

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX

THE PEOPLE OF THE VIRGIN ISLANDS **Plaintiff**)
)
 Vs.)
)
 CHARLES SEALEY **Defendant**)

CASE NO. SX-11-CR-0000883

ACTION FOR: 14 V.I.C. 2253

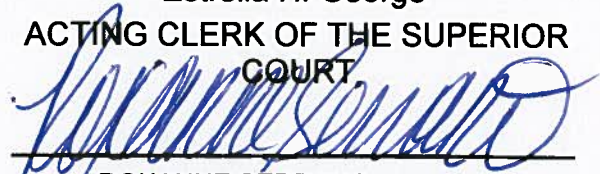
**NOTICE OF ENTRY OF
MEMORANDUM
OPINION AND ORDER**

TO: TAMARA BERMUDEZ, CHIEF DEPUTY
ORDER BOOK, IT, LAW LIBRARY
LAW CLERKS OF THE SUPERIOR COURT
JUDGES AND MAGISTRATES OF THE SUPERIOR COURT
JOSEPH PONTEEN, ESQ.
EMILE HENDERSON, ESQ.

Please take notice that on September 15, 2014 a(n) MEMORANDUM
OPINION AND ORDER dated September 15, 2014 was entered by the Clerk in
the above-entitled matter.

Dated: September 15, 2014

Estrella H. George
ACTING CLERK OF THE SUPERIOR
COURT



ROXANNE SERRANO
COURT CLERK SUPERVISOR

SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX

PEOPLE OF THE VIRGIN ISLANDS,

Plaintiff,

v.

CHARLES SEALEY,

Defendant.

CASE NO. SX-11-CR-883

ATTEMPTED MURDER IN FIRST
DEGREE, ETC.

MEMORANDUM OPINION AND ORDER

THIS MATTER is before the Court on Defendant Charles Sealey's Motion to Dismiss with Prejudice ("Motion"), filed May 15, 2014. The People have not responded. For the reasons that follow, Defendant's Motion will be denied.

PROCEDURAL BACKGROUND

The People accuse Defendant, along with two co-defendants, of attempted murder: to wit, shooting Selwyn Gonzales in the Salt River Bay area of St. Croix, Virgin Islands, on or about December 11, 2011. Defendant tendered an alibi defense, claiming that, when the shooting occurred, he was playing cards with a number of other individuals and was nowhere near the crime scene. Motion, at 1. As discovery ensued, Defendant learned that Arawak Inn, a nearby bed and breakfast resort, maintained a surveillance video system which may have captured the area near the crime scene when the alleged crime occurred. Motion, at 4. Defendant claims that the owners of the nearby bed and breakfast turned over some video footage to the Virgin Islands Police Department ("V.I.P.D.") and that the V.I.P.D. retained possession of said video. *Id.*

Defendant served the People with discovery demands, including "...the demand for any video recordings." *Id.* The People did not provide any video evidence. Defendant then served the People with a specific request for the video evidence in question; the People did not respond. During a calendar call, on April 16, 2014, the People indicated in open Court that the surveillance video in question "...had been destroyed." *Id.*

Defendant claims that the video in question would have definitively shown that Defendant was not present at the crime scene when Selwyn Gonzales was shot. Defendant now moves to dismiss the pending charges against Defendant, claiming that the People intentionally destroyed exculpatory evidence.

DISCUSSION

Defendant argues that the People's failure to preserve potentially exculpating evidence constitutes a violation of Defendant's due process rights pursuant to *Brady v. Maryland*, 373 U.S. 83 (1963), *Kyles v. Whitely* 514 U.S. 419 (1995), and *Government of the Virgin Islands v. Pellulo* 105 F.3d 117 (3d Cir. 1997). Motion, at 3. Defendant urges the Court to find that the People acted in bad faith by either failing to preserve the video evidence or by actively destroying it in order to hinder Defendant from obtaining exculpatory evidence. *Id.*

The Government (V.I.P.D. and the Attorney General's Office) is obligated to "...preserve evidence that may be expected to play a significant role in the suspect's defense." *Virgin Islands v. Yhan*, 2010 WL 7746389, at *3 (V.I. Super. August 6, 2010)(citing *California v. Trombetta*, 467 U.S. 479, 488 (1984)(internal quotations omitted). In order to prevail on a due process claim, "a defendant must prove that the government acted in bad faith when it failed to preserve the evidence." *U.S. v. Deaner*, 1 F.3d 192, 200 (3d Cir.1993).

Courts in the Virgin Islands have held that, in order "to determine whether the government acted in bad faith, the Court must consider whether the exculpatory value of the evidence was apparent at the time it was lost or destroyed." *Virgin Islands v. Smith*, 2011 WL 4703037, at * 2 (V.I. Super. March 23, 2011)(citing *Arizona v. Youngblood*, 488 U.S. 51, 56 n. 1 (1988) ("The presence or absence of bad faith by the police for purposes of the Due Process Clause must necessarily turn on the police's knowledge of the exculpatory value of the evidence at the time it was lost or destroyed.")). However, it is not enough

for a defendant to show that the police did not follow its normal procedures, or that the government was negligent in its duty to preserve evidence. *Smith*, at *2 (citing *Deaner*, 1 F.3d at 200-01).

The Court in both *Yahn* and *Smith* ultimately found that “because the lost video may not have been exculpatory, and because there is no evidence that the People believed the video was exculpatory at the time the video was lost, the Court cannot find that the video was ‘constitutionally material to the defense.’” *Yahn*, at *4 (citing *Trombetta*, 467 U.S. at 488 (“To meet this standard of constitutional materiality, evidence must both possess an exculpatory value that was apparent before the evidence was destroyed, and be of such a nature that the defense would be unable to obtain comparable evidence by other reasonably available means.”)); *Smith*, at *2.

Additionally, both *Yahn* and *Smith* reaffirm that burden is on a defendant who seeks dismissal to prove that the People acted in bad faith: “Importantly, the Defendants presented no evidence that the police or the Attorney General's Office acted in bad faith in destroying the video. Therefore, the Defendants' Due Process challenge must fail and the Court will deny their Motion to Dismiss.” *Smith*, at *2 (citing *Trombetta*, 467 U.S. at 488).

The Court notes that Defendant may indeed be prejudiced as a result of the missing video. “Loss or destruction of relevant evidence by the government not only raises general questions of the fundamental fairness of a criminal trial, but may also deny a defendant the right to compulsory process.” *Virgin Islands v. Testamark*, 15 V.I. 469, 476 (3d Cir. 1978). In this case by Order entered March 26, 2013, the Court ordered the People to disclose specific *Kyles* and *Brady* information (which would have included the video in question). Therefore, the Court must examine if the People’s actions warrant the ultimate sanction of dismissal.

In light of Defendant’s presentation of the facts in support of his Motion, the Court finds that dismissal of the Information charging Defendant would constitute an excessive sanction. First, there is

insufficient information to conclude that the lost video was exculpatory. While Defendant claims the video will show he was not at the crime scene when the shooting occurred, Defendant has not presented this Court with any information about what exactly the video would have shown (e.g. the area and the time periods reflected in the lost video). Without evidence as to the contents of the video, it is impossible to conclude, simply based on Defendant's alibi defense, that the video would have revealed exculpatory evidence.

Second, Defendant has not presented any evidence that the People believed the video was exculpatory at the time the video was lost. *See Yahn*, at *4. In fact, there is no evidence that the People even reviewed the video before it was lost. Without anything more in the record, the Court is unable to conclude that the People knew the video would have had provided exculpatory value to Defendant.

Finally, the Court must examine whether the People acted in bad in destroying the video. *See Trombetta*, 467 U.S. at 488. Without knowing more about the circumstances concerning the loss of the video recording, it cannot be concluded that V.I.P.D. acted in bad faith.¹ The record lacks any direct evidence affirmatively establishing that V.I.P.D. ever took possession of the video recording from the owners of Arawak Inn.

Further, Defendant's argument suggests that the video recording would prove a negative, i.e. since his image is not captured in the video recording (and neither he nor the People can confirm that to be the case), he must not have been at the scene. While video footage of the time and scene of the incident that did not show an image of Defendant would assist his defense, it obviously does not prove his innocence, as he may have been out of camera range.

¹ Defendant states in his Motion that "the People finally advised Defendant and the Court that the video had been destroyed" at the April 16, 2014 calendar call. Motion, at 4. However, nothing in the Record of Proceedings or the Court's file confirms that the People informed the Court that the video recording has been destroyed. The Record of Proceedings does note that an off-the-record discussion occurred at sidebar.

Defendant's claims also fails the test of logic. The People have charged three persons with criminal acts arising from the incident. It would not be in the apparent best interests of the prosecution to intentionally destroy a potentially probative crime-scene video recording because the image of one of the Defendants was not shown, for the purpose of trying to enhance its ability to obtain a conviction against one of the three co-defendants.

On the basis of the record, the Court is unable to find that Defendant has met his burden of proving that the People acted in bad faith in failing to preserve the video.

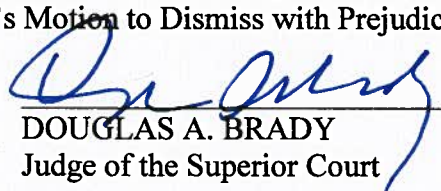
CONCLUSION

This Court finds that dismissing the People's case against Defendant would be an overly severe sanction in comparison to the People's failure to obtain and preserve a video recording that may have contained evidence exculpatory to Defendant. There is insufficient information in the record to conclude that the lost video contained exculpatory footage. Even if the contents of the video were exculpatory, there is insufficient evidence to conclude that the People believed it to be exculpatory at the time the video evidence was lost, or to otherwise conclude that the People acted in bad faith in "destroying" the video.

The premises being considered, it is hereby

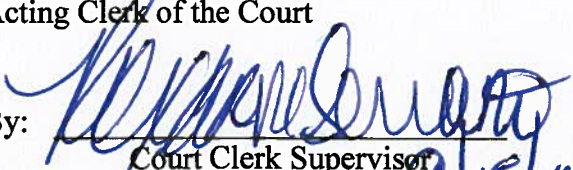
ORDERED that Defendant Charles Sealey's Motion to Dismiss with Prejudice is DENIED.

September 15, 2014


DOUGLAS A. BRADY
Judge of the Superior Court

ATTEST:

ESTRELLA GEORGE
Acting Clerk of the Court

By: 

Court Clerk Supervisor
9/15/14