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

PEOPLE OF THE VIRGIN ISLANDS, Plaintiff, vs. TIFFANNE C. SUTTON, Defendant.	CASE NO. ST-10-CR-F579 JURY TRIAL DEMANDED
PEOPLE OF THE VIRGIN ISLANDS, Plaintiff, vs. TIFFANNE C. SUTTON, ERROL S. PETERSON, and COLETTE HACKETT-BROWNE, Defendants.	CASE NO. ST-10-CR-F580 CASE NO. ST-10-CR-F581 CASE NO. ST-10-CR-F582 JURY TRIAL DEMANDED
PEOPLE OF THE VIRGIN ISLANDS, Plaintiff, vs. TIFFANNE C. SUTTON, KIMBERLY O. SUTTON, THIERRY PHILIPI SERRANT and ROBERT M. LATTIMORE, JR., Defendants.	CASE NO. ST-10-CR-F577 CASE NO. ST-10-CR-F608 CASE NO. ST-10-CR-F525 CASE NO. ST-10-CR-F653 JURY TRIAL DEMANDED

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CHRISTIAN, ADAM G., Judge

MEMORANDUM OPINION

(Filed: March 30, 2011)

I. Summary.

Before the Court is the "Motion to Consolidate and in the Alternate to Dismiss" filed by Defendant Tiffanne C. Sutton.[1] By said motion, Tiffanne C. Sutton seeks to consolidate all of the above-captioned criminal actions pursuant to FED. R. CRIM. P. 8(b) because all of the cases arise from the same acts and transaction. Only the People of the Virgin Islands (the "People") filed an opposition to the motion. Because all of the claims against all Defendants grow out of the same circumstances and no prejudice has been asserted by any Defendant, the motion will be granted and a joint trial of these cases ordered.

II. Background.

These cases grow out of alleged misuse of taxpayers' names and other personal information by former employees of the Virgin Islands Bureau of Internal Revenue ("VIBIR") in order to obtain and negotiate illegitimate tax refund checks. It also is alleged that persons outside of VIBIR assisted the employees in these endeavors. A review of the charges against all Defendants reveals substantial similarities.

Specifically, in Case Nos. ST-10-CR-580, 581 and 582, Defendants Colette Hackett Browne, Errol R. Peterson, and Tiffanne C. Sutton are charged with a conspiracy under the

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[1] Despite the title of the motion, there was no discussion in the body of the document regarding the standard for a pretrial dismissal of criminal charges, nor was a request for dismissal made. The motion focused solely on the issue of joinder. Therefore, this opinion does not address dismissal of criminal actions.

Virgin Islands Criminally Influenced and Corrupt Organizations Act ("CICO").[2] Ms. Browne also is charged with two substantive CICO counts, two counts of embezzlement or falsification of public accounts,[3] eight counts of offenses by officers and employees of the Virgin Islands,[4] and one count of fraud and false statements.[5] Mr. Petersen, in addition to the conspiracy count, is charged with two CICO counts, two counts of aiding and abetting[6] embezzlement or falsification of public accounts, eight counts of aiding and abetting offenses by officers and employees of the Virgin Islands, and one count of aiding and abetting fraud and false statements. Tiffanne C. Sutton is further charged with two CICO counts, two counts of aiding and abetting embezzlement or falsification of public accounts, three counts of aiding and abetting offenses by officers and employees of the Virgin Islands, and one count of aiding and abetting fraud and false statements.

In Case Nos. ST-10-CR-525, 577, 608, and 653, Tiffanne C. Sutton, Kimberly O. Sutton, Thierry Philipi Serrant,[7] and Robert Lattimore, Jr. are charged with participation in a CICO conspiracy. Tiffanne C. Sutton also faces two counts of violating CICO, one count of embezzlement or falsification of public accounts, one count of offenses by officers and employees of the Virgin Islands, five counts of embezzlement by clerks, agents, and employees,[8] one count of obtaining money by false pretenses,[9] and one count of identity theft.[10] Kimberly O. Sutton, in addition to the conspiracy count, is charged with two counts of aiding and abetting CICO violations, one count of aiding and abetting offenses by officers and employees of the Virgin Islands, five counts of aiding and abetting embezzlement by clerks, agents, and employees, one count of aiding and abetting the obtaining of money by false pretenses, and one count of aiding and abetting identity theft. Finally, in Case No. ST-10-CR-579, Tiffanne C. Sutton is charged with single counts of offenses by officers and employees of the Virgin Islands, fraud and false statements, identity theft, and obtaining of money by false pretenses.

The People oppose the motion on the grounds that consolidation would be "impractical and serve no legitimate purpose." The People also assert that the facts at trial would be different in the various cases. The People additionally claim that joining these cases would not serve the interests of judicial economy. By Orders dated January 27 and February 2, 2011, this Court gave all Defendants twenty (20) days to submit their responses to said motion. However, no responses were submitted by those parties, and, therefore, any potential objections to the instant

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2 V.I. CODE ANN. tit. 14, §§ 600-614.
3 14 V.I.C. § 1662.
4 33 V.I.C. § 1533.
5 33 V.I.C. § 1525.
6 14 V.I.C. § 11.
7 Although the People filed an Information against Mr. Serrant on September 15, 2010, and the Court issued a Writ of Habeas Corpus Ad Prosequendum on October 15, 2010, he has not yet been brought before the Court to be advised of his rights and arraigned. Therefore, Mr. Serrant will be given an opportunity to be heard on this matter, if he so desires, once he is brought before the Court.
8 14 V.I.C. § 1093.
9 14 V.I.C. § 834.
10 14 V.I.C. § 2202.

motion are deemed waived.[11] Upon consideration of the appropriate factors, the Court will grant Tiffanne C. Sutton's motion and order a joint trial of these matters.

III. Analysis.

Although both Tiffanne C. Sutton and the People primarily discuss FED. R. CRIM. P. 8(b) in their submissions, this is not the rule which principally governs the present motion. Federal Rule 8(b) establishes the bases on which multiple defendants may properly be charged in the same indictment or information. What Tiffanne C. Sutton seeks in her motion is a consolidation or joint trial of these several cases, which were commenced in three separate informations, and SUPER. CT. R. 129[12] governs this motion. However, the Court reads these rules together as they both promote judicial efficiency by sanctioning joint criminal trials whenever appropriate. Conservation of judicial resources is favored under the rules of this Court.[13] Construing these rules together is consistent with the practice of federal courts considering federal Rules 8(b) and 13[14] together when faced with similar motions. As noted by the United States Supreme Court, "Joint trials 'play a vital role in the criminal justice system.'"[15] The decision of whether to order a joint trial of separate criminal cases is committed to the sound discretion of the trial court.[16]

In this case, the Court agrees with the movant that the three Informations filed against all Defendants "arose out of the same facts and circumstances...." All cases involve allegations that VIBIR employees and other persons participated in a process to obtain income tax refund checks to which they were not entitled. In this process, false tax returns were submitted to and processed by the VIBIR, income tax refund checks were improperly issued, and these checks were negotiated.

Although some of the charges in the Informations cover different time frames, the Court notes the generally close temporal proximity of the varying allegations. In Case Nos. ST-10-CR-580, 581, and 582, the Information covers activities alleged to have occurred from January 1, 2006 through December 31, 2007. In Case Nos. ST-10-CR-525, 577, 608, and 653, the criminal activities are alleged to have taken place between January 1, 2008, the day immediately following the last date of the alleged illegal activities in Case Nos. ST-10-CR-580, 581 and 582, and March 30, 2010. In Case No. ST-10-CR-579, the alleged misconduct is said to have

11 SUPER. CT. R. 7, 128(a); FED. R. CRIM. P. 12(e).

12 "A judge may order that two or more complaints be tried together if the offenses arose out of the same facts and circumstances, regardless of the number of defendants. In all other cases, with the consent of the persons charged, a judge, for convenience, may consolidate complaints for trial."

13 SUPER. CT. R. 1.

14 FED. R. CRIM. P. 13 provides "The court may order that separate cases be tried together as though brought in a single indictment or information if all offenses and all defendants could have been joined in a single indictment or information." Although not identical to local rule 129, the Court finds that the rules have similar requirements and purposes.

15 *Zafiro v. United States*, 506 U.S. 534, 537 (1993) (quoting *Richardson v. Marsh*, 481 U.S. 200, 209 (1987)).

16 *E.g.*, *United States v. Vazquez-Barrena*, No. 1:07-CR-70 2007 WL 5312629 * 1 (E.D. Tenn. Dec. 28, 2007) (considering consolidation of separate indictments under FED. R. CRIM. P. 13).

occurred between February 1, 2008 and September 30, 2008, which overlaps with the time frame alleged in Case Nos. ST-10-CR-525, 577, 608, and 653. In addition to the temporal overlaps of the various cases, as described above there are similarities in the types of charges alleged against all Defendants. Given the overlapping time frames and similarity of the alleged activities of all Defendants, and the fact that each of them are alleged to have participated in one of the two alleged conspiracies, all of the violations and Defendants could have been charged in one Information under FED. R. CRIM. P. 8(b). Under these circumstances, ordering a joint trial is appropriate.

While it is in the interest of the public to conduct joint trials in criminal cases when authorized by the rules of procedure, the Court must also take into account any prejudice which may inure to any co-Defendants.[17] As noted above, Defendants did not respond to the motion. Therefore, no prejudice to any Defendant is present in the record. Further, the Court notes that, given the number of Defendants and charges, handling the several matters together will avoid the potential for multiplicitous or duplicitous charges being prosecuted against the various Defendants.[18]

The People's contention that the proposed joint trial of these cases would serve no legitimate purpose is contrary to both the well-established afore-cited precedent that joint trials are in the public interest and the policy of the Rules of the Superior Court. Moreover, the People's reliance on *United States v. Eufrasio*[19] is misplaced, as that case supports the conclusion that a joint trial of these cases is apt. Therein, the Third Circuit declared,

> Rule 8(b) provides substantial leeway to prosecutors who would join racketeering defendants in a single trial. The rule permits joinder of defendants charged with participating in the same racketeering enterprise or conspiracy, even when different defendants are charged with different acts, so long as indictments indicate all the acts charged against each joined defendant (even separately charged substantive counts) are charged as racketeering predicates or as acts undertaken in furtherance of, or in association with, a commonly charged RICO enterprise or conspiracy.[20]

Although the People brought the CICO conspiracy charges separately in these cases, it is apparent that the plans alleged in the CICO conspiracies are similar, if not the same. Count One of the Information in Case Nos. ST-10-CR-525, 577, 608, and 653 provides, in pertinent part:

> While employed by, or associated with, any enterprise, the defendants conducted and participated in, directly or indirectly, the affairs of the enterprise through a pattern of criminal activity to wit: Obtaining Money by False Pretense Tit. 14

17 *See, United States v. Salehi*, 187 F. App'x 157, 163-164 (3rd Cir. 2006).
18 *See, People v. Miller*, No. ST-08-CR-427, Mem. Op. (V.I. Super. Ct. Nov. 12, 2010) (Dunston, J.) (noting that certain charges involving CICO and related charges were multiplicitous and violated rights of defendants).
19 935 F.2d 553 (3rd Cir. 1991).
20 935 F.2d at 567.

> V.I.C. 834(b), in that the defendants, acting in concert with each other knowingly and designedly engaged in a fraudulent scheme defrauding the Government of the Virgin Islands Bureau of Internal Revenue (IRB) of money in excess of $100.00, by fraudulently intercepting, obtaining and negotiating or cashing tax refund checks issued by the IRB made payable to Virgin Islands taxpayers and obtaining the proceeds, in the names of others in violation of Tit. 14 V.I.C. § 605 (d), 604(e)(16).

And, Count One of the Information in Case Nos. ST-10-CR-580, 581 and 582 provides, in pertinent part:

> While employed by, or associated with, any enterprise, the Defendants conducted and participated in, directly or indirectly, the affairs of the enterprise through a pattern of criminal activity to wit: Obtaining Money by False Pretense, in that the Defendants, acting in concert with each other knowingly and designedly engaged in a fraudulent scheme defrauding the Government of the Virgin Islands Bureau of Internal Revenue of money in excess of $100.00, by fraudulently generating several tax refunds through the filing of several false and fraudulent tax returns in the names of others **in violation of Tit. 14 V.I.C. § 605 (d), 604(e)(16).** (Emphasis in original).

The language of the conspiracy charges indicates a substantial similarity in their nature. Moreover, the substantive charges are based on alleged acts of some Defendants by which the aforesaid CICO conspiracies were executed. Under *United States v. Eufrasio,* therefore, these cases should be joined and not maintained separately.

The People's concern that there are different substantive charges against the various defendants does not change this analysis as "...Rule 8(b), Fed.R.Crim.P., does not require that each defendant be named in each count, so long as the offenses are related."[21] Finally, case law indicates that, in the absence of prejudice, it is not an abuse of discretion to conduct a joint trial involving multiple conspiracies when, as here, there is a common scheme used to achieve the goals of the conspiracies.[22] Taking into account all relevant factors, the Court concludes that a joint trial of these cases is the best course of action.

IV. Conclusion.

The allegations against Defendants in the various charges brought by the People of the Virgin Islands all revolve around plans and actions to achieve the same improper goal – Defendants obtaining money by manipulating the income tax system. In light of the salutary principle of conserving judicial resources, and the lack of any articulated prejudice to any of the

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21 *United States v. Gimelstob,* 475 F.2d 157, 160 (3rd Cir. 1973).

22 *United States v. Rittweger,* 524 F.3d 171, 176-178 (2nd Cir. 2008). *See also, United States v. Elder,* 90 F.3d 1110, 1118-1120 (6th Cir. 1996) (no abuse of discretion by the trial court in holding joint trial of 13 defendants where all charges were logically related).

Defendants, the Motion to Consolidate and in the Alternate to Dismiss filed by Defendant Tiffanne C. Sutton will be granted. The Court will issue an order for the joint trial of the above-captioned matters in conjunction with this opinion.

Dated: March 30, 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
Acting Chief Deputy Clerk 3/30/2011

CERTIFIED A TRUE COPY
Date: 3/30/11
Venetia H. Velazquez, Esq.
Clerk of the Court
By: ______________________
Court Clerk