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JURY TRIAL DEMANDED

CHRISTIAN, ADAM G., Judge

(Filed: January 24, 2011)

The Federal Rules of Criminal Procedure allow for an information to be amended if no additional offenses are charged, and there is no prejudice to the defendant. In this case, the Court has to determine whether the proposed “Superseding Information” filed by the People of the Virgin Islands (the “People”) conforms with the Rules. Because the People’s proposed document charges the defendants with additional offenses in violation of the Rules, their Motion to File a Superseding Information will be denied.

II. Factual and procedural background

On March 17, 2010, the People filed a nine-count Information against Leroy Browne, Jr. and Colette U. Browne. The four counts against Mr. Browne charge him with violating V.I. CODE ANN. tit. 14 § 551(1) (Conspiracy), and aiding and abetting Mrs. Browne in her alleged violations of V.I. CODE ANN. tit. 14 § 2206(a), (d)(E) (Identity Theft), V.I. CODE ANN. tit. 14 §§ 605(a), 604(e)(16) (Criminally Influenced and Corrupt Organizations Act), and V.I. CODE ANN. tit. 14 §§ 605(a), 604(e)(16) (Criminally Influenced and Corrupt Organizations Act). The People allege in the present Information that from January 2003 to December 2008, Mr. Browne was involved in a fraudulent scheme of producing numerous false tax returns, and collecting and cashing tax refund checks generated from the false returns. There also are six counts against Defendant Collette U. Browne, including three alleged violations of V.I. CODE ANN. tit. 14 §§ 605(a), 604(e)(16) (Criminally Influenced and Corrupt Organizations Act), one violation of V.I. CODE ANN. tit. 14 § 2206(a), (d)(E) (Identity Theft), and one violation of V.I. CODE ANN. tit. 14 § 895(a) (Conversion of Government Property). The conspiracy count is asserted against both defendants.

On November 2, 2010, the People submitted a Motion to File a Superseding Information to the Court to: 1) correct the dates or statutory citations for each count; 2) dismiss Count Seven from the previous Information; and 3) add to or amend the remaining counts. The proposed Superseding Information contains eighteen counts, including twelve counts against Mrs. Browne and seven counts against Mr. Browne. Again, there is a conspiracy count asserted against both defendants.

Mr. Browne responded to the People's motion by filing an opposition memorandum on November 15, 2010. Defendant argues that proposed Counts Thirteen, Fourteen, Sixteen and Seventeen should be dismissed because they do not provide the essential facts necessary to inform him of his wrongdoing, thus violating FED. R. CRIM. P. 7(c)(1). Mr. Brown further argues that proposed Counts Twelve, Thirteen, Fourteen, Fifteen, Sixteen and Eighteen are barred by the statute of limitations. Mrs. Browne has not filed any response to the People's motion.

III. Discussion

Although Mr. Browne's response incorporates a motion to dismiss the proposed amended information, the Court first has to determine whether amending the existing Information is permitted under U.S. Virgin Islands law. Criminal proceedings in the Superior Court are governed by the Federal Rules of Criminal Procedure to the extent they are not inconsistent with local rules.¹ The Court first notes that the applicable rule does not authorize the filing of a "Superseding Information." Rather, FED. R. CRIM. P. 7 addresses amending an information and

¹ SUPER. CT. R. 7.

states that “[u]nless an additional or different offense is charged or a substantial right of the defendant is prejudiced, the court may permit an information to be amended at any time before the verdict or finding.”²

As detailed above, the existing Information charged Mr. Browne with four counts, and Mrs. Browne with six counts, of violations of the Virgin Islands Code. The proposed “Superseding Information” adds numerous additional counts against both defendants; specifically, embezzlement by public and private officers, conversion of government property (new only as against Mr. Browne), embezzlement or falsification of public accounts, and compounding a crime. As the Territorial Court of the Virgin Islands opined in *Simon v. Government*, Rule 7 “is explicit in its requirement that an information may be amended only if no additional or different offense is charged.”³ Importantly, the new charges are not lesser included offenses of the existing charges.⁴ Thus, any proposed amended charging document cannot insert additional charges against Defendants under Rule 7(e). As the People’s proposed “Superseding Information” includes three additional charges against Mr. Browne and six more charges against Mrs. Browne, the Court cannot grant their motion.

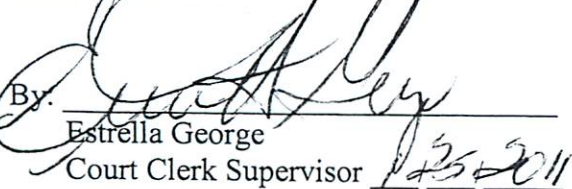
IV. Conclusion.

Because the proposed “Superseding Information” proposed by the People violates Rule 7(e) by adding several offenses against both defendants, the People’s Motion to File a Superseding Information will be denied. The Court will enter an appropriate Order with this Opinion.

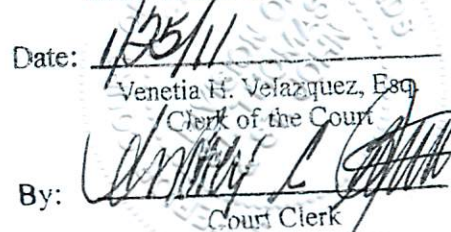
Dated: January 25, 2011


Hon. Adam G. Christian
Judge of the Superior Court
of the Virgin Islands

ATTEST:
Venetia H. Velazquez, Esq.
Clerk of the Court

By: 
Estrella George
Court Clerk Supervisor 1/25/2011

CERTIFIED A TRUE COPY

Date: 1/25/11
Venetia H. Velazquez, Esq.
Clerk of the Court
By: 
Court Clerk

² FED. R. CRIM. P. 7(e) (noting in Author’s Commentary that “[a]mendments may be made at any time prior to verdict as long as a different offense is not charged”) (emphasis added).

³ 47 V.I. 3, 17 (Terr. Ct. 2002) (furthering that “Such straightforward language leaves no room for alternative interpretations.”).

⁴ See, *Walters v. Government*, 36 V.I. 101, 107, 172 F.R.D. 165, 169 (D.V.I. App. Div. 1997) (“Because a lesser included offense is, by definition, composed exclusively of some, but not all, of the elements of the offense charged, it would never constitute a ‘different’ offense, and seldom an ‘additional’ offense within the meaning of Rule 7(e).”) (citations omitted), *aff’d* 135 F.3d 764 (3rd Cir. 1997) (Table).

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ORDERED that the People's Motion to File a Superseding Information is **DENIED**; and it is further

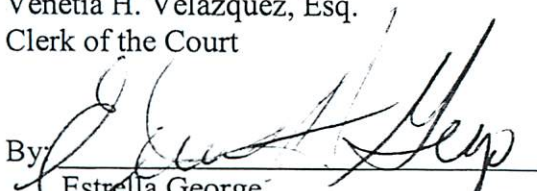
People of the Virgin Islands v. Colette U. Browne and Leroy Lemuel Browne, Jr.
Case Nos. ST-10-CR-115 and ST-10-CR-116
Order

ORDERED that copies of this Order and the accompanying Memorandum Opinion shall be served on Defendants Colette Browne and Leroy Browne, and also directed to all counsel of record.

Dated: January 25, 2011

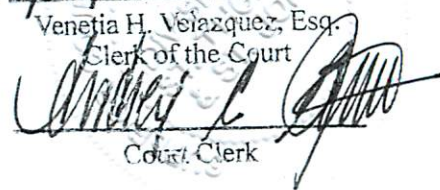

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