

IN THE SUPERIOR COURT THE VIRGIN ISLANDS

DIVISION OF ST. THOMAS AND ST. JOHN

PEOPLE OF THE VIRGIN ISLANDS,	)	
	)	
Plaintiff,	)	
	)	
v.	)	CASE NO. ST-16-CR-280
	)	
WAHILLI JAMES	)	
	)	
Defendant.	)	
	)	

MEMORANDUM OPINION

Pending before the Court is Defendant's October 21, 2016, Emergency Motion to Dismiss. Because a criminal action commenced upon the issuance of a proper arrest warrant within the three year statute of limitations, Defendant's motion will be denied.

RELVANT FACTUAL AND PROCEDURAL HISTORY

The Virgin Islands Police Department ("VIPD") opened an investigation on September 16, 2013, with respect to a robbery that occurred earlier that day at the Gems and Gold Corner jewelry store on St. Thomas, U.S.V.I.¹ Witnesses reported that the robbers pointed a gun at a jewelry store employee who was standing behind the counter, shattered the glass display containing jewelry, stole jewelry, and then fled in a dark colored Jeep Wrangler.² During its subsequent investigation, VIPD obtained information that implicated Defendant Wahilli James as a suspect in the robbery.³

On August 30, 2016, approximately two years and eleven months after the robbery, a warrant was issued for James' arrest. James was arrested on St. Croix on September 4, 2016,⁴ and

¹ See September 20, 2016, Information, Aff. of Nigel James.

² *Id.*

³ *Id.*

⁴ See September 4, 2016, Arrest Report.

made his initial appearance before the Superior Court on September 6, 2016.⁵ An Information, dated September 16, 2016, was filed on September 20, 2016, to which James pled not guilty at an arraignment on September 22, 2016.⁶

On October 21, 2016, James filed an Emergency Motion to Dismiss. Following the recusal of the Honorable Renee Gumbs-Carty on November 15, 2016, the case was assigned to undersigned.⁷ On December 7, 2016, undersigned entered an Order setting new briefing deadlines regarding James' Emergency Motion to Dismiss, as well as James' other pending motions.⁸

On December 19, 2016, the People moved for an extension of time to respond to James' pending motions, upon which request the Court has yet to rule.⁹ On December 29, 2016, the People filed their Opposition to James' Emergency Motion to Dismiss, but James did not file a reply. Defense counsel, the Territorial Public Defender, moved to withdraw as James' attorney of record on February 21, 2017.

DISCUSSION

I. The People's Motion for Extension of Time.

Having moved for an extension of time prior to the expiration of the original deadline, the Court may grant the People's motion for "cause shown."¹⁰ The People submit that additional time was needed to conduct legal research and prepare their responses to James' pending motions.¹¹ Further, James has neither opposed the motion nor moved to strike the People's Brief as

⁵ See September 6, 2016, Record of Proceeding.

⁶ See September 22, 2016, Record of Proceeding.

⁷ See November 15, 2016, Notice of Recusal.

⁸ See December 7, 2016, Order (directing the People to respond to Defendant's Emergency Motion to Dismiss, Motion for Bail Reduction, and Renewed Motion for Bail Reduction, and Motion to Compel Discovery by December 19, 2016, to which Defendant could reply by December 30, 2016).

⁹ See People's December 19, 2016, Mot. for Extension of Time.

¹⁰ SUPER. CT. R. 10(a)(1) ("When an act is required or allowed to be done at or within a specified time ... [t]he court for cause shown may at any time in its discretion . . . [w]ith or without notice, order the period enlarged if application therefor is made before the expiration of the period originally prescribed or as extended by a previous order of the court").

¹¹ People's December 19, 2016, Mot. for Extension of Time.

untimely,¹² and the ten day delay did not impact the progress of the judicial proceedings.¹³ Consequently, the Court will grant the People's Motion for Extension of Time and deem the People's Opposition filed *nunc pro tunc*.

II. Defendant's Emergency Motion to Dismiss.

James moves to dismiss the charges against him, arguing the criminal action commenced with the filing of the Information on September 20, 2016, four days after the expiration of the statute of limitations under 5 V.I.C. § 3541.¹⁴ In opposition, the People argue "the action is 'commenced' for purposes of the statute of limitation[s] with the issuance of an arrest warrant found on probable cause[.]" which occurred on August 30, 2016, nearly two weeks prior to the expiration of the statute of limitations.¹⁵

5 V.I.C. § 3541 provides:

- (a) A criminal action shall be commenced within the following periods:
 - (1) For murder, felony child abuse, felony child neglect, any felony sexual offense perpetrated against a victim, embezzlement of public moneys, and the falsification of public records, there is no limitation of the time within which a prosecution shall be commenced.
 - (2) For any felony other than specified above, action shall be commenced with three years after its commission.
 - (3) For any misdemeanor, action shall be commenced within one year after its commission.
- (b) If the defendant is out of the Virgin Islands when the offense is committed, the information may be filed within the term herein limited after his coming within the Virgin Islands, and no time during which the defendant is not an inhabitant of, or usually resident within, the Virgin Islands is a part of the limitation.
- (c) Nothing in this section extends to persons fleeing from justice.¹⁶

¹² See *Destin v. People of the Virgin Islands*, 2016 V.I. Supreme LEXIS 10, *3 n. 1 (V.I. 2016) ("Although the Superior Court failed to provide an explanation for considering the defendant's untimely motion, the record reflects that the People did not move to strike Destin's motion as being untimely, and therefore it waived any objection to its timeliness") (citing *Joseph v. People*, 60 V.I. 338, 347 n.7 (V.I. 2013)) (other citation omitted).

¹³ See *Fuller v. Browne*, 59 V.I. 948, 954 (V.I. 2013) (internal quotation marks and citations omitted).

¹⁴ Def.'s Mot. to Dismiss, p. 2.

¹⁵ People's Opp'n to Mot. to Dismiss, p. 2.

¹⁶ 5 V.I.C. § 3541.

As both parties note, the Virgin Islands Code does not specifically define what constitutes the “commencement” of a criminal action, and Virgin Islands courts have been incongruous on the issue. The Superior Court recently addressed this issue in *People of the Virgin Islands v. Ayala*,¹⁷ a case involving another alleged participant in the same robbery as James, and held that “either the issuance of a proper arrest warrant or the filing of an information, whichever is earlier, commences a criminal action for purposes of 5 V.I.C. § 3541.”¹⁸ In reaching this conclusion, the Superior Court analyzed the “discordant” rulings of Virgin Islands courts, noting that the United States District Court for the Virgin Islands held in *Gov’t of the V.I. v. Moncayo*¹⁹ that a criminal action is commenced under 5 V.I.C. § 3541 with “the filing of an information or the issuance of an arrest warrant within the limitation period[,]”²⁰ while the Supreme Court of the Virgin Islands stated in *Miller v. People of the Virgin Islands*²¹ that “the filing date of an information would determine when a criminal prosecution commenced.”²² However, the Supreme Court of the Virgin Islands cited *Moncayo* for that assertion,²³ doing so “in apparent tension with *Moncayo*, its putative source[.]”²⁴ Recognizing this distinction, the Superior Court considered the purpose of the statute of limitations under 5 V.I.C. § 3541, as described by the Supreme Court of the Virgin Islands,²⁵ ultimately finding that under 5 V.I.C. § 3541 a criminal action may commence upon the date a proper arrest warrant is issued or an information is filed.²⁶ Having reviewed the Superior Court’s

¹⁷ 2017 V.I. LEXIS 22 (V.I. Super. Ct. Feb. 6, 2017).

¹⁸ *See id.*

¹⁹ 31 V.I. 135, 142 (D.V.I. 1994).

²⁰ *Ayala*, 2017 V.I. LEXIS 22 at *6 (citing *Moncayo*, 31 V.I. at 142) (emphasis omitted).

²¹ 54 V.I. 398 (V.I. 2010).

²² *Ayala*, 2017 V.I. LEXIS 22 at *6 (citing *Miller*, 54 V.I. 398).

²³ *Id.*

²⁴ *People of the V.I. v. Cummings*, 2016 V.I. LEXIS 60, *3 n.3 (V.I. Super. Ct. May 9, 2016) (citing *Miller*, 54 V.I. at 402) (emphasis added).

²⁵ *Ayala*, 2017 V.I. LEXIS 22 at *7 (citing *Ventura v. People of the Virgin Islands*, 64 V.I. 589, 611 n.10 (V.I. 2016)) (other citation omitted).

²⁶ *Id.*; *See Rivera v. People of the V.I.*, 64 V.I. 540, 570-580 (V.I. 2016) (discussing the implications of pre-indictment delay on a defendant’s due process rights where there is no statute of limitations for the crime charged).

reasoning and finding it sound, the Court hereby adopts the Superior Court's interpretation in *Ayala* regarding the date a criminal action commences for statute of limitations purposes under 5 V.I.C. § 3541.

Here, a warrant for James' arrest was issued on August 30, 2016, based on the alleged commission of robbery in the first degree in violation of 14 V.I.C. § 1862(2); robbery in the second degree in violation of 14 V.I.C. § 1863(1); grand larceny in violation of 14 V.I.C. § 1083(1); assault in the first degree in violation of 14 V.I.C. § 295(3); assault in the third degree in violation of 14 V.I.C. § 297(a)(1)-(2); destruction of property in violation of 14 V.I.C. § 1266; and aiding abetting in violation of 14 V.I.C. § 11(a) by James on September 16, 2013.²⁷ The Magistrate Division of the Superior Court found there was probable cause for the charges,²⁸ and James has not challenged the sufficiency of the warrant for lack of probable cause. On September 20, 2016, a twelve count Information was filed against James.²⁹

With the exception of destruction of property, the criminal charges described in the arrest warrant and Information constitute felonies falling within the three year period of limitations of 5 V.I.C. § 3541(a)(2). Consequently, 5 V.I.C. § 3541 required that a criminal action on those felonies be commenced against James within three years of September 16, 2013, the date the offenses were allegedly committed. Because the warrant for James' arrest was issued on August 30, 2016, within

²⁷ August 30, 2016, Warrant, p. 1.

²⁸ See September 6, 2016, Record of Proceeding.

²⁹ The September 20, 2016, Information charges James with first degree robbery in violation of 14 V.I.C. §§ 1861, 1862(2), 11(a) (Count I), unauthorized use of a firearm during the commission of a first degree robbery in violation of 14 V.I.C. §§ 2253(a), 11(a) (Count II), second degree robbery in violation of 14 V.I.C. §§ 1861, 1863(1) (Count III), unauthorized use of a firearm during the commission of a second degree robbery in violation of 14 V.I.C. §§ 2253(a), 11(a) (Count IV), first degree assault in violation of 14 V.I.C. §§ 295(3), 11(a) (Count V), unauthorized use of a firearm during the commission of a first degree assault in violation of 14 V.I.C. §§ 2253(a), 11(a) (Count VI), third degree assault in violation of 14 V.I.C. § 297, 11(a) (Count VII), unauthorized use of a firearm during the commission of a third degree assault in violation of 14 V.I.C. §§ 2253(a), 11(a) (Count VIII), grand larceny in violation of 14 V.I.C. § 1083(1), 11(a) (Count IX), unauthorized use of a firearm during the commission of grand larceny in violation of 14 V.I.C. §§ 2254(a), 11(a) (Count X), possession of stolen property in violation of 14 V.I.C. §§ 2101(a), 11(a) (Count XI), and destruction of property in violation of 14 V.I.C. §§ 1266, 11(a). See September 20, 2016, Information.

three years of September 16, 2013, the criminal action against James commenced prior to the expiration of the statute of limitations in accordance with 5 V.I.C. § 3541. Because destruction of property is a misdemeanor with a one year statute of limitations, Count XII of the Information must be dismissed.

The People assert that, even assuming, *arguendo*, that the criminal action did not commence until the Information was filed on September 20, 2016, the action remains timely because “James tolled the statute of limitations in this matter when he fled the jurisdiction to avoid facing charges.”³⁰ On the other hand, James argues the exceptions set forth in 5 V.I.C. § 3541(b) and (c) do not apply because James “remained in the jurisdiction [of the Virgin Islands] from the time of the alleged offenses to the present.”³¹ As James points out, after the September 16, 2013, robbery, on St. Thomas, James was arrested for unrelated charges and “remained in the custody of the Bureau of Corrections until October 30, 2015.”³² These charges were subsequently dismissed and James “has not evaded prosecution[,] ... at all times, [having] lived under his legal name” at a residence located on St. Croix, U.S. Virgin Islands, while “not in the government’s custody.”³³ Indeed, the arrest of James in this case occurred on September 4, 2016, at his residence.³⁴ Moreover, considering VIPD was able to arrest James for a different crime during the months following the robbery at issue here, the Court finds no merit in the People’s suggestion that the statute of limitations was tolled due to James fleeing from justice. Nevertheless, because the Court

³⁰ People’s Opp’n to Mot. to Dismiss, p. 3.

³¹ Def.’s Mot. to Dismiss, p. 2.

³² Def.’s Mot. to Dismiss, p. 2. A review of court records indicates that on October 30, 2015, an Order was entered in *People v. James*, Case No. SX-13-CR-528, directing and commanding the release of James from Adult Correctional Facility, Golden Grove, St. Croix, U.S.V.I. See October 30, 2015, Order to Release Prisoner, *People v. James*, Case No. SX-13-CR-528.

³³ Def.’s Mot. to Dismiss, p. 2.

³⁴ See September 4, 2016, Arrest Report.

concludes that a criminal action against James commenced when a proper arrest warrant was issued on August 30, 2016, the statute of limitations need not be tolled here.

CONCLUSION

For the foregoing reasons, Defendant James' Emergency Motion to Dismiss will be denied with regard to Counts I through XI of the Information because a criminal action was commenced within the three year statute of limitations under 5 V.I.C. § 3541. The Motion will be granted with regard to Count XII, a misdemeanor.

An Order consistent with this Memorandum Opinion shall follow.

Dated: March 2, 2017

ATTEST: Estrella George
Acting Clerk of Court ____/____/____


HON. MICHAEL C. DUNSTON
JUDGE OF THE SUPERIOR COURT
OF THE VIRGIN ISLANDS

by: _____
Lori Boynes-Tyson
Court Clerk Supervisor ____/____/____