

NOT FOR PUBLICATION

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

People of the Virgin Islands,

Plaintiff,

v.

Charles Hardcastle,

Defendant.

SX-10-CR-404

**CHARGES: UNAUTHORIZED POSSESSION
OF A FIREARM/ PRINCIPAL; FAILURE TO
REPORT FIREARMS OBTAINED OUTSIDE
OR BROUGHT INTO VIRGIN ISLANDS/
PRINCIPAL; POSSESSION OF A
CONTROLLED SUBSTANCE WITH INTENT
TO DISTRIBUTE/PRINCIPAL**

People of the Virgin Islands,

Plaintiff,

v.

Omari Hardcastle,

Defendant.

SX-10-CR-405

**CHARGES: UNAUTHORIZED POSSESSION
OF A FIREARM/ PRINCIPAL; FAILURE TO
REPORT FIREARMS OBTAINED OUTSIDE
OR BROUGHT INTO VIRGIN ISLANDS/
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MEMORANDUM OPINION

This Matter is before the Court on the Defendant Omari Hardcastle's (hereafter "O. Hardcastle") Motion To Reconsider the Court's Memorandum Opinion and Order that had been entered on January 12, 2012 on the People's Motion for Search Warrant. For the reasons set forth below, the Defendant's motion to reconsider shall be denied.

FACTUAL AND PROCEDURAL BACKGROUND

Defendant O. Hardcastle and his brother, the Defendant Charles Hardcastle (hereafter "C. Hardcastle"), have been charged with possession of a controlled substance with intent to distribute and various firearm charges. The charges resulted from a search conducted on July 17, 2010 pursuant to a search warrant of property located at #280 Work and Rest. The search warrant was issued on July 15, 2010 by Magistrate Jessica Gallivan for evidence pertaining to an ongoing investigation into a robbery and second and aggravated assault reported on July 11, 2010 involving Leo Jackson.

On April 20, 2011, the People filed a Motion for Saliva Specimen Warrant. Defendant O. Hardcastle opposed on grounds that the affidavit failed to set forth any basis to believe that Defendant O. Hardcastle's DNA could link him to a criminal act. In support thereof Defendant O. Hardcastle purported that 1) the People's "claim that the firearm was discovered during the execution of a search warrant for the home of O. Hardcastle is patently false;" and 2) the circumstances set forth in Attorney Roberson's affidavit fail to establish that a crime was even committed as it is not illegal in the Virgin Islands to possess a firearm or to have a firearm in

one's bedroom. On January 12, 2012, the Court entered an order granting the People's Motion for Saliva Specimen Warrant as it pertained to Defendant O. Hardcastle. On January 31, 2012, Defendant O. Hardcastle filed its motion to have the Court's order that had been entered on January 12, 2012 reconsidered.

Defendant argues that the Motion to Reconsider is based on newly discovered evidence pertaining to the validity of the search of #280 Work & Rest and to prevent manifest injustice. Defendant further submits that evidence produced in the People's Sixth Response to Discovery Request dated December 7, 2011 shows that the search of Defendant's home was unconstitutional as outlined in Defendant's Motion to Suppress filed on January 30, 2011.

In addition, Defendant argues that the Court misconstrued salient facts and made erroneous assumptions regarding the validity of the search of Defendant's home that warrant a reconsideration of the Court's January 12th-Memorandum Opinion. Defendant's articulated basis for contending that the Court committed errors in its findings and conclusions is that (1) "there is no evidence indicating that either of the Defendants resided in the white trailer or that the subject weapon was located in the white trailer, and (2) Defendant "disputes that the search warrants were valid or not validly executed."

ANALYSIS

Standard for Motion to Reconsider

"A party may file a motion asking a judge or magistrate judge to reconsider an order or decision made by that judge or magistrate judge. A motion to reconsider shall be based on the need to correct clear error or prevent manifest injustice." LRCi. 7.3¹. "[A] motion to reconsider shall 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." *Nicholas v. Wyndham Int'l, Inc.*, 2002 U.S. Dist. LEXIS 27111 at *1 (D.V.I.2002); LRCi 7.3. A motion for reconsideration must be filed within ten (10) days of the date of entry of the contested order. LRCi 7.3. Because a party's time to act under LRCi 7.3 is less than eleven (11) days, weekends and holidays are not counted when determining the appropriate deadline. SUPER. CT. R. 9. There is no requirement that reasons be stated for the denial of a motion for reconsideration. *Briddle v. Scott*, 63 F.3d 364, 381 (5th Cir.1995).

¹ LRCi 7.3 applies to criminal proceedings in the Superior Court pursuant to SUPER. CT. R. 7 and LRCr 1.2.

The granting of a motion to reconsider is “an extraordinary remedy and should be used sparingly.” *Templet v. HydroChem Inc.*, 367 F.3d 473, 479 (5th Cir.2004) (citing *Clancy v. Employers Health Ins. Co.*, 101 F.Supp.2d 463, 465 (E.D.La.2000), citing 11 Charles A. Wright, Arthur R. Miller and Mary K. Kane, Federal Practice & Procedure § 2810.1, at 124 (2d ed.1995)). The purpose of such motions is to allow a [court] to correct its own errors, sparing parties and appellate courts the burden of unnecessary proceedings. *Charles v. Daley*, 799 F.2d 343, 348 (7th Cir.1986); see *United States v. Dieter*, 429 U.S. 6, 8 (1976). The moving party has a heavy burden to establish an error sufficiently serious to merit amendment. The moving party must 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. *Ansoumana v. Gristede'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 motion for reconsideration are strict, and reconsideration will generally be denied unless moving party can point to controlling decisions or data that court overlooked, which might reasonably be expected to alter conclusion reached by court.).

Motions for reconsideration should not 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.” *Bostic v. AT & T*, 312 F.Supp.2d 731, 733 (D.V.I.2004) (citing *Slater v. KFC Corp.*, 621 F.2d 932, 939 (8th Cir.1980); 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) (motions for reconsideration “are aimed at reconsideration, not initial consideration.”))

Upon review of this matter, the Court finds that Defendant O. Hardcastle filed this matter outside the required ten (10) days from the date of entry of this order. The order was entered on Thursday, January 12, 2012, and—without counting the weekends and holidays—the 10-day deadline expired on Friday, January 27, 2012. According to the Court's records, Defendant O. Hardcastle filed his motion to reconsider on January 31, 2012—two (2) days beyond the deadline. Notwithstanding O. Hardcastle's failure to comply with the procedures set forth in Rule 7.3 of the Local Rules of District Court, the Court will in the exercise of its discretion and

the interest of justice consider the motion to reconsider on its merits.²

In assessing the merits of O. Hardcastle's arguments, however, the Court finds that defendant has failed to meet his burden in establishing that the Court either 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, or that the errors that O. Hardcastle indicated were made in the Court's findings and conclusions were sufficiently serious to merit amendment.

As regards Defendant O. Hardcastle's argument that "the Court committed error in its findings and conclusion, because there is no evidence indicating that either of the Defendants resided in the white trailer or that the subject weapon was located in the white trailer", the Court finds that any reference to the "white trailer" in its Memorandum Opinion entered on January 12, 2012 stemmed directly from Exhibit 2 of Defendant O. Hardcastle's Opposition to the People's Motion for Saliva Search Warrant. Defendant O. Hardcastle represented his Exhibit 2 to be the relevant search warrant executed by Magistrate Gallivan for #280 Work & Rest on July 15, 2012. Indeed, the Search Warrant, submitted by Defendant O. Hardcastle as Exhibit 2, expressly provided that the property to be searched was "a white trailer located on the property at #280 Estate Work and Rest, Christiansted, St. Croix, U.S. Virgin Islands – is described as a white trailer with the large picture of a lion." Hence, the Court finds that there was nothing contained in Defendant O. Hardcastle's Opposition to the People's Motion for Saliva Search Warrant, or any other evidence presented by O. Hardcastle at the time of filing his opposition, that sufficiently showed that the search warrant submitted by O. Hardcastle as Exhibit 2 was invalid. The Court finds, moreover, that the "white trailer" language contained in its Memorandum Opinion by error was not sufficiently serious to merit amendment. This is so, because the Court's specific reference to the #280 property to be searched as a "white trailer" pertained strictly to the Court's findings and conclusions for C. Hardcastle³ and, thus, it is clear that the factual error did not materially affect O. Hardcastle.

² Trial courts have the inherent authority to deviate from procedural rules when there is a reason to do so and such a departure will not unfairly prejudice the opposing party. *E.g., United States v. Eleven Vehicles, Their Equipment and Accessories*, 200 F.3d 203, 215 (3rd Cir.2000)

³ The relevant language in the Memorandum Opinion entered on January 12, 2012, provides with respect to the "white trailer":

The affidavit fails to support that C. Hardcastle had access to O. Hardcastle's bedroom. Despite defendants' blood relationship, *their co-habitation together in the white trailer located at No. 280 Work and Rest* wherein the firearm was found.

Most critically, the Court additionally finds that O. Hardcastle's argument that the Court erred in finding that the search conducted at #280 Work & Rest on July 17, 2010 was pursuant to a "valid search warrant"—on grounds that there is "new evidence" that shows that the search warrant issued by Magistrate Gallivan was not valid and that the search warrant was not validly executed—must also fail. This is so, because the Court has not yet made critical factual findings and conclusions regarding the validity of the search warrants issued by Magistrate Gallivan on July 15, 2010. O. Hardcastle's Motion to Suppress will necessarily require an evidentiary hearing for ruling. O. Hardcastle's position, thus, prematurely assumes that that the alleged "new evidence" will show that the search leading to the discovery of the firearm under the mattress in O. Hardcastle's bedroom was unconstitutional, on the basis that either the search warrant and/or the execution of the search itself was invalid. These facts remain to be established and therefore may not be used at this juncture to sufficiently support reversal of this Court's order entered on January 12, 2012.

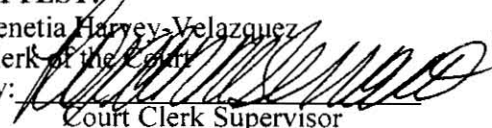
CONCLUSION

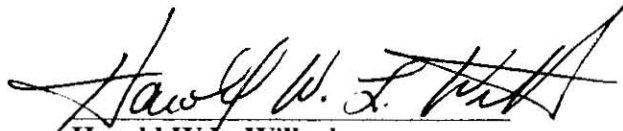
For the foregoing reasons, the Defendant O. Hardcastle's Motion to Reconsider shall be denied.

Dated: 4-11-12

ATTEST:

Venetia Harvey-Velazquez
Clerk of the Court

By: 
Court Clerk Supervisor


Harold W.L. Willocks
Judge of the Superior Court

Dated: 4/12/12