

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

PEOPLE OF THE VIRGIN ISLANDS,	)	
	)	CRIMINAL NO. ST-10-CR-554
Plaintiff,	)	
	)	V.I. CODE ANN. tit. 14, §§ 921, 922(a)(1),
v.	)	295(1), 2253(a), 625(a)
	)	
JAMAL D. TODMAN,	)	
(D.O.B.: 04/03/83)	)	
	)	
Defendant.	)	
_____	)	

MEMORANDUM OPINION

THIS MATTER came on for a hearing on October 20, 2010, on the People of the Virgin Islands' Motion for Pretrial Detention of Defendant Jamal D. Todman.¹ Because the Court finds that there is clear and convincing evidence of the crime of first degree murder, supported by witness statements and other evidence, Todman shall be detained pending trial.

An arrest warrant was issued for Todman on September 24, 2010, and bail was set by the Honorable Michael Dunston, Superior Court Judge, on that date in the amount of Two Hundred Fifty Thousand Dollars (\$250,000.00). Todman was arrested pursuant to the warrant on September 29, 2010 by Corporal Delbert Phipps and advised of his rights on September 30, 2010. At his arraignment, Todman pleaded not guilty to first degree murder and other charges and requested a trial by jury. The Court set a deadline for the People to file a motion for detention of October 15, 2010. On October 8, 2010, the People filed their motion for pretrial detention pursuant to Section 3 of the Revised Organic Act (the "ROA") and other statutory provisions. The Court held a detention hearing on October 20, 2010.

At the hearing, the People called Corporal Phipps as a witness. Corporal Phipps testified that a shooting occurred at Tutu Park Mall on December 11, 2008, and that he interviewed witnesses, identified as Witness 1, 2, and 3. Corporal Phipps summarized the witnesses' statements, and their statements were introduced into evidence.

Witness 1 stated that he met his friends, Antonio Escobar and Levi Benjamin, at Tutu Park Mall at approximately 4:20 p.m. on December 11, 2008. While in Footlocker Shoe Store, in the central area of Tutu Park Mall, Witness 1 saw a man wearing a white t-shirt and a white hat arguing with Benjamin. In describing the argument, Witness 1 said that the man was "right up in Levi's face." Later, Witness 1 saw the same man with another individual, wearing a brownish-orange t-shirt with black three-quarter length pants which were stone washed white. At some point, Witness 1 saw a third individual, who was wearing a royal blue t-shirt with a

¹ The People of the Virgin Islands appeared through Michael Motylinski, Esq., Assistant Attorney General. The Defendant was present and represented by Julie Smith Todman, Esq., Territorial Public Defender.

black hat and three-quarter length pants who was about 18 or 19 years old. When Benjamin approached the front passenger side of Escobar's car, a Honda which was parked at the back of Tutu Park Mall, the man wearing the white t-shirt and white hat took out a silver handled gun and first shot Escobar, and then shot Benjamin. The man shot each of them approximately four times and Escobar and Benjamin fell to the ground. After shooting the two men, the man in the white t-shirt and the other two men ran towards the bush where the fence was broken down. After the shooting, Witness 1 called 911 and ambulances came and transported the two men to the hospital.

Witness 1 described the person who shot Benjamin and Escobar as approximately 5 feet 5 inches with a medium build who is about 21 or 22 years old wearing a diamond stud earring. Witness 1 stated that he could identify the assailant, and indeed, was able to pick the shooter out of a photo array on August 11, 2010. Witness 1 picked Todman's photo from the photo array. Witness 1 stated that Todman had been sitting on the bench in front of Footlocker, at Tutu Park Mall, with other young men from around 11:00 a.m.

Witness 2 stated that he or she was at the laundromat at Tutu Park Mall on the date of the incident at around 4:00 pm when he or she looked up and saw four individuals running. Two men with guns in their hands were chasing two other men and firing shots at them. The two men who were fired at dropped to the ground. Witness 2 saw a man wearing a white t-shirt stand over one of the individuals on the ground and fire shots at that individual. Witness 2 also saw a second shooter. After they had finished firing the shots, both shooters ran through the opening of the fence into the bushes. Witness 2 was unable to identify either of the shooters.

Witness 3 also witnessed the shooting, and stated that he saw two individuals being chased by two other individuals while he was outside in the back of Tutu Park Mall. The two individuals who were being chased did not have guns, but the two pursuers had guns. One of the men with a gun was wearing a white t-shirt and jeans, and the other individual wore a big blue t-shirt and jeans. Witness 3 stated that he saw the individual with the blue t-shirt firing a gun, and he saw one of the victims fall to the ground. After the shooting, the assailants ran. Witness 3 stated that he was unsure if he could identify the assailant, but he believed that he could.

Both victims were taken to the Roy Lester Schneider Hospital where they later died. Multiple gunshot wounds caused the death of both individuals. Corporal Phipps also testified that there is a surveillance video available which shows the individuals involved in the shooting, but the actual shooting is not depicted in the video.

Pursuant to section 3 of the ROA and recent cases from the Virgin Islands Supreme Court, this Court must determine whether the "proof is evident or the presumption great" that a first degree murder occurred and that the defendant was the perpetrator.² In *Browne v. People*,³ the Supreme Court determined that the ROA calls for the denial of bail to a Defendant in a first

² Section 3 of the Revised Organic Act 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." 48 U.S.C. § 1561 (2006).

³ S. Ct. Crim. No. 2008-022, 2008 WL 4132233, at *9 (V.I. Aug. 29, 2008).

degree murder case in which the provisions of the ROA have been met. The Court said in that opinion that “[Section 3 of the ROA] remains a valid legal provision to be observed and implemented by local courts . . . [and] governs the issue of pretrial detention for first degree murder defendants in local Virgin Islands courts”⁴ As articulated in *Browne v. People*, the People “must prove that the proof is evident or presumption great that [the Defendant] committed first degree murder before [he] can be detained justifiably pending trial.”⁵ Although the standard contained in the ROA has been interpreted in different ways in different jurisdictions, the Supreme Court of the Virgin Islands adopted the majority position that “‘the proof is evident or the presumption is great’ evidentiary standard requires something more than probable cause but less than beyond a reasonable doubt.” That is, “a judge must find clear and convincing evidence that the defendant committed the offense for which he is before the court.”⁶ The *Browne* Court stated that the standard to be applied in this case is “*clear and convincing evidence*” which indicates “*that the thing to be proved is highly probable or reasonably certain.*”⁷

The standard of proof for detention hearings was later revisited by the Supreme Court of the Virgin Islands in *Williams v. People*.⁸ In *Williams*, the Supreme Court made it clear that, under Section 3 of the ROA,⁹ hearsay evidence is permissible in detention hearings. However, “when the People elect to present exclusively hearsay evidence at a pre-trial detention hearing, [the Court] when determining whether the evidence is clear and convincing, must undertake by whatever means are appropriate under the circumstances to ascertain the reliability of the underlying hearsay statement when their accuracy is in question.”¹⁰

Murder is the “unlawful killing of a human being with malice aforethought.”¹¹ To find a Defendant guilty of first degree murder, the People must also prove that the killing was “willful, deliberate and premeditated.”¹² In order to premeditate a killing, one must “conceive a design or plan to kill.”¹³ A deliberate killing is one that “has been planned and reflected upon by the accused,” and that is “committed in a cool state of the blood” and not in a sudden passion.¹⁴

The Court finds by clear and convincing evidence that Todman committed the crime of first degree murder. There is clear and convincing evidence that Todman murdered Escobar and

⁴ *Id.* at *8, *9.

⁵ *Id.* at *10.

⁶ *Id.* at *12.

⁷ *Id.* at *13 (emphasis added) (citing *Black's Law Dictionary* 596 (8th ed. 2004)).

⁸ Crim No. 2009-0111, 2010 WL 1565533 (V.I. April 19, 2010).

⁹ *Id.* at *6.

¹⁰ *Id.* at *10.

¹¹ V.I. CODE ANN. tit. 14, § 921 (1996).

¹² (a) All murder which –

(1) is perpetrated by means of poison, lying in wait, torture, detonation of a bomb or by any other kind of willful, deliberate and premeditated killing; . . .
is murder in the first degree.

V.I. CODE ANN. tit. 14, § 922(a) (Supp. 2010).

¹³ *Virgin Islands v. Lanclos*, 477 F.2d 603, 606 (3d Cir. 1973) (quoting *State v. Anderson*, 173 A.2d 377, 389-390 (N.J. 1961)).

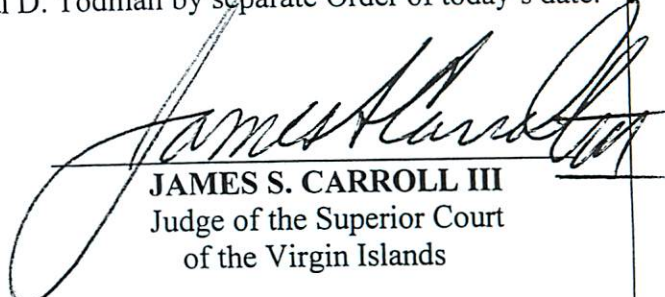
¹⁴ *Id.* (citing *State v. Roedl*, 155 P.2d 741, 749 (Utah 1945)).

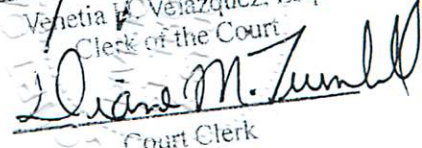
Benjamin, and that the killing was willful, premeditated and deliberate. Witness 1 stated the he or she saw Todman arguing with Benjamin before the shooting, and from this evidence a reasonable jury could conclude that anger was a factor in the shooting. Anger is a state of mind which is inconsistent with the cool, detached state of mind necessary as an element of first degree murder. There is also evidence, however, that Todman had been waiting for Benjamin and Escobar for several hours before the incident, that Todman was accompanied by other individuals while he waited, and that he and several other individuals pursued the victims before they shot them in the rear of Tutu Park Mall. Thus, although there may be evidence to the contrary, the evidence that the crime committed by Todman was first degree murder is clear and convincing.

In *Williams*, the Supreme Court stated that a court faced with hearsay evidence presented in a detention hearing, "must undertake by whatever means are appropriate under the circumstances to ascertain the reliability of the underlying hearsay statements when their accuracy is in question."¹⁵ Performing such an analysis, the Court finds that the witnesses' testimony is consistent and that at least one of the witnesses identified Todman and the victims. Although there was a discrepancy about the number of participants, and the number of people who had guns, the descriptions of the man wearing the white t-shirt, holding a gun, who was identified by one witness as Todman, was consistent. Also, the video surveillance corroborates the witnesses' testimony. For these reasons, the Court finds that the hearsay statements introduced during Todman's detention hearing are reliable, and that based on these statements and all of the other evidence admitted during the hearing, there is clear and convincing evidence that Todman committed the crime of first degree murder. The Court will, therefore, grant the Motion for Pretrial Detention of Defendant Jamal D. Todman by separate Order of today's date.

DATED: February 1, 2011

ATTEST: VENETIA H. VELAZQUEZ, ESQ.
Clerk of the Court
By: 
ESTRELLA GEORGE
Court Clerk Supervisor


JAMES S. CARROLL III
Judge of the Superior Court
of the Virgin Islands

CERTIFIED A TRUE COPY
Date: 2/2/11
Venetia H. Velazquez, Esq.
Clerk of the Court
By: 
Court Clerk

¹⁵ *Williams*, 2010 WL 1565533, at *10.

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PEOPLE OF THE VIRGIN ISLANDS,

Plaintiff,

v.

JAMAL D. TODMAN,
(D.O.B.: 04/03/83)

Defendant.

CRIMINAL NO. ST-10-CR-554

V.I. CODE ANN. tit. 14, §§ 921, 922(a)(1),
295(1), 2253(a), 625(a)

ORDER

AND NOW, pursuant to the Memorandum Opinion of today's date, it is hereby

ORDERED that the People of the Virgin Islands' Motion for Pretrial Detention of Defendant Jamal D. Todman is **GRANTED**; and it is further

ORDERED that the bail previously set by the Court, in the Warrant dated September 24, 2010 in the amount of \$250,000.00, is **REVOKED**; and it is further

ORDERED that Defendant Jamal D. Todman shall be **DETAINED** without bail pending trial in this action; and it is further

ORDERED that copies of this Order and the accompanying Memorandum Opinion shall be directed to counsel of record, to the Virgin Islands Bureau of Corrections and a copy thereof personally served upon the Defendant.

DATED: February 1, 2011

ATTEST: VENETIA H. VELAZQUEZ, ESQ.
Clerk of the Court

BY:

ESTRELLA GEORGE

Court Clerk Supervisor 2/2 2011

JAMES S. CARROLL III
Judge of the Superior Court
of the Virgin Islands

CERTIFIED A TRUE COPY

Date: 2/2/11
Venetia H. Velazquez, Esq.
Clerk of the Court

By: Diane M. Turrell
Court Clerk