

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

PEOPLE OF THE VIRGIN ISLANDS,

Plaintiff,

v.

SHARMOY STEVENS,

Defendant.

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CASE NO. SX-10-CR-0657

MEMORANDUM OPINION

MOLLOY, Judge.

THIS MATTER comes before the Court on Defendant Sharmoy Stevens' ("Stevens") Motion for Release filed on October 23, 2013. Stevens requests that the Court amend his bail to allow for him to be released from confinement on a \$125,000 unsecured bond. The People of the Virgin Islands (the "People") filed a response on November 4, 2013, opposing the motion for release. The Court held a hearing on November 19, 2013. For the reasons stated below, the Court will deny the motion.

I. FACTUAL BACKGROUND

Stevens is a 22-year-old male who was born in the United States Virgin Islands and resided in Antigua prior to his arrest. He was arrested on November 16, 2010, and charged with committing illicit sexual acts on an 8-year-old female between October 22, 2010, and November 12, 2010. The Court advised Stevens of his rights at an advice of rights hearing held on November 17, 2010. During this hearing, Stevens requested that his bail be set at \$75,000. The People objected and requested that Stevens' bail be set at \$150,000. The

Court set Stevens' bail at \$125,000 and also denied Stevens' oral motion that he be released on an unsecured bond.

On December 7, 2010, the People filed a six-count Information charging Stevens with the following offenses: aggravated rape first degree (2 counts), unlawful sexual contact first degree (2 counts), aggravated child abuse, and violation of the Computer and Child Exploitation Prevention Act. Stevens was arraigned on December 8, 2010. At his arraignment, Stevens renewed his motion to be released on an unsecured bond. The magistrate presiding over the arraignment denied the motion.

On October 23, 2013, Stevens filed a Motion for Release requesting that the Court release him upon the signing of an unsecured bond in the amount of \$125,000. On November 4, 2013, the People filed a response objecting to the motion for release contending that the Court should deny the motion because Stevens has not shown that he has strong ties to the community, has not identified a third party custodian, has no local address, and faces serious charges that include the penalty of life imprisonment. The Court held a hearing on November 19, 2013, on the motion for release. Stevens did not present any witnesses at the hearing.

II. STANDARD OF REVIEW

Steven's Motion for Release is governed under Rule 141 of the Rules of the Superior Court. Rule 141(b) provides that "[w]henver a person charged with an offense is before a judge or magistrate of [the Superior Court] for release on bail prior to trial . . . the judge or magistrate shall, in considering the release of such person be guided by and apply the appropriate provisions of The Bail Reform Act . . .". Super. Ct. R. 141(b). Rule 141(c)

further provides that bail and other conditions of release shall be ordered in any of the following categories: (1) cash bail bond; (2) surety bond; (3) unsecured bail bond; or (4) personal recognizance. In addition to the four categories mentioned above, "the court may require a third party custodian to further ensure compliance with the terms of the release and the appearance of the defendant in each of the foregoing instances. Each custodian must fully execute under oath the Third Party Custodian Consent Form before a defendant may be released." Super. Ct. R. 141(d).

Finally, "[w]hen the court resolves a motion to modify bail and release conditions, it must make an individualized determination in order to ensure that the bail is not excessive. Any bail or conditions of release that are not tailored to achieve the purpose of bail are considered excessive and therefore unconstitutional." *Rieara v. People of the Virgin Islands*, 57 V.I. 659, 667 (2012).

III. DISCUSSION

During the hearing held on November 19, 2013, Stevens did not testify nor did he present any witnesses to testify on his behalf. Instead, he relied on the arguments made by his counsel who contends that because Stevens is indigent, the Court should release him upon the signing of an unsecured bond in the amount of \$125,000 and permit him to reside at a shelter until he can find a suitable residence. The Court finds these arguments unpersuasive to release Stevens on an unsecured bond.

Pursuant to Superior Court Rule 141(b), the Court must be guided by the Bail Reform Act ("BRA") when considering a defendant's motion for release prior to trial. The applicable section of the BRA states:

The judicial officer shall order the pretrial release of the person on personal recognizance, or upon an unsecured bond in an amount specified by the court . . . unless the judicial officer determines that such release will not reasonably assure the appearance of the person as required or will endanger the safety of any other person or the community.

18 U.S.C. § 3142(b). If the Court determines that releasing a person on personal recognizance or on an unsecured bond “will not reasonably assure the appearance of the person as required or will endanger the safety of any other person or the community” the Court may order the pretrial release of the person on conditions set forth in section 3142(c)(1)(A) and (B) of the BRA. 18 U.S.C. § 3142(c). The Court finds that releasing Stevens on personal recognizance or on an unsecured bond will not reasonably assure his appearance at trial or related proceedings and will endanger the safety of the victim and the community.

In this case, Stevens does not reside in the Virgin Islands, or in any other U.S. jurisdiction for that matter. Prior to his arrest, Stevens resided in Antigua and was on St. Croix for less than one month at the time of his arrest. Stevens contends that he has no place to reside in the Virgin Islands because his family lives in public housing and is unable to provide for his housing due to the rules of the housing community in which they live. In addition to not having a place of residence in the Virgin Islands, Stevens also does not work, nor does he have any prospect of gainful employment in the territory. Thus, although Stevens was born on St. Croix, the Court finds that Stevens poses a flight risk and releasing him on personal recognizance or upon an unsecured bond will not reasonably assure his appearance at trial or related proceedings. *See, e.g., United States v. Townsend*, 897 F.2d 989, 996 (9th Cir. 1990) (finding that the defendants were serious flight risks where, *inter*

alia, they did not reside or work in the United States); *United States v. Minns*, 863 F. Supp. 360, 364 (N.D. Tex. 1994) (finding that the defendant was a flight risk where, *inter alia*, he had lived outside the United States for many years).

Moreover, Stevens is charged with two counts of aggravated rape first degree, two counts of unlawful sexual contact, aggravated child abuse, and violation of the Computer and Child Exploitation Act. These offenses are punishable by up to life in prison, fifteen years in prison, thirty years in prison, and twenty years in prison, respectively. The Court finds that Stevens is charged with serious crimes that weigh against releasing him on an unsecured bond or on personal recognizance. The Court also finds that a shelter is a not suitable location for the residence of an individual accused of serious offenses as alleged in the Information.

The Court also finds that releasing Stevens on personal recognizance or unsecured bond would pose a danger to the victim and to the community. According to the Probable Cause Fact Sheet presented by Sergeant Deborah Jack, the victim is an 8-year-old female who stated that Stevens had been sexually assaulting her for a number of days. The victim further reported that Stevens touched her in her private parts with various parts of his body and on more than one occasion, Stevens showed her his penis and "white stuff" came out. *See* Probable Cause Fact Sheet, at 1 (Nov. 17, 2010). The victim further stated that "Stevens made her view pornographic acts on the internet and on the television and then he would perform the above mentioned acts on her." *Id.* The Court finds that this information demonstrates that releasing Stevens would pose a danger to the victim, the

sole eye witness identified in this case. This information weighs strongly against releasing Stevens on personal recognizance or on an unsecured bond.

Lastly, Stevens has not requested that the Court reduce the amount of his cash bail bond set at \$125,000. In fact, Stevens argues that he has no financial resources and is therefore entitled to be released on an unsecured bond. Stevens also cites section 3141(c) of the BRA for the proposition that because “[he] has no substantial funds which may be deposited as surety”, this Court cannot impose a financial condition that would result in his pretrial detention. *See* Def.’s Motion for Release at 4. Although section 3142(c)(2) of the BRA states that “[t]he judicial officer may not impose a financial condition that results in the pretrial detention of the person”, this provision is simply a guide and is not binding on the Court. *See* Super. Ct. R. 141(b) (stating that a judge or magistrate of the Superior Court *shall be guided by* and apply the provisions of the BRA when considering person’s release) (emphasis added). Furthermore, although the Eighth Amendment to the U.S. Constitution prohibits excessive bail,¹ “[t]he plain meaning of ‘excessive bail’ does not require that it be beyond one’s means, only that it be greater than necessary to achieve the purposes for which is imposed.” *Galen v. County of Los Angeles*, 477 F.3d 652, 661-62 (9th Cir. 2007). *Galen* was cited with approval by the Supreme Court of the Virgin Islands. *See Rieara*, 57 V.I. at 667. Accordingly, and in light of the fact that Stevens has not articulated a justifiable

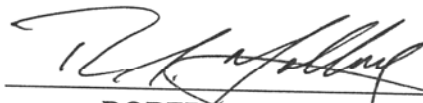
¹ The Eighth Amendment to the U.S. Constitution provides that “[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.” U.S. Const. amend. VIII. The U.S. Supreme Court has opined that the excessive bail clause of the United States Constitution does not guarantee a right to bail in all cases. *United States v. Salerno*, 481 U.S. 739, 752-54 (1987). However, under section 3 of the Revised Organic Act, the Court must allow bail by sufficient sureties for “all defendants, other than those charged with first degree murder where the proof is evident or the presumption great . . .”. *Tobal v. People of the Virgin Islands*, 51 V.I. 147, 153 (2009).

basis to depart from the bail previously set, the Court will deny his motion and maintain his bail at \$125,000 cash bond.

IV. CONCLUSION

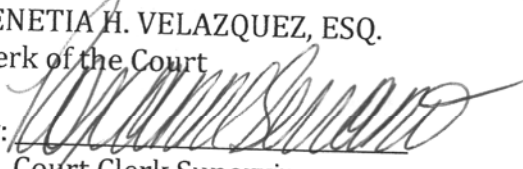
For the reasons stated above, the Court concludes that releasing Stevens on an unsecured bond or on personal recognizance will not reasonably assure his appearance at trial nor would it assure the safety of the victim or the community. Accordingly, Stevens' Motion for Release will be denied. The Court will issue an Order accompanying this Memorandum Opinion.

Dated: November 26, 2013


ROBERT A. MOLLOY
Judge of the Superior Court

ATTEST:

VENETIA H. VELAZQUEZ, ESQ.
Clerk of the Court

By: 

Court Clerk Supervisor

Dated: 11/26/13

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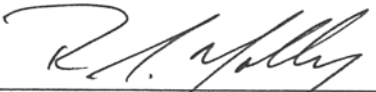
ORDER

THIS MATTER comes before the Court on Defendant Sharmoy Stevens' ("Stevens") Motion for Release filed on October 23, 2013. After careful consideration and review, and for the reasons stated in the accompanying Memorandum Opinion of even date, it is hereby

ORDERED that Stevens' Motion for Release is **DENIED**; it is further

ORDERED that copies of this Order shall be provided to counsel of record.

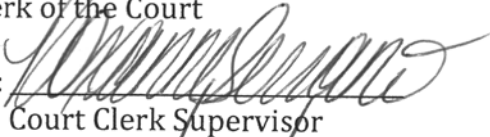
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