Only a defendant whose Fourth Amendment rights have been violated by the surveillance has standing to challenge the admissibility of Title III wiretaps. *United States v. Alderman*, 394 U.S. 165, 171-76 (1969). Accordingly, a defendant must have been either a party to the intercepted conversation or an owner of the premises where the illegal interception occurred in order to seek suppression of a Title III wiretap. *Id.* at 176-78 (holding that the owner of the premises where the illegal interception occurred had standing to assert a violation of Title III, even if the owner did not participate in any of the intercepted conversations).

Here, the Court is aware of intercepted conversations to which Mark, Fagan, and Ells were parties. Therefore, Mark,

Fagan, and Ells all have standing to challenge the admissibility of the wiretaps. The Court is not aware of any intercepted communication to which Freeman, Swan, Moses, or Mills, was a party, nor do these defendants assert any ownership interest in any of the locations where the illegal interception occurred. Accordingly, only Mark, Fagan, and Ells may challenge the admissibility of the communications intercepted through the Title III wiretaps.

## **2. Necessity of the Wiretap**

As grounds for suppression, Mark, Fagan, and Ells contend that the wiretaps were unnecessary to the drug trafficking investigation. Specifically, they claim that the agents were able to obtain sufficient information through traditional means of investigation, such as ground surveillance and confidential informants. They also claim that the agents could have attempted to arrest certain suspects at an early date and secure their cooperation before resulting to a wiretap investigation.

Title III provides that a wiretap order may only issue upon a finding that "normal investigative procedures have been tried and have failed or reasonably appear to be unlikely to succeed if tried or are too dangerous." See 18 U.S.C. § 2518(3)(c). Each wiretap application must independently satisfy the necessity requirement. *United States v. Carneiro*, 861 F.2d 1171, 1177 (9th Cir. 1988).

Law enforcement officers need not exhaust every conceivable investigative technique before resorting to electronic surveillance. *United States v. Williams* 124 F.3d 411 (3d Cir. 1997). "Rather, it is sufficient if there is evidence that normal investigative techniques . . . reasonably appear to be unlikely to succeed if tried." *Id.* (quotations omitted). Indeed, the government's affidavit in support of the wiretap, "need only lay a 'factual predicate' sufficient to inform the judge why other methods of investigation are not sufficient." *United States v. McGlory*, 968 F.2d 309, 345 (3d Cir. 1992)) (quoting *United States v. Armocida*, 515 F.2d 29, 38 (3d Cir. 1975)).

In determining whether the necessity requirement has been satisfied, it is proper to take into account affirmations founded in part upon the specialized training and experience of law enforcement officers. *Id.* Whether a wiretap is necessary to a given investigation "is to be 'tested in a practical and commonsense fashion.'" *McGlory*, 968 F.2d at 345 (quoting *United States v. Vento*, 533 F.2d 838, 849 (3d Cir. 1976)).

Here, each affidavit in support of each wiretap authorization or extension contained a statement that ground surveillance of the Savan area had been tried, but with little success. The physical layout of the streets and the terrain of Savan rendered visual surveillance difficult. Hired "look-outs" in the neighborhood allegedly alerted drug dealers when law

enforcement vehicles are present. Though a confidential informant completed several controlled narcotics transactions with certain suspects, the informant was unable to infiltrate to higher levels of the suspected drug trafficking organization. Coconspirators allegedly used cellular phones to conduct their criminal business and prevent detection. Pen registers had been used, but did not reveal the contents of the conversations. Individuals with knowledge of the suspected criminal activity were themselves participants in the conspiracy. Such participants would therefore have been unlikely to provide truthful, significant information, and may have alerted other participants of the investigation. Grand jury investigations or search warrants may have also jeopardized the investigation by alerting targets. Moreover, such techniques would not likely reveal the full scope of the conspiracy to identify all the conspirators.

In addition to the above, the affidavit supporting the Fagan wiretap asserted the following. Though the Dinzey wiretap was able to identify some alleged sources of supply, it would not reveal participants of the conspiracy on a higher-level since Dinzey was a suspected mid-level drug dealer. On May 2, 2005, Fagan allegedly believed there was a police presence near Dinzey's home and changed the location for a drug transaction accordingly. On at least five occasions, the surveillance teams

ceased all operations because they believed they had been detected by drug dealers in Savan.

Finally, the affidavit in support of the Mark wiretap adds the following claims of necessity. Mark and his associates regularly conducted counter-surveillance on law enforcement before attempting illegal activity. Mark's residence was allegedly surrounded by a security gate which agents believed to be fortified with motion lights and cameras. Though the Fagan wiretap had allowed agents to identify Mark, it would not lead to higher members of the alleged conspiracy because Fagan was believed to be a mid-level drug dealer. Therefore, Agent Goldfinger asserted that the agents needed to wiretap Mark's phone in order to determine the scope, nature, and methods of his drug business.

Each affidavit, standing alone, provided a sufficient factual predicate for finding that normal investigative techniques were unlikely to succeed at that stage in the investigation. Indeed, the affidavits explained that ground surveillance and confidential informants could provide only limited information. They also suggested that arresting suspects in an attempt to gain their cooperation would have jeopardized the investigation by alerting other coconspirators. Moreover, the agents were not required to exhaust every possible method of investigation, including attempts to arrest and "flip" coconspirators, before applying for a wiretap.

Accordingly, the wiretaps in this case satisfied the necessity requirement of Title III. See, e.g. *Williams*, 124 F.3d at 418 (finding that the government had shown necessity for video surveillance where agents were unable to use confidential informants without a high risk of discovery, aural surveillance could not perceive silent criminal activity, and coconspirators used evasive techniques to avoid detection); *United States v. Guerra-Marez*, 928 F.2d 665, 670 (5th Cir. 1991) (finding necessity satisfied even though officers had not fully exploited controlled purchases, confidential informants, and other traditional surveillance because the untried methods were not reasonably likely to succeed).

### **3. Probable Cause**

Defendants Mark, Fagan, and Ells also claim the wiretaps were unsupported by probable cause.

Title III requires a showing of probable cause in three different contexts: (1) that an individual has or is about to commit one of several enumerated offenses; (2) that particular communications relating to the charged offense will be obtained through the interception; and (3) that the facilities from which the communications are to be intercepted are being used in connection with the charged offense. *Armocida*, 515 F.2d at 35. The probable cause required for wiretaps focuses on the "target facility," or cellular phone number believed to be used to facilitate criminal activity. *Id.* at 1117. Wiretaps are not directed at people. *Id.* at 1118. Accordingly, an affidavit

supporting a wiretap order need not provide information sufficient to justify the arrest of the individual in possession of or in control of the property. *Id.*

The standard for determining whether probable cause exists under Title III is the same as that used to obtain ordinary search warrants. *United States v. Tehfe*, 722 F.2d 1114, 1118 (3d Cir. 1983). The probable cause determination thus depends on the totality of the circumstances:

The task . . . is simply to make a practical, common-sense decision whether, given all the circumstances set forth in the affidavit . . . there is a fair probability that contraband or evidence of a crime will be found in a particular place.

*Illinois v. Gates*, 462 U.S. 213, 238 (1983). In determining whether probable cause has been shown, it is appropriate to consider reasonable inferences made by law enforcement officers based on their specialized training and experience. *United States v. Arvizu*, 534 U.S. 266, 277 (2002).

Here, the affidavit in support of the initial wiretap of Dinzey's phone indicated that DEA agents had received tips from confidential sources that Dinzey. It detailed how a confidential informant had successfully completed several controlled purchases of narcotics from Dinzey as well as other individuals. It also described several consensual conversations recorded by the agents in which drug transactions were arranged, which the confidential informant later carried out. Moreover, it explains that the

confidential informant obtained Dinzey's cellular phone number during one of the controlled transactions. Analysis of pen registers, trap and trace devices, and toll records showed numerous calls between Dinzey's phone number and phone numbers subscribed to other suspected drug dealers.

Based on the totality of the circumstances, there was probable cause to believe that Dinzey, amongst others, had committed and would continue to commit a drug trafficking offense. These facts also establish probable cause to believe that communications relating to the alleged drug trafficking would be obtained through interception of wire communications, and that Dinzey's phone number was being used to facilitate the criminal conduct. *See Tefe*, 722 F.2d at 1117-18.

The affidavits supporting the extension of the initial wiretap, as well as the Fagan and Mark wiretaps contained most of the same facts as the initial affidavit. The subsequent affidavits also included evidence from intercepted conversations, which the agents interpreted as relating to drug transactions.

The Court acknowledges that the intercepted conversations could be subject to differing interpretations. However, when viewed in the totality of circumstances, including the reasonable inferences made by the officers and the patterns of similar conversations, the affidavits support a finding of probable cause with respect to the extension of the initial wiretap order, as

well as the orders for the Fagan wiretap, and the Mark wiretap. See, e.g., *United States v. Gray*, 410 F.3d 338, 344 (7th Cir. 2005) (acknowledging that an intercepted conversation could be interpreted in various ways, but finding nonetheless that the totality of circumstances supported a finding of probable cause for the wiretap).

#### **4. Minimization**

Mark, Fagan, and Ells allege that the agents failed to carry out the surveillance in accordance with the order by failing to minimize the scope of the surveillance according to the Court's authorization.

After law enforcement officers receive court authorization for a wiretap, Title III imposes a continuing duty to minimize the interception of communications that are not relevant to the criminal investigation. See 18 U.S.C. § 2518(5). Title III provides:

Every order and extension thereof shall contain a provision that the authorization to intercept shall be executed as soon as practicable, shall be conducted in such a way as to minimize the interception of communications not otherwise subject to interception . . . .

*Id.* The minimization effort must be objectively reasonable in light of the totality of the circumstances. See *Scott v. United States*, 436 U.S. 128, 136-37 (1978).

Here, each wiretap order contained the requisite provision mandating that "all monitoring of wire communications be limited to those communications relevant to the pending investigation." At the suppression hearing, the prosecutor asked DEA Agent Michael Goldfinger, "what procedure did you use for minimization?"

A. Simply hit the button on the system and it stops the recording process.

Q: How long would you listen before that button was hit?

A: Approximately two minutes.

Q: And how long was the machine turned off when you hit that off button?

A: After the machine was turned off, according to the rules of minimization, we're allowed to use what's called spot checking, where every 20 to 30 seconds you can turn the call back on, give another listen. . . .

(Suppression Hr'g Tr. 21, August, 2007.)

The alleged conspiracy was complex, involving many suspected participants. Additionally, the defendants spoke in local dialect during the conversations that were allegedly related to drug trafficking. In light of the totality of the circumstances, the Court finds that the agents' minimization efforts were reasonable. There is no evidence in the record before the Court that the government did anything contrary to the Court's wiretap orders or contrary to the minimization instructions.

Accordingly, the Court will deny the motions of all of the defendants to the extent they seek suppression of the communications intercepted through the Title III investigation.

**B. Cocaine Recovered from Fagan's Vehicle**

Fagan seeks suppression of the crack cocaine uncovered after his vehicle was seized and searched by the DEA agents on June 8, 2005. Fagan contends that the warrantless seizure and search of the vehicle were conducted in violation of his Fourth Amendment rights.

In an order dated February 23, 2007, in a matter assigned Criminal No. 2005-76, this Court held that this same warrantless search violated Fagan's Fourth Amendment rights. Therefore, the government has indicated that it will not seek to introduce at trial the crack cocaine obtained from Fagan's vehicle. For the reasons stated in the memorandum opinion accompanying and order, dated February 23, 2007, order, the Court will grant Fagan's motion to suppress the crack cocaine found in his vehicle on June 8, 2005.<sup>5</sup>

**C. Currency Recovered from Freeman**

The agents searched Freeman at the airport on November 17, 1998, after receiving consent from Freeman to do so. The search

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<sup>5</sup> See (Memorandum Opinion and Order 28-32, Crim. No. 2005-76, Feb. 23, 2007.)

uncovered approximately \$6,000. Freeman argues that the search was illegal because the consent was improperly given.

The Supreme Court has explained that "searches made at the border, pursuant to the longstanding right of the sovereign to protect itself by stopping and examining persons and property crossing into this country, are reasonable simply by virtue of the fact that they occur at the border." *United States v. Flores-Montano*, 541 U.S. 149, 124 S.Ct. 1582, 1585, 158 L.Ed.2d 311 (2004) (internal citation and quotations omitted); see also *United States v. Glasser*, 750 F.2d 1197, 1200 (3d Cir. 1984) ("One of the inherent powers of a sovereign is the power to restrict or regulate the entry of persons and property across the border."). Consequently, law enforcement officers may perform routine border searches without a warrant, probable cause, or reasonable suspicion. *United States v. Montoya de Hernandez*, 473 U.S. 531, 538, 105 S.Ct. 3304, 87 L.Ed.2d 381 (1985).

"[T]he Territory of the U.S. Virgin Islands is a 'customs zone' separate and apart from the United States, Puerto Rico and other U. S. possessions, as evidenced by the statutes governing the collection of Customs duties and the enforcement of immigration laws in the Virgin Islands." *United States v. Chabot*, 531 F. Supp. 1063, 1069 (D.V.I. 1982). The islands of St. Thomas constitutes a "border," or its functional equivalent within the

meaning of the "border search" exception to the warrant requirement. *Id.*

Because it is impractical to expect that searches can be conducted at the exact moment a person crosses a border, "courts have recognized the validity of border searches at what are referred to as the 'functional equivalent' of a border." *United States v. Duncan*, 693 F.2d 971 (9th Cir. 1982) (citations and quotations omitted). "To require that a passenger board a plane before allowing a customs stop is unreasonable. It is enough that the passenger manifest a definite commitment to leave the United States and that the search occur in reasonable temporal and spatial proximity to the departure." *Id.*

The search of Freeman on November 17, 1998, occurred while Freeman was *en route* from Atlanta Georgia to St. Thomas. Nothing in the record suggests that the search of Freeman at the airport was highly intrusive or posed a serious threat to Freeman's dignity or privacy. See *Flores-Montano*, 541 U.S. at 152-53 (noting that some level of suspicion may be required for non-routine border searches, or "highly intrusive searches of the person-dignity and privacy interests of the person being searched."). Additionally, in purchasing a one-way ticket to St. Thomas, Freeman had manifested a definite commitment to leave the United States customs zone. Finally, the record indicates that the search occurred in close temporal and spacial proximity to the place of departure. Therefore, the search of Freeman was a

border search, for which no search warrant, probable cause, or consent was necessary. *See, e.g., United States v.*

*Aleman-Figueroa*, 117 Fed. Appx. 208, 210-13 (3d Cir. 2004)

(citations omitted) (explaining that a routine border search is lawful without any showing of reasonable suspicion or consent to the search); *Duncan*, 693 F.2d 971 (holding that search of a defendant in the United States while he was proceeding up a ramp to board an aircraft bound for Columbia was a valid "border" search); *United States v. Swarovski*, 592 F.2d 131 (2d Cir. 1979) (noting that "warrantless searches of appellant's luggage as he was about to depart the country did not violate his Fourth Amendment rights"). Accordingly, the Court will deny Freeman's motion to suppress the currency seized from him on November 17, 1998.

#### IV. CONCLUSION

For the reasons set forth above, the Court will deny the defendants' motion to suppress the communications intercepted through the Title III wiretap. With respect to Fagan, the Court will grant the motion to suppress as it relates to the crack cocaine uncovered from his Mazda. Finally, the Court will deny Freeman's motion to suppress the currency seized from him on November 17, 1998. An appropriate judgment follows.

**Dated: September 5, 2007**

S\ \_\_\_\_\_  
**CURTIS V. GÓMEZ**  
**Chief Judge**

Copy:

Hon. Geoffrey W. Barnard  
Delia L. Smith, AUSA  
Kevin D'Amour, Esq.  
Pamela L. Colon, Esq.  
Carl R. Williams, Esq.  
Thurston T. McKelvin, FPD  
Jesse Gessin, AFPD  
Arturo R. Watlington, Jr., Esq.  
Andrew L. Capdeville, Esq.  
Dale L. Smith, Esq.  
Mrs. Trotman  
Ms. Donovan  
Mrs. Schneider  
Probation  
U.S. Marshals  
Bailey Figler, Esq.