

FOR PUBLICATION

**SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX**

PEOPLE OF THE VIRGIN ISLANDS,)	CASE NO. SX-14-CR-136
)	CASE NO. SX-14-CR-144
Plaintiff,)	
)	
v.)	
)	
EUGENE ROBERTS and LARRY)	
WILLIAMS, JR.,)	
)	
Defendants.)	

Cite as: 2019 VI SUPER 21

Appearances:

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MEMORANDUM OPINION
(Filed February 21, 2019)

DONOHUE, SR., Senior Sitting Judge:

¶1 **BEFORE THE COURT** is a motion filed by the People of the Virgin Islands to strike the notice Larry Williams, Jr.'s filed to join in the motion for judgment of acquittal or new trial that his co-defendant, Eugene Roberts, filed.¹ For the reasons stated below, the motion will be granted.

¹ The title of the People's motion is to strike Williams's motion for judgment of acquittal, or in the alternative, new trial. But Williams did not file a motion for judgment of acquittal or new trial, even though the Court granted him several extensions of time. And in the body of their motion, the People refer to the notice of joinder Williams filed. Substance

BACKGROUND AND ARGUMENTS

¶2 On or about April 19, 2014, multiple shots were fired at the vicinity of the Frontline nightclub on St. Croix, U.S. Virgin Islands, resulting in the death of Matthew Vernege, Jr. and injury to several others. The perpetrators rode off in a vehicle that later got into a car accident in the vicinity of Estate Morning Star. Eugene Roberts and Larry Williams, Jr. were arrested and charged on May 20, 2014 with several crimes including, *inter alia*, assault, murder, and unauthorized possession of a firearm during the commission of a crime of violence.²

¶3 Following a jury trial and several amendments to the charging document, Williams was found not guilty of first-degree murder as to Vernege and third-degree assault as to Vernege's girlfriend, Kenya Stanley, but guilty of the lesser-included offense of second-degree murder, first-degree reckless endangerment, possession of ammunition, and two counts of unauthorized possession of a firearm, one of which was during the commission of a crime of violence. Roberts was acquitted of murdering Vernege and assaulting Stanley as well as aiding and abetting Williams in committing either crime, but guilty of attempted murder in the first degree and first-degree assault as to Roscar Hurtault, a patron of the Frontline club, as well as first-degree reckless endangerment, possession of ammunition, and three counts of unauthorized possession of a firearm, two of which were during the commission of a crime of violence. The only counts of which Williams and Roberts were both convicted were reckless endangerment, possession of ammunition, and the enhanced and unenhanced firearm charges.

¶4 After the jury returned its verdict, Roberts filed a motion for judgment of acquittal or, in the alternative, for a new trial on November 29, 2016, which the People opposed on January 10, 2019, after an extension of time. Williams requested and was granted multiple extensions, but ultimately failed to file a post-trial motion. Sentencing was scheduled for February 13, 2019, but continued to

controls over the title of a motion. *Cf. Anthony v. FirstBank V.I.*, 58 V.I. 224, 228 n.5 (2013).

² Elijah Felix, Lester Roberts, and Derrick Liburd were also charged. Felix agreed to plead guilty to unauthorized possession of a firearm and was sentenced to two years incarceration. Lester Roberts agreed to a dismissal of all charges against him without prejudice. Liburd was acquitted of all charges by the Court after the close of the People's case-in-chief.

February 22, 2019, due to a conflict of Williams's counsel. In the interim, Williams filed a notice on February 14, 2019, joining in Roberts's motion for judgment of acquittal or new trial, specifically "adopt[ing] the facts and arguments set forth in the Memorandum of Law in Support of Motion for Judgment of Acquittal or for New Trial to the extent that they apply to him." (Def.'s Notice of Joinder 1, filed Feb. 14, 2019.)

¶5 In response, the People filed a motion to strike Williams's joinder,³ contending that the "notice seems to be an end run around the Court's Order of January 10, 2019, granting Williams a fifth and final extension of the time to file his post-trial motion." (People's Mot. 1, filed Feb. 13, 2019.) "Williams did not file his post-trial motion . . . as ordered," the People point out. *Id.* Instead, Williams seeks "to establish the same feat outside of the time mandated by the Court by joining in Roberts' post-trial motion." *Id.* The effect, the People contend, is that "Williams has moved for a judgment of acquittal outside of the time allowed by the Court, and without an extension of time." *Id.* at 2. Since Williams's "Notice was filed a month after his fifth and final extension expired, without any extension from the Court and without any showing of excusable neglect . . . the Notice of Joinder in Defendant Roberts' motion . . . must . . . be stricken." *Id.* at 2-3.

¶6 Because the deadline for Williams to respond the People's motion would come after the February 22, 2019 sentencing date, the Court has chosen to rule on the motion without awaiting a response from Williams.

DISCUSSION

¶7 "In general, 'a court has inherent authority to strike any filed paper which it determines to be abusive or otherwise improper under the circumstances.'" *In re: Asbestos, Catalyst & Silica Toxic Dust Exposure Litig.*, 68 V.I. 507, 515 (Super. Ct. 2018) (internal quotation marks omitted) (quoting *Der Weer v. Hess Oil V.I. Corp.*, 64 V.I. 107, 126 (Super. Ct. 2016)). "But it does not follow that courts

³ Williams served his notice of joinder on the People on February 13, 2019. However, the notice was not filed with the Court until February 14, 2019.

should always strike untimely-filed papers just because they were filed late. A motion to strike raises a question of propriety rather than of right and for this reason it is addressed to the discretion of the court.” *Der Weer*, 64 V.I. at 127 (quotation marks and citations omitted). Hence, when motion papers are filed late, courts can strike them, *cf. Destin v. People*, 64 V.I. 465, 468 n.1 (2016), or dismiss an untimely motion or disregard an untimely response or reply, assuming excusable neglect were not found. *Cf. Der Weer*, 64 V.I. at 127. But the issue raised here is more nuanced than whether Williams filed his notice late.

¶8 By claiming that Williams failed to show good cause, the People also assume that Williams had a deadline to join Roberts’s motion. In other words, the People assume that Williams filed his notice of joinder late because he did not file it before the various deadlines this Court set and extended for him to file a post-trial motion had passed. But the deadline for Williams to give notice that he was joining in *Roberts*’s motion cannot also be the same deadline for him to file his own motion because “a notice is not a motion, and should not be so treated. A notice does not invite a response in opposition or a reply. Notices are neither granted nor denied (or dismissed).” *Gov’t of the U.S.V.I. v. ServiceMaster Co., LLC*, SX-16-CV-700, 2018 V.I. LEXIS 100, *22 (V.I. Super. Ct. Sep. 26, 2018) (quotation marks, brackets, and citation omitted). While a motion joined by another party remains pending “even if the party who originally filed the motion is later dismissed or . . . withdraw[s] the motion,” *Der Weer v. Hess Oil V.I. Corp.*, 60 V.I. 91, 100 (Super. Ct. 2014) (citations omitted), joining another party’s motion is not the same as filing a motion. Consequently, the People’s motion begs the more basic question, when must a notice of joinder be filed. This is a question of first impression because the Virgin Islands rules of procedure are silent on whether and how one party joins another party’s motion.

¶9 The general practice in the Virgin Islands has been “for one party to join another party’s position by notice, not by motion.” *People v. Rivera*, 68 V.I. 393, 422 (Super. Ct. 2018). “Court

approval is unnecessary,” *id.*, because joinder enhances judicial efficiency. One party who seeks the same relief as another party can join in that party’s motion or opposition because it cuts back on expense and reduces delay. *Accord* V.I. R. Crim. P. 1(d) (“These rules are to be interpreted to provide for the just determination of every criminal proceeding, to secure simplicity in procedure and fairness in administration, and to eliminate unjustifiable expense and delay.”); V.I. R. Civ. P. 1 (“These rules should be construed, administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every action and proceeding.”). *Cf. ServiceMaster Co., LLC*, 2018 V.I. LEXIS 100 at *10 (“Since twenty-four pages is preferable to sixty-pages, the Court will grant the Defendants page limit motion and accept their joint motion to dismiss.”); *see also Niswander v. Price, Waicukauski & Riley LLC*, No. 1:08-cv-1325-WTL-DML, 2010 U.S. Dist. LEXIS 2444, *3 n.1 (S.D. Ind. Jan. 13, 2010) (“Defendant Jennifer Graham has filed a motion to join in the other Defendants’ motion. . . . In the future, it is unnecessary for Ms. Graham to file a motion to join; a notice of joinder serves the same purpose and reduces the number of entries on the Court’s docket because it does not require a ruling.”). But judicial efficiency is not enhanced if a notice of joinder raises new or different arguments than those raised in the motion or opposition or when parties attempt to join motions that cannot be extended to them. *Cf. Shame on You Prods., Inc. v. Banks*, 120 F. Supp. 3d 1123, 1142-43 (C.D. Cal. 2015) (finding notice of joinder improper because the joining parties had not answered and could not join a motion for judgment on the pleadings); *Molina v. Wash. Mut. Bank*, No. 09-CV-00894-IEG (AJB), 2010 U.S. Dist. LEXIS 8056, *4 n.1 (S.D. Cal. Jan. 29, 2010) (“[T]he Court ordered that the notice of joinder was proper to the extent Wilshire joined in the arguments raised in the Motion to Dismiss, but that the Court would not consider the new arguments raised in the notice of joinder.”); *Miss. Band of Choctaw Indians v. Mississippi*, Civ. No. J90-0386(B), 1991 U.S. Dist. LEXIS 19397, *10 (S.D. Miss. Apr. 9, 1991) (“Defendant Mabus may not use the Notice of Joinder to add any new issues to the Motion to Dismiss that was filed by the State of Mississippi.”). Here, the relief Williams

requests is the same relief that Roberts requests – acquittal or a new trial, but only “to the extent that they apply to him.” (Def.’s Notice of Joinder 1.) Williams did not raise any new arguments in his notice of joinder or request new or different relief. Consequently, Williams’s notice of joinder is not improper in that regards. But it was filed late.

¶10 This Court holds that a notice of joinder in a motion must be filed as early as possible, but in any event, no later than the time allowed for filing a response since a notice of joinder is a nothing more than a response to a motion. Roberts filed his motion for judgment of acquittal or new trial on November 29, 2016. For Williams to have timely joined in that motion, he had to give notice within fourteen days or by December 13, 2016. *See* D.V.I. Local R. Civ. P. 7.1(e)(1) (applicable via Super. Ct. R. 7 and D.V.I. Local R. Crim. P. 1.2). Instead, Roberts filed his notice of joinder over two years late.

¶11 When one party joins another party’s motion late, courts either excuse the delay or disregard the notice of joinder. *Compare Croman Corp. v. Gen. Eng’g Co.*, No. 2:05-cv-0575-GEB-JFM, 2005 U.S. Dist. LEXIS 39408, *2 n.1 (E.D. Cal. Sep. 12, 2005) (“UTC noticed its motions on July 7, 2005. On August 19, 2005, Sikorsky and HSI filed a ‘Notice of Joinder’ to UTC’s motions so that the relief requested by UTC would apply to them if granted. . . . Even though the ‘Notice of Joinder’ is untimely, the motions will be decided as if UTC, Sikorsky, and HSI had brought them in the first instance because the decision will not adversely affect Croman.”), *with Tobin v. BC Bancorp.*, No. 09cv0256 DMS (CAB), 2010 U.S. Dist. LEXIS 87667, *3-4 n.1 (S.D. Cal. Aug. 24, 2010) (“Defendant NDEx West LLC filed a Notice of Joinder in Defendant Wells Fargo’s motion on July 22, 2010, nearly one week after the reply briefs were filed. Because Plaintiffs did not have an opportunity to respond to arguments as they relate to Defendant NDEx West, the Court finds the Notice of Joinder was untimely filed, and declines to address the motion as to Defendant NDEx West.”). *Croman* and *Tobin* exemplify two of the ways in which courts approach untimely notices of joinder. If the moving party would be

disadvantaged, for example, by not being able to respond to the joining party, then disregarding the untimely notice of joinder may be the appropriate course. However, when the outcome would be the same even if the joining party joins, then excusing the delay and taking the joinder into consideration in ruling on the motion may be appropriate.

¶12 In this instance, the situation is somewhat different insofar as it is the opposing party, the People, and not the moving party, Roberts, who opposes Williams's joinder. Moreover, if Williams had given timely notice that he was joining Roberts's motion, the People might have been able to respond to Williams's joinder or perhaps to tailor their arguments accordingly. But at this point, Roberts's motion is fully briefed and to allow Williams to join that motion after the fact would place the People at a disadvantage or require the Court to allow the People to file a response now to Williams's joinder, which would in turn require granting Williams leave to file a reply. Joinder does not enhance judicial economy under these circumstances.

¶13 But beyond the timeliness of Williams's notice,⁴ the more important concern here is with the type of motion that Williams has joined. As *Shame on You* implicitly recognized, there are certain motions that parties cannot join. Substantive motions are among them. There, the federal district court rejected the attempt by two defendants to join in a motion filed by other defendants for judgment on the pleadings. The court reasoned that the joinder was improper

because a Rule 12(c) motion is only proper after the pleadings are closed but within such time as not to delay the trial. The pleadings are closed for the purposes of Rule 12(c) once a complaint and answer have been filed, assuming . . . that no counterclaim or cross-claim is made.

⁴ Although Williams filed his notice of joinder late, the Court could deny the People's motion to strike because they failed to show prejudice. "The movant carries the burden of persuasion." *Goodwin v. Fawkes*, 67 V.I. 104, 130 n.19 (Super. Ct. 2016). As the movant, the People were required to show how Williams's delay prejudiced them. *Cf. Brown v. People*, 49 V.I. 378, 383 (2008) (*per curiam*) ("[T]he determination of excusable neglect is at bottom an equitable one. The trial court should take into account all relevant circumstances . . . including the danger of prejudice to the People." (quotation marks, citations, brackets, and ellipses omitted)). They did not. So, but for the concerns raised regarding the type of motion Williams joined, the Court could deny the People's motion to strike for failure to show how the delay impacted them.

Shame on You Prods, 120 F. Supp. 3d at 1142-43 (quotation marks, brackets, and citations omitted). Because the joining defendants had not yet answered the complaint, the court rejected their attempt to join. *See id.* at 1143 (“Because Garner and Broken Road have not filed an answer, the pleadings are not closed as to them; hence, they cannot join the remaining defendants’ motion for judgment on the pleadings. In fact, so long as Garner and Broken Road remain parties, the pleadings are not closed and the court cannot grant defendants’ motion for judgment on the pleadings.” (citation omitted)).

¶14 Like a motion for summary judgment or a motion for judgment on the pleadings, a motion for judgment of acquittal necessarily involves an evaluation of the sufficiency of the evidence as to each defendant. Joinder is not proper in this instance. Joining a motion for an extension of time or a motion to dismiss for failure to state a claim for relief, any of the procedural or legal-sufficiency motions that parties may file, may enhance judicial economy, save time and costs, and reduce delay. But joining a substantive or a dispositive motion is not proper when it relieves the joining party from carrying its own burden in support. *Cf. Barak v. The Quisenberry Law Firm*, 37 Cal. Rptr. 3d 688, 693 (Ct. App. 2006) (“When a party merely joins in a motion for summary judgment without presenting its own evidence, the party fails to establish the necessary factual foundation to support the motion.”); *United States v. Coffman*, 574 F. App’x 541, 558 (6th Cir. 2014) (“[A] motion for severance is particular to the individual making the motion and cannot be joined by other defendants.”). *See also Schnabel v. Lui*, 302 F.3d 1023, 1034 n.4 (9th Cir. 2002) (“As a practical matter, counsel may face a conflict of interest if two clients have such diverse interests that their defenses cannot be joined in one motion, but that issue is not before us.”).

¶15 The Court agrees with the People that Williams is attempting “an end run around” the various deadlines and extensions already given to him to file his own post-trial motion. But Williams would also be circumventing the requirement that he make his own motion with the proper factual and legal support. *Cf. Litwin Corp. v. Universal Oil Prods. Co.*, SX-05-CV-056, 69 V.I. ___, ___; 2018 V.I.

V.I. LEXIS 104, *12 (V.I. Super. Ct. Sep. 28, 2018) (“[N]o court can ‘make a movant’s arguments for him when he has failed to do so.’” (quoting *Joseph v. Joseph*, SX-04-CV-188, 2015 V.I. LEXIS 43, *5 (V.I. Super. Ct. Apr. 23, 2015)) (remaining citation omitted)). And if the Court were to disregard the delay and allow Williams to join in Roberts’s motion for judgment of acquittal, it would force the Court to undertake an analysis of the sufficiency of the evidence as to Williams, but without the benefit of briefing from Williams or the People. Joinder should be encouraged when it will increase efficiency and reduce cost. But not when the effect is to excuse parties from carrying their respective burdens or counsel from fulfilling their professional duties.

¶16 Finally, the Court acknowledges that the Supreme Court of the Virgin Islands has recognized that “where a co-defendant properly raises an issue predicated on the same facts from the same trial . . . ‘it would be manifestly unjust to’” to resolve the issue as to “one co-defendant’s case and not the other co-defendant’s case.” *Rivera v. People*, 64 V.I. 540, 587 (2016) (quoting *Boston v. People*, 56 V.I. 634, 645-46 (2013)). But the Supreme Court also recognized that it would be unjust only if “the People have had the ‘opportunity to fully brief’ the same issue,” *id.* (quoting *Boston*, 56 V.I. at 646), and “the facts supporting a motion . . . in [one defendant’s] case are the same facts that would support a motion . . . in [the other defendant’s] case.” *Id.* at 587-88. If the Court had granted Roberts’s request for new trial it would manifestly unjust to deny Williams the same relief based solely on the failure of Williams’s counsel “to make the same argument,” *id.* at 587, but only “to the extent that the [errors] apply to” Williams. (Joinder 1.) However, the Court denied Roberts’s motion for new trial and none of the errors Roberts raised, that also apply to Williams, warrant granting Williams a new trial.

CONCLUSION

¶17 For the reasons stated above, the Court holds that a notice of joinder should be filed within the same time as a response to a motion or a reply to a response. Williams joined Robert’s motion nearly two years after the motion was filed and fully briefed. The notice of joinder is untimely. Nonetheless,

if Williams joining in Roberts's motion would have had no impact on the outcome of Roberts's motion, the Court could overlook the delay and decline to strike Williams's notice. But the Court holds that joining a substantive or dispositive motion is not proper because the joining party is seeking the same relief as the movant, but without carrying its own burden in support. Williams cannot join in Robert's motion for judgment of acquittal. To the extent Williams is attempting to join in Roberts's motion for a new trial, none of the errors Roberts raised that apply to Williams warrant granting Williams a new trial. Accordingly, the Court will grant the People's motion and strike Williams's notice of joinder. An appropriate order follows.

DONE this 21st day of February, 2019.

ATTEST:
ESTRELLA H. GEORGE
Clerk of the Court

By:


Court Clerk Supervisor

Dated:

2/21/19


DARRYL DEAN DONOHUE, SR.
Senior Sitting Judge