

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

PEOPLE OF THE VIRGIN ISLANDS,	)	
	)	
	)	
vs.	)	ST-12-CR-510
	)	
TYRONE THOMAS,	)	
	)	
Defendant.	)	
_____	)	

MEMORANDUM OPINION

Defendant Tyrone Thomas, by and through his counsel, Joseph A. DiRuzzo, III, Esq., has filed two separate motions seeking Defendant's pre-trial release from custody. Initially, Defendant filed a Motion to Release Defendant on His Own Recognizance Or In The Alternative To Reduce Bond¹. He later filed an Emergency Motion to Release Defendant On His Own Personal Recognizance Or in the Alternative To Reduce Bond.² Then Defendant, on his own behalf and apparently without the aid of his counsel of record, filed a Motion for 10% Reduction of Bail.³

BACKGROUND

Defendant has been in custody since his arrest on September 11, 2012. He was advised of his rights on September 12, 2012 by Honorable Magistrate Alan D. Smith and Defendant's bail was set at \$25,000.00 during that initial hearing. Defendant was arraigned on September 27, 2012 on charges of Third Degree Burglary (Title 14 V.I.C. § 444(1)), Grand Larceny (Title 14 V.I.C. §§ 1081, 1083(1)), and Destruction of Property (Title 14 V.I.C. §1266) and aiding and abetting another, all related to a break-in and theft that allegedly occurred at the Top Sail Business in the area of Frenchtown. Allegedly stolen was One Thousand Four Hundred and Eighty One Dollars (\$1,481.00) in cash, four (4) i-Pods valued at Two Hundred Dollars (\$200.00) each, and four (4) twenty (20) gallon bottles of gasoline. This case was assigned to Honorable Judge Brenda J. Hollar, who is now retired.

STANDARD FOR BAIL

A Defendant's pre-trial release is governed by the provisions of the Federal Bail Reform Act (B.R.A.).⁴ The B.R.A. dictates that the purpose of bail is to reasonably assure the appearance of

¹ Filed on October 23, 2012.

² Filed on December 17, 2012.

³ Filed on March 27, 2013.

⁴ Rule 141(b) of the Rules of the Superior Court and *People v. Simmonds*, 48 V.I. 320, 322 (Sup. Ct. 2007).

the Defendant as required and the safety of any other person and the community.⁵ As such, “bail set at a figure higher than an amount reasonably calculated to fulfill this purpose is ‘excessive’ under the Eighth Amendment.”⁶

ARGUMENT

Defendant’s motions collectively argue that he is indigent and the bail is excessive and unattainable by his family in their current financial situation. Defendant states that he has four children ranging in age from 4 months to 6 years of age and that he and his common law wife are the sole providers for these children. Defendant argues that he is not a flight risk as he has substantial ties to the community. He also argues that he is not a danger to the community as the alleged crimes are not crimes of violence and the Government (as of the filing of the Emergency Motion on December 17, 2012) had not produced any discovery that would support a proposition that he is a danger. Defendant further states that his co-defendant, Keith Lewis, has paid back the victim, Top Sail, and there is no restitution due. Defendant offered to relinquish any/all identification documentation to the Court as a condition of his pre-trial release. Defendant proffers that he will reside with Elvis David at No. 129-4B Estate Tutu, St. Thomas, Virgin Islands and that Elvis David is willing to serve as a Third Party Custodian if the Court will permit Defendant’s release. One motion describes Elvis David as a family friend and another describes him as Defendant’s cousin.

The People of the Virgin Islands initially had no objection to a reasonable reduction in bail provided that the Defendant provide the Court with an address where he would reside pending trial and that he report to probation at least once per week.⁷ The People of the Virgin Islands then opposed the Defendant’s Emergency Motion for Release on the grounds that he did not provide a social security number, driver’s license number or legal alien number, and argues Defendant’s citizenship is non-US, and his home address is in Tortola. The People also argue, upon information and belief, the Defendant was not residing within the United States and has no legitimate ties to the U.S. Virgin Islands, and as a result the People argue that Defendant is a significant flight risk.⁸

Defendant Tyrone Thomas then supplied the Court with photocopies of a British Virgin Islands driver’s license (that appears to have expired while Defendant has been in custody) and a passport issued by the B.V.I.⁹

⁵ *United States v. Hilmer*, 797 F. 2d 156, 158 (3d Cir. 1986).

⁶ *Sistrunk v. Lyons*, 646 F. 2d 64, 69-70 (3d Cir. 1981) quoting *Stack v. Boyle*, 343 U.S. 1, 5 (1951).

⁷ See People’s Response To The Defendant’s Motion for Release, filed on October 23, 2012.

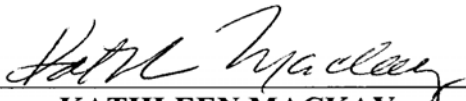
⁸ See Opposition to Defendant’s Emergency Motion To Release, filed on December 17, 2012.

⁹ Filed on January 29, 2013.

CONCLUSION

Court records reveal that the Defendant is approximately 25 years old. Defendant is a resident of the British Virgin Islands. Defendant has not established that he has substantial ties to the U.S. Virgin Islands and as a result the Court finds that he is a significant risk of flight. The Court is not persuaded that the mere surrendering of Defendant's passport, without more, is sufficient to limit his ability to leave the U.S. Virgin Islands and travel to the British Virgin Islands. As a result, the Court will not grant Defendant's motion to release him on his personal recognizance or allow him to post 10% of the current bail. However, taking into consideration the nature of the charges the Court finds that there is sufficient basis to reduce Defendant's bail from \$25,000.00 to \$10,000.00 provided Elvis David submits to serving as a Third Party Custodian and Defendant resides with him during the pendency of this matter. Therefore the Court will grant the motion for a reduction in bail. Such an order will be entered.

DATED : June 21, 2013


KATHLEEN MACKAY
Judge of the Superior Court
of the Virgin Islands

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

By: 

LORI BOYNES-TYSON
Court Clerk Supervisor 6/21/13

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PEOPLE OF THE VIRGIN ISLANDS,	)	
	)	
vs.	)	Criminal No.: ST-12-CR-510
	)	
TYRONE THOMAS,	)	
	)	
Defendant.	)	
_____	)	

ORDER

The Court having issued a Memorandum Opinion on this date, it is hereby

ORDERED that Defendant's Motion to Release Defendant on His Own Recognizance Or In The Alternative To Reduce Bond is **DENIED** in Part and **GRANTED** in Part; and it is further

ORDERED that Defendant's Emergency Motion to Release Defendant on His Own Recognizance Or In The Alternative To Reduce Bond is **DENIED** as MOOT; and it is further.

ORDERED that Defendant's Motion for 10% Reduction of Bail is **DENIED**; and it is further

ORDERED, that bail for Defendant Tyrone Thomas is reduced to Ten Thousand Dollars (\$10,000.00), and he may be released from custody upon posting \$10,000.00 unless there is another court order mandating his further incarceration; and it is further

ORDERED that Defendant must provide the Court with a third party custodian; and it is further

ORDERED that Elvis David is approved as a Third Party Custodian and if he is willing to serve he shall submit an affidavit to the Court; and it is further

ORDERED that Elvis David's affidavit shall indicate if he will permit Defendant to reside with him; and it is further

ORDERED that the Defendant shall report immediately to the Territorial Office of Probation upon his release, and thereafter, once per week; and it is further

ORDERED that the Defendant shall not leave the jurisdiction of the U.S. Virgin Islands without the written consent of this Court; and it is further

ORDERED that the Defendant shall not violate any of the Territorial Laws of the United States Virgin Islands nor the Federal Laws of the United States; and it is further

ORDERED that the Defendant shall appear for all proceedings in this matter; and it is further

ORDERED that the Defendant shall contact his attorney twice per month during the pendency of this matter; and it is further

ORDERED that the Defendant shall not possess any dangerous weapons or abuse alcohol or use any controlled substances during the pendency of this matter; and it is further

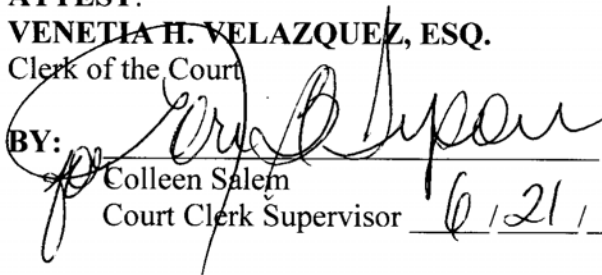
ORDERED, that a copy of this Order be served upon the Defendant, **Tyrone Thomas**, Bureau of Corrections, and copies directed to Douglas Sprotte, Assistant Attorney General, Joseph DiRuzzo, III, Esq., and Office of Probation.

DATED: June 21, 2013


KATHLEEN MACKAY
Judge of the Superior Court
of the Virgin Islands

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

BY:


Colleen Salem
Court Clerk Supervisor 6/21/13