

**FOR PUBLICATION**

**SUPERIOR COURT OF THE VIRGIN ISLANDS  
DIVISION OF ST. CROIX**

People of the Virgin Islands,

Plaintiff,

v.

Ronald Hatcher,

Defendant.

Case No. SX-14-CR-131

Charges: Murder in the Second Degree; Reckless Endangerment in the First Degree; and Carrying or Using a Dangerous Weapon During the Commission of a Crime of Violence

**Appearances:**

**PATRICIA QUINLAND, ESQ.**

**R. OLIVER DAVID, ESQ.\***

Assistant Attorney General

U.S. Virgin Islands Department of Justice

6040 Estate Castle Coakley,

Christiansted, VI 00820

*For Plaintiff*

**YOHANA MANNING, ESQ.**

Manning Legal Services, P.C.

53A Company St., 2nd Fl.

Christiansted, VI 00820

**MEMORANDUM OPINION**

**MEADE, Judge**

**THIS MATTER** is before the Court on a motion filed by the People of the Virgin Islands to summarily deny all defense motions *in limine* filed out of time without leave of court. The defendant, Ronald Hatcher, opposed the motion. The Court denied the motion from the bench and *sua sponte* amended the motions deadline so that both parties may make trial-related motions (orally or in writing) in advance of trial. This opinion follows to reduce the bench ruling to writing. *Cf.* V.I. R. Crim. P. 12(d).

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\* Appearance after the motions addressed in this Opinion were filed, argued, and decided orally.

### Background

The People of the Virgin Islands charged Ronald Hatcher by information with Murder in the Second Degree, Reckless Endangerment in the First Degree, and Carrying or Using a Dangerous Weapon During the Commission of a Crime of Violence all related to the September 26, 2013 fatal shooting of Jose Rivera-Berrios in Christiansted. Mr. Hatcher has pleaded not guilty.

From the bench, the Court set jury selection and trial for March 19, 2018, which was confirmed in a January 23, 2018 Trial Management Order. The Trial Management Order directed that “[t]he parties shall have up to and including **February 19, 2018**,<sup>[1]</sup> to file motions *in limine*. The parties shall have up to and including **February 26, 2018**, to file responses to the motions *in limine*.” (Order 1, entered Jan. 23, 2018.)

On February 23, 2018, Mr. Hatcher filed a motion to exclude prejudicial terms; a motion to preclude any reference to the truthfulness of witness by the prosecution; a motion regarding the term “homicide”; a motion to prohibit privileged communications; a motion for jury view of alleged crime scene; a motion to preclude mental state testimony; and a motion to prohibit evidence of mental condition of decedent and/or suffering. Then, on February 27, 2018, Mr. Hatcher filed a motion to preclude law enforcement witnesses from opining as to the use of force and a motion to preclude evidence that injured party was unarmed or possessed a “toy shotgun.” Finally, on March 1, 2018, Mr. Hatcher filed a motion for early production of “Jencks” material; a motion to compel production of Frankie Ortiz’s personnel

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<sup>1</sup> By order dated February 5, 2018, entered February 6, 2018, the Court *sua sponte* extended the deadline to February 20, 2018 because February 19, 2018 was President’s Day, a legal holiday. See V.I. R. Crim. P. 45(a)(4).

records; and a motion to compel production of police reports, field notes and other investigative papers; and a motion to disclose witness history and incentives.

In the interim, on February 28, 2018, the People filed a motion to summarily deny all motions *in limine* filed by Mr. Hatcher because they were filed out of time and without a motion for leave to file out-of-time. Mr. Hatcher filed an opposition on March 1, 2018. The People did not file a reply. From the bench on March 16, 2018, the Court denied the People's motion.

### **Discussion**

In their motion the People note that, despite the title of the various motions, what Mr. Hatcher is seeking is "to deem certain evidence inadmissible and/or limit the prosecution's language during trial," therefore all his motions "are, in fact motions in Limine." (Pl.'s Mot. 2, filed Feb. 28, 2018.) Since Mr. Hatcher did not move "to extend th[e motion *in limine*] deadline or [file] any motion requesting leave from the court to file these motions out of time," each motion should "be summarily denied." *Id.*

Mr. Hatcher rejects the People's contention that the Court must summarily deny his motions because "the Virgin Islands Rules of Criminal Procedure . . . allows an extension for good cause or in the interests of justice if done before trial." (Def.'s Opp'n 3, filed Mar. 1, 2018.) Virgin Islands Rule of Criminal Procedure 12 provides that "[a]t any time before trial, the court may extend or reset the deadline for pretrial motions for good cause or in the interests of justice." *Id.* at 2-3 (quoting V.I. R. Crim. P. 12(c)(2)). Furthermore, there is no requirement, Mr. Hatcher contends, "that a Motion to File the referenced Motions Out of Time or a Motion to Extend the Deadlines before the filing of certain documents." *Id.* at 3. Additionally, Mr. Hatcher

notes that all his motions were filed “more than 7 days before” the final pretrial hearing scheduled for March 16, 2018. *Id.* And Virgin Islands Rule of Criminal Procedure 47 provides that “[a] party must serve a written motion . . . and any hearing notice at least 7 days before the hearing date.” *Id.* (quoting V.I. R. Crim. P. 47(c)). Lastly, “[t]he purpose of a *motion in limine*,” Mr. Hatcher argues, “is to allow the trial court to rule in advance of trial on the admissibility and relevance of certain forecasted evidence.” *Id.* at 4 (citing *Luce v. United States*, 469 U.S. 38, 41 n.4 (1984)) (remaining citations omitted)). Since “[t]he trial court retains the power to make evidentiary rulings throughout the trial . . . [and] may even adjust its disposition of a *motion in limine* during the course of a trial,” *id.* (citation omitted), “good cause and/or the interests of justice favor extending the deadline and/or accepting the documents as filed.” *Id.* (capitalization, bold and italic font omitted).

Mr. Hatcher is correct that, “[n]othing in the Virgin Islands Rules of Criminal Procedure authorizes the use of *in limine* rulings,” nor has “the Virgin Islands Supreme Court . . . ordained such a practice . . . under the new Rules of Criminal Procedure.” *Id.* at 5. And “the Court does possess the inherent power to manage the conduct of trials . . . [and] minimize delay” by ensuring that “improper evidence [should] be[] admitted.” *Id.* But Mr. Hatcher is not correct that he can just disregard court orders and file thirteen motions after the motions deadline without seeking leave beforehand or at the same time.

Virgin Islands Rule of Criminal Procedure 45 provides that,

[w]hen an act must or may be done within a specified period, the court on its own may extend the time, or for good cause may do so on a party's motion made: (A) before the originally prescribed or previously extended time expires; or (B) after the time expires if the party failed to act because of excusable neglect.

V.I. R. Crim. P. 45(b)(1). Rule 45 authorizes the court to grant a party leave to act out of time *sua sponte* or for good cause on motion. “[E]xcusable neglect and good cause are essentially synonyms under Virgin Islands law.” *People v. Hatcher*, SX-14-CR-131, \_\_\_ V.I. \_\_\_, \_\_\_, 2018 V.I. LEXIS 32, \*18 (V.I. Super. Ct. Mar. 19, 2018) (quotation marks, brackets, and citations omitted)). But excusable neglect and good cause must be shown, not concluded. *Cf. Fuller v. Browne*, 59 V.I. 948, 957 (2013) (“[T]he overwhelming, uncontradicted *evidence* in the record indicates that Fuller met his *burden of demonstrating* good cause or excusable neglect.” (emphasis added)); *accord In re: Red Dust Claims*, SX-15-CV-620, 2017 WL 2889567, \*7 (V.I. Super. Ct. July 7, 2017) (“If the request comes late, then good cause must be shown.”). And the showing must be by motion, *see* V.I. R. Crim. P. 45(b)(1), not by opposition to a motion. *Cf. Red Dust Claims*, 2017 WL 2889567 at \*11 n.7 (“A response should respond, not also incorporate a request or a motion.”); *see also Valerino v. Manning*, SX-15-RV-005, \_\_\_ V.I. \_\_\_, \_\_\_ n.3, 2018 V.I. LEXIS 28, \*13 n.3 (V.I. Super. Ct. App. Div. Mar. 9, 2018) (“‘Commingling arguments against one motion with arguments in a support of another motion in the same motion paper is improper,’ because it can make it ‘almost impossible to distinguish’ arguments made in support of one motion from those made in opposition to another.” (quoting *Goodwin v. Fawkes*, SX-11-CV-435, 67 V.I. \_\_\_, \_\_\_ n.19, 2016 V.I. LEXIS 198, \*41 n.19 (Super Ct. Dec. 12, 2016))). As the People correctly point out, Mr. Hatcher did not file a motion “to extend th[e motion *in limine*] deadline or . . . request[] leave from the court to file . . . out of time.” (Pl.’s Mot. 2.) So, there is no motion before the Court to excuse Mr. Hatcher’s neglect in not filing his *limine* motions before

February 20, 2018. But Mr. Hatcher's failure to show excusable neglect does not mean that the People's motion has to be granted.

During oral argument, counsel for Mr. Hatcher conceded that the motions were tardy, but were only "precautionary" motions. Mr. Hatcher did not file a substantive motion like a motion to suppress or a motion to dismiss, counsel remarked. Counsel then reiterated that *limine* motions can be filed during trial and the Court agreed, explaining that some courts allow motions to be made during trial, including *limine* motions, since the parties can object to the admission of evidence or make oral motions. The Court then denied the People's motion to deny and held that it would adopt a liberal policy for motions in *limine* and amend the motions deadline in the Trial Management Order *sua sponte* in the interests of justice to allow both parties to file motions prior to and during trial. The People had filed a motion to compel Mr. Hatcher's compliance with Rule 16 of the Virgin Islands Rules of Criminal Procedure after the motion deadline had passed, but without requesting leave to file out-of-time. To be sure, the People's motion was also a "precautionary" motion, filed to ensure that they receive reciprocal discovery from Mr. Hatcher prior to trial. But their motion further underscores why this Court has adopted the liberal approach to trial-related motions permitted by Virgin Islands Rule of Criminal Procedure 12. A court may "extend or reset the deadline for pretrial motions . . . in the interests of justice" "[a]t *any time before trial*." V.I. R. Crim. P. 12(c)(2) (emphasis added). The Court so held and from the bench denied the People's motion to deny Mr. Hatcher's motions summarily.

**Conclusion**

For the reasons stated above, the Court denied the People's motion to summarily deny all defense motions *in limine* filed out of time. A separate order follows to reduce the bench ruling to writing and amending the Trial Management Order accordingly.

**Dated** this 22 day of March, 2018.

  
**JOMO MEADE**  
Judge of the Superior Court

**ATTEST:**

Estrella H. George  
Clerk of the Court

By: 

Court Clerk Supervisor

Dated: 3 / 22 / 2018

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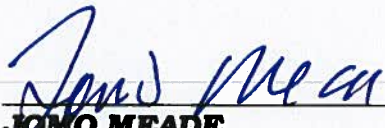
**ERRATA ORDER**

**COMES NOW** the Court *sua sponte* and issues this Order to correct the following scrivener's errors in the Memorandum Opinion dated March 22, 2018:

On page 3, in the first line on the page, delete the word "and" following the semi-colon; on page 4, three lines before the paragraph break, italicize the "id." citation signal;

It is further **ORDERED** that a copy of this Order be directed to counsel of record and forwarded to the Law Library for distribution to Lexis and Westlaw.

**DONE and SO ORDERED** this 30 day of July, 2018.

  
**JOMO MEADE**  
Judge of the Superior Court

**ATTEST:**  
Estrella H. George  
Clerk of the Court

By: 

Court Clerk Supervisor

Dated: 7 / 30 / 18