IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. THOMAS AND ST. JOHN

THE PEOPLE OF THE VIRGIN ISLANDS **Plaintiff**)	CASE NO. ST-10-CR-0000171
Vs.)	ACTION FOR: 14 V.I.C. 2253(A)
JERMAINE WILLIAMS **Defendant**)	

NOTICE OF ENTRY OF MEMORANDUM OPINION AND ORDER

TO: PAULA D. NORKAITIS, ESQ.
ASSISTANT ATTORNEY GENERAL MICHAEL MOTYLINSKI
JUDGES & MAGISTRATES, SUPERIOR COURT
LIBRARIAN
IT DIVISION & ORDER BOOK

Please take notice that on April 05, 2011 a(n) MEMORANDUM OPINION AND ORDER dated April 05, 2011 was entered by the Clerk in the above-entitled matter.

Dated: April 05, 2011

Venetia H. Velazquez, Esq.
CLERK OF THE SUPERIOR COURT

Diane Matthew-Turnbull

DIANE MATTHEW-TURNBULL
COURT CLERK II

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN
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THE PEOPLE OF THE VIRGIN ISLANDS,	)	CRIMINAL NO. ST-10-CR-171
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
JERMAINE WILLIAMS,	)	
	)	
	)	
	)	
Defendant.	)	

MEMORANDUM OPINION

The Court held a hearing on April 3, 2010, to advise Defendant Jermaine Williams of his rights.[1] At that hearing, the People requested that Williams be detained pending trial in this matter pursuant to the terms of § 3 of the Revised Organic Act of 1954, which provides for the pretrial detention of defendants who are charged with first degree murder when "the proof is evident or the presumption great." For the reasons that follow, the Court will grant the People's Motion and will direct Williams to be detained pending trial.

FACTS

The People called one witness, Detective Albion George, to the stand during the detention hearing. Detective George testified that he investigated an alleged homicide in the area of Simmonds Alley near Kronprindsens Gade, St. Thomas, on February 17, 2010. At that time, he interviewed an eyewitness—Eyewitness Number One—who told Detective George that the Eyewitness was in the alley at the time, and she/he saw Williams enter the alley around 4 a.m. on February 17, dressed completely in black, with a handgun. According to Detective George, the Eyewitness saw Williams enter the alley, walk up to the victim, Delano Dowe, shoot Dowe, walk back out, get in his car and leave the area.[2] Eyewitness Number One, according to Detective George's testimony, never indicated that Dowe had a weapon or was in any way threatening Williams.

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[1] Samuel Joseph, Esq., Territorial Public Defender, appeared with and on behalf of Defendant Jermaine Williams. Assistant Attorney General Michael Motylinksi, Esq., appeared on behalf of the People of the Virgin Islands.

[2] In a separate part of Officer George's testimony, though, he said Eyewitness Number One saw Williams leave the area *on foot*, walking fast. This part of Officer George's testimony came within a sequence of questions about Eyewitness Two, and it is not clear whether Officer George intended to respond about whether Eyewitness One or Eyewitness Two saw Williams leave on foot. Even later in this testimony, Officer George reiterated that Eyewitness Number One saw Williams leave the alley by foot and enter his vehicle, which was a green, two-door Honda Civic. Officer George said Eyewitness Number Two did not have a clear view of the vehicle leaving, and indicated that Williams left on foot.

According to Detective George, Eyewitness Number One had sufficient light in the alley and was one hundred percent certain that it was Williams who shot the victim. However, Detective George acknowledged that several weeks before the hearing, there was an effort to "clean up" Simmonds Alley, and part of that effort included improving the lighting in the area. Detective George also acknowledged, in response to Williams's questions, that he believed it was light enough for Eyewitness Number One to see Williams, but not for Williams to see the Eyewitness, because Eyewitness Number One had pulled himself back to remain out of sight.

After the shots were fired, Eyewitness Number One saw Dowe stumble out of the alley, "holding his lower parts of his body." Detective George testified that Dowe later died of his injuries. Medical Examiner Dr. Landron, according to Detective George, examined Dowe and concluded that he died of a gunshot wound to the "lowest pelvic area."

About a week after the alleged homicide, Eyewitness Number One identified Williams in a photo array as the shooter. The Eyewitness knew Williams for several years before this alleged incident. Detective George then identified Williams in the courtroom as the person identified by the Eyewitness in the photo array. Eyewitness One also had an opportunity to observe the handgun Williams carried, and Eyewitness Number One described it as a black handgun, "possible 9 millimeter."

Detective George testified that he also interviewed a second individual—Eyewitness Number Two—who lives in the area of Simmonds Alley and heard shots fired on the morning. Eyewitness Number Two saw Williams leaving the scene dressed all in black.

Detective George stated that both Eyewitness One and Eyewitness Two were consistent in their statements that they heard shots fired on the morning of February 17, 2010, and saw Williams dressed all in black leaving the scene of the homicide in Simmonds Alley.

ANALYSIS

Pursuant to § 3 of the Revised Organic Act (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 Murder in the First Degree occurred and that Defendant was the perpetrator.[3]

In *Browne v. People*, the Supreme Court determined that the ROA calls for the denial of bail to a Defendant in a first degree murder case in which the provisions of the ROA have been met.[4] 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

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

for first degree murder defendants in local Virgin Islands courts . . . ."[5]

As articulated in *Browne*, 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."[6] 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."[7] The *Browne* Court interpreted the standard to be applied in this case to require "*clear and convincing evidence*," which indicates "*that the thing to be proved is highly probable or reasonably certain.*"[8]

The Supreme Court of the Virgin Islands later revisited the standard of proof for detention hearings in first degree murder cases in *Jalani Williams v. People*.[9] In *Jalani Williams*, the Supreme Court made it clear that hearsay evidence is permissible in detention hearings under Section 3 of the ROA.[10] 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."[11]

In this case, the Court finds clear and convincing evidence that Williams committed the crime of Murder in the First Degree in this case. Murder is the "unlawful killing of a human being with malice aforethought."[12] To find the Defendant guilty of Murder in the First Degree, the People must also prove that the killing was "willful, deliberate and premeditated."[13] In order to premeditate a killing, one must "conceive a design or plan to kill."[14] 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.[15]

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[5] *Id.* at *8, *9.
[6] *Id.* at *10.
[7] *Id.* at *12.
[8] *Id.* at *13 (emphasis added) (citing *Black's Law Dictionary* 596 (8th ed. 2004)).
[9] Crim No. 2009-0111, 2010 WL 1565533 (V.I. April 19, 2010).
[10] *Id.* at *6.
[11] *Id.* at *10.
[12] V.I. CODE ANN. tit. 14, § 921 (1996).
[13] (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)
[14] *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)).
[15] *Lanclos*, 477 F.2d at 606 (citing *State v. Roedl*, 155 P.2d 741, 749 (Utah 1945)).

There is clear and convincing evidence that Williams murdered Dowe, and that the killing was willful, premeditated and deliberate. The witnesses reported that Williams walked into the alley with a handgun. Although Dowe and Williams did not argue or struggle, and although no words were exchanged, and Dowe possessed no firearm or other weapon, Williams nonetheless shot Dowe and walked away. The People presented clear and convincing evidence that the killing of Dowe was not something that was the result of passion and that it was not a spontaneous act. Rather, the evidence shows that Williams had time to reflect upon the killing and carried it out with a cool head. Therefore, there is sufficient evidence that the People could prove Williams killed Dowe and that the crime constituted Murder in the First Degree.[16]

In *Jalani 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."[17] Performing such an analysis, the Court finds that the unnamed witnesses' underlying hearsay statements are consistent. One of the eyewitnesses has known Williams for several years. The two eyewitnesses' statements are largely consistent, except that one eyewitness said Williams left in a car and the other said on foot. However, this discrepancy can be explained by the fact that Eyewitness Number Two was not in a position to see Williams's vehicle. For these reasons, the Court finds that the hearsay statements supporting Williams's detention are reliable, and that based upon these statements, there is clear and convincing evidence that Williams committed the crime of Murder in the First Degree. The Court will therefore grant the People's motion to detain Williams pending trial by separate order of even date.

DATED: April 5, 2011
[*Nunc pro tunc* to April 3, 2010]

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

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

BY: _____
ESTRELLA GEORGE
Court Clerk Supervisor 4/5/2011

CERTIFIED TRUE COPY
Date: 4/5/11
Venetia H. Velazquez, Esq.
Clerk of the Court
By: Diane M. Turnbull
Court Clerk

[16] The focus of the detention hearing is not to determine the guilt of the defendant, but simply to focus on the strength of the People's evidence. *Jalani Williams*, 2010 WL 1565533, at *4.
[17] *Jalani Williams*, 2010 WL 1565533, at *10.

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	)	
	)	
	)	
	)	
Defendant.	)	

ORDER

AND NOW, pursuant to the Memorandum Opinion of even date, it is hereby

ORDERED that the Motion of the People of the Virgin Islands for pre-trial detention of Defendant Jermaine Williams is **GRANTED**; and it is further

ORDERED that Defendant Jermaine Williams 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, and a copy thereof personally served upon the Defendant.

DATED: April 5, 2011
[*Nunc pro tunc* to April 3, 2010]

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

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

BY:
ESTRELLA GEORGE
Court Clerk Supervisor 4 5 2011

CERTIFIED TRUE COPY
Date: 4/5/11
Venetia H. Velazquez, Esq.
Clerk of the Court
By: Court Clerk