

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

<b>PEOPLE OF THE VIRGIN ISLANDS,</b>	)	
	)	
Plaintiff,	)	Case No.: ST-16-CR-377
	)	
v.	)	
	)	
<b>TRESON STEPHENS,</b>	)	
	)	
Defendant.	)	Cite as: 2019 VI Super 36U
_____	)	

**MEMORANDUM OPINION**

¶1 **THIS MATTER** is before the Court on Defendant Treson Stephens' Motion In *Limine* To Exclude Introduction of His Prior Arrests and Misdemeanor Conviction, filed October 18, 2018 (the "Motion to Exclude").<sup>1</sup> For the reasons set forth herein, Defendant's Motion to Exclude will be granted.

**Relevant Background**

¶2 Defendant Treson Stephens ("Stephens") is charged with first degree homicide in the shooting death of Shacoi Benjamin on October 19, 2014. Stephens's prior criminal history includes five (5) arrests, all prior to the instant matter. Three (3) of those arrests occurred in the Virgin Islands. Of the three local arrests, two of the matters were dismissed, and the third ended in an acquittal after a jury trial. Thus, he has no conviction in any of the courts of the Virgin Islands.

---

<sup>1</sup> Plaintiff opposed the motion on February 26, 2019 (the "Opposition"). At a hearing on March 7, 2019, Defendant declined to file a Reply and the Court heard oral arguments on the Motion.

¶3 Stephens also has two (2) arrests in the state of Tennessee. The first incident was a domestic assault matter which was dismissed by the local court. In the second incident, Stephens was arrested and charged with driving under the influence (“DUI”). Stephens plead no contest to the charge and therefore has one misdemeanor conviction.

¶4 In anticipation that Plaintiff People of the Virgin Islands (the “People”) might seek to introduce information regarding Stephens’ prior criminal arrest record at trial, Stephens now asks the Court to exclude any use of or reference to said arrest record under V. I. Rules of Evidence 404 and/or 609.

### **Legal Standard**

¶5 **V.I.R.E. 404(b)** states as follows:

**(b) Crimes, Wrongs, or Other Acts.**

(1) Prohibited Uses. Evidence of a crime, wrong, or other act is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character.

(2) Permitted Uses; Notice in a Criminal Case. Evidence of a crime, wrong, or other act may be admissible for other purposes, such as addressing issues, if actually contested in the case, concerning motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident — provided that the probative value of such proof, supported by specific facts and circumstances, substantially outweighs its prejudicial effect. On request by a defendant in a criminal case, the prosecutor must:

(A) provide reasonable notice of the general nature of any such evidence that the prosecutor intends to offer at trial; and

(B) do so before trial — or during trial if the court, for good cause, excuses lack of pretrial notice.

V.I.R.E. Rule 404(b)

¶6 V.I.R.E. 609(a) states in relevant part:

(a) In General. The following rules apply to attacking a witness's character for truthfulness by evidence of a criminal conviction:

(1) for a crime that, in the convicting jurisdiction, was punishable by death or by imprisonment for more than one year, the evidence:

(A) must be admitted, subject to Rule 403, in a civil case or in a criminal case in which the witness is not a defendant; and

(B) must be admitted in a criminal case in which the witness is a defendant, if the probative value of the evidence outweighs its prejudicial effect to that defendant; and

(2) for any crime regardless of the punishment, the evidence must be admitted if the court can readily determine that establishing the elements of the crime required proving -- or the witness's admitting -- a dishonest act or false statement.

V.I.R.E. Rule 609

**Discussion**

**I. Stephens' Prior Arrests and Conviction Are Not Admissible as 404(b) Prior Bad Acts Evidence.**

¶7 Stephens claims that (i) the prior bad acts evidence the People may seek to introduce at trial is not relevant to the crimes charged in this matter, and (ii) if admitted, use of the evidence would be highly prejudicial. The People, however, assert that Stephens' criminal record should be admissible at trial under V.I.R.E. 404(b) to show motive, opportunity, intent, preparation, plan, and knowledge. Opp.4.

¶8 Per Rule 404(b)(2), “[e]vidence of a crime, wrong, or other act may be admissible for . . . addressing issues, if actually contested in the case, concerning motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident — provided that the probative value of such proof . . . substantially outweighs its prejudicial effect.” V.I.R.E. 404(b)(2).

¶9 “[Rule 404(b)] reflects the revered and longstanding policy that, under our system of justice, an accused is tried for *what* he did, not *who* he is.” *United States v. Caldwell*, 760 F.3d 267, 276 (3d Cir. 2014).<sup>2</sup> “Rule 404(b) is a rule of general exclusion, and carries with it ‘no presumption of admissibility.’” *Id.* (quoting Christopher B. Mueller & Laird C. Kirkpatrick, *Federal Evidence* § 4:28, at 731 (4th ed. 2013)). “The ‘permitted uses’ of prior act evidence set forth in Rule 404(b)(2) are treated like exceptions to this rule of exclusion.” *Id.*

In *Huddleston v. United States*, 485 U.S. 681, 691-92 (1988), the United States Supreme Court laid out four requirements to consider in evaluating whether evidence is properly admitted under Rule 404(b). Namely, (1) the evidence must be offered for a proper purpose, (2) the evidence must be relevant under the standards of Rule 402, (3) its probative value must not be substantially outweighed by its potential for unfair prejudice pursuant to Rule 403, and (4) where requested the court must instruct the jury to consider the evidence only for its limited admissible purpose.

*Tyson v. People of the Virgin Islands*, 59 V.I. 391, 423 (V.I. 2013).<sup>3</sup>

---

<sup>2</sup> The Court notes that *U.S. v. Caldwell* was interpreting the Federal Rules of Evidence and not the recently-adopted Virgin Islands Rules of Evidence. (On January 18, 2017, the Virgin Islands Supreme Court adopted the Virgin Islands Rules of Evidence, effective as of March 31, 2017. *In re Adoption of Virgin Islands Rules of Evidence*, No. 2017-002, 2017 V.I. Supreme LEXIS 21, (V.I. Apr. 3, 2017).) Therefore, *U.S. v. Caldwell* is not binding. However, as Fed. R. Evid. 404(b) and V.I.R.E. 404(b) are very similar, we find this decision persuasive.

<sup>3</sup> See n.2, above. Further, the differences between F.R.E. 404(b) and V.I.R.E. 404(b) are not critical to this analysis and therefore citations to the Federal Rule are persuasive, here.

¶10 Evaluating the proposed 404(b) evidence while using Huddleston and Tyson as guides, the Court will first examine (i) whether the evidence is being offered for a proper purpose, and (ii) whether the evidence is relevant. At least one court has held that “[t]he first two considerations of the four-part analysis are met where the proffered evidence is ‘probative of a material issue other than character.’” *Id.* (quoting *United States v. Cross*, 308 F.3d 308, 320-21 (3d Cir. 2002)). “[T]he probative value of proposed evidence should meet at least two distinct requirements: ‘(1) [t]he evidence must be probative of the proposition it is offered to prove, and (2) the proposition to be proved must be one that is of consequence to the determination of the action.’” *Morton v. People of the Virgin Islands*, 59 V.I. 660, 667 (V.I. 2013) (quoting *United States v. Hall*, 653 F.2d 1002, 1005 (5th Cir. 1981) (citations omitted)). Here, the People have not even noticed the Court of its intention to introduce this evidence. Instead the Defendant is the moving party to ensure his record is not admitted during the trial. However, the People suggest that Stephens’ criminal record would be offered to prove that he had a part in shooting and killing Shacoi Benjamin. But the proposed evidence does not connect Stephens with Mr. Benjamin. Moreover, the alleged crimes involve burglary, robbery, domestic disturbance and driving under the influence: none involve murder. Finally, none of the proposed evidence shows a pattern of behavior that could serve to in some way identify Stephens as Benjamin’s shooter or guilty of any of the related charges pending against Stephens.

¶11 Instead, the Court finds the People's proposed prior bad acts evidence would likely go to establishing character and a pattern of behavior, both of which are prohibited by 404(b). "Generally, if evidence of other bad acts or previous criminal activity is offered only to prove that a defendant has a propensity to commit crime, it must be excluded." *Morton*, 59 V.I. 660, 666. As propensity is not a proper purpose under 404(b), the evidence fails the first two prongs of the *Huddleston* test. As a result, the Court need not analyze the issue further. Stephens' prior arrests and conviction are not admissible under 404(b).

**II. Stephens' Prior Arrests and Conviction Are Not Admissible as 609 Impeachment Evidence, Should He Testify at Trial.**

¶12 If Stephens chooses to testify at trial, his prior criminal record could be used to impeach his character, pursuant to V.I.R.E. Rule 609. Rule 609 provides that evidence of a criminal conviction for "any crime regardless of the punishment . . . must be admitted if the court can readily determine that establishing the elements of the crime required proving -- or the witness's admitting -- a dishonest act or false statement." V.I.R.E. 609(a)(2). However, Rule 609 only applies to "evidence of a criminal conviction." V.I.R.E. 609(a) (Emphasis added.) "The proper test for admissibility under Rule 609(a)(2) does not measure the severity or reprehensibility of the crime, but rather focuses on the witness's propensity for falsehood, deceit or deception." *Better Building Maintenance of the Virgin Islands, Inc. v. Lee*, 60 V.I. 740, 749 (V.I. 2014) (citing *Walker v. Horn*, 385 F.3d 321, 334 (3d Cir. 2004)) (internal quotations omitted).

¶13 Here, Stephens' only conviction is for a misdemeanor DUI. Stephens claims that nothing about his DUI conviction focuses on a person's propensity for falsehood, deceit or deception and therefore, the conviction cannot be offered as impeachment evidence. This Court agrees.<sup>4</sup>

### Conclusion

¶14 The proposed Rule 404(b) prior bad acts evidence relating to Defendant Stephens' alleged prior crimes and bad acts is not admissible to show motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident. Thus they are not admissible.

¶15 Should Defendant Stephens choose to testify at trial, his one prior DUI conviction does nothing to show a propensity for falsehood, deceit or deception and is therefore inadmissible under Rule 609.

¶16 Therefore, Defendant's Motion in *Limine* To Exclude any 404(b) or Prior Bad Acts Evidence is granted.

¶17 An Order consistent with this Memorandum Opinion will be entered.

DATED: March 13, 2019


ATTEST:

ESTRELLA H. GEORGE  
Clerk of the Court

BY:

 3/15/19  
LORI BOYNES TYSON

Chief Deputy Clerk \_\_\_\_/\_\_\_\_/\_\_\_\_

  
Kathleen Mackay  
Judge of the Superior Court  
of the Virgin Islands

<sup>4</sup> The People seem to concur, per Section B of the Opposition, "The Defendant's Arrests Cannot Be Admitted Pursuant to Rule 609."