

IN THE TERRITORIAL COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX

GOVERNMENT OF THE VIRGIN ISLANDS,	)	
	)	CRIMINAL NO. 537/1983
Plaintiff,	)	
	)	
v.	)	AGGRAVATED ASSAULT AND
	)	BATTERY (2 Counts),
MARGARITO OTTIS,	)	DISTURBING THE PEACE AND
	)	RESISTING ARREST AND
Defendant.	)	DELAYING AN OFFICER IN
	)	THE LAWFUL DISCHARGE OF
	)	DUTY

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PETERSEN, Judge

MEMORANDUM OPINION

February 23, 1984

This matter is before the Court upon the defendant's motion to dismiss one count of aggravated assault and battery and one count of disturbing the peace on the ground that the alleged victim, Aida Cruz, his wife, refuses to testify against him. The Government opposes the motion to dismiss,

GOVERNMENT v. OTTIS
CRIMINAL NO. 537/1983
AGGRAVATED ASSAULT AND BATTERY (2Counts), DISTURBING THE
PEACE AND RESISTING AND DELAYING AN OFFICER IN THE LAWFUL
DISCHARGE OF DUTY
Page 2

alleging that the Virgin Islands marital confidential communications privilege, 5 V.I.C. Section 856 (1921), does not apply to the facts of this case. For the reasons set forth below, the defendant's motion to dismiss is denied.

FACTS

On November 14, 1983, the Government of the Virgin Islands, Department of Law, filed a complaint against the defendant alleging two counts of aggravated assault and battery, pursuant to 14 V.I.C. Sections 298(1) and (5) (1971), one count of disturbing the peace, pursuant to 14 V.I.C. Section 622(1) (1964) and one count of resisting and delaying an officer in the lawful discharge of duty, pursuant to 14 V.I.C. Section 1508 (1964). On January 24, 1984, the defendant filed with this Court a motion to dismiss one count of aggravated assault and battery and one count of disturbing the peace, each involving the defendant's wife, Aida Cruz, as the alleged victim. The motion, which cited no authority, was supplemented with the sworn affidavit of Ms. Cruz, which states that she will not testify against her husband, the defendant, whom she alleges was under the influence of liquor at the time of the argument in question. On February 8, 1984, the Government of the Virgin Islands filed its opposition motion, arguing that the Virgin Islands marital confidential

GOVERNMENT v. OTTIS
CRIMINAL NO. 537/1983
AGGRAVATED ASSAULT AND BATTERY (2Counts), DISTURBING THE
PEACE AND RESISTING AND DELAYING AN OFFICER IN THE LAWFUL
DISCHARGE OF DUTY
Page 3

communications privilege does not apply because (1) there is no allegation of a confidential communication and (2) there is an exception to the privilege when one spouse commits a crime against the other. The government's motion also presents an estoppel argument.

DISCUSSION

Rule 501 of the Federal Rules of Evidence, made applicable to the Virgin Islands by App.IV Rule 7 of the Territorial Court of the Virgin Islands, provides that the law of testimonial privilege in criminal cases

. . . shall be governed by the principles of the common law as they may be interpreted by the courts of the United States in the light of reason and experience.

There are two separate and distinct evidentiary "marital privileges." The first privilege permits one spouse to prevent the other spouse from testifying as to marital confidential communications in a civil or criminal proceeding. The second privilege permits one spouse to refuse to testify against his or her spouse in a criminal proceeding. See United States v. Mendoza, 574 F.2d 1373, 1379 (5th Cir. 1978), cert. denied. 439 U.S. 988 (1979). As there is no claim by the defendant or his spouse that a confidential marital

GOVERNMENT v. OTTIS
CRIMINAL NO. 537/1983
AGGRAVATED ASSAULT AND BATTERY (2Counts), DISTURBING THE
PEACE AND RESISTING AND DELAYING AN OFFICER IN THE LAWFUL
DISCHARGE OF DUTY
Page 4

communication is involved in the case, neither the provisions of 5 V.I.C. Section 851 (1967) nor those of 5 V.I.C. Section 856 (1967) apply. Rather, this Court must look to the principles of the common law to determine whether or not the second adverse spousal testimony privilege governs this case.

The adverse spousal testimony privilege is premised upon the view that it fosters the harmony and sanctity of the marriage relationship. Trammel v. United States, 445 U.S. 40, 44 (1980). See also, United States v. Allery, 526 F.2d 1362, 1365 (8th Cir. 1975). However, the Supreme Court has also instructed that

testimonial exclusionary rules and privileges contravene the fundamental principle that the public has a right to every man's evidence. As such, they must be strictly construed and accepted only to the very limited extent that permitting a refusal to testify or excluding relevant evidence has a public good transcending the normally predominant principle of utilizing all rational means for ascertaining truth. Trammel v. United States, supra, at 50 (emphasis added).

In Trammel, the Supreme Court modified the widely criticized adverse spousal testimony privilege by holding that the privilege of a spouse to refuse to testify against his or her spouse resides only in the witness-spouse. Id. at 53.

GOVERNMENT v. OTTIS
CRIMINAL NO. 537/1983
AGGRAVATED ASSAULT AND BATTERY (2Counts), DISTURBING THE
PEACE AND RESISTING AND DELAYING AN OFFICER IN THE LAWFUL
DISCHARGE OF DUTY
Page 5

However, the Court also recognized that the adverse spousal testimony privilege is subject to a well-established exception in cases where one spouse commits a crime against the other. Id. at 48, n.1 (citing Wyatt v. United States, 362 U.S. 525, 526 (1960)). See also, United States v. Allery, supra. This exception was long established at common law. Trammel v. United States, supra, at 48, n.1; Wyatt v. United States, supra; United States v. Mitchell, 137 F.2d 1006, 1008 (2d Cir. 1943). The courts of the United States have broadly interpreted a "crime against the other spouse" to include a physical, mental or moral wrong. United States v. Allery, supra.

In Wyatt, supra, at 530, the Court held that a prostituted witness-wife could not "voluntarily" refuse to testify against her husband in a Mann Act prosecution. The Court reasoned that a defendant-husband who could compel his wife to prostitute herself could just as readily force her not to testify against him. Bearing in mind the Supreme Court's admonition that testimonial exclusionary rules and privileges are to be accepted only when permitting a refusal to testify has a public good which transcends the predominant principle of ascertaining the truth, Trammel v. United States, supra, at 50, this Court believes that the reasoning of Wyatt, supra, at

GOVERNMENT v. OTTIS
CRIMINAL NO. 537/1983
AGGRAVATED ASSAULT AND BATTERY (2Counts), DISTURBING THE
PEACE AND RESISTING AND DELAYING AN OFFICER IN THE LAWFUL
DISCHARGE OF DUTY
Page 6

530, applies to the facts of this case. Thus, when a crime is allegedly committed by one spouse against the other, the alleged victim-spouse may testify against the defendant-spouse as an exception to the adverse spousal testimony privilege.

Moreover, the alleged victim-spouse has no privilege to refuse to testify against the defendant-spouse. This Court so holds because "reason and experience" dictate that marital peace and harmony will not be fostered by excluding potentially probative evidence of an assault and battery allegedly committed by one spouse against the other. A defendant-spouse who allegedly batters his spouse may well be able to force the spouse not to testify against him. In such a situation, to conduct an ad-hoc inquiry into the actual state of mind of the allegedly battered spouse would be unrealistic and would prove too difficult, particularly given the likelihood that the spouse would be experiencing a high degree of fear. See Wyatt v. United States, supra.

Consequently, this Court holds that the defendant's wife, Aida Cruz, has no privilege to refuse to testify against the defendant. Therefore, she may be compelled to testify. Whether or not the defendant was intoxicated at the time of the alleged crime, as Ms. Cruz has alleged, is irrelevant at this juncture. See 14 V.I.C. Section 16 (1964).

GOVERNMENT v. OTTIS
CRIMINAL NO. 537/1983
AGGRAVATED ASSAULT AND BATTERY (2Counts), DISTURBING THE
PEACE AND RESISTING AND DELAYING AN OFFICER IN THE LAWFUL
DISCHARGE OF DUTY
Page 7

Accordingly, for the foregoing reasons, the defendant's motion
to dismiss is DENIED.


EILEEN R. PETERSEN
Judge

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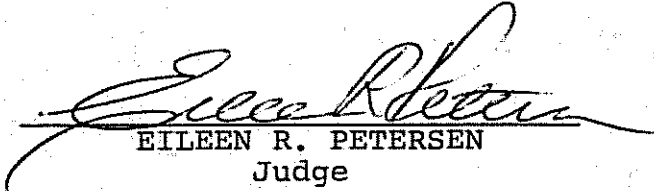
ORDER AMENDING MEMORANDUM OPINION

It is ORDERED that the memorandum opinion in the above-entitled cause is hereby amended as follows:

Page 5, line 4, substitute "48, n.7" for "48, n.1";

Page 5, line 7, substitute "48, n.7" for "48, n.1".

DATED: February 23, 1984.


EILEEN R. PETERSEN
Judge