

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. THOMAS AND ST. JOHN

THE PEOPLE OF THE VIRGIN ISLANDS **Plaintiff**)
)
 Vs.)
)
PREDRAG MILOSAVLJEVIC **Defendant**)

CASE NO. ST-09-CR-0000582

ACTION FOR: 14 V.I.C. 1093


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

TO: JOSEPH A. DIRUZZO, III, ESQUIRE
CHRISTINE D. THOMAS, ESQ., ASSISTANT ATTORNEY GENERAL
JUDGES & MAGISTRATES, SUPERIOR COURT
LIBRARIAN
~~IT~~ DIVISION
ORDER BOOK

Please take notice that on September 17, 2010 a(n) MEMORANDUM
OPINION AND ORDER dated September 15, 2010 was entered by the Clerk in
the above-entitled matter.

Dated: September 17, 2010

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



DIANE MATTHEW-TURNBULL
COURT CLERK II

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

PEOPLE OF THE VIRGIN ISLANDS,)	CRIMINAL NO. ST-09-CR-582
)	
	Plaintiff,	V.I. CODE ANN. tit. 14, §§ 1093;
)	834(2); 791(1); 792(2)
)	
vs.)	
)	
PREDRAG MILOSAVLJEVIC,)	
(D.O.B.: 03/27/1984))	
	Defendant.	
)	

MEMORANDUM OPINION

THIS MATTER is before the Court on Plaintiff People of the Virgin Islands' Motions to Quash. The People of the Virgin Islands ("People") are represented in this matter by Assistant Attorney General Christine Thomas, Esq. Defendant Predrag Milosavljevic ("Milosavljevic") is represented in this matter by Joseph DiRuzzo, Esq.

The People filed three motions to quash Milosavljevic's subpoenas *duces tecum*. On April 8, 2010, Milosavljevic issued a subpoena *duces tecum* to the Virgin Islands Bureau of Internal Revenue. The People filed a Motion to Quash that subpoena on May 24, 2010. On July 13, 2010, Milosavljevic issued a subpoena *duces tecum* to Magens Point Inc. and Resort Management, Inc., which the People moved to quash on July 23, 2010. Finally, on July 13, 2010, Milosavljevic issued a subpoena *duces tecum* to Southland Gaming, Inc., which the People moved to quash on July 27, 2010. In response to the People's Motions to Quash, Milosavljevic filed an Omnibus Response on July 30, 2010.

I. The People's Standing to Object to the Subpoenas *Duces Tecum*

As to all the Motions to Quash, Milosavljevic argues that the People lack standing to object to the issuance of the subpoenas on non-parties. Milosavljevic is correct that parties to a matter generally lack standing to challenge subpoenas *duces tecum* issued to non-parties pursuant

to Rule 17 of the Federal Rules of Criminal Procedure.¹ *United States v. Raineri*, 670 F.2d 702, 712 (7th Cir. 1982) (citing *In re Grand Jury*, 619 F.2d 1022, 1027 (3d Cir.1980)); *Langford v. Chrysler Motors Corp.*, 513 F.2d 1121, 1126 (2d Cir. 1975) (citing 5A J. MOORE, FEDERAL PRACTICE § 45.05(2), (2d ED. 1974)) (“In the absence of a claim of privilege a party usually does not have standing to object to a subpoena directed to a non-party witness.”); *United States v. Daniels*, 95 F. Supp. 2d 1160, 1164 (D.Kan. 2000).

However, the standing rule is not absolute. A party may challenge a subpoena issued to a non-party if the subpoena infringes on the party’s legitimate interests. *Raineri*, 670 F.2d at 712. In the circumstances of a criminal trial, the courts have recognized that the government has a legitimate interest in preventing undue lengthening of a trial, undue harassment of its witnesses and prejudicial over-emphasis on its witnesses’ credibility. *Id.*; *United States v. Segal*, 276 F. Supp. 2d 896, 900 (N.D. Ill. 2003).

In this case, the People challenge a subpoena *duces tecum* issued to the Virgin Islands Bureau of Internal Revenue (“VIBIR”) for gross receipts forms and income tax returns. Neither party has publicly identified the VIBIR as a potential witness in this case so there is no concern about undue harassment of a trial witness or over-emphasis on its credibility. In addition, the People have not raised any concerns regarding undue lengthening of the trial. However, the Court will presume that the Department of Justice, through its Assistant Attorney General, is acting on behalf of the VIBIR, an executive agency. V.I. CODE ANN. tit. 3, § 114 (1995). Therefore, the People have standing to move to quash the VIBIR subpoena.

With respect to the subpoena Milosavljevic issued to Southland Gaming and to Magens Point, the Court also finds that the Government has standing to object. The People have stated in

¹ The Federal Rules of Criminal Procedure apply to matters before this Court whenever they are not inconsistent with the Rules of the Superior Court. Super. Ct. R. 7.

their Amended Pre-Trial Memorandum, filed on May 13, 2010, that they intend to call as witnesses two individuals from Magens Point and one individual from Southland Gaming to testify on the People's behalf. Therefore, the People have an interest in preventing harassment of these witnesses.² *Raineri*, 670 F.2d at 712. Consequently, the Court finds that the People have standing to pursue their Motions to Quash the subpoenas.

II. The Merits of the Motions to Quash

A. Virgin Islands Bureau of Internal Revenue

Milosavljevic requested that a subpoena *duces tecum* issue to the VIBIR. Through that subpoena, he seeks to obtain "all gross receipts forms . . . all income tax returns" and various other forms, "for the period January 1, 2007 through December 31, 2009."

In their Motion to Quash, the People argue that the subpoena is improper because it "requests documents that are not subject to disclosure as they are not public records." Section 881 of Title 3 defines public record: "'public records' includes all records and documents of or belonging to this Territory or any branch of government in such Territory or any department, board, council or committee of any branch of government." V.I. CODE ANN. tit. 3, § 881(a) (1995). The Virgin Islands' tax code also specifically states that tax records are public records. V.I. CODE ANN. tit. 33, § 822 (1994)(a)(1).³ Despite the fact that tax records are public records, they are available for inspection "only upon Order of the Governor." *Id.* Therefore, Milosavljevic must obtain the relevant tax records from Southland Gaming and Magens Point, rather than from the VIBIR.

² The People did not make this argument. In fact, after Milosavljevic raised the standing issue in his Omnibus Response to the Motions to Quash, the People did not file any Reply, foregoing their opportunity to address the question of standing.

³ It is unclear why the People did not cite the relevant portion of Title 33 to make their argument. LRCi. 11.1 states that, "[b]y signing a motion or supporting memorandum or brief, an attorney certifies to the Court that: (a) the applicable law in this jurisdiction has been cited, including authority for and against the position being advocated by counsel." Failure to comply with the Rule, like all failures to comply with Local Rules, constitutes an actionable offense. More importantly, counsel does a disservice to the Court by omitting relevant statutes and caselaw.

B. Magens Point

Milosavljevic also requested that a subpoena issue to Magens Point itself. He seeks from Magens Point a number of tax records, emplacement records for all individuals, a list of all bank accounts, copies of all bank statements, copies of books and records, and all communications, data, reports, and information received from and provided to Southland Gaming.

Applying the test described above, the Court must determine whether the Magens Point subpoena seeks specific, relevant and admissible documents or, instead, whether it is simply part of a broader “fishing expedition.” *Nixon*, 418 U.S. at 700. As described above, the Court finds that the tax records sought are relevant, specific and admissible. However, Milosevljevic also seeks emplacement records for all persons working at Magens Point. While the People generally state that the subpoena is “overbroad,” it does not specifically state why the emplacement records request is overbroad. On the other hand, Milosavljevic, in his Omnibus Response, does not make any argument as to why the emplacement records *are* relevant or how his request is sufficiently specific. Without some justification on Milosavljevic’s part, the Court has no way to determine whether the request for these documents is proper. Consequently, the Court will quash the request found in the second bulletpoint of the attachment to the July 9, 2010 subpoena.

Milosavljevic also seeks a list of Magens Point’s bank accounts and copies of all bank statements. Again, the People do not specifically address how this request is overbroad or irrelevant. Milosavljevic states that the “bank statements were requested to determine the financial stability and cash flow of the Resort.” These documents may well be relevant to determining that question, which is put at issue by Milosavljevic’s defense theory. However, the request is overbroad. Milosavljevic does not state for which period of time he seeks bank statements. Therefore, his request does not meet the specificity standard and the Motion to Quash will be granted as to bulletpoint numbers three and four.

The Magens Point subpoena also requests “copies of the books and records.” It goes on to state that the request “includes but is not limited to all the accounting data that is used to create balance sheets, income statements, statement of cash flows, budgets, income projections, loss projections, income tax returns, employment tax returns, and credit applications. Accounting data is broadly defined to include any and all data contained in paper files, electronic files, whether under the direct or indirect control of the respective business entities or it [sic] owners.”

Again, documentation and records regarding Magens Point’s financial situation, including accounting data, may well be relevant to disproving the People’s allegation that seventy-five thousand dollars is missing because Milosavljevic embezzled it. However, his request is not sufficiently specific. He apparently requests every single document ever produced or retained by Magens Point that touched upon anything remotely financial. The subpoena is also insufficiently specific as to the time-period requested. Therefore, the Court will grant the Motion to Quash as to bulletpoint number five.

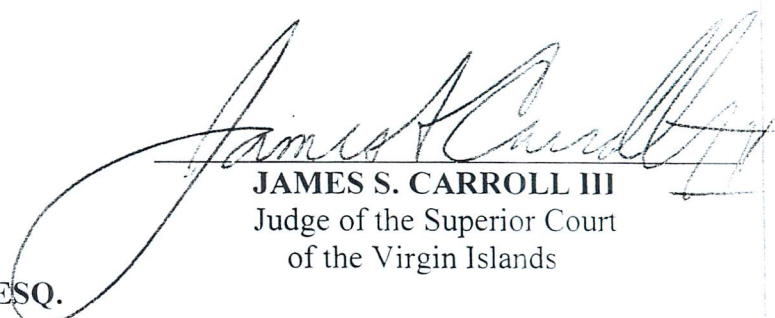
Finally, the Court will also grant the Motion to Quash as to bulletproof number six. Milosavljevic seeks “[a]ll communications, data, reports, and information received from and provided to Southland Gaming.” This request is overbroad. While it may be useful to Milosavljevic to have documentation regarding Southland Gaming’s video lottery terminal (“VLT”) liquidation reports, he does not explain why each and every communication, every piece of data, and any information received from Southland is relevant. Moreover, he does not attempt to define a time-period of the documents sought in the July 13, 2010 subpoena. The Court will grant the Motion to Quash as to these documents.

C. Southland Gaming

Finally, on July 13, 2010, a subpoena requested by Milosavljevic was issued to Southland Gaming. It requests that Southland turn over "all communications, data, reports, and information received from and provided to [Magens Point] for the period January 1, 2007, to May 1, 2010." This subpoena reflects substantially the same request made in the last bulletpoint of the July 13, 2010 subpoena issued to Magens Point. However, unlike the Magens Point request, the Southland Gaming request is limited in time. Nonetheless, it is still overbroad. Milosavljevic does not explain why he would need "all communications, data, reports, and information received from and provided to" Magens Point. Again, while it may be useful to Milosavljevic to consider the VLT liquidation reports, which he says are produced by Southland Gaming, his request is not so narrow. Therefore, the Court finds that the Southland Gaming subpoena is overbroad and must be quashed.

A separate Order of even date will follow.

DATED: September 15, 2010



JAMES S. CARROLL III
Judge of the Superior Court
of the Virgin Islands

ATTEST: VENETIA VELAZQUEZ, ESQ.



ROSALIE GRIFFITH
Court Clerk Supervisor 9/16/10

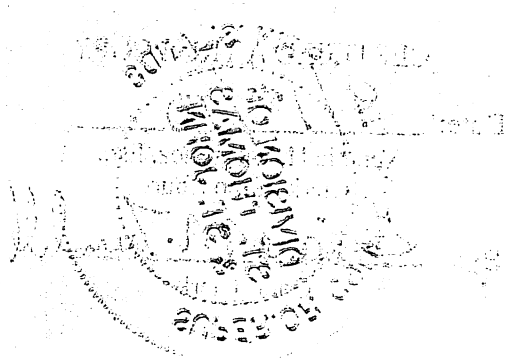
CERTIFIED A TRUE COPY

Date: 9/17/10
Venetia H. Velazquez, Esq.
Clerk of the Court

By: Diane M. Turnbull
Court Clerk



Main body of faint, illegible text, possibly a letter or report, covering the upper and middle portions of the page.



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

PEOPLE OF THE VIRGIN ISLANDS,)	CRIMINAL NO. ST-09-CR-582
)	
)	Plaintiff,
)	V.I. CODE ANN. tit. 14, §§ 1093;
)	834(2); 791(1); 792(2)
)	
vs.)	
)	
PREDRAG MILOSAVLJEVIC,)	
(D.O.B.: 03/27/1984))	
)	
Defendant.)	

ORDER

AND NOW, pursuant to the Memorandum Opinion of even date, it is hereby

ORDERED that the People of the Virgin Islands' May 24, 2010 Motion to Quash the subpoena *duces tecum* issued to the Virgin Islands Bureau of Internal Revenue is **GRANTED**; and it is further

ORDERED that the People of the Virgin Islands' July 23, 2010 Motion to Quash the subpoena *duces tecum* issued to Magens Point, Inc. and Resort Management, Inc. is **DENIED in part and GRANTED in part**; and it is further

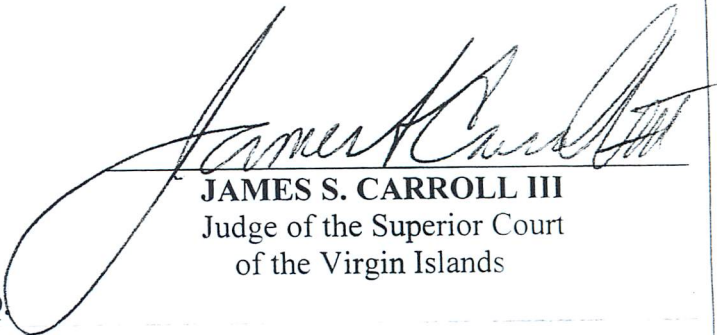
ORDERED that the request for documents listed in bulletpoints two, three, four, five and six of the addendum to the July 13, 2010 subpoena *duces tecum* issued to Magens Point, Inc. and Resort Management, Inc. is **QUASHED**; and it is further

ORDERED that the People of the Virgin Islands' July 27, 2010 Motion to Quash the subpoena *duces tecum* issued to Southland Gaming, Inc., is **GRANTED**; and it is further

ORDERED that the July 13, 2010 subpoena *duces tecum* issued to Southland Gaming, Inc., is **QUASHED**; and it is further

ORDERED that a copy of this Order and the Memorandum Opinion of even date shall be served personally upon the Defendant, and copies thereof shall be directed to counsel of record.

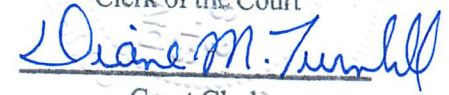
DATED: September 15, 2010


JAMES S. CARROLL III
Judge of the Superior Court
of the Virgin Islands

ATTEST: VENETIA VELAZQUEZ, ESQ.


ROSALIE GRIFFITH
Court Clerk Supervisor 9/16/10

CERTIFIED
Date: 9/17/10
Venetia H. Velazquez, Esq.
Clerk of the Court

By: 
Court Clerk

