

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

PEOPLE OF THE VIRGIN ISLANDS,	)	
	)	
Plaintiff,	)	CASE NO.: ST-17-CR-319
	)	
-vs-	)	14 V.I.C. § 297(a)(2)
	)	14 V.I.C. § 2251(a)(2)(B)
CLAUDE LESPERANCE,	)	14 V.I.C. §§ 292 & 299(2)
(D.O.B. 08-30-79)	)	14 V.I.C. § 625(a)
	)	
Defendant.	)	

MEMORANDUM OPINION

THIS MATTER came on for a hearing on November 20, 2017, on Defendant's Motion for Release filed on October 31, 2017. Two proposed third party custodian's testified at the hearing: Anthoniel Toussaint and Jeff M. Pierre. Both men filed affidavits stating that they understood their responsibilities if appointed as the Defendant's third party custodians.

In his Motion, Defendant states that he does not have the funds to meet the current Twenty-Five Thousand Dollars (\$25,000.00) cash bail due to indigency, and proposes that he only be required to post 10%. Defendant is a citizen of Haiti who has worked at the Westin in St. John, VI for the last seven (7) years. The Defendant claims he has no prior arrests or convictions. The Defendant is married to Jenny Desrosin, one of the victims.

The People oppose any reduction of bail less than 50% on the grounds that the Defendant is a flight risk, a danger to the victims, and the charges are very serious. Further, the People do not think that the proposed third party custodians will be able to adequately monitor the Defendant's actions and prevent him from coming in contact with the victims or fleeing the jurisdiction.

I. APPLICABLE LEGAL STANDARD.

The analysis of Defendant's Motion begins with Section 3 of the Revised Organic Act of 1954 which provides that "[a]ll persons shall be bailable by sufficient sureties in the case of criminal offenses, except for first-degree murder or any capital offense when the proof is evident or the presumption great."¹ Superior Court Rule 141(a) provides that "[a]ll persons shall, before conviction, be bailable by sufficient sureties approved by a judge or magistrate..."

Super. Ct. Rule 141(b) goes on to state that "[w]henever a person charged with an offense is before a judge or magistrate of this court for release on bail prior to trial, pursuant to these rules,

¹ Rev. Organic Act § 3, 48 U.S.C. § 1561, reprinted in V.I. Code Ann., Historical Documents, Organic Acts, and U.S. Const. at 86 (1995 ed.).

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'...."

However, provisions of the Bail Reform Act only serve as a guide which should be applied when appropriate.² "Furthermore, although the Eighth Amendment to the U.S. Constitution prohibits excessive bail, "[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 bail is imposed."³

Under the guidance of the BRA, the general presumption is that a criminal defendant should be released on his personal recognizance or an unsecured bond, unless a judicial officer determines that the defendant's release would not assure his appearance at trial or may result in harm to the general community or a specific person.⁴ Further, the amount of bail imposed must be designed solely to ensure that a defendant will appear for all hearings and the trial of the matter.⁵ In reviewing Defendant's request to be released this Court may consider "...circumstances of the particular defendant and case."⁶

1. Danger to Specific Persons.

On October 19, 2017, the Defendant got into an argument with his wife, Jenny Desrosin, after seeing text messages she had received from Mr. Maxey Detournel. When the wife walked to a nearby parking lot to meet Detournel, the Defendant followed her in his vehicle. Upon arriving at the parking lot the Defendant then drove his vehicle towards both of them, striking Detournel on his foot, causing serious injuries including a dislocated shoulder, a broken leg and a fractured shin. The People further allege that after he struck Detournel with a motor vehicle, the Defendant got out of his vehicle, grabbed Detournel by his collar, punched him twice and slapped him twice. It is also alleged that the Defendant tried to reverse his vehicle in order to hit Detournel again but the vehicle was stuck. Thereafter, the Defendant left the scene and was arrested hours later.

The People have charged the Defendant with third degree assault in violation of V.I. Code Ann. 14, § 297(a)(2); using a dangerous weapon during the commission of a crime of violence in violation of 14 V.I.C. § 2251(a)(2)(B); simple assault in violation of 14 V.I.C. §§ 292, 299(2); and reckless endangerment in the first degree in violation of 14 V.I.C. §625(a).

Given the circumstances of the alleged assault, the Court finds that the Defendant is a danger to Detournel and Desrosin, who had to jump out of the way to avoid being struck by Defendant's vehicle. For this reason, any pretrial release conditions must also assure the safety of

² See Super. Ct. R. 141(b) and *People of the V.I. v. Stevens*, 2013 V.I. LEXIS 68, *8-9 (V.I. Super. Ct. Nov. 26, 2013)

³ *People of the V.I. v. Stevens*, 2013 V.I. LEXIS 68, *8-9 (V.I. Super. Ct. Nov. 26, 2013) (citing *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 *Rivera*, 57 V.I. at 667.

⁴ 18 U.S.C. § 3142(b); see also *People of the V.I. v. Saldana*, Super. Ct. Crim. No. 187/2014, 2015 V.I. LEXIS 1, at *10 (V.I. Super. Ct. 2015).

⁵ *Id.* at *11-12.

⁶ *Id.* at *11 citing *Rieara v. People*, 57 V.I. 659, 667 (V.I. 2012).

the victims. These circumstances call for a cash bail in an amount that will deter Defendant from future harm to the victims.

2. Risk of Flight by Defendant and Ties to the Jurisdiction.

The People bear the burden of showing, by a preponderance of the evidence, that Defendant is a flight risk.⁷ The Court finds that Defendant is a flight risk as he is a citizen of Haiti. He is presently unemployed. Other than his past residence in St. Thomas, Defendant has not presented evidence of another ties he may with the Virgin Islands. The Defendant is not a suitable candidate for release on his own recognizance or on an unsecured bond. The Court will require that the Defendant post significant cash as a bond to insure that he appears for all required Court hearings, conferences, jury selection and trial.

3. Suitability of Proposed Third Party Custodians.

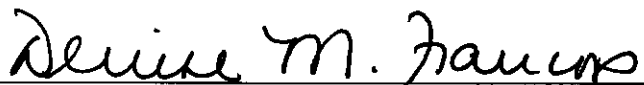
The Court finds that Toussaint and Pierre are credible and suitable third party custodians. They both appeared in person to testify. Both are employed. Pierre is a security guard at the Westin Resort in St. John. Toussaint has known the Defendant for twelve (12) years, beginning from when they were both in Haiti. Both Toussaint and Pierre clearly understood and articulated what their duties would be as third-party custodians.

II. CONCLUSION.

In the absence of posting the full amount of the \$25,000.00 cash bond, the Court will require that any pre-trial release of Defendant must be to an appropriate third-party custodian(s). The Court will permit Toussaint and Pierre to serve as co-third party custodians of the Defendant. As a condition of his release, the Court will require Defendant to post fifteen percent (15%) of his bail in cash calculated to insure that the Defendant keeps his Court appointments and refrains from any contact with the victims.

A separate Order amending the terms of Defendant's pretrial release follows.

DATED: November 28, 2017

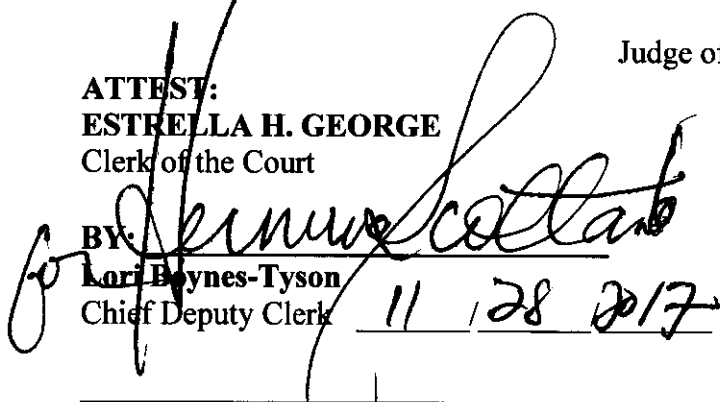


DENISE M. FRANCOIS

Judge of the Superior Court of the Virgin Islands

ATTEST:

ESTRELLA H. GEORGE
Clerk of the Court

BY: 

Lori Byrnes-Tyson
Chief Deputy Clerk

11 28 2017

⁷ *Id.* at *19 (citations omitted).