

FOR PUBLICATION

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

People of the Virgin Islands,

Plaintiff,

v.

Ronald Hatcher,

Defendant.

Case No. SX-14-CR-131

Charges: Murder in the Second Degree; Reckless Endangerment in the First Degree; and Carrying or Using a Dangerous Weapon During the Commission of a Crime of Violence

Appearances:

PATRICIA QUINLAND, ESQ.

R. OLIVER DAVID, ESQ.*

Assistant Attorney General

U.S. Virgin Islands Department of Justice

6040 Estate Castle Coakley,

Christiansted, VI 00820

For Plaintiff

YOHANA MANNING, ESQ.

Manning Legal Services, P.C.

53A Company St., 2nd Fl.

Christiansted, VI 00820

MICHAEL A. JOSEPH, ESQ.*

46C Estate Glynn

Christiansted, VI 00851

For Defendant

MEMORANDUM OPINION

MEADE, Judge

THIS MATTER is before the Court on motions filed by the People of the Virgin Islands to continue trial and for reconsideration. The defendant, Ronald Hatcher, opposed both motions. The Court denied the motions from the bench. This opinion follows to reduce to writing the reasons for the denials. *Cf.* V.I. R. Crim. P. 12(d).

* Appearances after the motions addressed in this Opinion were filed, argued, and decided orally.

Background

The People of the Virgin Islands charged Ronald Hatcher by information with murder in the second-degree, reckless endangerment in the first degree, and carrying or using a dangerous weapon during the commission of a crime of violence all related to the September 26, 2013 fatal shooting of Jose Rivera-Berrios in Christiansted. Hatcher has pleaded not guilty.

The Court held a status conference on January 18, 2018. Counsel appeared and announced their readiness for trial. From the bench, the Court tentatively set jury selection and trial for March 19, 2018, which was confirmed in a January 23, 2018 Trial Management Order. Approximately six weeks later, on March 8, 2018, the People filed a motion to continue the trial because “the Medical Examiner will be on leave from March 15, 2018 to April 2, 2018.” (Pl.’s Mot. to Continue 1, filed Mar. 8, 2018.) Since “[t]he Medical Examiner, Dr. Francisco Landron, is a material witness,” *id.*, the People asked for a two-week continuance. Attached in support of the motion was a copy of a letter dated March 1, 2018 from Dr. Landon to Claude E. Walker, Esq., the Attorney General of the U.S. Virgin Islands, stating that he would be “off-island on leave from March 15th – April 2, 2018.” *Id.* at Ex. 1.

Mr. Hatcher responded with six reasons why the motion should be denied. First, his attorney is scheduled to be in federal court on St. Thomas at the end of March and into the middle of April 2018 and then in federal court on St. Croix from the middle of April until maybe the end of June 2018 for retrial in a six-defendant criminal case. “The honest reality,” Mr. Hatcher explained, “is that this trial may not occur until sometime in 2019” because of his attorney’s schedule throughout the balance of the year. (Def.’s Opp’n 2 & n.2, filed Mar. 9, 2018.) Second, the People

“failed to even contact [Dr. Landron] for more than six weeks, therefore the People’s claim that this witness is material is belied by common sense and the record.” *Id.* at 2. “Because there is no evidence of a subpoena, the People’s Motion should fail.” *Id.* (citing *Francis v. People*, 63 V.I. 724, 750 (2015); *Cain v. State*, 588 S.E.2d 707, 708 (Ga. 2003)). Third, the People knew Dr. Landron’s location on March 8, 2018, the day they moved for a continuance. So, they “should be compelled to subpoena” him now, Mr. Hatcher argued. *Id.* at 2-3 (citing *Cunningham v. Mun. Ct. for the Los Angeles Jud. Dist. of Los Angeles Cnty.*, 133 Cal. Rptr. 18 (Ct. App. 1976)). Fourth, continuing trial “so that the Medical Examiner may have a vacation . . . is insufficient to constitute good cause.” *Id.* at 3 (citations omitted). Fifth, Mr. Hatcher is nearly 74 years old and has been experiencing memory lapses. Finally, the Supreme Court of the Virgin Islands held in *Carty v. People*, 56 V.I. 345, 356 (2012), that a 25-month delay was “an unusual and interminable length of delay.” The delay in this case is nearly 47 months.

The People did not file a reply. Instead, they filed a supplement on March 12, 2018, explaining that “when undersigned counsel spoke to Dr. Landron via phone on March 7, 2017, Dr. Landron has not yet been personally served with his subpoena.” (Pl.’s Supp. to Mot. to Continue Trial 1, filed Mar. 12, 2018.)

The Court heard oral argument on the motion on March 12, 2018. Counsel for the People explained that she had announced ready on January 18, 2017, but subject to the availability of witnesses. Counsel also explained that Dr. Landron works in Puerto Rico and the U.S. Virgin Islands, but is based at the Schneider Regional Medical Center on St. Thomas when in the Virgin Islands. Because of the conditions in the Territory after Hurricanes Irma and Maria, but specifically because

phone service was only recently restored to the Virgin Islands Department of Justice's Office on St. Croix, counsel argued that the People's efforts to secure Dr. Landron's attendance were reasonable under the circumstances. Dr. Landron was subpoenaed, but the subpoena could not be served on him because he works on St. Thomas and the investigators in the Department of Justice who serve subpoenas were out of the office participating in a joint law enforcement operation with federal officials. Since the moving party only has to show reasonable efforts to secure a witness, not exceptional circumstances, the People argued that they met their burden under Virgin Islands Rule of Civil Procedure 6-3.

Counsel for Mr. Hatcher rejected the People's claims. Counsel did acknowledge the difficulties post-Irma and Maria, but remarked that courts are now trying to make up for lost time by scheduling trials and other hearings back-to-back, especially for defendants in pre-trial detention. Although Mr. Hatcher is not detained, he would still be prejudiced by a delay, counsel argued, because his memory is fading and his health is declining. Furthermore, the People have not explained why Dr. Landron is unavailable—whether he will be out for vacation or on medical leave—and why he could not delay his departure by a few days, counsel observed. Dr. Landron's letter to Attorney General Walker was dated March 1, 2018, long after the January 18, 2018 bench order and the January 23, 2018 Trial Management Order scheduling trial for March 19, 2018. In the Virgin Islands, the medical examiner is an employee of the Department of Justice. As an employee, the Attorney General could order Dr. Landon to delay his trip and appear for trial, counsel argued. Subpoenaing him was not the only way to secure his appearance.

From the bench the Court denied the motion to continue and directed counsel to report to the Court by the end of the day whether Dr. Landron could postpone his trip so he could testify and if not, the parties were to meet and confer to discuss whether Dr. Landron should testify remotely or by videotaped deposition. The People responded by the end of the day, but with a motion for reconsideration, which Mr. Hatcher immediately opposed.

In their March 12, 2018 motion, the People asked the Court to reconsider its decision to deny a continuance for one reason – because “[t]he People were able to confirm that Dr. Landron’s absence from the territory during the time of trial is based on medical reasons.” (Pl.’s Recons. Mot. 1, filed Mar. 12, 2018.) Since “[t]he Court stated that it would reconsider this motion if Dr. Landron’s leave is based on medical reasons,” *id.*, the People so moved. Mr. Hatcher opposed, noting first that “[t]he People failed to produce any evidence proving that Dr. Francisco Landron . . . cannot be at trial on March 19, 2018” and second that, even though the motion states that Dr. Landron’s “leave is ‘medical’,” it does not prove or even state that the witness himself, is, indeed, the patient.” (Def.’s Opp’n 1, filed Mar. 12, 2018 (hereinafter “Recons. Opp’n”).)

Counsel appeared before the Court the following day, March 13, 2018, on other cases, but asked to be heard on this case. After hearing argument briefly on the People’s motion to reconsider, the Court denied it and ordered the People to make Dr. Landron available to give sworn testimony the next day, March 14, 2018.

Motion to Continue

Virgin Islands Rule of Criminal Procedure 47 provides that “[a] motion . . . must be in writing . . . [and] state the grounds on which it is based, the legal

authorities upon which it relies, and the relief or order sought. It may be supported by affidavit.” V.I. R. Crim. P. 47(b). Both motions the People filed failed to state any rule, precedent, or statute in support. (*Accord* Recons. Opp’n 3 (“The People have failed to cite any cases where such lack of information can justify good cause.”).) This alone could have warranted a denial of the motion. *See* V.I. R. Crim. P. 47(b) (“A motion . . . *must* state . . . the legal authorities upon which it relies.” (emphasis added)); *see also* *Davis v. HOVENSA, LLC*, 63 V.I. 475, 496 (Super. Ct. 2015) (“The Supreme Court has established that in order for a motion to be properly before the court, parties must support their arguments by citing the proper legal authority, statute or rule.” (citing *Bernhardt v. Bernhardt*, 51 V.I. 341, 345-46 (2009) (*per curiam*); *Davis v. Varlack Ventures, Inc.*, 59 V.I. 229, 238-239 (2013)). However, during oral argument on the first motion, the People remarked that Virgin Islands Rule of Civil Procedure 6-3 governed, but without explaining why a civil rule would apply in a criminal case. It does. But why it does must be explained.

Virgin Islands Rule of Criminal Procedure 45 governs the computation and extension of time in criminal cases. It provides that

[w]hen an act must or may be done within a specified period, the court on its own may extend the time, or for good cause may do so on a party’s motion made: (A) before the originally prescribed or previously extended time expires; or (B) after the time expires if the party failed to act because of excusable neglect.

V.I. R. Crim. P. 45(b)(1). The word “act” is not defined in the rules. *See* V.I. R. Crim. P. 2. Therefore, the word’s plain meaning controls. *See* *Bryan v. Fawkes*, 61 V.I. 416, 457 (2014) (“when this Court includes plain, unambiguous language in a court order, court rule, or other court-issued document, this Court simply means what it

says.” (quotation marks, footnote, and citation omitted)); *see also Corraspe v. People*, 53 V.I. 470, 480-81 (2010) (plain meaning canon applies to rules).

Generally-speaking, the word “act” means “[s]omething done or performed, esp. voluntarily; a deed.” *Black’s Law Dictionary* 29 (10th ed. 2014). However, as used in Rule 45, the word “act” refers to something done in the case. *E.g.*, V.I. R. Crim. P. 3 (motion for a bill of particulars must be filed within 14 days after arraignment unless another deadline is set by the court); *see also, e.g.*, V.I. R. Crim. P. 12.1, 12.2, & 12.3 (deadlines to give notice of defenses). Trial is not “an act” that “must or may be done within a specified period.” V.I. Crim. P. 45(b)(1). Hence, Rule 45 does not govern motions for continuance. Since no other rule within the Virgin Islands Rules of Criminal Procedure speaks to continuances of trial, another procedure must govern. *See* V.I. R. Crim. P. 1(e) (“When procedure is not prescribed by these Virgin Islands Rules of Criminal Procedure, precedent from the Supreme Court of the Virgin Islands, or the Virgin Islands Code, a judge may regulate practice in a criminal proceeding in any manner consistent with law of the Virgin Islands.”)

Superior Court Rule 7 directs that “practice and procedure in the Superior Court shall be governed by *the Rules of the Superior Court* . . . and any other rules promulgated by the Supreme Court of the Virgin Islands” (emphasis added). Superior Court Rule 10.1 directs that “Rule 6-3 of the Virgin Islands Rules of Civil Procedure shall govern continuances of all trials, conferences, and other scheduled hearings, in *both civil and criminal cases*” (emphasis added). Both Superior Court Rule 10.1 and Superior Court Rule 7 remain in effect, notwithstanding the promulgation of the Virgin Islands Rules of Civil and Criminal Procedure. Therefore, the People are correct, and this Court holds, that Virgin Islands Rule of Civil

Procedure 6-3 governs “[c]ontinuances of trials, conferences, other scheduled hearings,” V.I. R. Civ. P. 6-3(a), in criminal cases through Virgin Islands Rule of Criminal Procedure 1(e), Superior Court Rule 7, and Superior Court Rule 10.1. Yet, even though the People correctly identified the rule that governs their motion to continue, they may not have read it correctly.

Virgin Islands Rule of Civil Procedure 6-3(a) directs that

[c]ontinuances of trials, conferences, other scheduled hearings . . . will not be routinely granted, but will be granted only upon a demonstration of *good cause*. Such motions or stipulations must be in writing and served and filed at the earliest practical date . . . but, in any event, not later than the deadline set forth in subpart (d) of this Rule.

V.I. R. Civ. P. 6-3(a) (emphasis added). But Rule 6-3(d) also provides that “[a]ll motions for continuance must be filed and served not less than 7 days prior to the scheduled trial, conference, or hearing. A motion filed less than 7 days prior to the scheduled trial, conference, or hearing will only be considered upon a showing of *exceptional circumstances*.” V.I. R. Civ. P. 6-3(d) (emphasis added). And Rule 6-3(b) further provides that,

[w]hen the basis of the request for continuance is based upon the absence of a witness, the movant must: (1) demonstrate that the witness is material to the movant’s case; (2) demonstrate that the movant has unsuccessfully *exhausted reasonable efforts* to secure the attendance of the witness for the trial, conference, or hearing, and; (3) provide a date by which the attendance of the witness can be secured for the trial, conference, or hearing.

V.I. R. Civ. P. 6-3(b) (emphasis added).

No court has considered yet how Virgin Islands Rule of Civil Procedure 6-3—or its predecessor, Superior Court Rule 10.1—should be construed, considering that the rule provides three different standards of review: good cause if a motion for a continuance is filed more than seven days before a trial, conference, or hearing;

exceptional circumstances if a motion for continuance is filed less than seven days before a trial, conference or hearing; and reasonable efforts if a motion for continuance is based on the unavailability of a witness. The People represented that Dr. Landron is a material witness who will be absent from the Territory during trial and, during oral argument, the People asserted that Rule 6-3(b) governed and argued that they had exhausted reasonable efforts, given the circumstances following Hurricanes Irma and Maria, to secure his attendance for trial. The question presented here is which standard governs when a motion is filed exactly seven working days prior to the trial, conference or hearing; and, further, whether Rule 6-3(b)'s exhaustion of reasonable efforts standard governs regardless of when a motion is filed, so long as the basis for continuance is the unavailability of a witness.

Time is calculated similarly under the Virgin Islands Rules of Civil Procedure and the Virgin Islands Rules of Criminal Procedure – “when the period is 14 days or less, do not count intermediate Saturdays, Sundays, and legal holidays.” V.I. Crim. P. 45(a)(2); *accord* V.I. R. Civ. P. 6(a)(1)(B) (“when the period is 14 days or less, do not count intermediate Saturdays, Sundays, and legal holidays.”). Therefore, because Rule 6-3(d) sets a deadline of 7 days, and because 7 days is less than 14, the period of time in Rule 6-3(d) would be 7 working days, not 7 calendar days. The People filed their motion to continue on March 8, 2018, which was eleven calendar days, or seven working days, before the March 19, 2018 trial date. At first glance, it appears that Rule 6-3(d) would not apply because the People filed their motion exactly seven working days prior to trial. However, Rule 45(a) also provides that “the day of the act, event, or default that begins the period” must be excluded when

computing time. V.I. R. Crim. P. 45(a)(1). And Rule 6-3(d) has two triggering events: the act (the filing of a motion) and the event (the date set for the trial, conference, or hearing). Rule 45(a) requires that both be excluded from the 7-day period in Rule 6-3.

Ordinarily, the act or event that begins a period of time has one starting point under the rules. *E.g.*, V.I. R. Crim. P. 3(e) (“The defendant may move for a bill of particulars before or within 14 days *after arraignment* or at a later time if the court permits.” (emphasis added); V.I. R. Crim. P. 29(c)(1) (“a defendant may move for a judgment of acquittal, or renew such a motion, within 14 days *after a guilty verdict or after the court discharges the jury*, whichever is later.” (emphasis added). But Virgin Islands Rule of Civil Procedure 6-3(d) has two triggering events: the filing of a motion and the date set for trial. The filing of a motion is the act that begins the “7 days prior to” period while the date of the trial, conference, or hearing begins the “not less than” period. Both must be considered because the motion for continuance must fit within this 7-day period.

Here, the date of trial, March 19, 2018, must be excluded. Additionally, because March 19, 2018 is a Monday the preceding Saturday and Sunday must also be excluded. See V.I. R. Crim. P. 45(a)(2). Consequently, the People had to file their motion within seven working days from Friday, March 16, 2018. Counting six days back (and excluding the intervening Saturday and Sunday), the seventh day prior to trial was Thursday, March 8, 2018—the same day the People filed their motion. But, because the filing of a motion is the “act . . . that begins the period” under Rule 6-3, V.I. R. Crim. P. 45(a)(1), that act must also be excluded. Accordingly, Thursday, March 8, 2018, must also be excluded. Consequently, seven working

days prior to trial—excluding of the day the motion was filed, the day of trial, and the intervening Saturdays and Sundays—was Wednesday, March 7, 2018. The People filed their motion on March 8, 2018, which was less than 7 days prior to trial. Therefore, they had to show “exceptional circumstances” pursuant to Rule 6-3(d), unless Rule 6-3(b)’s “reasonable efforts” governs.

Witness unavailability—as well as scheduling conflicts of counsel, see V.I. R. Civ. P. 6-3(c)—is one of the most common reasons why courts have to continue trials conferences, and hearings. It is reasonable, therefore, to address both separately under the rules. *See* V.I. R. Civ. P. 6-3(b), (c). But if Rule 6-3(b) governed, irrespective of the proximity of the request to the hearing or trial date, to the exclusion of Rule 6-3(d), then Rule 6-3(c) would also have to govern to the exclusion of Rule 6-3(d) so long as “the basis of the request for continuance is based on a scheduling conflict of counsel.” V.I. R. Civ. P. 6-3(c). But to exclude witness unavailability and scheduling conflicts of counsel from Rule 6-3(d)’s 7-day period would either eviscerate the rule or render it rarely applicable because the remaining grounds for moving to continue 7 days before a trial, conference, or hearing would be almost always be “exceptional.” V.I. R. Civ. P. 6-3(d). This Court holds that Rule 6-3(d) governs all requests for a continuance, regardless of the underlying reason, so long as the motion is filed 7 or less days before a trial, conference, or hearing. Accord V.I. R. Civ. P. 6-3(a) (“Such motions or stipulations must be in writing and served and filed at the earliest practical date prior to the affected trial, conference, or hearing but, in any event, *not later than the deadline set forth in subpart (d) of this Rule.*” (emphasis added)).

Discussion

During oral argument, counsel for the People detailed the difficulties she encountered in attempting to contact persons on St. Thomas, including Dr. Landron. Counsel stated that she issued the subpoena to Dr. Landron and assumed that it would be served, but service was delayed because the investigators with the Virgin Islands Department of Justice were out participating in law enforcement activities with their federal counterparts. By the time it was served, Dr. Landron had already been approved for leave. The People argued that, under the circumstances, they exhausted reasonable efforts to secure Dr. Landron's attendance at trial. But the record belies the People's assertion.

First, counsel did not submit an affidavit with her motion or affirm that the statements made therein were true. Continuance motions must be supported by evidence and "unsworn representations of an attorney are not evidence." *Henry v. Dennery*, 55 V.I. 986, 994 (2011). Second, during the January 18, 2018 status conference, the Court tentatively scheduled jury selection and trial for March 19, 2018. That date was confirmed when the Court issued its Trial Management Order on January 23, 2018. Therefore, both sides had 60 days from the status conference and 55 days from the date the Trial Management Order was entered to prepare for trial. Counsel for the People argued that she took reasonable efforts to contact Dr. Landron, but that is simply not correct.

The Court takes judicial notice that a clerk signed a subpoena for Dr. Landron on February 23, 2018, which was returned to the court on March 6, 2018 unserved, with a notation from "R. Soto" stating that the subpoena was "received" by him "on March 6th, 2018." The subpoena could not be served, however, because Dr. Landron would be out of the Territory. Two days later, on March 8, 2018, the People moved

for a continuance. The Court vehemently disagrees that this establishes “exceptional circumstances” warranting the grant of a continuance seven days before trial. This Court holds that when a trial date is given, counsel must contact their witnesses forthwith to determine if there is a conflict and immediately notify the court. Subpoenaing witnesses may be necessary to ensure their attendance. But that should be the last step counsel takes to prepare for trial, not the first.

“Any delay that affects the Superior Court’s ability to manage its docket as a whole weighs against a finding of excusable neglect.” *Greene v. V.I. Water & Power Auth.*, S. Ct. Civ. No. 2016-0048, 67 V.I. ___, ___, 2017 V.I. Supreme LEXIS 45, *15 (V.I. July 28, 2017 (citations omitted)). And since “[e]xcusable neglect and good cause are essentially synonyms’ under Virgin Islands law,” *In re: Asbestos, Catalyst, & Silica Toxic Dust Exposure Litig.*, SX-15-CV-096, 67 V.I. ___, ___, 2017 V.I. LEXIS 136, *21 (V.I. Super. Ct. Aug. 23, 2017) (quoting *Fuller v. Browne*, 59 V.I. 948, 954 (2013) (internal quotation marks omitted)), and since the good-cause/excusable neglect showing is lower than “exceptional circumstances,” V.I. R. Civ. P. 6-3(d), it follows that the circumstances that would warrant a continuance seven days before trial must be so exceptional that they outweigh the Superior Court’s obligation to bring cases to trial. Dr. Landron’s letter to Attorney General Walker shows that, as of March 1, 2018, he was unaware that he was supposed to be on St. Croix on or shortly after March 19, 2018 to testify at trial Counsel for the People conceded during the hearing that she sent the subpoena out and assumed it would be served. Once it was returned unserved, she then contacted Dr. Landron and learned he would be out of the Territory on leave. Counsel then moved the Court for a continuance on the seventh day before trial.

Even if Rule 6-3(d) does not govern here, and the People only had to show good cause, *cf.* V.I. R. Civ. P. 6-3(a), the Court found that the People failed to show good cause because they did not “demonstrate that the movant has unsuccessfully *exhausted* reasonable efforts to secure the attendance of the witness for the trial.” V.I. R. Civ. P. 6-3(b). During oral argument counsel fixated on the word “reasonable” to the exclusion of the word “exhausted.” This Court holds that both words must be given effect. Counsel’s efforts to secure Dr. Landron’s attendance may have been reasonable in light of the situation in the Virgin Islands a few months after two category-5 hurricanes ravaged the Territory. But counsel’s efforts were not exhaustive. Issuing a subpoena and making a phone call does not show an exhaustion of reasonable efforts. For these reasons, the Court denied the motion to continue.

Motion for Reconsideration

The Virgin Islands Rules of Criminal Procedure do not expressly authorize motions for reconsideration. However, the Supreme Court of the Virgin Islands has held that “regardless of any procedural rules, ‘the common law confers trial courts with the discretion to revise any interlocutory order at any time prior to entry of a final judgment.’ This inherent authority under the common law extends to criminal cases as well.” *People v. Armstrong*, 64 V.I. 528, 535 (2016) (quoting *Island Tile & Marble, LLC v. Bertrand*, 57 V.I. 596, 609 (2012)). Courts often look to civil rules when criminal rules are silent. *See, e.g., SFF-TIR, LLC v. Stephenson*, 264 F. Supp. 3d 1148, 1214 (N.D. Okla. 2017) (“While the civil rules are not expressly applicable to criminal cases, the courts have used the principles somewhat interchangeably.” (citations omitted)); *State v. Gonzalez*, 757 P.2d 925, 928 (Wash. 1988) (“[T]he civil

rules can be instructive in matters of procedure for which the criminal rules are silent.” (citations omitted)); *see also* D.V.I. Local R. Crim. P. 1.2 (“In cases of general procedure not covered by these Rules, the Local Rules of Civil Procedure shall apply.”). Because a court can revise an order in a criminal case, and because courts can look to civil rules when the criminal rules of procedure are silent, this Court holds that Virgin Islands Rule of Civil Procedure 6-4 applies in criminal cases.

Discussion

The People titled their March 12, 2018 motion as a “Motion to Reconsider Denial of Motion Continue March 19, 2018 Trial Date.” (*See* Recons. Mot. 1.) They then explained that “Dr. Landron’s absence from the territory during the time of trial is based on medical reasons.” “WHEREFORE, the People request[ed] that the Court reconsider its decision on March 12, 2018 and grant People’s request for continuance.” *Id.* Despite the title of the motion, reconsideration is not what the People were seeking. *Cf. Island Tile & Marble, LLC v. Bertrand*, 57 V.I. 596, 612 (2012) (“[T]he substance of a motion, and not its caption, shall determine under which rule that motion is construed.” (quotation marks and citation omitted)).

Virgin Islands Rule of Civil Procedure 6-4 permits a motion for reconsideration if based on “(1) intervening change in controlling law; (2) availability of new evidence; (3) the need to correct clear error of law; or (4) failure of the court to address an issue specifically raised prior to the court’s ruling.” V.I. R. Civ. P. 6-4(b). The People did not identify any change in the law in the hours after the Court had issued its ruling from the bench. The People did not argue that new evidence became available after their earlier motion to continue was denied. In fact, the People offered no evidence in their March 12, 2018 motion, a point Mr. Hatcher noted in his

opposition. (See Recons. Opp'n 1 ("This motion for reconsideration had no exhibits attached to it. . . . There is no evidence to prove where the witness is going").) The People did not identify any clear error of law, which they wanted this Court to correct. The People also did not "point out . . . where in the record of the proceedings [a] particular issue was actually raised before the court," V.I. R. Civ. P. 6-4(b)(4), which the Court had failed to address in its bench ruling. The March 12, 2018 motion was not a motion for reconsideration. It was a renewed motion to continue.

Renewal and reconsideration are similar, but not the same. *Cf. Armstrong*, 64 V.I. at 534 ("[W]e conclude that the People's argument that the renewed motion . . . should be treated similarly to a motion for reconsideration, *lacks merit*." (emphasis added)); *see also Carnegie Mellon Univ. v. Hoffman La Roche, Inc.*, 148 F. Supp. 2d 1004, 1010 n.4 (N.D. Cal. 2001) ("As a procedural matter, plaintiffs argue that the Roche defendants' motion is improper under Local Rules governing motions for reconsideration of a prior order. However, the Roche defendants are making a renewed motion for summary judgment, not a motion for reconsideration." (internal citation omitted)). A motion for reconsideration is proper when the court has erred by not applying new law, *see* V.I. R. Civ. P. 6-4(b)(1), by applying existing law incorrectly, *see* V.I. R. Civ. P. 6-4(b)(3), or by neglecting to consider an issue the parties raised before the court ruled. *See* V.I. R. Civ. P. 6-4(b)(4). But a motion for reconsideration is not proper when presenting new facts, raising new issues, or making new arguments. *Cf. In re: Infant Sherman*, 49 V.I. 452, 457 (2008) ("A motion for reconsideration is not a second bite of the apple, but is intended to focus the parties on the original pleadings as the main event, and to prevent parties from filing a second motion with the hindsight of the court's analysis covering issues that

should have been raised in the first set of motions.” (paragraph break, quotation marks, and citations omitted)); *see also Hughes v. The Ester C Co.*, 320 F.R.D. 337, 343 (E.D.N.Y. 2017) (“[R]econsideration is not a proper vehicle to ‘advance new facts, issues or arguments not previously presented to the Court.’” (quoting *Caribbean Trading & Fid. Corp. v. Nigerian Nat’l Petro. Corp.*, 948 F.2d 111, 115 (2d Cir. 1991))). *But cf.* V.I. R. Civ. P. 6-3(b)(2) (permitting reconsideration based on newly-available evidence). Instead, a motion is renewed when the circumstances on which the earlier motion was made have changed. *Cf. Armstrong*, 64 V.I. at 535-36 (“[T]he availability of new evidence or the need to correct a clear error or prevent manifest injustice warrants exercising this authority.” (quotation marks and citation omitted)); *Carnegie Mellon Univ.*, 148 F. Supp. 2d at 1010 n.4 (“‘A moving party may renew a motion for summary judgment notwithstanding denial of an earlier motion by showing a different set of facts or some other reason justifying renewal of the motion.’” (internal citation omitted) (quoting *Advanced Semiconductor Materials Am., Inc. v. Applied Materials, Inc.*, 922 F. Supp. 1439, 1442 (N.D. Cal. 1996))); *see also, e.g.*, V.I. R. Crim. P. 29(c)(1) (“[A] defendant may move for a judgment of acquittal, or renew such a motion, within 14 days after a guilty verdict.”); V.I. R. Civ. P. 50(b) (“[T]he movant may file a renewed motion for judgment as a matter of law.”).

Here, the People renewed their motion to continue after they learned that Dr. Landron would be unavailable for medical reasons. But this basis for the motion was not to point the Court to new law, to alert the Court to clear error, or to identify an issue the Court had overlooked. Instead, the People had learned the reason why Dr. Landron’s was unavailable and then renewed their motion to continue. But the People could have learned why Dr. Landron would be off-island before they filed

their first motion to continue. Moreover, it was only after the Court remarked from the bench that the People had failed to explain why type of leave Dr. Landron would be on, that the People then renewed their motion. But the renewed motion, like the earlier motion to continue, failed to cited any authority and failed to show what exceptional circumstances warranted a continuance made less than seven days before trial. In short, because the People failed to carry their burden, the Court denied the renewed motion and directed the People to make Dr. Landron available the following day to give sworn testimony before he left the Territory.

Conclusion

For the reasons stated above, the Court denied the People's motion to continue and the People's motion to reconsider. A separate order follows to reduce the bench rulings to writing.

Dated this 19 day of March, 2018.



JOMO MEADE

Judge of the Superior Court

A T T E S T:

Estrella H. George
Clerk of the Court

By:


Court Clerk Supervisor 11

Dated: 3 / 19 / 18

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

People of the Virgin Islands,

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v.

Ronald Hatcher,

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Case No. SX-14-CR-131

ERRATA ORDER

COMES NOW the Court *sua sponte* and issues this Order to correct the following scrivener's errors in the Memorandum Opinion dated March 19, 2018:

On page 3, in the second and third paragraphs, replace "2017" with "2018"; on page 11, in the first full paragraph, italicize the signal "see" in the first line and the signal "Accord" four lines from the end of the paragraph; on page 13, five lines from the bottom of the page, insert a period after "trial" and before "Counsel";

It is further **ORDERED** that a copy of this Order be directed to counsel of record and forwarded to the Law Library for distribution to Lexis and Westlaw.

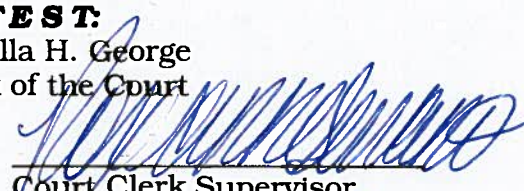
DONE and SO ORDERED this 30 day of July, 2018.


JOMO MEADE

Judge of the Superior Court

ATTEST:

Estrella H. George
Clerk of the Court

By: 

Court Clerk Supervisor

Dated: 7 / 30 / 18