

NOT FOR PUBLICATION

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

People of the Virgin Islands,	Plaintiff,	SX-10-CR-734
v.		
Joseph Yarwood,	Defendant.	

MEMORANDUM OPINION

THIS MATTER is before this Court on the People's Motion to Withdraw Motion to Amend Information and Motion to File Superseding Information filed on August 8, 2011 pursuant to Rule 7(e)¹ of the Federal Rules of Criminal Procedure. Defendant Joseph Yarwood filed an opposition to the People's Motion to Withdraw Motion to Amend Information on September 15, 2011. For the reasons set forth below, this Court will 1) correct the record—pursuant to Rule 137 of the Superior Court Rules—to reflect that the People's Motion to Amend the Information was filed on August 2, 2011, 2) grant the People's Motion to Amend Information, 3) deny as moot the People's Motion to Withdraw Motion to Amend Information and 4) allow the parties an opportunity to meet and confer on the issue of what the appropriate pleadings and deadlines would be with respect to the People's Motion to File Superseding Information.

FACTUAL AND PROCEDURAL BACKGROUND

On January 10, 2011, the People filed the original Information charging eleven counts against Defendant for alleged acts that occurred on or about December 10, 2010 in the vicinity of #131 Profit Hills, Kingshill in the Judicial District of St. Croix, U.S. Virgin Islands.

A status conference was held on June 21, 2011. During the conference, the People informed the Court that the case was not ready for trial and that a motion to amend the complaint in order

¹ The provisions of Rule 7 of the Federal Rules of Criminal Procedure regarding the Information are incorporated to the criminal practice and procedures of the Superior Court by Rule 123(f) of the Superior Court Rules.

to substantially reduce the counts charged would be filed.² In response to the Court's inquiry on how soon the People would be filing the documents, Attorney Jana M. Dalmida for the People stated that it would be by the end of the week. The Court then scheduled the matter for a follow up status conference on August 3, 2011—stating that it was done “just so that we don't lose track of Mr. Yarwood...” At the August 3rd conference, Attorney Kippy Roberson—newly assigned to represent the People in the matter—informed the Court that there would be a withdrawal of the Motion to Amend Information that had been filed by Attorney Dalmida on August 2, 2011. In support thereof, Attorney Roberson stated that the filing of the Motion to Amend Information should not have been filed. Defense Counsel taken aback by the People's change of position argued that relying on the People's representations at the June 21, 2011-status conference she had filed a motion for reduction of bail on August 3, 2011. The People stipulated to the Defense's release from 24 hour electronic monitoring and requested that Defendant remain in 24 hour house arrest. The Court granted Defendant's motion for release but ordered that Defendant be placed on 24 hour house arrest along with the other standard conditions. Defendant agreed to prepare the appropriate order for signature. A follow-up status conference was scheduled to take place on October 28, 2011. In the interim, Attorney Roberson filed the Motion to File Superseding Information and the Motion to Withdraw Motion to Amend Information on August 8, 2011. Defense Counsel filed an opposition to the People's motions to withdraw Attorney Dalmida's prior motion to amend information. The Court issued an order on January 10, 2012 scheduling an evidentiary hearing to determine and put on the record whether the Motion to Amend Information that was represented to have been filed by Attorney Dalmida on August 2, 2012 had in fact been filed. An evidentiary hearing was held on January 19, 2012. At the hearing, Attorney Dalmida stated on the record that she had prepared the Motion to Amend Information and following customary protocol had personally given it to the Attorney General Office's messenger for delivery and filing in Court on August 2, 2011. Attorney Dalmida further stated on the record that she had faxed a copy to Defense Counsel and the Court. Defense Counsel also acknowledged on the record the receipt of the Motion to Amend Information on

² At the June 21, 2011 status conference, the People had represented that they would be amending the 11 count complaint to reduce the charges to one count of simple assault and battery/Domestic Violence—a lesser included offence of the original Count Nine.

August 2, 2011 via facsimile. The Court took under advisement the issue of whether the lack of documentary evidence in the Court file that the Motion to Amend the Information had been filed on August 2, 2011 as represented by Attorney Dalmida constituted a clerical mistake or error pursuant to Rule 137 of the Superior Court Rules that may be corrected by the Court to accurately reflect the record.

ANALYSIS

Rule 137 provides that [c]lerical mistakes in judgments, orders or other parts of the record, and errors in the record arising from oversight or omission may be corrected by the court at any time and after such notice, if any, as the court orders. V.I. Super. Ct. R. 137.³

As a threshold factual issue the Court finds that the parties are in agreement that the Motion to Amend the Information was filed by Attorney Dalmida on August 2, 2011. This is supported by the parties' representations to this Court at the June 21, 2011 status conference, where Attorney Dalmida made it clear that she would be amending the information in order to substantially reduce the charges and there was obviously no objection but mutual agreement from Defense Counsel. It is further supported by the parties' representations at the evidentiary hearing of January 19, 2012, where Attorney Dalmida placed on the record that the Motion to Amend the Information was prepared and—as part of regular business procedure—personally given to the Attorney General's Office messenger for filing in the Court and faxed to Defense Counsel and the Court on August 2, 2011. At the evidentiary hearing, Defense Counsel also acknowledged receipt of the faxed copy on August 2, 2011. Attorney Robberson's representation at the August 3, 2011 status conference and in his subsequent motions to withdraw and to file superseding information also clearly reflect the fact that the People's Motion to Amend the Information was filed by Attorney Dalmida on August 2, 2011.

The Court finds for the record, therefore, that the People's Motion to Amend the Information was filed on August 2, 2011. This is supported by Attorney Dalmida's representations to the Court, both at the June 21, 2011 status conference regarding her intent to amend the information

³ In a case of an omission or error in the record, a court has the power to amend the record so that it conforms to the facts, but not to adversely affect rights. *CJS Courts § 251 Amendments* (2012). Its office is not to supply omitted action by the court, but to furnish the record of an action really had, where its recording was omitted through inadvertence or mistake. *See American Sur. Co. pf M.Y. v. Mosler*, 64 P.2d 1025, 1030 (1936); *Wilmerding v. Corbin Banking Co.*, 126 Ala. 268, 28 So. 640; *Perkins v. Hayward*, 132 Ind. 95, 31 N.E. 670.

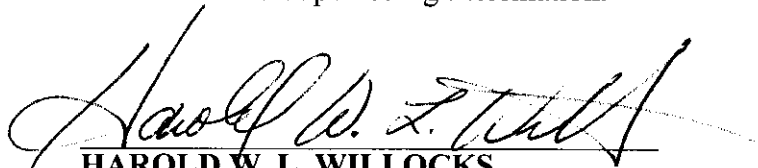
in order to substantially reduce the charges with Defense Counsel's agreement and once again at the January 19, 2012 evidentiary hearing—assuring the Court that the Motion to Amend Information was according to her recollection properly filed in the Court on August 2, 2011. The Court will, thus, and pursuant to Rule 137, issue an order that will have the record corrected to reflect that the Motion to Amend the Information will be deemed filed on August 2, 2011.

Under these circumstances, the Court will also grant the People's Motion to Amend the Information filed by Attorney Dalmida. It will do so, because the Court finds that the parties were in full agreement of the reduction of charges at the June 21, 2011 status conference, and that—but for the oversight that the Motion to Amend Information had somehow been inadvertently misplaced—the Court would have, based upon such clear understanding, entered its order granting the People's Motion to Amend the Information on August 2, 2011 and prior to the People's subsequent Motion to Withdraw the Motion to Amend Information.

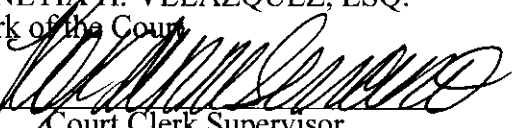
CONCLUSION

For the foregoing reasons, the Court finds that the People's Motion to Amend the Information was filed on August 2, 2011 and pursuant to Rule 137 of the Superior Court Rules will correct the mistake in the record to accurately reflect that it was filed. Additionally, in order to preserve the mutual understanding of the parties at the time the People's Motion to Amend was deemed to have been filed, the Court will also grant the People's Motion to Amend the Information. The Court will also deny as moot the People's Motion to Withdraw the Motion to Amend the Information and this matter will be stayed from referral to the Magistrate's Division for a period of ten (10) days from the date of entry of this order to allow the People an opportunity to amend its Motion to File Superseding Information.

Dated: 4/17/12


HAROLD W. L. WILLOCKS
Judge of the Superior Court

ATTEST:
VENETIA H. VELAZQUEZ, ESQ.
Clerk of the Court

By: 
Court Clerk Supervisor

Dated: 4-19-12