

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

PEOPLE OF THE VIRGIN ISLANDS,	)	CRIMINAL NO:
	)	ST-17-CR-52
Plaintiff,	)	
vs.	)	
	)	
CARLOS NORMAN,	)	
	)	
Defendant.	)	

MEMORANDUM OPINION

THIS MATTER is before the Court on Defendant Carlos Norman's "Defendant Norman's Motion to Compel Immediate Disclosure of Witness No. 1," filed Feb. 28, 2018 (the "Motion to Compel"). The People of the Virgin Islands (the "People") filed their opposition on May 11, 2018 (the "Opposition"). For the reasons set forth herein, Defendant's Motion to Compel will be denied.

Background

On December 28, 2016, a criminal information was filed against Defendant Carlos Norman ("Norman") and two other defendants in connection with the shooting death of Shacoi Benjamin ("Benjamin").¹

Norman asserts that the People have not disclosed the identity of a certain Witness #1 whose statements were included in the affidavit seeking an arrest warrant. Probable Cause Fact Sheet (filed February 16, 2017). In discovery, the People also produced to Norman an affidavit from said unidentified Witness #1 ("John Doe").

¹ Norman's charges include First Degree Murder.

In his instant motion, Norman argues that the People's failure to immediately disclose John Doe's information before trial constitutes a violation of both (i) Norman's due process rights under the standard set forth in *Brady v. Maryland*, 373 U.S. 83 (1963) and (ii) his rights under the Confrontation Clause of the Sixth Amendment. Norman asks that the Court require the People to immediately disclose the identity of the John Doe witness, as well as his criminal history, any statements or recordings and any plea deals or offers made so that Norman may prepare his defense.²

Legal Standard

In *Brady v. Maryland*, the U.S. Supreme Court held that "the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." *Brady*, 373 U.S. at 87. (See also *Stevens v. People of the Virgin Islands*, 55 V.I. 550, 556, 2011 V.I. Supreme LEXIS 16).

The Sixth Amendment to the U.S. Constitution applies to the Virgin Islands through Section 3 of the Revised Organic Act of 1954.³ The Confrontation Clause of the Sixth Amendment states that "[i]n all criminal prosecutions, the accused shall

² In his Mot. to Compel, Norman notes that his co-Defendant Treson Stephens filed a similar Motion to Compel Immediate Disclosure of Information Bearing on Government's Roviario Witnesses on August 15, 2017 (although Stephens' motion is captioned "Witnesses," his motion only refers to one particular witness.) Norman joins that motion and the arguments made therein. Mot. to Compel 1. This Court denied Stephens' motion by an Order dated December 6, 2017.

³ Revised Organic Act of 1954, § 3, 48 U.S.C. § 1561, *reprinted in* V.I. CODE ANN., Historical Documents, Organic Acts, and U.S. Constitution at 86-88 (1995) (preceding V.I. CODE ANN. tit. 1).

enjoy the right . . . to be confronted with the witnesses against him.” USCS Const. Amend. 6.

Discussion

A. There has been no *Brady* violation.

The People’s refusal to immediately disclose the identity of the John Doe witness does not constitute a *Brady* violation.

“A *Brady* violation occurs when favorable exculpatory or impeaching evidence is suppressed by the government, resulting in prejudice to the defendant.” *People of the V.I. v. Corraspe*, 2018 V.I. LEXIS 10, *3 (Super. Ct. Jan. 31, 2018) (citing *Strickler v. Greene*, 527 U.S. 263, 281-282, (1999)). *Brady* is not intended “to provide a remedy to the accused at the pretrial stage of a criminal case.” *Id.* Rather, the U.S. Supreme Court has found that “*Brady* applies to situations ‘involv[ing] the discovery, *after trial*, of information which had been known to the prosecution but unknown to the defense.” *George v. People of the V.I.*, 59 V.I. 368, 378, 2013 V.I. Supreme LEXIS 37 (quoting *U.S. v. Agurs*, 427 U.S. 97, 103 (1976)) (emphasis added). “To prevail on a *Brady* claim, the defendant ‘must show that the evidence was (1) suppressed, (2) favorable, and (3) material to the defense.’” *Bowry v. People of the V.I.*, 52 V.I. 264, 274, 2009 V.I. Supreme LEXIS 37 (quoting *Riley v. Taylor*, 277 F.3d 261, 301 (3d Cir. 2001) (citing *United States v. Perdomo*, 929 F.2d 967, 970 (3d Cir. 1991))). Here, no evidence has been suppressed. The People have acknowledged the existence of the John Doe witness and have announced their intention to provide the identity, criminal and National Crime Information Center histories of John Doe, three (3) days

prior to trial.⁴ Moreover, as the instant matter has not yet gone to trial, *Brady* does not apply.

Therefore, no *Brady* violation has taken place and Norman's due process rights have not been violated.

B. Norman's Sixth Amendment Right to Confrontation has not been violated.

Norman argues that the People's failure to immediately disclose the identity of the John Doe witness will deprive him of his ability to "meaningfully confront and cross-examine" said witness. Mot. to Disclose 3. However, "the Confrontation Clause is implicated only when a declarant's statement is introduced against the defendant *at trial* and the declarant does not appear at trial." *Rivera v. People of the Virgin Islands*, 53 V.I. 589, 593, 2010 V.I. Supreme LEXIS 20, *7 (emphasis added). Thus, Norman's argument that his Sixth Amendment right to confrontation will be violated if the John Doe's identity is not *immediately* disclosed is not persuasive, as the trial has not yet begun. Moreover, as noted above, the People have announced their intention to disclose John Doe's identity prior to the trial.⁵

C. The People must disclose the witness's identity and criminal record five work days before trial.

Because "[p]rotection of the identity of witnesses in homicide cases serves the public interest in encouraging future witnesses to cooperate and disclose what they

⁴ Opp'n 14.

⁵ See n.3.

know to the public . . .”, *Corraspe*, 2018 V.I. LEXIS 10, *12, “[t]he government has a privilege to withhold from disclosure the identity of persons who furnish information of violations of law to officers charged with enforcement of that law.” *Roviaro v. United States*, 353 U.S. 53, 54, (1957). “The privilege, however, is not absolute, and where ‘the disclosure of an informer’s identity . . . is relevant and helpful to the defense of an accused, or is essential to a fair determination of a cause, the privilege must give way.’” *United States v. Padilla*, 2010 U.S. Dist. LEXIS 107730, *22 (quoting *Roviaro*, 353 U.S. at 60-61). Disclosure of the John Doe witness’s identity may indeed be relevant and helpful to Norman’s defense. “[D]isclosure is timely ‘if [the] *Brady* material is disclosed . . . in time for its effective use at trial.’” *Corraspe*, 2018 V.I. LEXIS 10, *4 (quoting *U.S. v. Higgs*, 713 F.2d 39, 44 (3d Cir. 1983)). Although Norman’s rights under *Brady* and the Confrontation Clause have not been violated, the Court is concerned that disclosure of the identity of the John Doe witness three (3) days prior to trial may not be sufficient to protect Norman’s ability to prepare an adequate defense. The Court concludes that production of the identity of the John Doe witness seven (7) calendar days before the first day of trial “represents an appropriate balance between the competing interests of the People in protecting their witness[] and [Norman]’s interest in preparing his defense.” *Corraspe*, 2018 V.I. LEXIS 10, *14.

Conclusion

The Court finds that as the trial has not yet commenced, there has been no *Brady* violation and Norman’s due process rights have not been violated.

Similarly, Norman's rights under the Confrontation Clause of the Sixth Amendment have not been violated, as the trial has not yet taken place.

However, the Court further finds that Norman is entitled to the disclosure of John Doe's identity seven (7) calendar days prior to the trial.

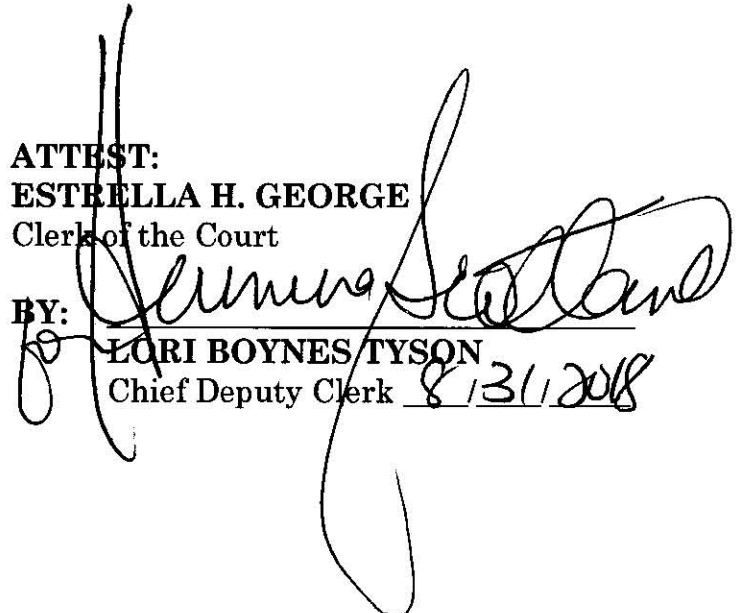
An Order consistent with this Memorandum Opinion will be entered.

DATED: May 31, 2018


Kathleen Mackay
Judge of the Superior Court
of the Virgin Islands

ATTEST:
ESTRELLA H. GEORGE
Clerk of the Court

BY:


LORI BOYNES-TYSON
Chief Deputy Clerk 8/31/2018

Chief Deputy Clerk