

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. THOMAS AND ST. JOHN

THE PEOPLE OF THE VIRGIN ISLANDS)
Plaintiff)
Vs.)
RUSSELL E.D. ROBINSON)
Defendant)

CASE NO. ST-95-CR-0000121

ACTION FOR: 14 V.I.C. 922(A)(1)

**NOTICE OF ENTRY OF
MEMORANDUM
OPINION AND ORDER**

TO: GEORGE MARSHALL MILLER, ESQUIRE
ERNEST F. BASON, ESQUIRE
ORDER BOOK
LIBRARIAN
JUDGES & MAGISTRATES, SUPERIOR COURT

IT DIVISION
RUSSELL ROBINSON, PRO SE
P.O. Box 2147
San Juan, P.R. 00922-2147

Please take notice that on March 26, 2010 a(n) MEMORANDUM OPINION

AND ORDER dated March 26, 2010 was entered by the Clerk in the
above-entitled matter.

Dated: March 26, 2010

Venetia H. Velazquez. Esq.
CLERK OF THE SUPERIOR COURT



ROSEALIE GRIFFITH
COURT CLERK SUPERVISOR

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

GOVERNMENT OF THE VIRGIN ISLANDS,)	
)	
Plaintiff,)	
)	CRIMINAL NO. ST-95-CR-0000121
vs.)	
)	CHARGES:
RUSSELL ROBINSON,)	14 V.I.C. §§ 921(A)(1)
)	
Defendant.)	
)	
)	
)	

MEMORANDUM OPINION

Before the court is Russell Robinson's *pro se* Motion Seeking Dismissal with Prejudice and Expungement of Criminal Record by the Virgin Islands Police Department, N.C.I.C., or any other Data Bases dated December 12, 2006 and filed January 4, 2007 as well as a Renewed Motion Requesting an Expedited Ruling dated February 17, 2007. In his motion, although not explicitly stated, the Defendant supports his request by alleging that his arrest warrant was not supported by the requisite probable cause. The People have not submitted any response to the Defendant's request.

I. BACKGROUND

On May 20, 1994, then Territorial Court Judge Soraya Diase issued a warrant for Russell Robinson's arrest. The affidavit supporting the arrest warrant relied heavily on the statement of a then unidentified witness (later identified as Jennine Chateram). In her statement, Chateram stated that she saw Robinson and another male walk over to where she had previously seen the victim. Shortly after seeing the two males, she heard several shots fired and saw Robinson and

the other male enter a car and speed off. Chateram subsequently picked Robinson's photo out of a photo array and identified him as the person she saw on the night of the shooting.

Based on this affidavit, the Court found sufficient probable cause for the defendant's arrest. The defendant was arrested and charged with Murder in the First degree in violation of V.I. CODE ANN. tit. 14, §§ 921 and 922(a)(1). Before the trial's commencement, Chateram submitted an affidavit to the court retracting her prior statement and claimed that she was on St. John at the time of the shooting. Shortly thereafter, the Government submitted a Motion to Dismiss without Prejudice to the Court, which was duly granted. On January 4, 2007, the Defendant submitted this Motion praying that the Order dismissing the case without prejudice be amended to reflect the dismissal of the case with prejudice and that the arrest be expunged from his record.

II. DISCUSSION

In his Petition, Robinson seems to allege that the warrant for his arrest was not based on probable cause because the supporting affidavit was based on the false statement of a witness. To resolve this issue, two sub issues must first be examined. Those sub issues are: (1) if the arrest was based on probable cause, is the defendant entitled to have his record expunged; and (2) whether Robinson's arrest was based on probable cause where probable cause was based on a statement that was later recanted.

A. If there was probable cause for the Defendant's arrest and no special circumstances exist, then the Defendant is not entitled to the expungement of his record.

The Government has an interest in promoting effective law enforcement by retaining and preserving arrest records. *Government of the Virgin Islands v. Richardson*, 2004 WL 242886 (Terr. Ct. V.I. 2004). Such records help to meet the compelling public need for maintaining an effective and workable criminal identification procedure. *Id.* Thus, although courts have the

inherent power to expunge records, a defendant is not automatically entitled to expunction after being acquitted of criminal charges or after the Government dismisses criminal charges. *Id.* When considering whether to expunge a record the court must balance the Government's compelling interest in maintaining an "effective and workable criminal identification procedure" against the harm maintaining the arrest records may cause a citizen. *Id.* at 1. The person seeking expungement has the burden of proving that an expungement should be granted. *Government of the Virgin Islands v. Nugent*, 2007 WL 1394014. ("Importantly, the Government's interests in maintaining criminal records are presumed, unless a petitioner seeking expungement can overcome them." *Richardson*, 2004 WL 242886 at 1.) ("[P]ower to expunge records is a narrow one, and should not be routinely used whenever a criminal prosecution ends in an acquittal, but should be reserved for the *unusual or extreme case*." *United States v. Thomas*, 34 F. Supp. 2d 303 (D.V.I. 1999) (Emphasis added)).

The Court will not usually grant expungement where the "factual basis of the arrest" is buttressed by probable cause. *Government of the Virgin Islands v. Nugent*, 2007 WL 1394014. In fact, where the factual basis for arrest is supported by probable cause the court's inherent right to expunge records is limited to instances where: (1) there is a permissible statute; (2) the defendant proves there was a constitutional infirmity in his arrest or conviction; or (3) there are extreme circumstances that outweigh the Court's interest in maintaining the records. *Id.* V.I. CODE ANN. tit. 5, §§ 3711, 3712(a) create limited circumstances where expungement may be granted. Section 3711 allows for expungement after the defendant fulfills his or her probation

obligations.¹ Section 3712 applies exclusively to youth offenders who have not reached the age of 21 at the time of conviction.²

Expungement is an extraordinary remedy “reserved for the unusual or extreme case.” *Government of the Virgin Islands v. Nugent*, 2007 WL 1394014. Unusual circumstances outweighing the Government’s need to maintain criminal records are very limited. The courts have acknowledged that an extraordinary circumstance exists where the Government not only dismisses the charges against a defendant, but also concedes that the defendant is innocent. *United States v. Van Wagner*, 746 F. Supp. 619 (E.D. Va., 1990) (holding that expungement was proper in the unique circumstance where “the Government conceded that Defendant was innocent of the charges.”). However, where the Government has not conceded innocence, and the arrest was based on probable cause, expungement petitions based on “economic and employment losses” claims do not present a “harsh or unique situation sufficient to justify expungement.” (“a defendant is not automatically entitled to have his record expunged for “convictions overturned on constitutional grounds or even for acquittal...” *Nugent*, SX-05-CR-69 quoting *United States v. Friesen*, 853 F.2d 816 (10th Cir. 1988)).

In this instance, the Defendant was not put on probation and was over twenty-one (21) years of age at the time of the arrest; therefore, neither V.I. CODE ANN. tit. 5, §§ 3711, 3712(a) applies. Because neither §§ 3711, or 3712 apply in this case, the petitioner must demonstrate extreme or unusual circumstances that warrant expungement. To this end, the Defendant contends that he was due to appear in the Federal District Court, on or about February 28, 2007 and that this

¹ ...Upon fulfillment of probation the defendant shall be discharged without court adjudication of guilt, and an order shall be entered expunging the finding, verdict or plea of guilty as the case may be. V.I. CODE ANN. tit. 5, § 3711(c)(1).

² Upon a conviction of any offense against the laws of the Virgin Islands, not punishable by life imprisonment, if the defendant so convicted has not yet reached 21 years of age... V.I. CODE ANN. tit. 5, § 3712(a).

matter on his record severely prejudices him due to the extreme inflammatory nature of the offense. Because the date of his court date has already passed, this reason is obviously moot.

B. Probable cause is determined based on the information available to the judge at the time and cannot be retroactively negated because new facts come to light.

The Defendant also contends that his arrest was based on a constitutional infirmity, namely—his arrest was not based on probable cause. To determine whether an arrest warrant was based on probable cause the Court must examine the facts and circumstances as they existed at the time of the warrant's issuance. Evidence that emerges after a warrant is issued does not affect its validity. *Maryland v. Garrison*, 480 U.S. 79, 85 (1987). The constitutionality of the officer's conduct at the time must be considered "in light of the information available to them at the time they acted." *Id.* The warrant must be examined in light of any information the officers disclosed, or were duty bound to discover and disclose to the magistrate at the time the determination was made. ("Just as the discovery of contraband cannot validate a warrant invalid when issued, so is it equally clear that the discovery of facts demonstrating that a valid warrant was unnecessarily broad does not retroactively invalidate the warrant.") *Id.* Even though the above cited cases all involved search warrants instead of arrest warrants, they are still pertinent to the case at hand because arrest warrants must also be based on probable cause.

Here, Judge Diase properly based the determination of probable cause on the information she received in the affidavit. Probable cause based on fact that there was an eyewitness to the crime and that the eyewitness later identified Defendant out of a line up.

Any information discovered after the finding of probable cause is extraneous with respect to the validity of the warrant when issued. Therefore, the fact that Jenine Chateram came forward and recanted her initial statement via an affidavit has no bearing on whether there was

probable cause for arrest. Further, although the witness recanted her statement in an affidavit subsequent to the warrant, she does not state that there was any coercion by anyone for her to change her statement.

C. Recent Developments

On November 25, 2009, the Virgin Island Legislature enacted new legislation, Act No. 7136, Bill No. 28-0151, which amended title 5 of the Virgin Island Code and thus created new rules and procedures for expungement of criminal records. The new expungement law, V.I. Code Ann. tit. 5 § 3733(a), provides, in pertinent part:

§ 3733. Expungement of Criminal Record

- a. The record of an arrest, a criminal complaint or an information that does not result in a conviction must be expunged by Petition to the Court:
- (1) When the case has been dismissed without prejudice and the statute of limitation has expired.
 - (2) Where the case has been tried and there was an acquittal.
 - (3) Where there is a statement of *Nolle Prosequi*, and the People have not filed an information or complaint and the statute of limitation has expired.

Per §3733(a), there are certain instances where an arrest record of a Defendant must be expunged under other circumstances, §3732, an arrest record may be expunged. In this case, Defendant Robinson was arrested on March 2, 1995 and his case was later dismissed without prejudice by this Court on November 6, 1995 at the request of the Government. At the time of Defendant Robinson's arrest, §3733 was not enacted. Nowhere in Act No. 7136 does it state that the new legislation is retroactive. Furthermore, it can be inferred from the "clear and unambiguous language" of the statute and other expungement statutes within Chapter 314 that the legislature intended the statute to give effect prospectively. Thus, Defendant Robinson's criminal records for this offense are not eligible for expungement.

Even if §3733 could be applies retroactively, Defendant Robinson's arrest records would not be eligible for expungement since a proper petition under 5 V.I.C. §3735 has not been filed with the Court. V.I. Code Ann. tit. 5 §3735 states:


§ 3735 Expungement Petition

- (a) The Petition for expungement must include the following
 - (1) The name of the Petitioner;
 - (2) The offense for which the Petitioner was arrested;
 - (3) A certified copy of the arrest, complaint, or information;
- (b) The Petition must also include the following:
 - (1) A copy of the Petitioner's criminal record; and
 - (2) A sworn statement by the Petitioner that there are no charges pending against him.

CONCLUSION


Since there was sufficient probable cause for Robinson's arrest, Defendant's criminal records are not eligible for expungement under the new statute and the proper petition for expungement has not been filed with this Court, the Defendant's Motion for Expungement is **DENIED.**

Dated: March 26, 2010


**BRENDA J. HOLLAR, Administrative Judge
Superior Court of the Virgin Islands**

**ATTEST:
VENETIA H. VELAZQUEZ, ESQ.
CLERK OF THE COURT**


**ROSALIE GRIFFITH
Court Clerk Supervisor 3/26/10**

CERTIFIED A TRUE COPY
Date: 3/26/10
Venetia H. Velazquez, Esq.
Clerk of the Court
By: 
Court Clerk

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

GOVERNMENT OF THE VIRGIN ISLANDS,)	
)	
Plaintiff,)	
)	CRIM NO.: ST-95-CR-121
vs.)	
)	CHARGES
RUSSELL ROBINSON,)	14 V.I.C. §§ 921(A)(1)
)	
Defendant.)	
_____)	


ORDER

THIS MATTER is before the Court on Defendant's Motion to Seeking Dismissal with Prejudice and Expungement of Criminal Record by the Virgin Islands Police Department, N.C.I.C., or any other Data Bases dated December 12, 2006 and filed January 4, 2007 as well as a Renewed Motion Requesting an Expedited Ruling dated February 17, 2007. For reasons stated in the accompanying Memorandum Opinion of even date, it is

ORDERED, that Defendant's Motion to Seeking Dismissal with Prejudice and Expungement of Criminal Record is **DENIED**; and it is further

ORDERED, that a copy of this Order shall be directed to the counsels of record for the respective parties and a copy served on the Defendant, **RUSSELL ROBINSON**.

Dated: March 26, 2010


BRENDA J. HOLLAR, Administrative Judge
Superior Court of the Virgin Islands

ATTEST:
VENETIA H. VELAZQUEZ, ESQ.
CLERK OF THE COURT


ROSALIE GRIFFITH
Court Clerk Supervisor 3/26/10

CERTIFIED A TRUE COPY
Date: 3/26/10
Venetia H. Velazquez, Esq.
Clerk of the Court
By: 
Court Clerk