

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

PEOPLE OF THE VIRGIN ISLANDS,	)	
	)	CRIMINAL NOS. ST-11-CR-669 and
Plaintiff,	)	ST-11-CR-670
	)	V.I. CODE ANN. tit. 14, §§ 295(1),
v.	)	
	)	11(a), 2253(a), 625(a), 921, 922(a)(1)
JEVERN B. PHILLIP and	)	
MALIK OSTALAZA,	)	
	)	
Defendants.	)	
_____	)	

MEMORANDUM OPINION

THIS MATTER¹ came on for a hearing on the Defendants' Motion in Limine to Preclude the People From Offering into Evidence the Video Footage It Has Disclosed To Date and Defendant Malik Ostalaza's Motion in Limine to Exclude Firearms and Ballistic Evidence. The Defendants are on trial for first degree murder and other related offenses. The Court will deny the Motion in Limine pertaining to the video footage and grant the Motion in Limine pertaining to the firearms and ballistic evidence.

In addition, the People of the Virgin Islands filed a Motion in Limine with regard to an Audio 911 Call and Call History Record in this matter, on May 10, 2012. The Court will reserve ruling on that Motion and order the parties to turn the 911 tapes over to the Court so that it may review the 911 tapes before making a final determination.

I. DEFENDANTS' MOTION IN LIMINE TO PRECLUDE PEOPLE FROM OFFERING VIDEO FOOTAGE

In their Motion in Limine, the Defendants argue that the video footage that the People intend to use is so inaudible and indistinct that a jury would have to speculate as to its contents. In addition, the Defendants argue that the video footage shows depictions that the People's witnesses will ultimately testify to, thus making the use of the video footage tantamount to unfair bolstering of the People's witness testimony. For these reasons, the Defendants contend that the video is inadmissible under Federal Rule of Civil Procedure 403 because it would mislead the jury and lead to a needless presentation of cumulative evidence. In response, the People argue that the video footage depicts an accurate rendition of the crime scene route and the jury is best suited to make a determination on the images shown on the video footage.

¹ The People of the Virgin Islands are represented by Charles Willoughby, Esq., Assistant Attorney General, and Sigrid M. Tejo-Sprotte, Esq., Assistant Attorney General. Defendant Phillip is represented by Michael C. Quinn, Esq., of Dudley, Topper, and Feuerzeig LLP. Maria Hodge, Esq. of Hodge and Francois represents Malik Ostalaza.

There are two videos that the People seek to use in this matter. The first video purports to show a Suzuki Vitara traveling in an area near Hospital Ground, which was the scene of the crime. The second video purports to show footage of the Jaguars nightclub entrance and surrounding street during the night of the crime, when the Defendants left the club and entered the Suzuki Vitara. The video which shows the Suzuki Vitara traveling near Hospital Ground was camcorder footage taken by a Virgin Islands Police Department Officer of images captured by a surveillance camera situated in the vicinity of Lionel Roberts Stadium. The second video that shows the entrance of Jaguars nightclub were images captured by various surveillance cameras situated in the vicinity of the nightclub.

The Court will decide the Motion in Limine under Federal Rules of Evidence 401, 402 and 403. Rule 401 states that relevant evidence is "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence."² Here, it is essentially undisputed that the video footage at issue is relevant if it shows the crime scene route at Jaguars nightclub and at Hospital Ground as it purports to show. Furthermore, Rule 402 states that "[A]ll relevant evidence is admissible, except as otherwise provided by the Constitution of the United States"³ Thus, unless a conflict with Rule 403 is present, the video footage should be admitted.

Rule 403 states that relevant evidence may be excluded if it, among other things, misleads the jury and results in needless presentation of cumulative evidence.⁴ The Court is of the belief that the video is sufficiently clear such that a jury will not be misled and could reach its own conclusions on whether the video depicts what the People will argue that it does. Furthermore, the Court does not consider the video to be needless cumulative evidence because the mere fact that the People's witness will testify to seeing the crime scene route during the night in question does not negate the usefulness of a jury actually seeing video footage purporting to show the crime scene route. Also, having viewed the video footage in open Court, the Court is not convinced that the video footage is so blurry and indistinct as to render it meaningless, as the Defendants contend. Last, the Court believes that any issues that the Defendants wish to raise regarding the use of the video as relevant evidence by the People can be presented and explored on cross-examination by Defendants' counsel. Accordingly, the Court will deny the Defendants' Motion to preclude the use of video footage.

II. DEFENDANT MALIK OSTALAZA'S MOTION IN LIMINE TO EXCLUDE FIREARMS AND BALLISTIC EVIDENCE

In his Motion in Limine, Defendant Ostalaza argues that the Court should exclude evidence and testimony relating to or referencing the firearms seized on March 20, 2010 by the Virgin Islands Police Department from the motor vehicle driven by Raymond Leerdam because

² FED R. EVID. 401.

³ FED R. EVID. 402.

⁴ FED R. EVID. 403 states that "[A]lthough relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence."

the evidence is not relevant under Rule 401. The guns recovered were a .40 caliber Springfield Armory and a .45 caliber Taurus. Ostalaza contends that the firearms evidence is irrelevant as to him since they were seized by the police department from Mr. Leerdam's vehicle, at a time when Ostalaza was not a passenger in the car, and because Leerdam has agreed to plead guilty to its possession.

The People contend that the firearms evidence is relevant as to Ostalaza because its Jaguars security witnesses will testify that they saw both Ostalaza and Jamal Morton exit Leerdam's vehicle about ten minutes prior to the police searching the vehicle. Furthermore, the People's witnesses will testify that they saw Ostalaza and Morton remove weapons from their person prior to exiting Leerdam's vehicle. Also, the People contend that according to Federal Bureau of Investigation Reports, the bullets and shell casings found at the crime scene match the .45 caliber Taurus found in Leerdam's vehicle. Last, the people provided evidence to the Court showing that Leerdam had not accepted a plea deal from the Government regarding the firearms possession.

Rule 401 states that relevant evidence is "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence."⁵ Here, the Court believes that the evidence of the .45 caliber Taurus does not tend to make it more probable that Ostalaza was involved in the crime. The Court makes this determination based on the fact that there is no fingerprint or other forensic evidence that directly links Ostalaza to the .45 caliber Taurus that was found in Leerdam's vehicle. While shell casings from the .45 caliber Taurus have been linked to the crime by ballistic evidence, that alone is not enough to make that evidence relevant as to Ostalaza. After all, Ostalaza was not in the vehicle at the time that the weapons were seized and is not the owner of the vehicle. The People contend that they will produce witnesses that will testify that they saw Ostalaza removing weapons from his person upon exiting the vehicle near club Jaguars. However, in the absence of an eyewitness willing to testify to directly seeing Ostalaza removing a .45 caliber Taurus of the same color recovered from Leerdam's car at the time that Ostalaza exited the car, the evidence tying the Taurus to Ostalaza is too tenuous and attenuated. Without a more direct connection to Ostalaza, the Court views evidence of the .45 caliber Taurus as irrelevant and potentially unduly prejudicial under Rule 403.⁶ Accordingly, the Court will not allow evidence regarding the .45 caliber Taurus. In addition, the Court will exclude evidence of the .40 caliber Springfield Armory since it was not the weapon used at the crime scene and thus is also clearly irrelevant to the matters at issue. Last, since the Court is excluding the evidence with respect to the firearms, the Court will preclude the Defendants from arguing that the People have no evidence concerning the weapon used in the crime during the trial.

⁵ FED R. EVID. 401.

⁶ The Court also considered whether evidence of the seizure of the .45 caliber Taurus could come in under an aiding and abetting theory, since there is DNA evidence that Ostalaza possessed the .40 caliber weapon in the car, and that Morton, an alleged aider and abetter, would have therefore, been in possession of the .45 caliber firearm. The Court believes that such evidence would be unduly prejudicial to Ostalaza, since it could not be presented without tying Ostalaza to the .40 caliber weapon which is not related to the crime in this case.

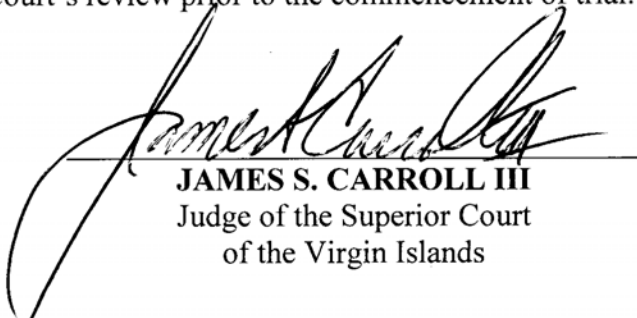
III. PEOPLE'S MOTION IN LIMINE WITH RESPECT TO 911 CALLS RECORDINGS

In its Motion in Limine, the People request that the Court allow the People to present audio evidence of a series of 911 calls made in regards to the shooting at Hospital Ground and a request for assistance at Club Jaguars during the morning of March 6, 2010. The People contend that while the tapes contain statements that reference a prior shooting involving the same three males charged in this matter, that portion of the tapes can be redacted. The People request to present the redacted version to the jury.

In response, Defendant Jevern Phillip argues that the tapes should not be admitted in its original or redacted form because the nature of the calls is testimonial and highly prejudicial. Phillip argues that the calls are testimonial because they were not made for the callers' health, safety, or to seek assistance, but were made to provide information to aid in the investigation and potential prosecution of a crime. Phillip further argues that the calls are irrelevant as they do not prove any material fact that the Government could not use other evidence to prove.

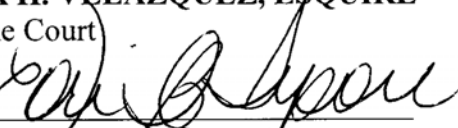
The Court will reserve ruling on the Motion in Limine and will order the parties to submit to the Court, the 911 tapes in question for the Court's review prior to the commencement of trial.

DATED: May 14, 2012



JAMES S. CARROLL III
Judge of the Superior Court
of the Virgin Islands

ATTEST:
VENETIA H. VELAZQUEZ, ESQUIRE
Clerk of the Court

BY: 
LORI BOYNES-TYSON
Court Clerk Supervisor 5/14/12