

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. THOMAS AND ST. JOHN

THE PEOPLE OF THE VIRGIN ISLANDS)
Plaintiff)
Vs.)
MICHAEL J. STEINHAUER)
Defendant)

CASE NO. ST-10-CR-0000240

ACTION FOR: 14 V.I.C. 834(2)

**NOTICE OF ENTRY OF
MEMORANDUM
OPINION AND ORDER**

TO: CHRISTINE THOMAS, ESQ.
CHARLES S. RUSSELL, JR., ESQ.
SUPERIOR COURT JUDGES and MAGISTRATES
CLERK OF THE SUPERIOR COURT, I.T. ✓
ORDER BOOK and LAW LIBRARY

Please take notice that on November 23, 2010 a(n) MEMORANDUM
OPINION AND ORDER dated November 23, 2010 was entered by the Clerk in the
above-entitled matter.

Dated: November 23, 2010

Venetia H. Velazquez, Esq.
CLERK OF THE SUPERIOR COURT


AUDREY BRIN
COURT CLERK II

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN**

PEOPLE OF THE VIRGIN ISLANDS,)	
)	CASE NO. ST-10-CR-F240
Plaintiff,)	
)	JURY TRIAL DEMANDED
v.)	
)	
MICHAEL J. STEINHAUER,)	
)	
Defendant.)	
_____)	

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Attorney for Defendant

CHRISTIAN, ADAM G., Judge

MEMORANDUM OPINION
(Filed: November 23, 2010)

Pending before the Court is a Praecipe filed by Defendant Michael J. Steinhauer. In this Praecipe, Defendant requests that this Court issue a Subpoena Duces Tecum to SFN Group directing that entity to produce certain broadly defined records to the Clerk of the Court in St. Thomas, Virgin Islands. For the reasons set forth below, the Praecipe will be denied without prejudice.

I. Analysis.

The subpoena power of the Superior Court of the Virgin Islands is derived from Section 21 of the Revised Organic Act of the Virgin Islands of 1954, as amended.¹ *Government v. O'Brien*, 21 V.I. 549, 553 (Terr. Ct. 1985). Moreover, this Court has the authority “To amend and control its process so as to make them conformable to law and justice.” V.I. CODE ANN. tit. 4, § 243. There is no question that this Court has the authority to issue a subpoena duces tecum, which commands a party to produce documents, as SUPER. CT. R. 11(c) provides,

“A subpoena may also command the person, to whom it is directed, to produce books, papers, documents, or other objects designated therein. The judge on motion made promptly, may quash or modify the subpoena if compliance would be unreasonable or oppressive. The judge may direct that books, papers, documents, or other objects designated in the subpoena be produced before the court at a time prior to the trial or prior to the time when they are to be offered in evidence, and may upon their production permit the books, papers, documents, or other objects or portions therein, to be inspected and copied by the parties and their attorneys, or by a probation officer.”

However, as a territorial court, the authority of this Court to issue process is construed in the same fashion as the power of state courts. *See, People v. Donastorg*, No. ST-10-CR-109, 2010 WL 3063765 * 3 (V.I. Super. Ct. Aug. 4, 2010) (Superior Court of the Virgin Islands has judicial authority similar to that of state courts). One important limitation on state courts is that they lack the authority to issue compulsory process outside of their respective territorial jurisdictions. *Syngenta Crop Protection, Inc. v. Monsanto Co.*, 908 So.2d 121, 125 (Miss. 2005) (“Although this is a case of first impression in this state, several jurisdictions have held that a court's subpoena power does not extend beyond the state in which it sits.”); *AARP v. Amer. Family Prepaid Legal Corp., Inc.*, No. 06 CVS 10216, 2007 WL 2570841 * 2 (N.C. Super. Ct. Feb. 23, 2007) (“But while the Rule appears to admit of no territorial limits on the power, it is

¹ Revised Organic Act of the Virgin Islands 1954, as amended, § 23, 48 U.S.C. § 1611, reprinted in V.I. CODE ANN., Historical Documents, Organic Acts, and U.S. Constitution at 157 (1995) (preceding V.I. CODE ANN. tit. 1) (“Revised Organic Act”).

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elementary that the ‘subpoena power of a court cannot be more extensive than its jurisdiction.’”) (unpublished opinion). Indeed, our rules implicitly acknowledge this limitation noting that “A subpoena requiring the attendance of a witness at a hearing or trial may be served at any place **within the territory.**” SUPER. CT. R. 11(d) (Emphasis added). In this matter, the Court notes that SFN Group, according to Defendant’s Praecipe, is located in Ft. Lauderdale, Florida, well outside the jurisdictional limits of this Court. Based on the foregoing settled precedent, the Court concludes that it is improper to issue the subpoena duces tecum requested by Mr. Steinhauer.

The Court observes that this conclusion may be viewed as inconsistent with the case of *Government v. O’Brien*, wherein the then-Territorial Court declared that the subpoena power of this Court extends throughout the United States pursuant to FED. R. CRIM. P. 17. 21 V.I. at 553. However, this Court declines to adopt the rationale of *Government v. O’Brien* for two reasons. First, because there is a specific rule of this Court addressing the issuance and service of subpoenas, Rule 17 of the Federal Rules of Criminal Procedure is inapplicable to the extent that it is inconsistent with the Superior Court rule. *See*, SUPER. CT. R. 7. As noted above, SUPER. CT. R. 11(d) limits the service of subpoenas to the territorial jurisdiction of this Court. Second, the Supreme Court of the Virgin Islands has pronounced that the Superior Court may not adopt federal substantive law contained in federal rules through SUPER. CT. R. 7. *Government v. Durant*, 49 V.I. 366, 373-376 (V.I. 2008) (Superior Court improperly adopted the Insanity Defense Reform Act by its wholesale incorporation of FED. R. CRIM. P. 12.2 via SUPER. CT. R. 7).

However, this ruling does not leave Mr. Steinhauer without some ability to obtain the documents he seeks. The Virgin Islands has adopted The Uniform Act to Secure the Attendance

of Witnesses from Without a State in Criminal Proceedings (the “Act”). V.I. CODE ANN. tit. 5, §§ 3861-3865. Notably, there is a split among the jurisdictions on the issue of whether courts may issue a subpoena duces tecum pursuant to this Act. *See, Jay M. Zitter, Annotation, Availability Under Uniform Act to Secure the Attendance of Witnesses without a State in Criminal Proceedings of Subpoena Duces Tecum*, 7 A.L.R. 4th 836 (1981). Nevertheless, this Court agrees with those jurisdictions which hold that a subpoena duces tecum may issue pursuant to the Act.

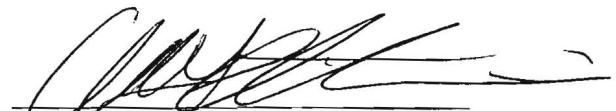
As the Prefatory Note to the Act states, the “...adoption [of the Act] will facilitate the administration of the criminal law.” UNIF. ACT TO SECURE THE ATTENDANCE OF WITNESSES FROM WITHOUT A STATE IN CRIMINAL PROCEEDINGS 11 U.L.A. 3 (1936). The use of documents in modern criminal proceedings is common and even necessary in many instances. Therefore, reading the Act to allow for the issuance of a subpoena duces tecum would be consistent with its express purpose of furthering the administration of criminal law in the adoptive jurisdictions. Moreover, in the Virgin Islands, “When jurisdiction by law is conferred on a court or judicial officer, all the means necessary to carry it into effect are also given...”. V.I. CODE ANN. tit. 4, § 324. In view of this broad statutory grant of authority to courts of the Virgin Islands and stated purpose of the Act, the Court concludes that Mr. Steinhauer may make a request pursuant to the Act.

The Act requires that the court in which the criminal trial is pending make findings that the witnesses, or in this case the documents, sought are material and necessary and the issuance of process will not cause undue hardship to said witnesses, or the producing party in this matter. V.I. CODE ANN. tit. 5, § 3862. If the Court so determines, it may issue a certificate to an appropriate court in the jurisdiction in which the witness, or information, is located if that

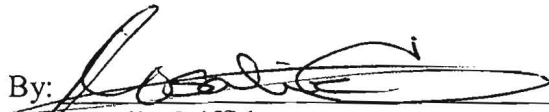
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jurisdiction has also adopted the Act. *Id.* The State of Florida has adopted the Act and has held that a subpoena duces tecum may issue pursuant to its provisions. *State v. Bastos*, 985 So.2d 37 (Fla. Dist. Ct. App. 2008). The instant praecipe, however, does not contain any information upon which this Court may make the requisite findings. Therefore, Mr. Steinhauer's Praecipe will be denied without prejudice so that he may properly pursue the avenue provided by the Act. The Court will issue an order of even date to this effect.

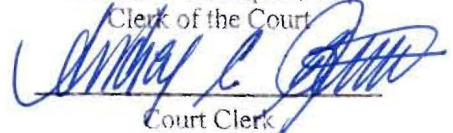
Dated: November 23, 2010


Hon. Adam G. Christian
Judge of the Superior Court
of the Virgin Islands

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

By: 
Rosalie Griffith
Court Clerk Supervisor 11/23/10

CERTIFIED A TRUE COPY

Date: 11/23/10
Venetia H. Velazquez, Esq.
Clerk of the Court
By: 
Court Clerk

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DIVISION OF ST. THOMAS AND ST. JOHN

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CHRISTIAN, ADAM G., Judge

ORDER

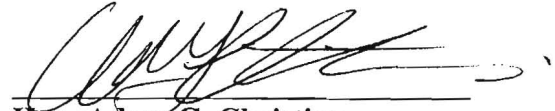
THIS MATTER is before the Court on the Praeceptum of Defendant Michael J. Steinhauer. The Court having entered a Memorandum Opinion of even date, and in accordance with the same, it is hereby

ORDERED that Defendant's Praeceptum is **DENIED WITHOUT PREJUDICE**; and it is further

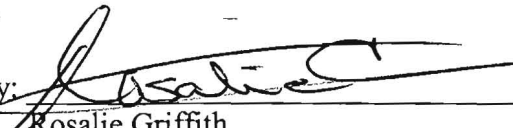
People of the Virgin Islands v. Michael Steinhauer
Case No. ST-10-CR-F240
Order

ORDERED that copies of this Order and the accompanying Memorandum Opinion shall be served on Defendant Michael J. Steinhauer and also directed to all counsel of record.

Dated: November 23, 2010


Hon. Adam G. Christian
Judge of the Superior Court
of the Virgin Islands

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

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Rosalie Griffith
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