

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

PEOPLE OF THE VIRGIN ISLANDS,	)	
	)	CASE NO. ST-14-CR-F187
Plaintiff,	)	
	)	JURY TRIAL DEMANDED
v.	)	
	)	
ENRIQUE SALDANA,	)	
	)	
Defendant.	)	

DOUGLAS J. SPROTTE, ESQ.
Assistant Attorney General
U.S. Virgin Islands Department of Justice
34-38 Kronprindsens Gade
GERS Bldg., 2nd Floor
St. Thomas, VI 00802
Attorney for Plaintiff

FLORENCE KAHUGU, ESQ.
Assistant Territorial Public Defender
Office of the Territorial Public Defender
P.O. Box 6040
St. Thomas, VI 00804
Attorney for Defendant

CHRISTIAN, ADAM G., Judge

ORDER

THIS MATTER is before the Court on the Motion for Bail Release and Reduction filed by Defendant Enrique Saldana. For the reasons set forth in the accompanying Memorandum Opinion of even date, it is hereby

ORDERED that the Motion for Bail Release and Reduction filed by Defendant Enrique Saldana is **GRANTED**, and the amount of bail required to secure Defendant Saldana's pretrial release is **REDUCED** to One Hundred Thousand Dollars (\$100,000.00); and it is further

ORDERED that Defendant Enrique Saldana shall be released from the custody of the Virgin Islands Bureau of Corrections upon: 1) the posting of No. 148-185 Estate Anna's Retreat, St. Thomas, U.S. Virgin Islands as a property bond; 2) the execution of the appropriate third party custodian forms of this Court by Ms. Emma Smith and Ms. Felecita Richards; and 3) the following conditions:

1. That he not violate any laws of the United States of America or the United States Virgin Islands;
2. That he report to the Office of Probation twice per week via telephone on the days of the week directed by that office;

People of the Virgin Islands v. Enrique Saldana
Case No. ST-14-CR-F187
Order

3. That he shall not leave the Territory of the Virgin Islands without the advance written permission of this Court;
4. That he shall not possess any firearms or other dangerous or deadly weapons;
5. That he shall not abuse alcohol, prescription or over-the-counter medication, or controlled substances;
6. That he shall reside with his mother Ms. Emma Smith at No. 148-185 Estate Annas Retreat, St. Thomas, U.S. Virgin Islands, he shall obey all rules of his mother's household, and he may not change his address for any reason without prior court approval;
7. That he shall be placed on 24-hour house arrest with electronic monitoring, and he shall be responsible for timely tendering all fees for the same;
8. That he shall contact his attorney at least once per week;
9. That he shall appear at all scheduled hearings, conferences, and trial dates scheduled for this case;¹
10. That he shall surrender all travel documents to the Clerk of the Court;
11. That he shall not contact any known victims or witnesses in this case in any manner, or any witnesses in this case; and
12. That, if his daughter, the minor S.S. elects to contact him, he may not discuss this case with her in any manner;² and
13. That he shall surrender to the Clerk of the Court any registrations or other ownership documents for any boats or vessels, and any captain or other operating licenses for boats or vessels, issued to him by any public authorities; and it is further

ORDERED that if Defendant Enrique Saldana violates any of the terms of his pretrial release as set forth above, he may be held in contempt of court, a warrant may issue for his arrest, and he may be remanded to the custody of the Bureau of Corrections pending the resolution of this case; and it is further

¹ Defendant Saldana shall have one (1) hour of time to travel to any court appointments and one (1) hour of time to return to No. 148-185 Estate Annas Retreat at the conclusion of any such hearings.

² The People of the Virgin Islands requested that this Court enter an order directing that the minor S.S. not have any contact with Defendant Saldana. However, while S.S. may be a witness in this case, S.S. is not a party who is under the continuing jurisdiction of this Court. *See, Jenkins v. Carper*, No. 3297, 1976 WL 182402 (Va. Cir. Ct. May 21, 1976) ("A potential witness on the other hand is not by virtue of that within the jurisdiction of the court or under its control..."). Thus, absent service of the appropriate process on her, the Court is without jurisdiction to enter an order regulating her personal conduct. The Court does agree, however, that Defendant Saldana should not discuss this matter with her in any form. Therefore, he is prohibited from discussing this case with the minor S.S. even if she raises the issue.

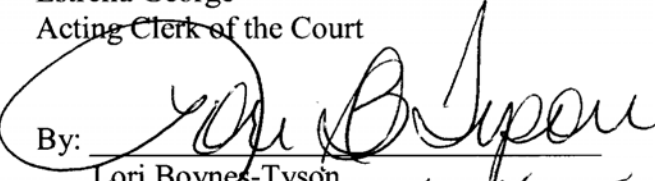
People of the Virgin Islands v. Enrique Saldana
Case No. ST-14-CR-F187
Order

ORDERED that copies of this Order and accompanying Memorandum Opinion shall be personally served on Defendant Enrique Saldana and third party custodians Ms. Emma Smith and Ms. Felecita Richards, and also distributed to Assistant Attorney General Douglas J. Sprotte, Esquire, Assistant Territorial Public Defender Florence Kahugu, Esquire, the Office of Probation, the Office of the Superior Court Marshal, the Virgin Islands Police Department, and the Virgin Islands Bureau of Corrections.

Dated: January 16, 2015


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

ATTEST:
Estrella George
Acting Clerk of the Court

By: 
Lori Boynes-Tyson
Court Clerk Supervisor 1/16/15

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

PEOPLE OF THE VIRGIN ISLANDS,	)	
	)	CASE NO. ST-14-CR-F187
Plaintiff,	)	
	)	JURY TRIAL DEMANDED
v.	)	
	)	
ENRIQUE SALDANA,	)	
	)	
Defendant.	)	

DOUGLAS J. SPROTTE, ESQ.
Assistant Attorney General
U.S. Virgin Islands Department of Justice
34-38 Kronprindsens Gade
GERS Bldg., 2nd Floor
St. Thomas, VI 00802
Attorney for Plaintiff

FLORENCE KAHUGU, ESQ.
Assistant Territorial Public Defender
Office of the Territorial Public Defender
P.O. Box 6040
St. Thomas, VI 00804
Attorney for Defendant

CHRISTIAN, ADAM G., Judge

MEMORANDUM OPINION

(Filed: January 16, 2015)

Pending before the Court is Defendant Enrique Saldana's ("Defendant Saldana") "Motion for Release and Bail Reduction." The People of the Virgin Islands (the "People") opposed the motion, and Defendant Saldana filed a written reply. The Court held a hearing on the motion and allowed the People additional time to respond to documents which had not been previously filed as part of Defendant Saldana's motion. He replied to the People's responses. For the reasons discussed below, the Court will grant Defendant Saldana's motion.

I. FACTUAL AND PROCEDURAL BACKGROUND.

Defendant Saldana is charged with several counts of assaulting and murdering his wife, all of which are charged as acts of domestic violence.¹ He was arrested on May 2, 2014, on a warrant in which the senior charge was second degree murder and set his bail at Five Hundred Thousand Dollars (\$500,000.00). At Defendant's advice of rights hearing before the Magistrate Division, the bail remained at the same amount. At the arraignment, the People filed an Information charging Defendant Saldana with first degree murder and related charges. He subsequently filed the instant motion.

¹ The factual background is derived from a combination of the written submissions and the testimony elicited at the hearing on Defendant Saldana's motion.

People of the Virgin Islands v. Enrique Saldana
Case No. ST-14-CR-F187
Memorandum Opinion

In support of his request, Defendant Saldana contends that he was born and raised in St. Thomas, U.S. Virgin Islands, and has resided here for all of his life. He is a 51-year old male, a graduate of the Ivanna Eudora Kean High School, completed classes at the then-College of the Virgin Islands, was in the Virgin Islands National Guard, and served as a police officer in the Virgin Islands Police Department. Defendant receives some income as a retiree of the Virgin Islands Government, but is otherwise unemployed. Defendant Saldana has family in Tortola, British Virgin Islands, and the states of Florida and North Carolina. Defendant contends that he cannot raise cash bail in the amount presently set by the Court. He proposes that, if released, he would reside with his mother, Ms. Emma Smith, at No. 148-185 Estate Tutu, St. Thomas, U.S. Virgin Islands, and she and his sister, Ms. Felecita Richards, would act as his third-party custodians. Ms. Richards does not reside in her mother's home. Ms. Smith is prepared to post her abode as security for Defendant's release.

Defendant Saldana also submitted with his motion an appraisal, dated May 12, 2009, which values Ms. Smith's real property at Two Hundred Five Thousand Dollars (\$205,000.00). However, at the motion hearing, another appraisal, dated June 27, 2014, valued the same real estate at Two Hundred Twenty Thousand Dollars (\$220,000.00). There is no evidence from either side that there are any encumbrances on the property. Defendant Saldana requests that the Court reduce his bail to One Hundred Thousand Dollars (\$100,000.00) and that the Estate Tutu property be utilized as the security for a property bond of Two Hundred Thousand Dollars (\$200,000.00).²

The People counter with several arguments. First, they note that Defendant Saldana's charged conduct is violent and resulted in the death of his wife. Second, the People have submitted a copy of a criminal judgment in *United States of America v. Enrique Saldana*, District Court of the Virgin Islands, Division of St. Thomas and St. John, Case No. 3:09CR00032-G-003, which reflects that Defendant Saldana was convicted of extortion and conspiracy to commit extortion under federal law, and four related charges under Virgin Islands law.³ The People also questioned the validity of the appraisals of Ms. Smith's property based on information obtained from the Office of the Lieutenant Governor, which is tasked with assessing and taxing real property in the U.S. Virgin Islands. Additionally, the People submitted a copy of a police report regarding a complaint the victim made against Defendant Saldana on April 5, 2014. Based on the foregoing, the People suggest that Defendant Saldana is a danger to the community. The People also argue that because Defendant Saldana has many ties to family members in Tortola and the United States mainland, and he is facing very lengthy periods of incarceration, that he is a flight risk.

In reply, Defendant Saldana contends that he obeyed all conditions of pretrial release in the District Court case, and submits a letter from the United States Probation and Pretrial Services office attesting to this fact. The People counter that they should have a chance to cross-examine the officer who supervised Defendant Saldana in that case before the Court considers that document.

² Under the rules of this Court, if real property is used as security for bail, it must have a fair market value of two times the amount of the set bail. SUPER. CT. R. 141(a).

³ Under Virgin Islands law, Defendant Saldana was convicted of conspiracy, extortion under color of official right, solicitation and receipt of a bribe, and conflict of interest.

II. LEGAL DISCUSSION.

a. Legal Standard to be Applied on a Motion for Reduction of Bail.

Initially, the Court notes that the People did not file a motion for detention of Defendant Saldana under Section 3 of the Revised Organic Act of the Virgin Islands of 1954.⁴ If the People had filed such a motion and established by clear and convincing evidence that the proof against Defendant Saldana on the first degree murder charge was “evident or the presumption great,” this Court would be prohibited from granting Defendant Saldana release on any bail conditions.⁵ However, in the absence of a detention motion and adequate proof in support thereof, Defendant Saldana has a right to be released on bail.⁶ The determination of the amount of bail set by this Court is discretionary and governed by Rule 141 of the Rules of the Superior Court. Once bail is set by a magistrate or the trial judge, that “judicial officer may at any time amend the order to impose additional or different conditions of release.”⁷ The trial judge’s determination of a motion to amend pretrial release conditions is *de novo* under the federal Bail Reform Act⁸ provisions we have adopted as a guide in our rules.

Decisions of the Supreme Court of the Virgin Islands delineate the standards which this tribunal must apply when deciding Defendant Saldana’s present request. Our Rule 141 incorporates, as a guide, the release provisions of the federal Bail Reform Act.⁹ Under the Bail Reform Act, the general presumption is that a defendant in a criminal case should be released on his personal recognizance or an unsecured bond, unless the trial court determines that release on these lenient provisions will not assure the defendant’s appearance at trial or may result in harm to the general community or a specific person.¹⁰ If the trial court concludes that release on personal recognizance or an unsecured bond is not appropriate, then a defendant is to be released on the condition that he does not violate any federal, state or local laws,¹¹ and the least restrictive of a host of additional conditions.¹² The potential terms of release include, but are not limited to, appointing a third-party custodian or remaining in governmental custody on certain hours, seeking continuing employment or education, travel restrictions, avoiding contact with certain persons, reporting to designated government agencies, imposition of a curfew, prohibitions on the possession of firearms and dangerous weapons or the abuse of controlled substances, medications, or alcohol, and the posting of money or real or personal property which may be forfeited if the defendant violates his release conditions.

⁴ See, Revised Organic Act of the Virgin Islands 1954, as amended, § 3, 48 U.S.C. § 1561, *reprinted in* V.I. CODE ANN., Historical Documents, Organic Acts, and U.S. Constitution at 86 (1995) (preceding V.I. CODE ANN. tit. 1).

⁵ See, *Browne v. People*, 50 V.I. 241, 256-63 (2008).

⁶ See, *Tobal v. People*, 51 V.I. 147, 160 (2009).

⁷ SUPER. CT. R. 141(b); 18 U.S.C. § 3142(c)(3).

⁸ *United States v. Koenig*, 912 F.2d 1190, 1191 (9th Cir. 1990); *United States v. Maull*, 773 F.2d 1479, 1481 (8th Cir. 1985) (en banc); *United States v. Delker*, 757 F.2d 1390, 1394-95 (3d Cir 1985).

⁹ SUPER. CT. R. 141(b).

¹⁰ 18 U.S.C. § 3142(b).

¹¹ 18 U.S.C. § 3142(c)(1)(A).

¹² 18 U.S.C. § 3142(c)(1)(B).

The amount of bail imposed by a trial court must be geared solely to ensure that a defendant will appear for all hearings and the trial of the matter.¹³ Thus, on a motion to alter the conditions of release, the trial court must consider the circumstances of the particular defendant and case.¹⁴ “Any bail or conditions of release that are not tailored to achieve the purpose of bail are considered excessive and therefore unconstitutional.”¹⁵ It is in making this crucial determination that the trial court must consider whether there is a risk that the defendant may flee the jurisdiction pending trial and if he poses a danger to the community based on various factors presented in a motion or at a hearing.¹⁶ These factors include:

...the nature and circumstances of the offense charged, the weight of the evidence against the person, and the history and characteristics of the person, such as character, physical and mental condition, family ties, employment, financial resources, length of residence in the community, community ties, past conduct, history relating to drug or alcohol abuse, criminal history, and record concerning appearance at court proceedings.¹⁷

Ultimately, the determination of the conditions of release rests in the sound discretion of the trial judge.¹⁸ In addition, when considering what proof to consider in bail proceedings, the trial court is not strictly bound by the rules of evidence.¹⁹ Therefore, hearsay statements may be used when deciding bail motions if there is a basis of reliability for said evidence.²⁰

b. Danger to the Community Factor.

The People argue that Defendant Saldana is a danger to the community based upon the pending charges and the allegations set forth in the affidavits on file. They further contend that his prior felony convictions in the District Court of the Virgin Islands support a finding of danger to the community. Defendant Saldana counters that he must be presumed innocent at this stage of the proceeding and his prior convictions do not indicate that he is a danger to the community or any person.

¹³ *Cantois v. People*, S. Ct. Crim. No. 2014-0013, 2014 WL 4410039 at * 2 (V.I. Sept. 5, 2014) (citations omitted).

¹⁴ *See, Rieara v. People*, 57 V.I. 659, 667 (V.I. 2012).

¹⁵ *Id.* (citations omitted).

¹⁶ *Tobal*, 51 V.I. at 155-57.

¹⁷ *See, e.g., United States v. Rico*, 551 F. App'x 446 (10th Cir. 2014) (quoting 18 U.S.C. § 3142(g)).

¹⁸ *Rieara*, 57 V.I. at 668 (noting that the Supreme Court applies the abuse of discretion standard to bail decisions of this tribunal).

¹⁹ FED. R. EVID. 1101(d)(3). *See also, United States v. Montemayor*, 666 F.2d 235, 237 (5th Cir. 1982). The Federal Rules of Evidence apply to proceedings in the Superior Court both by statute and court rule. *See, Malloy v. Reyes*, S. Ct. Civ. No. 2012-0081, 2014 WL 3697332 at * 8 n. 17 (V.I. July 22, 2014) (citing Act No. 7161, § 15(b), 2010 V.I. Sess. Laws 50); SUPER. CT. R. 7.

²⁰ *See, Williams v. People*, 53 V.I. 514, 527-33 (2010) (noting that the trial court must ascertain whether hearsay in an affidavit is reliable before using that evidence in a detention hearing). *See also, United States v. Lee*, 156 F. Supp. 2d 620, 623 (E.D. La. 2001).

People of the Virgin Islands v. Enrique Saldana
Case No. ST-14-CR-F187
Memorandum Opinion

Under the Bail Reform Act, the nature of the charges against Defendant Saldana are properly considered,²¹ and the charges of domestic violence, assault, and murder are extremely serious. Further, the charges against Defendant Saldana include allegations that he physically beat his deceased wife. The affidavits on file indicate that the victim had bruising on her body. And, although the U.S. Virgin Islands does not have a general statutory definition of a crime of violence, both assault and murder are “crimes of violence” for purposes of title 14, Chapter 5, of the Virgin Islands Code.²² Moreover, the crimes charged are alleged to be acts of domestic violence as defined by Virgin Islands law.²³

Against this backdrop, the Court notes that the weight of evidence against Defendant Saldana is not formidable at this juncture of the proceedings. The circumstances presented in the affidavits in the record are certainly questionable. However, there is no eyewitness to any beating or other violent or other illegal acts taken by Defendant Saldana against his late wife. Moreover, at the latest hearing held on November 6, 2014, the People indicated that, even at this juncture in the proceedings, they do not have an autopsy report or other documentation establishing Mrs. Saldana’s cause of death. Further, the reliable live testimony did not demonstrate that Defendant Saldana had any history of assaulting his wife.

With respect to Defendant Saldana’s prior conviction in the District Court for extortion and conspiracy to commit extortion under federal law, and several violations of territorial law, there is no doubt that Defendant Saldana is a felon. However, the evidence submitted by the People does not show that these crimes involved violence. A violation of the federal criminal extortion law, frequently referred to as the Hobbs Act,²⁴ may occur when one extorts money by virtue of an official position, even if no violence is used.²⁵ The Court also notes that the local violations involve Defendant Saldana’s use of his public position for advantage, and not violence. To the extent that Defendant Saldana was able to carry out his previous criminal activities due to his position as a police officer, it is clear that he no longer has that ability. The testimony and other documents establish that he has retired from the Virgin Islands Police Department and has no other position of authority which would allow him to engage in this type of conduct again. There was no evidence that Defendant Saldana is known for having a violent temper, or that he has any history of violence in the community.²⁶ There also was no evidence presented that any person would be endangered if he were placed on some form of pretrial release with conditions.

Importantly, under the federal Bail Reform Act provisions adopted by this Court, the People bear the burden of showing that Defendant Saldana’s prior criminal history, current

²¹ 18 U.S.C. § 3142(g).

²² 23 V.I.C. §481(d).

²³ 14 V.I.C. §§ 91(b)(1), (2). Although murder is not expressly listed among the acts which may constitute domestic violence, assault and battery are enumerated. As alleged in the Information and defined in the Virgin Islands Code, the assaults charged are lesser included offenses of murder. *Compare*, 14 V.I.C. §§ 922(a)(1), (2), *with*, 14 V.I.C. §§ 295(1), 296(1), 297(3).

²⁴ 18 U.S.C. § 1851.

²⁵ *United States v. Kenny*, 462 F.2d 1205, 1228-29 (3d Cir. 1972), *cert. denied*, 409 U.S. 914 (1972).

²⁶ Diane Magras testified that she recently learned that there may have been a domestic violence incident between Defendant Saldana and his former wife. However, there was no testimony about the source of that second-hand information. In light of the absence of any reliability of this claim, the Court will not give it any weight in determining this motion. *See, Williams v. People*, 53 V.I. at 527-33.

charges, and other evidence supports a finding that he is a danger to the community or a specific person by clear and convincing evidence.²⁷ The People have not met this burden based on the record before the Court.²⁸ While other insinuations have been made regarding a potential violent propensity of Defendant Saldana, these allusions have not been supported with reliable, clear, and convincing evidence. In addition, the Court must be mindful that a defendant maintains his constitutional presumption of innocence when the trial court considers his bail and release conditions.²⁹ Taking all of the foregoing into consideration, this factor dictates that Defendant Saldana is not a significant danger to the community.

c. Risk of Flight Factor.

The record reflects that Defendant Saldana has numerous contacts both in the U.S. Virgin Islands and outside of the Territory. In addition to the facts previously stated, at the time of his arrest Defendant Saldana was living with his mother, Ms. Emma Smith, and paying for some of the household expenses with his retirement proceeds. Defendant Saldana has children who live in the U.S. Virgin Islands, Tortola, British Virgin Islands, and the United States mainland. He also has grandchildren on the U.S. mainland.

Although raised by the People in their argument, the evidence of record does not show that Defendant Saldana has “belonger” status in the British Virgin Islands. The testimony in that regard was ambivalent at best. It did, however, confirm that Defendant Saldana has family there and visits them on a regular basis. He also has travelled to the United States mainland to visit his family from time to time. There was testimony that Defendant Saldana went fishing on vessels owned or operated either by him or others. Further statements were made that he owned land in Anguilla, and had a friend who owns an airplane. However, this latter information was either equivocal or based upon hearsay, on multiple levels, without anything to substantiate its reliability. There is no evidence that Defendant violated the terms of his pretrial release or that he failed to appear for any hearings during his District Court criminal case.

The People contend that Defendant Saldana is a significant flight risk in light of the potential for a sentence of life incarceration without possibility of parole if convicted on Count One. They also aver that the possibility of further sanction from the District Court is significant. The People further argue that Defendant faces punishment as a habitual offender if convicted on any of the charges against him, which carries a sentence of ten (10) years to life imprisonment. Defendant Saldana counters that his ties to the community and the fact that he did not attempt to flee while his case was adjudicated in the District Court indicate that he is not a flight risk.

²⁷ *United States v. English*, 629 F.3d 311, 319 (2d Cir. 2011) (noting that even when there is a presumption of detention under the Bail Reform Act, the prosecution has the ultimate burden of persuading the trial court that a criminal defendant is a danger to the community with clear and convincing evidence); *United States v. Jackson*, No. 12-CR-0096-JHP, 2013 WL 265932 at * 2 (E.D. Okla. Jan. 23, 2013) (citing *United States v. Himler*, 797 F.2d 156, 160-61 (3d Cir. 1986)).

²⁸ The People also submitted a police report detailing a complaint the victim in this case made against Defendant Saldana. However, Mrs. Saldana indicated that she did not wish to pursue any charges, and there is no detail as to what actually transpired during the purported incident. Therefore, this report does not alter the Court’s analysis of the danger to the community factor.

²⁹ 18 U.S.C. § 3142(j).

The People bear the burden of showing that Defendant Saldana is a flight risk by a preponderance of the evidence.³⁰ It is not disputed that he has extensive contacts both within and outside of the United States Virgin Islands. However, there was no testimony or other evidence that any of his travels, which were to visit his family or to fish, contravened any pretrial or post-trial supervised release conditions imposed on him by the District Court. Absent such restrictions, Defendant Saldana had the constitutional right to travel both inside and outside of the Territory as he saw fit or as allowed by that tribunal.³¹ Conversely, the extra-territorial contacts, when combined with the fact that he is facing a maximum penalty of life in prison without parole if convicted of first degree murder,³² or up to life in prison if convicted of second degree murder³³ or as a habitual offender³⁴ on any of the felony charges, warrants a determination that there is a risk of flight in this case.³⁵ Therefore, the People have shown by a preponderance of the evidence that Defendant Saldana is not a suitable candidate for release on his personal recognizance or on an unsecured bond, and the Court must determine what combination of bail and other conditions are appropriate.

d. Reasonable Amount of Bail.

As noted above, in setting a reasonable amount of bail and other conditions, the Court must fix them at the least restrictive levels which ensure that he attends all conferences, hearings, and the trial of this case. Presently, Defendant Saldana's bail is fixed at Five Hundred Thousand Dollars (\$500,000.00). He contends that he lacks sufficient assets to tender cash bail in this amount. The Court notes the inability to furnish the bail amount set, without more, does not require a finding that the bail is excessive.³⁶ Nevertheless, while the present bail is not necessarily an exorbitant amount based on the charges against Defendant Saldana,³⁷ neither is it the least restrictive amount based upon the record presented to the Court. As discussed above, the Court must impose the least restrictive conditions of release under the federal Bail reform Act.

Defendant Saldana proposes using his mother's property, where he presently resides, as security for his pretrial release, and she has agreed to this request. While it is not his property, it does not appear that he would have anywhere else to reside pending trial. Also, there was no indication in the record that Defendant Saldana would leave his mother in a situation where she could be rendered homeless. Thus, he has every reason not to violate any terms of pretrial release

³⁰ *Karpouzis v. Gov't*, 36 V.I. 132, 146-47, 961 F. Supp. 2d 841, 851 (D.V.I. App. Div. 1997) (citing *United States v. Himler*, 797 F.2d 156, 161 (3d Cir 1986)).

³¹ *Attorney General of New York v. Soto-Lopez*, 476 U.S. 898, 901 (1986) ("Freedom to travel throughout the United States has long been recognized as a basic right under the Constitution.") (citations omitted); *Schneider v. Todman*, 13 V.I. 182, 187 (D.V.I. 1976) ("By the clear implication of the decided cases, the right to travel is not restricted to inter-state commerce but extends to intra-state (in our context intra-territorial) movements as well.") (citations omitted).

³² 14 V.I.C. § 923(a).

³³ 14 V.I.C. § 923(b).

³⁴ 14 V.I.C. § 61(a).

³⁵ See, *United States v. Banki*, 369 F. App'x 152, 153 (2d Cir. 2010); *United States v. McCarns*, No. 2:08-cr-00116-KJM, 2014 WL 1247732 at * 6 (E.D. Cal. Mar. 25, 2014) (citations omitted).

³⁶ E.g., *United States v. McConnell*, 842 F.2d 105, 107 (5th Cir. 1988) (collecting cases).

³⁷ E.g. *Ex Parte Jackson*, 257 S.W.3d 520 (Tex. App. 2008) (holding that bail of \$750,000.00 was not excessive for murder charges).

which could result in the forfeiture of this security. In addition to utilizing this real property as the security for bail, the Court can set other conditions which it deems necessary to assure Defendant Saldana will attend all court appointments. These conditions include, but are not limited to, house arrest with electronic monitoring, reporting to the office of probation, restrictions on travel, and surrendering personal documents required for travel.

Pursuant to our rules, if the Court accepts real property as security for bail instead of cash or a bond, the value of the real property must be "...double the amount of bail set or reduced by the court."³⁸ The value of the property, despite the objections of the People, exceeds Two Hundred Thousand Dollars (\$200,000.00) under either appraisal submitted by Defendant Saldana. The first appraisal was commissioned by the Bank of Nova Scotia in 2009 and submitted as an attachment to Defendant Saldana's written motion. The second appraisal was requested by Ms. Emma Smith in 2014 for use in this bail proceeding. While the People have submitted documents from the Office of the Tax Assessor indicating a lower value for the real estate, they do not provide any underlying analysis for their conclusions. To the contrary, the appraisals filed by Defendant Saldana detail the process by which each appraiser assessed the property. Therefore, the Court will use the valuation of Two Hundred Thousand Dollars (\$200,000.00) for the subject real property, and, to ensure compliance with our rule, decrease the amount of bail to One Hundred Thousand Dollars (\$100,000.00). The Court determines that this result, along with the several conditions which will be placed in the accompanying order, properly balances the competing interests, sets an appropriate amount of bail,³⁹ and imposes the least restrictive conditions of release as required by the federal Bail Reform Act.

³⁸ SUPER. CT. R. 141(a).

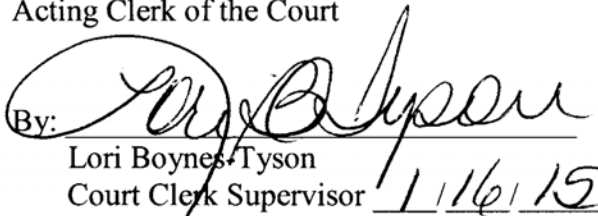
³⁹ *Burris v. Crosby*, Civil Action No. 3:09-3114-HFF-JRM, 2010 WL 60906 at * 4 (D.S.C. Jan. 6, 2010) (holding that bail of \$100,000.00 was not excessive for a murder charge and denying habeas corpus relief).

III. CONCLUSION.

The People failed to establish that Defendant Saldana is a danger to the community by clear and convincing evidence, but did establish that he is a risk of flight by a preponderance of the evidence. Based on the record, while Defendant Saldana is not entitled to release on his own recognizance or on an unsecured bond, a reduction of bail is appropriate to meet the guidelines of Rule 141 of the Rules of the Superior Court and the federal Bail Reform Act. Therefore, Defendant's Motion for Release and Bail Reduction will be granted in an appropriate order of even date.

Dated: January 16, 2015

ATTEST:
Estrella George
Acting Clerk of the Court

By: 
Lori Boynes-Tyson
Court Clerk Supervisor 1/16/15


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