

SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. THOMAS AND ST. JOHN

PEOPLE OF THE VIRGIN ISLANDS,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	CASE NO. ST-06-CR-248
	)	
JONATHAN PHIPPS,	)	
	)	
Defendant.	)	

MEMORANDUM OPINION

Pending before the Court is Defendant Jonathan Phipps' motion to dismiss. For the following reasons, Defendant's motion will be denied.

FACTUAL AND PROCEDURAL HISTORY

On November 28, 2007, Defendant was convicted of one count of assault in the third degree and one count of possession of a dangerous weapon during a crime of violence. On February 14, 2011, the Supreme Court of the Virgin Islands reversed Defendant's conviction based on an error made in the jury instructions and remanded the matter back to this Court for a new trial. Defendant now contests the retrial of his case based on the Double Jeopardy Clause and his right to confrontation.

ANALYSIS

The Double Jeopardy Clause of the Fifth Amendment protects individuals from being tried twice for the same offense. *Texas v. Cobb*, 532 U.S. 162, 173 (2001). When a conviction is reversed at the appellate level for trial error, however, the Double Jeopardy Clause does not bar retrial of the case. See *Evans v. Court of Common Pleas, Delaware*

County, Pa., 959 F.2d 1227, 1235 (3d Cir. 1992). See also *Burks v. U.S.*, 437 U.S. 1, 14 (1978) (Double Jeopardy Clause “does not preclude the Government's retrying a defendant whose conviction is set aside because of an error in the proceedings”).

Given the fact that the Supreme Court reversed Defendant’s conviction based on procedural grounds, Defendant’s due process rights will not be violated if he is retried. See *U.S. v. Cabrera*, No. 2:08-cr-94-FtM-99DNF, 2011 WL 2681248, at *4 (M.D. Fla. 2011) (“[a] conviction which is reversed because of legal error during the trial proceedings, such as improper jury instructions, may be retried without violating the Double Jeopardy Clause”).

Defendant also asserts that his rights under the Confrontation Clause of the Sixth Amendment will be violated if there is a retrial on the basis that “the alleged victim and all the People’s witnesses have left the jurisdiction,” which would necessitate a “trial by transcript.” (Defendant’s motion, at page 2). In a June 20, 2011, pretrial conference, the People stated they were not ready for trial because they were still in the process of locating witnesses. Considering that at this stage in the proceedings it is not clear which witnesses will or will not testify at trial, Defendant’s claims are not ripe for review. Accordingly, Defendant’s motion to dismiss will be denied. An Order consistent with this Opinion shall follow.

Dated: August 9, 2011

ATTEST: Venetia H. Velazquez, Esq.
Clerk of Court

by:

Lori Boynes-Tyson

Court Clerk Supervisor



HON. MICHAEL C. DUNSTON
JUDGE OF THE SUPERIOR COURT
OF THE VIRGIN ISLANDS

8/9/11

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DIVISION OF ST. THOMAS AND ST. JOHN

PEOPLE OF THE VIRGIN ISLANDS,

Plaintiff,

vs.

JONATHAN PHIPPS,

Defendant.

CASE NO. ST-06-CR-248

ORDER

Upon consideration of the premises, it is hereby

ORDERED that Defendant's motion to dismiss is DENIED; and it is

ORDERED that a copy of this Order shall be directed to counsel of record.

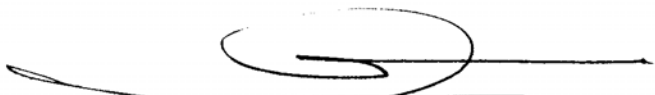
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