

**IN THE TERRITORIAL COURT OF THE VIRGIN ISLANDS
DIVISION OF SAINT CROIX AT KINGSHILL**

GOVERNMENT OF THE VIRGIN ISLANDS,)

Plaintiff)

vs.)

JOHN ALCINDOR,)

Defendant.)

CRIMINAL NO. 346/1997

**ACTION FOR AGGRAVATED
ASSAULT AND BATTERY:
DOMESTIC VIOLENCE**

NOT FOR PUBLICATION

APPEARANCES:

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MEMORANDUM OPINION

(Filed: July 8, 1998)

THIS MATTER is before the Court on the defendant's motion in arrest of judgment, or in the alternative, reconsideration. The issue presented is whether the Double Jeopardy Clause bars prosecution of a defendant on substantive criminal charges based upon the same conduct for which he was previously held in criminal contempt of court. For the following reasons, the Court answers in the negative and denies defendant's motion.

STATEMENT OF FACTS

On February 26, 1997, Nadra Taylor ("plaintiff") filed a complaint and motion for temporary restraining order ("TRO") against defendant, John Alcindor. Territorial Court Judge Patricia Steele granted plaintiff's motion for a TRO and following a hearing on March 4, 1997, entered a permanent restraining order ("PRO") against the defendant. The PRO specifically ordered "that the defendant is prohibited from directly or indirectly subjecting the plaintiff to any act of domestic violence, that is: assault, battery, burglary, kidnaping, unlawful sexual contact, rape, forcible or unlawful entry, coercion, destruction of property, and/or harassment"

On October 29, 1997, plaintiff filed a motion for contempt against defendant alleging that defendant physically assaulted her sometime in October in violation of the March 4, 1997 PRO. An order to show cause hearing was held on November 18, 1997 and by Contempt Order dated December 2, 1997, Judge Steele found that the defendant willfully violated the Court's March 4, 1997 Order by committing the following acts of domestic violence against the plaintiff: Assault, Battery, Harassment, and Threats. Judge Steele also remanded defendant to the custody of the Director of the Bureau of Corrections for a period of six months, with all but ninety (90) days suspended.

On October 21, 1997, the Government filed two criminal complaints against John Alcindor. The first complaint, Criminal No. 275/1997, alleged that defendant committed the crime of "aggravated assault and battery", an Act of Domestic Violence, on August 23, 1997 when he assaulted and battered Nadra Taylor by pulling and hitting her about the mouth. The second complaint, Criminal No. 346/1997, alleged that defendant, on October 3, 1997, committed the crime

of "aggravated assault and battery", an act of domestic violence, by hitting Nadra Taylor about the head and by grabbing her neck. Both actions were scheduled to be tried on October 29, 1997, but on that date, the parties informed the Court that the defendant would plea to the single charge of "aggravated assault and battery" in Criminal No. 346/1997 in exchange for the Government's dismissal of Criminal No. 275/1997. The plea was entered and the Court later sentenced defendant to six (6) months incarceration, to be served consecutive to Judge Steele's sentence for contempt.

DISCUSSION

The Double Jeopardy Clause provides that no person shall "be subject for the same offense to be twice put in jeopardy of life or limb." U.S. Constitution, Amendment 5. The Revised Organic Act of 1954 makes this provision applicable in the Virgin Islands. The Double Jeopardy Clause protects against 1) a second prosecution for the same offense after conviction; and 2) multiple punishments for the same offense. *North Carolina v. Pearce*, 395 U.S. 711, 717, 89 S.Ct. 2072, 23 L.Ed.2d 656 (1969). It is well established that criminal contempt enforced through nonsummary proceedings is a "crime" and that the protection of the double jeopardy clause attaches to nonsummary criminal contempt prosecutions. *U.S. v. Dixon*, 509 U.S. 688, 696, 113 S.Ct. 2849, 2856 (1993).

The test for determining whether two offenses are "the same offense" was enunciated in *Blockburger v. United States*, 284 U.S. 299, 52 S.Ct. 180, 76 L.Ed. 306 (1932). The same-elements test inquires whether each offense contains an element not contained in the other; if not, they are the "same offenses" and double jeopardy bars additional punishment and successive prosecution. *Dixon*,

113 S.Ct. at 2856. Similarly, if one offense is a lesser included offense of the other, double jeopardy attaches and the subsequent prosecution is barred. *See Commonwealth v. Yerby*, 679 A.2d 217,221 (Pa. 1996) and *Dixon*, 113 S.Ct. at 2857.

At the time Judge Steele issued the contempt order against defendant in December 1997, there were only two statutes in the Virgin Islands criminalizing indirect acts of contempt¹: Title 4 V.I.C. § 244² and Title 14 V.I.C. § 582³. Defendant could not have violated any of these statutes until an order prohibiting or requiring certain conduct on his behalf was issued. *See Dixon*, 113 S.Ct. at 2856. Once Judge Steele prohibited the defendant from committing the acts of assault or battery in her March 4, 1997 Permanent Restraining Order, defendant's subsequent commission of an assault and battery became an offense under the contempt statutes. *Id.* Thus, before Judge Steele could

¹ The Court notes that the Virgin Islands Legislature recently enacted a third statute, Title 14 V.I.C. § 582a, which states, in pertinent part, that "whoever willfully disobeys any lawful order issued pursuant to Section 97(b)(2) or Section 98 of Title 16 is guilty of a crime." See Act No. 6217, March 11, 1998, § 582a, Sess.L.Mar.2, 1998 ("Bill No. 22-0127").

² Section 244 states

Any person who willfully violates, neglects or refuses to observe or perform any lawful order of a court shall be guilty of contempt of court and upon being found guilty of such contempt may be punished as provided by law.

³ Section 582 states

Whoever willfully disobeys any lawful ... order, of any court of the Virgin Islands by doing any act therein, or thereby forbidden, if the act or thing done be of such character as to constitute also a criminal offense under any statute of the United States or under the laws of the Virgin Islands shall be punished by fine or imprisonment, or both.

find the defendant in contempt of the court during her order to show cause hearing held on November 18, 1997, she must have found the existence of the following elements:

- 1) Existence, and the defendant's knowledge, of a judicial order prohibiting the defendant from committing an assault or battery⁴; and
- 2) Wilful violation of the court's order.

The applicable elements for "aggravated assault and battery" are:

- 1) Defendant acted intentionally,
- 2) Defendant used unlawful violence upon the person of another with the intent to injure that person, and
- 3) Defendant was an adult male, and the assault and battery was inflicted upon a female or child.

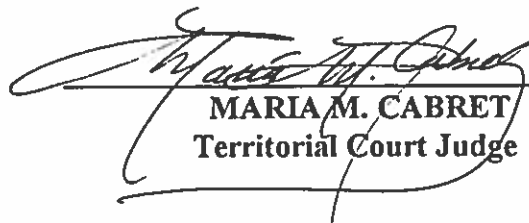
Title 14 V.I.C. § 298(5)(1996 ed.). Applying the test outlined in *Blockburger*, it is evident that the offense of "aggravated assault and battery" is not the same or a lesser included offense of criminal contempt of court (by committing an assault and battery), because the offense of aggravated assault and battery requires additional proof that the defendant was an adult male, and that the assault and battery was inflicted upon a female or child. Likewise, the offense of contempt of court requires proof of the existence, and knowledge of, a court order, which is not required to establish aggravated assault and battery. *See Dixon*, 113 S.Ct. at 2858-2859. Since each offense requires proof of an additional fact not required to prove the other, the two offenses are therefore separate and distinct and may be prosecuted successively without violating the Double Jeopardy Clause. *See Blockburger*,

⁴ Assault and battery is defined, in Title 14 V.I.C. § 292, as "whoever uses any unlawful violence upon the person of another with intent to injure him, whatever be the means or the degree of violence used, commits an assault and battery."

284 U.S. 299.

CONCLUSION

For the above stated reasons, this Court concludes that in the case *sub judice*, the Criminal No. 346/1997 prosecution for "aggravated assault and battery" following the Family No. DV 69/1997 adjudication for criminal contempt does not offend the Double Jeopardy Clause. Specifically, the Court finds that the two offenses are separate and distinct and furthermore, that neither is a lesser included offense of the other. Accordingly, the Court denies defendant's motion in arrest of judgment, or in the alternative, reconsideration.


MARIA M. CABRET
Territorial Court Judge