

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

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| <b>PEOPLE OF THE VIRGIN ISLANDS,</b> | ) | <b>CASE NO: ST-2013-SFL-0000005</b>         |
|                                      | ) |                                             |
|                                      | ) | V.I. Code Ann. tit. 14, §§ 291 & 922(a)(1)  |
| Plaintiff,                           | ) | V.I. Code Ann. tit. 14 §§ 921 & 922(b)      |
|                                      | ) | V.I. Code Ann. tit. 14, § 295(1) and        |
| -vs-                                 | ) | V.I. Code Ann. tit. 14, §§ 297(4) & 297(2)  |
|                                      | ) | V.I. Code Ann. tit. 14, § 2253(a), 3 counts |
| <b>SHANDOS POWELL,</b>               | ) | V.I. Code Ann. tit. 14, § 625(a)            |
|                                      | ) |                                             |
| Defendant.                           | ) |                                             |

**MEMORANDUM OPINION**

**THIS MATTER** is before the Court on Defendant Shandos Powell's ("Defendant") Motion for Bail Reduction. The Court finds that the Defendant is a danger to the community given the nature of the charges and the circumstances under which they occurred. In addition, the Court finds that a significant bail is required to ensure Defendant's appearance at trial because, in the face of the penalties for murder and other charges, Defendant has every reason to flee the jurisdiction.

**I. Factual and Procedural Background.**

On November 8, 2013, Akil Greig, age 33, was shot and killed in the Bureau of Motor Vehicles ("BMV") building in Subbase, St. Thomas, Virgin Islands. According to the Affidavit in Support of an Arrest Warrant, Greig and the Defendant had an argument in the lounge or office of the BMV building, Defendant left the building and then returned inside and allegedly shot Greig multiple times in the presence of a witness. Greig died at the scene. At least two other witnesses and video surveillance establish Defendant entering the BMV building, leaving the building and then re-entering at the time the shooting occurred.

Defendant was seen driving a BMW into the BMV yard and then driving out after the shooting, and that BMW was registered to Defendant. The car was eventually located at Defendant's residence in Hull Bay, St. Thomas.

On November 12, 2013, a warrant was issued for the arrest of Defendant. Bail was set at One Million Dollars at the time the warrant was issued for Defendant's arrest on charges of first degree murder, second degree murder, first and third degree assault, reckless endangerment and three counts of possession of a firearm during the commission of a crime of violence arising from the fatal shooting of Akil Greig on November 8, 2013 at the Bureau of Motor Vehicles in Subbase, St. Thomas, Virgin Islands.

Defendant was arrested on November 18, 2013 when he turned himself into the V. I. Police. He was advised of his rights the same day; his bail remained set at One Million Dollars.

The People filed an eleven-count Information against Defendant on November 20, 2013, charging, as follows: Count 1 first degree murder in violation of V.I. Code Ann. tit. 14, §§ 921, 922(a)(1); Count 2 unauthorized use of an unlicensed firearm during the commission of first degree murder in violation of V.I. Code Ann. tit. 14, §§ 2253(a); Count 3 second degree murder in violation of V.I. Code Ann. tit. 14, §§ 921, 922(b); Count 4 unauthorized use of an unlicensed firearm during the commission of second degree murder in violation of V.I. Code Ann. tit. 14, § 2253(a); Count 5 first degree assault in violation of V.I. Code Ann. tit. 14, § 295(1); Count 6 unauthorized use of an unlicensed firearm during the commission of first degree assault in violation of V.I. Code Ann. tit. 14, §§ 2253(a); Count 7 third degree assault in violation of V.I. Code Ann. tit. 14, § 297(4); Count 8 unauthorized use of an unlicensed firearm during the commission of third degree assault in violation of V.I. Code Ann. tit. 14, §§ 2253(a); Count 9 third degree assault in violation of V.I. Code Ann. tit. 14, § 297(2); Count 10 unauthorized use of an unlicensed firearm during the commission of a third degree assault in violation of V.I. Code Ann. tit. 14, §§ 2253(a); and Count 11 reckless endangerment in the first degree in violation of V.I. Code Ann. tit. 14, § 625(a).

The People did not move for Defendant's pretrial detention pursuant to Section 3 of the Revised Organic Act of 1954 which governs pretrial detention of defendants charged with first degree murder in the Superior Court under Virgin Islands law.<sup>1</sup>

On January 28, 2013, Defendant filed a Motion for Bail Reduction pursuant to Super. Ct. R. 141 and the Bail Reform Act of 1984, codified at Title 18, section 3141 *et seq.* of the United States Code. In support of the Motion for Bail Reduction, Defendant submitted the affidavit of his mother, Sherryl Joseph ("Joseph"), the proposed third party custodian, which affidavit states that Joseph resides at #8 Lerke Gade, Apt. 2, St. Thomas, VI.

At the March 6, 2014 pretrial hearing on Defendant's motion for bail reduction, Joseph testified her lease for #8 Lerke Gade, Apt. 2, St. Thomas had been terminated and she was living at her daughter's two bedroom house with her daughter's two children and another daughter of Joseph's. Joseph testified that she was in the process of looking for another place of her own. She also testified that while living at #8 Lerke Gade she did not have electricity but she did have running water.

Joseph's testimony further established that Defendant is a twenty-five years old male born in St. Thomas, Virgin Islands. He has lived on St. Thomas all his life where he attended elementary, junior high school and high school until the 9<sup>th</sup> grade. At the time of his arrest he was self-employed as a car salesman and had been living in Hull Bay, St. Thomas. Defendant's

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<sup>1</sup> 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.).

father lives in Tortola, British Virgin Islands but has never been in Defendant's life. Joseph also testified concerning her and Defendant's long standing ties to the community, both were born on St. Thomas and have lived on St. Thomas all their lives. Defendant has brothers in Georgia, Texas, Massachusetts and Florida but he has never travelled to visit any of them. Joseph stated that Defendant has never been to Tortola for longer than a day or two. Joseph did state that Defendant's business of selling cars sometimes required him to travel to New York, and he was sometimes off-island for up to two weeks on those trips.

Joseph further testified that Defendant does not have a history of mental illness and has no known addictions. She said that Defendant does smoke marijuana. Joseph knew about her son's prior arrests. In one case he was arrested for assaulting his child's mother. Another case involved a gun charge and she says that was dropped. The People provided more detail on Defendant's history confirming the same arrest for unlicensed firearm in 2007, and an arrest for aggravated assault and domestic violence disturbance of the peace in 2010 resulting in a disturbance of the peace conviction. The third arrest, in 2011 for aggravated assault and battery-domestic violence, resulted in Defendant pleading guilty to simple assault and battery-domestic violence in *People v Shantos Powell*, Superior Court Case No. ST-2011-CR-357.

On the issue of payment of a cash bond, Joseph testified that neither she nor her son own any real estate in the Virgin Islands, she does not have a bank account, she is not presently working, and she has no funds to post as bail for Defendant. As of the date of the hearing Joseph had not asked any family members to help raise funds towards bail for Defendant's release. Joseph is unemployed and expressed her willingness to be a third party custodian, provide daily supervision of Defendant and insure that Defendant not leave the jurisdiction. When asked how she would pay for electronic monitoring which costs \$10/day or \$300/month, Joseph answered "If it has to be done, it has to be done."

The People called as their witness Detective Cherise Thomas who testified that in her prior interaction with Joseph, regarding Joseph's younger son, Joseph was less than forthright and cooperative with the police.

Defendant's sister Sherry Powell also testified but her testimony was focused on the past interactions between Joseph and a social worker.

At the conclusion of testimony, the defense counsel argued that Defendant is "...not a danger to the community at large..." Because Defendant has not resided anywhere other than the U. S. Virgin Islands the defense argued that Defendant was not a flight risk. Defendant further suggested that a curfew, electronic monitoring and home confinement were all conditions that will assure Defendant's attendance at trial in lieu of cash bail. The defense also argued that if the Court was not inclined to set an unsecured bond, then the amount of the secured bond should be \$25,000.

The People argued that a reasonable bail amount has already been set and objected to Joseph as a third party custodian based upon her combativeness on the witness stand, past history

of “playing games with social workers”, her lack of a residence and the uncertainty of whether a future landlord would allow the Defendant to reside with Joseph.

## **II. Analysis**

### **A. Applicable Law.**

Superior Court Rule 141 provides that the Court must be guided by the Bail Reform Act of 1984, codified at Title 18, section 3141 *et seq.* of the United States Code, when determining the conditions of pretrial release of a person charged with an offense. Section 3142(a) of the Bail Reform Act provides that:

a) In General.— Upon the appearance before a judicial officer of a person charged with an offense, the judicial officer shall issue an order that, pending trial, the person be—(1) released on personal recognizance or upon execution of an unsecured appearance bond, under subsection (b) of this section; (2) released on a condition or combination of conditions under subsection (c) of this section; (3) temporarily detained to permit revocation of conditional release, deportation, or exclusion under subsection (d) of this section; or (4) detained under subsection (e) of this section.

Bail has been set in this matter at One Million Dollars. However, Defendant argues that he has no substantial funds which may be deposited as surety and that a judicial officer may not impose a financial condition that results in the pretrial detention of a person. Essentially, Defendant is arguing that if he cannot afford bail, then he should be released on unsecured bond because a judicial officer may not impose a financial condition that results in the pretrial detention of a person. Lack of financial means to pay bail does not automatically render the bail amount constitutionally excessive merely because a defendant is financially unable to satisfy the requirement<sup>2</sup>.

#### **1. Defendant’s Ties to the Community.**

The People did not dispute Defendant’s ties to the U.S. Virgin Islands community. However, ties to the community is not the only factor to evaluate in order determine what conditions or combination of conditions will reasonably assure the appearance of Defendant. Bail Reform Act identifies the information the Court must look at to determine whether there are conditions of release that will reasonably assure the appearance of the person, as required, and the safety of any other person and the community<sup>3</sup>. In the case at hand, the violence of the crimes charged, the weight of the evidence against the Defendant in the form of witnesses and

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<sup>2</sup> *United States v. McConnell*, 842 F.2d 105, 107 (5th Cir. 1988).

<sup>3</sup> 18 U.S.C. § 3142(g).

surveillance video, Defendant's criminal history involving violence and the danger to the community he presents all outweigh the other considerations such as ties to the community.

## **2. Defendant Presents a Risk of Flight.**

The Court does not agree that Defendant is not a flight risk in light of the pending charges and possibility of life in prison if he is convicted of first degree murder.<sup>4</sup> "There exists a presumption in pre-trial bail proceedings that the likelihood of flight increases with the severity of the strength of the government's case, and the penalty which conviction could bring."<sup>5</sup> Under these circumstances a bond of \$25,000 is insufficient to reasonably assure Defendant's appearance at trial and other court proceedings. If Defendant has no assets, then an unsecured bond of \$25,000 or even \$250,000 is not going to be a meaningful incentive for Defendant to appear at trial and other court proceedings.

## **3. Defendant is a Danger to Community.**

Dangerousness is a factor the Court must consider in determining conditions for pretrial release.<sup>6</sup> Defendant argues he made all court appearances in his prior cases. However, a review of the history cited by the People shows an escalation in the frequency of arrests and charges. The last two convictions involved violence, and in his most recent conviction Defendant pled guilty to Simple Assault and Battery - Domestic Violence.<sup>7</sup> As part of the sentence for pleading guilty to the one count complaint Defendant was ordered to complete anger management counselling. The Affidavit in Support of An Arrest Warrant alleges that Defendant was arguing with the victim shortly before the shooting occurred. Defendant's 2010 arrest also resulted in charges of aggravated assault and disturbing the peace. Defendant pled guilty to Disturbance of the Peace-Domestic Violence in violation of 14 V.I.C. § 622(1) and 16 V.I.C. § 91(b)(10) and was sentenced to three months imprisonment with all suspended, except for ten (10) days.<sup>8</sup> In the face of Defendant's history of violence and requirement of attending anger management the safety of the witnesses to the November 8, 2013 shooting is of critical importance.

## **4. Third Party Custodian**

The Court will not approve Defendant's mother Sherryll Joseph as a third party custodian for several reasons. First, at the time of the hearing on March 7<sup>th</sup>, she did not have her own permanent place of residence, nor was she able to identify where or when she would have her own residence in the future. Second, on the witness stand, Joseph was not a model of cooperation when questioned by the prosecutor. Normally, third party custodians will try to

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<sup>4</sup> 14 V.I.C. § 923(b).

<sup>5</sup> *Gov't of the V.I. v. Texido*, 35 V.I. 3, 6 (V.I. Super. Ct. 1996) (citations omitted).

<sup>6</sup> *People v. Camacho*, 47 V.I. 302, 313 (V.I. Super. Ct. 2005) citing *United States v. Himler*, 797 F.2d 156, 159 (3d Cir. 1986) (Under the Bail Reform Act, judicial officers must now consider danger to the community in all cases in setting conditions of release).

<sup>7</sup> *People v. Shandos Powell*, Super. Ct. Crim. No. ST-2011-CR-357 (February 3, 2012).

<sup>8</sup> *People v. Shandos Powell*, Super. Ct. Crim. No. ST-2010-CR-611 (April 20, 2011).

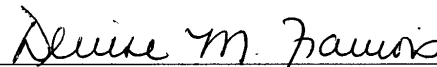
demonstrate at bail hearings their willingness to notify the authorities if the defendant violates a condition of pretrial lease. Joseph's argumentative and combative actions did not match her assurances that she would carry out the duties of a third party custodian. Third, the Court is troubled by Joseph's history of failing to cooperate with the social worker and police in locating her younger son on an unrelated matter. The defense tried to justify Joseph's lack of cooperation with testimony from her daughter that the social worker did not return Joseph's numerous calls but that is not justification for an evasive response to authorities questions on the location of her minor son.

### **III. Conclusion**

The Court finds that Defendant is a danger to the community given the nature of the charges and the circumstances under which they occurred. Consequently, the Court finds that a significant bail is required to ensure Defendant's appearance at trial. However, because the Court finds that bail of One Million Dollars is so high as to have the same effect as no bail at all and because the People did not move for Defendant's for pretrial detention, bail will be reduced from One Million Dollars to Five Hundred Thousand Dollars (\$500,000.00). All of the other conditions of release ordered at Defendant's November 18, 2013 advice of rights hearing shall also remain as conditions of release.

An accompanying order to this effect will be issued.

DATED: March 24, 2014



**DENISE M. FRANCOIS**  
Judge of the Superior Court  
of the Virgin Islands

**ATTEST:**  
**ESTRELLA H. GEORGE**  
Acting Clerk of the Court

BY: 

**LORI BOYNES-TYSON**  
Court Clerk Supervisor 3/24/2014