

DATE: 8/22/18 TIME: 10:10am

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1 FOR PUBLICATION

2
3 IN THE SUPERIOR COURT
4 OF THE
5 COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

6 THE COMMONWEALTH OF THE
7 NORTHERN MARIANA ISLANDS,

CRIMINAL CASE NO. 17-0049R

8 Plaintiff,

9 v.

ORDER CORRECTING VENUE TO
SAIPAN FROM ROTA AND DENYING
DEFENDANT'S MOTION TO CHANGE
VENUE TO ROTA

10 BENJAMIN MANGLONA,

11 Defendant.

12 I. INTRODUCTION

13 THIS MATTER came before the Court on August 7, 2018 at 9:00 a.m. in the Pedro P.
14 Tenorio Multipurpose Center Room 1 for a hearing on the Commonwealth's Motion to Correct
15 Venue. Assistant Attorney General Chester Hinds represented the Commonwealth of the
16 Northern Mariana Islands ("Commonwealth"). Assistant Public Defender Heather Zona
17 represented Benjamin Manglona ("Defendant"), who was not present.

18 II. BACKGROUND

19 On May 1, 2017, an information was filed charging Defendant with Illegal Possession of
20 Controlled Substance in violation of 6 CMC § 2142(a). On July 24, 2018, this matter came
21 before the Court for Defendant's Motion for Jury Trial, which this Court granted. The Court now
22 turns to the question of whether the correct venue for the jury trial is on Rota or on Saipan.

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III. LEGAL STANDARD

In the Commonwealth, all trials of offenses shall be held on the island where the offense was committed if a court competent to hear the case is located or regularly sits on that island. 6 CMC § 108(a). A defendant or the Commonwealth may petition the court for a change of location of trial for good cause. 6 CMC § 108(c). Except as otherwise permitted by statute or by these rules, the court shall fix the place of trial with due regard to the convenience of the defendant and the witnesses and the prompt administration of justice. NMI R. CRIM. P. 18.

The Court regularly sits in Saipan, but may sit in Rota as such times and to conduct such proceedings as shall be necessary to meet the needs of the inhabitants. NMI R. PRAC. 4(a-b). A judge may, in the interest of justice or to further the efficient performance of the business of the court, conduct proceedings in a case pending before him at a special session anywhere in the Northern Mariana Islands, on the request of a party. NMI R. PRAC. 4(c).

IV. DISCUSSION

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The Court reads 6 CMC § 108(a), as the initial assumption that all trials shall be held on the island where the offense was committed. However, there are exceptions to the general assumption of 6 CMC § 108(a) that all trials shall be held on the islands where the offense was committed, which are set forth in NMI R. CRIM. P. 18 and NMI R. PRAC. 4. These rules provide that a venue may be changed for the convenience of the Defendant and his witnesses or in the interest of justice or to further the efficient performance of the business of the Court.

A. 6 CMC § 108(a)

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As noted above, the applicable rule regarding venue is 6 CMC § 108(a), which provides “[a]ll trials of offenses shall be held on the island where the offense was committed if a court competent to hear the case is located or regularly sits on that island.” 6 CMC § 108(a) makes it clear the proper venue is on the island where the offense was committed. In this case, it is undisputed that the alleged offense took place solely on Saipan. In applying the initial

1 assumption of 6 CMC § 108(a), the proper venue should be Saipan rather than Rota. This was an
2 error, and the Court now corrects the error and finds that Saipan is the proper venue.

3 Parties may petition the Court to change the location for good cause and the NMI
4 Supreme Court has interpreted this to mean that although “venue should involve the place where
5 an action occurred,” the court “should consider the convenience of the parties as well as the fair
6 administration of justice.” *Guerrero v. Tinian Dynasty Hotel & Casino*, 2006 MP 26 ¶ 12 (citing
7 *Van Dusen v. Barrack*, 376 U.S. 612, 622 (1964)).

8 At the early stages of this case, the Court incorrectly assigned Rota as the venue for this
9 case. In his pleading, Defendant moved to Change Venue in the event the Court granted the
10 Commonwealth’s motion.¹ This Court is now tasked with deciding a venue under Rule 18 and
11 Rule 4.

12 **B. Convenience and Interest of Justice**

13 The United States Supreme Court, in *Platt v. 3M*, listed a number of factors to consider
14 when determining whether a case should be transferred, which included: 1) location of
15 defendant, 2) location of possible witnesses, 3) location of events likely to be in issue, 4) location
16 of evidence likely to be involved, 5) disruption of the defendant’s business unless the case is
17 transferred, 6) expense to the parties, 7) location of counsel, 8) relative accessibility of place of
18 trial, 9) docket condition of each district or division involved, and 10) any other special elements
19 which might affect the transfer. 376 U.S. 240, 243-244 (1964).

20 This Court does not find these factors binding, but does find them as persuasive
21 guidelines. Further, no factor is dispositive, and it remains in this Court’s discretion to strike a
22 balance and determine which factors are of greatest importance. *United States v. Muldonado*

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¹ The August 7, 2018 hearing was originally scheduled for the Commonwealth’s Motion to Correct Venue, but as both parties delivered their arguments, Defendant raised an alternative Motion to Change the Venue to Rota should this Court grant the Commonwealth’s original motion.

1 *Rivera*, 922 F.2d 934, 966 (2d Cir. 1990) (quoting *United States v. Stephenson*, 895 F.2d 867,
2 875 (2d Cir. 1990)).

3 As a matter of policy, a court should wherever possible, try a defendant where he resides.
4 *United States v. Spy Factory, Inc.*, 951 F. Supp. 450, 456 (S.D.N.Y. 1997). Defendant in this
5 matter is a resident of Rota and has been located on Rota since posting property bond at a Bail
6 Hearing on April 28, 2017. This factor weighs in favor of holding the trial on Rota, absent other
7 countervailing considerations. *United States v. Brooks*, 2008 U.S. Dist. LEXIS 58101, at *5
8 (S.D.N.Y. 2008).

9 Defendant argues he may plan to call Rota residents to testify at trial as witnesses and
10 having the trial on Saipan would unduly prejudice him. While Defendant is not required to
11 provide his potential witnesses' testimony, there needs to be made an offering of proof
12 articulating in generality the number of witnesses he intends to call and their whereabouts and
13 other general information, without revealing his defense strategy. The Government cites *United*
14 *States v. Brooks* for the proposition that there must be "specific examples of witnesses"
15 testimony and their inability to testify because of the location of the trial." 2008 U.S. Dist.
16 LEXIS 58101, at *6-7 (quoting *Spy Factory, Inc.*, 951 F. Supp. at 456). Defendant's bare
17 assertion that he may call witnesses from Rota and that they may be unable² to attend a trial in
18 Saipan is not sufficient, without explanation, for the Court to assign the weight of this factor on
19 behalf of Defendant.

20 Defendant further argued the unaffordable expenses he will incur if the trial is on Saipan
21 prejudices him because he is indigent, and thereby favors Rota as the correct venue for the trial.³
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² Defendant is provided with a tool through witness summons, filed with the Court, to require witnesses to appear in
court at a set date and courtroom. Defendant is provided with another tool; namely, filing a motion for an *in camera*
review with the Judge of issues involving "trial strategy," outside of the presence of the Commonwealth.

³ Because Defendant is indigent, it is more than likely that Defendant will seek to have his transportation and his
room and board paid for by the Government. If this request is denied, at this point in time, it is likely Defendant may
then justify his undue prejudice argument.

1 In addition, Defendant argued it is inconvenient for him if the trial is on Saipan. As the court
2 stated in *United States v. U.S. Steel Corp*:

3 Every litigation, particularly a criminal prosecution, imposes burdens upon a
4 defendant and brings in its wake dislocation from normal occupational and
5 personal activities. ... But mere inconvenience, interference with one's routine
6 occupation and personal activities, and other incidental burdens which normally
7 follow when one is called upon to resist a serious charge do not ipso facto make
8 the necessary showing that a transfer is required in the interest of justice...

9 233 F. Supp 154, 157 (S.D.N.Y. 1964). Defendant has made minimal, if any, showing of
10 inconveniences he would suffer that would rise to the level of weighing this factor in his favor.

11 In fact, Defendant is currently unemployed, so his claim of hardship appears to be nothing more
12 than a "mere inconvenience" and "interference with routine." *Id.*

13 Finally, Defendant argued the current closure of the Guma' Hustisia' constitutes a special
14 circumstance that warrants the trial remaining on Rota. However, the U.S. District Court for the
15 NMI remains available to hold trials and other judicial matters.

16 Here, it is undisputed the alleged offense occurred on Saipan. Defendant was stopped at
17 Saipan International Airport in possession of the alleged controlled substance. No elements of
18 the offense occurred on Rota. About three Customs Officers and two Police Officers the
19 Commonwealth plan to call as witnesses are located on Saipan and any expert witnesses being
20 called will likely be flying in from Guam to Saipan. The evidence and alleged contraband
21 substance, Crystal Methamphetamine, is located on Saipan. It would be far more expensive to fly
22 the witnesses, counsels, and the Court to Rota than flying the Defendant to Saipan. Both parties'
23 counsel are located on Saipan. The Court finds persuasive the Commonwealth's arguments on
each of the ten factors listed in *Platt* and thereby weighing in favor of correcting the venue to
Saipan.

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V. CONCLUSION

For the aforementioned reasons, the Commonwealth's Motion to Correct Venue is **GRANTED** and Defendant's Motion to Change Venue is **DENIED**. The venue for the Jury Trial is hereby scheduled on Saipan on October 9, 2018 at 9:00 a.m.

SO ORDERED this 22nd day of August, 2018.



ROBERTO C. NARAÑA, Presiding Judge