IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN
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PEOPLE OF THE VIRGIN ISLANDS, Plaintiff, -vs- **LENNY ALFRED,** Defendant.	CRIMINAL NO. ST-12-CR-137 V.I. Code Ann. tit. 14, §792

MEMORANDUM OPINION

THIS MATTER is before the Court on Defendant Lenny Alfred's Motion to Reconsider this Court's Order dated June 14, 2013, which approved a fee of $5,375 plus travel expenses for Defendant's currency expert.[1] Once again, Defendant seeks payment of the sum of $14,775 because the currency expert will "only work from retainer funds and the amount originally requested is required."[2] As this Court has already found the originally requested sum of $14,775 to be to be unreasonable and because the Defendant has failed to satisfy the requirements of LRCi 7.3, Defendant's Motion to Reconsider will be denied.

I. Factual and Procedural Background.

Defendant Lenny Alfred is charged with one count of possession of counterfeit bills in violation of V.I. CODE ANN. tit. 14, § 792.

On April 11, 2012, the Court received Defendant's Motion for Funding to Engage Currency Expert. By Order entered April 30, 2012, this Court granted Defendant's Motion for Funding to Engage Currency Expert provided that Defendant submit an estimate of the funds necessary for the expert's services.

By Order entered June 5, 2012, this Court directed the Defendant, for a second time, to provide the Court, by June 15, 2012, with an estimate of the funds necessary to engage the services of a currency expert.

On June 4, 2012, the Court received Defendant's Supplement to Motion to Appoint Currency Expert. In his supplement, Defendant submitted three quotes from three experts provided through The TASA Group (Technical Advisory Services for Attorneys). One of the three currency experts was Joseph A. LaSorsa.

[1] Defendant is represented by Joseph A. DiRuzzo, III, Esquire, and Clyde E. Murphee, Esquire. The People are represented by Douglas Sprotte, Assistant Attorney General.
[2] *See* Def.'s Mot. to Reconsider Ex. A.

In his April 29, 2013 Motion to Alter Order Granting Defendant's Request for Funding for a Currency Expert, Defendant notified the Court that of the three currency experts previously identified, one had retired, a second was not willing accept the engagement, and a third, Joseph A. LaSorsa, would accept the engagement subject to conditions. The conditions included an "upfront payment in the amount of $14,775.00."[3] The April 26, 2013 Invoice from TASA for LaSorsa's services itemized the required upfront payment of $14,775.00 as follows:

Advance Invoice

Description	Quantity		Rate	Amount
Court testimony	1.00		5,000	5,000.00
Case preparation	8.00	Hour(s)	325.00	2,600.00
Travel (roundtrip)	16.00	Hour(s)	325.00	5,200.00
	Subtotal for Professional Services			12,800.00
Travel exps, meals & hotel				1,800.00
Administrative charge				175.00
		Total Amount Due (USD)		14,775.00

In contrast to the "Advance Invoice," the May 18, 2012 TASA Confirmation and Agreement appears to require an advance consisting of 4 hours or $1,300 (4 hours x $325/hour) minimum per case, plus administrative charge ($175.00) totaling $1,475, which is the same amount previously approved as a reasonable advance. However, attached to the TASA Confirmation and Agreement is the Advance Invoice which increased minimum court testimony from $2,600 to $5,000 and added $5,200 for round trip travel consisting of 16 hours at $325/hour and $1,800 in travel expenses, meals and hotels.

By Order dated June 14, 2013, and entered June 17, 2013, this Court found currency expert Joseph LaSorsa's requirement of an upfront payment of $14,775 to be unreasonable. After a review of the May 18, 2012 TASA Confirmation and Agreement attached to Defendant's Motion to Alter Order Granting Defendant's Request for Funding for a Currency Expert, the Court determined a fee of $5,375 to be reasonable with an advance of $1,475 as initially stated by the expert. This approved fee included 8 hours of testimony at the rate of $325/hour, the fee for preparation in the amount of $2,600 and TASA's administrative fee of $175. In addition, it was ordered that the expert would be reimbursed for his travel expenses upon the submission of an affidavit with supporting documents.

[3] Def.'s Mot. to Alter Order Granting Def.'s Req. for Funding for a Currency Expert.

Defendant argues that recent events, i.e., a January 21, 2014 email from his currency expert Joe LaSorsa to The TASA Group (the Technical Advisory Service for Attorneys) stating "[t]he retainer amount received in this matter is insufficient. I only work from retainer funds and the amount originally requested is required," demonstrate that the Court approved funding is inadequate and violates the Defendant's right to effective assistance of counsel. On this basis, Defendant argues this Court must reconsider its June 14, 2013 Order and "provide constitutionally adequate funding."

On March 5, 2014 this Court received Defendant's Supplement to Motion to Reconsider which attached a recent decision of the U. S. Supreme Court issued in *Hinton v. Alabama*, 134 S.Ct. 1081 (2014).

II. Timeliness of Defendant's Motion to Reconsider.

Defendant's Motion to Reconsider is brought pursuant to LRCi 7.3.[4] LRCi 7.3 states that a motion for reconsideration must be filed within ten (10) days of the date of entry of the contested order[5] Since the time to act under LRCi 7.3 is less than eleven (11) days, weekends and holidays are not counted when determining the deadline.[6] If the January 7, 2014 emails rise to the level of new evidence not available at the time the Court ruled on Defendant's earlier Motion to Alter Order Granting Defendants' Request for Funding a Currency Expert, then the deadline for Defendant to file his motion for reconsideration was January 21, 2014, i.e., fourteen (14) days after receipt of the January 7, 2014 emails. Although Defendant's Motion to Reconsider was received by the Court on February 3, 2014, it bears a certificate of service that the motion was mailed to opposing counsel on January 21, 2014, which this court will accept as date the motion was also mailed to the Court for filing.

III. Applicable Legal Standard for Motion for Reconsideration.

Defendant correctly relies upon LRCi 7.3 to seek reconsideration of this Court's June 14, 2013 Order.[7] A motion to reconsider made pursuant to LRCi 7.3 must be based on:

1. Intervening change in controlling law;
2. Availability of new evidence; or
3. The need to correct clear error or prevent manifest injustice.

In support of his Motion for Reconsideration, Defendant does not claim intervening change in controlling law but rather the availability of new evidence. The new evidence presented by Defendant is his currency expert's position that the approved retainer of $1,475 is

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[4] LRCi 7.3 applies to criminal proceedings in the Superior Court pursuant to SUPER. CT. R. 7 and LRCr 1.2.

[5] "The practice and procedure in the Superior Court shall be governed by the Rules of the Superior Court and, to the extent not inconsistent therewith, by the Rules of the District Court, the Federal Rules of Civil Procedure, the Federal Rules of Criminal Procedure and the Federal Rules of Evidence." SUPER. CT. R. 7.

[6] SUPER. CT. R. 9.

insufficient and that the currency expert will "only work from retainer funds and the amount originally requested is required."[8]

The gist of Defendant's Motion for Reconsideration is that the Court should approve the payment, in advance, of the sum of $14,775 to his currency expert. The Motion for Reconsideration represents a second request for the same payment that the Court has already found to be unreasonable.

As the party moving for reconsideration, the burden is on Defendant to demonstrate that the court failed to consider controlling decisions or factual matters that were put before it on the underlying motion and which, had they been considered, might reasonably have led to a different result.[9]

In the instant case, the Defendant has not demonstrated any factual matters or controlling decision that, had they been considered previously, might reasonably have led to a different result. The only difference between the first motion for $14,775 and the Motion for Reconsideration is the currency expert's January 7, 2014 email stating, "[t]he retainer amount received in this matter is insufficient. I only work from retainer funds and the amount originally requested is required."[10]

Much of Defendant's Motion for Reconsideration is devoted to the need for a currency expert to mount a defense and so that his attorney may provide effective assistance of counsel. It is well established that The Sixth Amendment[11] right of an indigent criminal defendant to the effective assistance of counsel includes the basic tools of an adequate defense.[12] The United States Supreme Court expanded this principle in *Ake v. Oklahoma,* 470 U.S. 68, 83 (1985), and declared that an expert witness can constitute a basic tool of an adequate defense.[13]

This Court has already found that Defendant made the necessary showing for funds to engage a currency expert. That is not in dispute. The real issue is the reasonableness of the fees required by the currency expert. Further, the compensation to be paid to the expert is within the discretion of the Court, and the expert's fees must be reasonable.[14] V.I. CODE ANN. tit. 5, § 3503(b) allows reasonable compensation and expenses incurred by attorneys appointed to counsel for indigent defendants.

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[8] Def.'s Mot. to Reconsider Ex. A.

[9] *People v. Faucher*, 2013 WL 4522023 (V.I.Super.), 1 citing *Ansoumana v. Grislede's Operating Corp.,* 255 F. Supp. 2d 197, 198 (S.D.N.Y. 2003); *see also Shrader v. CSX Transp., Inc.,* 70 F.3d 255, 257 (2d Cir. 1995) (holding that standards for granting motions for reconsideration are strict and reconsideration will generally be denied unless the moving party can point to controlling decisions or data that court overlooked, which might reasonably be expected to alter conclusion reached by the court).

[10] Def.'s Mot. to Reconsider Ex. A.

[11] The Sixth Amendment to the Constitution of the United States was extended to the Virgin Islands by Section 3 of the Revised Organic Act of 1954.

[12] S*ee Cuyler v. Sullivan,* 446 U.S. 335, 344 (1980); *Britt v. N.C.,* 404 U.S. 226, 227 (1971).

[13] *State v. Brown,* 134 P.3d 753, 757 (N.M. 2006).

[14] *Edwards v. Government*, 47 V.I. 605, 616 (D.V.I. 2005).

The June 14, 2013 Order provided a detailed analysis of the basis for the approved fees and payments. The currency expert's hourly rate was not questioned. The fee request of $14,775, all to be paid in advance and up front before the currency expert even started work, was found to be unreasonable. Defendant's Motion for Reconsideration fails to present new evidence not available at when the Court ruled on Defendant's Motion to Alter Order Granting Defendant's Request for Funding for Currency Expert. Defendant's Motion for Reconsideration also fails mention that the June 14, 2013 Order provided that the expert shall be reimbursed for this travel expenses upon the submission of an affidavit with supporting documents.[15] Defendant also has the option of trying to locate other currency experts whose billing requirements may be different from the currency expert located through TASA but has not presented any evidence to that effect.

Hinton v. Alabama, relied upon Defendant, does not dictate a different result in the case at hand because its finding was that "[t]he only inadequate assistance of counsel was the inexcusable mistake of law—the unreasonable failure to understand the resources that state law made available to him—that caused counsel to employ an expert that he himself deemed inadequate."[16]

Motions for reconsiderations cannot be used as "a vehicle for registering disagreement with the court's initial decision, for rearguing matters already addressed by the court, or for raising arguments that could have been raised before but were not."[17] Defendant's Motion for Reconsideration does not meet the requirements of LRCi 7.3 and it is denied. A separate Order shall issue.

DATED: March 11, 2014

DENISE M. FRANCOIS
Judge of the Superior Court
of the Virgin Islands

ATTEST:

ESTRELLA H. GEORGE
Acting Clerk of the Court

BY: 3/11/14
LORI BOYNES-TYSON
Court Clerk Supervisor ___/___/___

[15] In light of the expert's position and the difference between the fees stated in TASA's May 18, 2012 Confirmation and Agreement and the April 26, 2013 Advance Invoice, the Defendant may want to consider locating another currency expert.
[16] *Hinton v. Alabama*, 134 S.Ct. 1081, 1089 (2014).
[17] *Bostic v. AT&T,* 312 F. Supp. 2d 731, 733 (D.V.I. 2004); *see also Fein v. Peltier,* 36 V.I. 197, 198 (D.V.I. 1997) ("Motions for reconsideration should not be used as a vehicle for rehashing and expanding upon arguments previously presented or merely as an opportunity for getting in one last shot at an issue that has been decided."); *FDIC v. World Univ., Inc.*, 978 F.3d 10, 16 (1st Cir. 1992) (explaining that motions for reconsideration "are aimed at reconsideration not initial consideration").