

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

PEOPLE OF THE VIRGIN ISLANDS,	)	CRIMINAL NO:
	)	ST-16-CR-377
Plaintiff,	)	
vs.	)	
	)	
TRESON STEPHENS,	)	
	)	
Defendant.	)	

MEMORANDUM OPINION

THIS MATTER is before the Court on Defendant Treson Stephens' "Motion to Compel Immediate Disclosure of Information Bearing on Government's *Roviaro* Witnesses."¹ The People of the Virgin Islands (People) filed their opposition on October 17, 2017. For the reason's set forth herein, Stephens' motion will be denied.

I. Background

On December 28, 2016, a criminal information was filed against Stephens—and two other defendants—in connection with the shooting death of Shacoi Benjamin.²

Stephens asserts the People have not disclosed the identity of a witness whose statements were included in the affidavit seeking an arrest warrant³. The People also produced an affidavit from the unidentified witness (John Doe) to Stephens in discovery.

¹ Although Stephens' motion is titled "witnesses," his motion only refers to one particular witness.

² Stephens charges included First Degree Murder.

³ Probable Cause Fact Sheet (filed Dec. 12, 2016)

Stephens' instant motion argues that certain circumstances, including the possibility the John Doe witness is "a participant and not a mere tipster," require that the People to immediately provide the name, background, and criminal history of the John Doe witness. Stephens argues that the People's failure to disclose John Doe's information before trial constitutes a violation of a standard set forth in *Roviaro v. United States*, 353 U.S. 53 (1957), and also a violation of his "Sixth Amendment Confrontation Rights" and the "*Roviaro* standard."⁴

The Court disagrees.

II. Discussion

Roviaro is highly distinguishable from the instant matter.

The Government has a privilege to withhold the identity of persons "who furnish information of violations of law to officers charged with enforcement of that law."⁵ The privilege grants anonymity to encourage citizens to communicate their knowledge of the commission of crimes to law-enforcement officials.⁶

However, the privilege is not absolute, and trial courts generally have substantial leeway when determining whether the disclosure of a witness's identity is warranted.⁷ In *Roviaro v. United States*, 353 U.S. 53, 62 (1957), the United States Supreme Court observed that deciding whether to require disclosure "calls for

⁴ Def's Mot. to Compel Immediate Disclosure, 5 ¶ iii.

⁵ *Roviaro v. United States*, 353 U.S. 53, 59 (1957).

⁶ *Id.*

⁷ See *United States v. Brown*, 3 F.3d 673, 679 (3d. 1993) ("The Court in *Roviaro* left substantial leeway to the trial courts to determine on a case-by-case basis whether disclosure is warranted.")

balancing the public interest in protecting the flow of information against the individual's right to prepare his defense."

In *Roviaro*, the Supreme Court determined disclosure of the witness's identity was required not only because the witness was the only other participant in the alleged crime besides the defendant; but also because the Government presented evidence that was based on the witness's testimony, despite the fact the witness was never "produced, identified, or made available" during the trial.

Since *Roviaro*, courts have reiterated that important factors that weigh in favor of disclosing a witness's identity include if the witness was also a conspirator in the crime, or more importantly, if the witness was the *only other* conspirator in crime.⁸

Throughout Stephens' motion, he routinely refers to the John Doe witness as an informant, uncharged conspirator, and an assumed undisclosed participant in the conspiracy.⁹ However, Stephens does not cite to any evidence in the record or attach any exhibits to support his theory.¹⁰

Furthermore, Stephen's reliance on *Roviaro* is seemingly premature because the *Rovario* decision was based on the government using evidence derived from the

⁸ See e.g., "[W]here the witness is an active participant or witness to the offense charged, disclosure will almost always be material to the accused's defense. *United States v. Barnes*, 486 F.2d 776, 778-779, (8th Cir. 1973); [T]he government's privilege to withhold the names of informers must give way if the government's informer was the sole participant, other than the accused, in the transaction charged . . . [and] was the only witness in a position to amplify or contradict the testimony of government witnesses." *United States v. Bibbey*, 735 F.2d 619, 621 (1st Cir. 1984) citing *Rovario*, at 64. (internal quotations omitted).

⁹ See e.g., Def's Mot. to Compel Immediate Disclosure, 1 ¶ 3, 2 ¶8,

¹⁰ In contrast, the John Doe's statements that were included in the probable cause sheet do not suggest he/she was involved in the alleged crime whatsoever.

John Doe witness *during trial*, but also not identifying the John Doe witness, or producing him/her for cross examination *during the trial*.

Because trial in the instant matter has not yet begun, the Court finds *Rovario* highly distinguishable and emphasizes “there is a difference between a confidential informant, whose identity the government often never wants to reveal, and a confidential witness, whose identity will ultimately be revealed to facilitate the witness' testimony at trial and the defendant's opportunity to cross examine that witness,” *United States v. Garcia*, 2017 U.S. Dist. LEXIS 66498, *144 (D.N.M. 2017).

Therefore, the Court finds Stephens' reliance on *Roviaro* to be unconvincing, and also finds Stephens' right to prepare his defense does not require the disclosure of the John Doe's identity.

Stephen's Sixth Amendment Right to Confrontation has not been implicated.

Stephens also argues that People's failure to disclose the identity of the John Doe witness will deprive his ability to “adequately cross-examine this witness in violation of his Sixth Amendment Confrontation rights.”¹¹

The Sixth Amendment applies to the Virgin Islands through Section 3 of the Revised Organic Act of 1954.¹² The Confrontation Clause of the Sixth Amendment provides that in all criminal prosecutions, the accused shall enjoy the right to be confronted with the witnesses against him.¹³ Stated differently, “[t]he Confrontation

¹¹ Def's Mot. to Compel Immediate Disclosure, 3.

¹² 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).

¹³ U.S. Const. amend. VI.

Clause affords criminal defendants both the right to confront and to cross-examine adverse witnesses.”¹⁴

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.”¹⁵

Appropriately, Stephens’ argument that his Sixth Amendment right to confrontation will be violated if the John Doe’s identity is not *immediately* disclosed is not persuasive because trial has not yet begun. Furthermore, the Court notes that the People have suggested the John Doe’s identity will be disclosed three days prior to trial.¹⁶ The Court believes Defendant is entitled to the disclosure of John Doe’s identity more than three days in advance of trial. However, it need not make that determination at this time.

III. Conclusion

Considering *Roviaro* is highly distinguishable from the facts of the instant matter, the Court finds Stephens right to prepare right to prepare his defense does not require the disclosure of the John Doe’s identity at this time.

Furthermore, the People’s John Doe witness does not implicate Stephens’ “Sixth Amendment Confrontation Rights.”

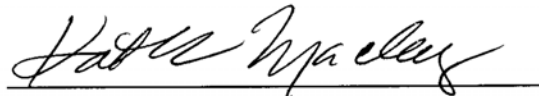
¹⁴ *Browne v. People of the Virgin Islands*, 56 V.I. 207, 221-222 (2012)

¹⁵ *Rivera v. People of the Virgin Islands*, 53 V.I. 589, 593 (2010)

¹⁶ People’s Opp’n to Def’s Mot to Compel Immediate Disclosure, 11.

An Order consistent with this Memorandum Opinion will be entered.

DATED: December 6, 2017

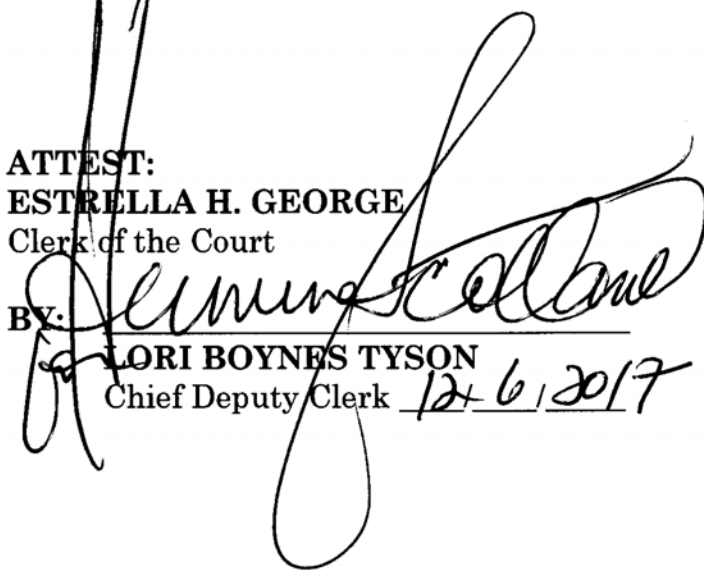


Kathleen Mackay
Judge of the Superior Court
of the Virgin Islands

ATTEST:

ESTRELLA H. GEORGE
Clerk of the Court

BY:



LORI BOYNES TYSON
Chief Deputy Clerk 12/6/2017