

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

THE PEOPLE OF THE VIRGIN ISLANDS,	)	CRIMINAL NO. ST-11-CR-327
	)	
	Plaintiff,	)
	)	
v.	)	
	)	
RASHEEM A. MORTON,	)	
	)	
	)	
	Defendant.	)
	)	

MEMORANDUM OPINION

The Court held a hearing on June 17, 2011 pursuant to the request of the People that the Defendant Rasheem A. Morton be detained pending trial in this matter pursuant to the terms of Section 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."¹ The Court will deny the People's Motion and will set bail for Morton pending trial.

At the detention hearing, the People called one witness, Detective Granville Christopher. Christopher testified that he was a member of the Cold Case Squad, which is a subdivision of the Major Crime Investigation Bureau. On May 29, 2009, the homicide case concerning Kenrick Troy Mason was assigned to the Cold Case Squad.

The facts concerning the homicide showed that on December 26, 2001, the victim, a security guard, was found shot to death lying in a white GMC cargo van, license plate number TAC-403 at approximately 4:25 a.m. on the road adjacent to the parking lot of Cost-U-Less, Market Square East, Estate Donoe, St. Thomas, Virgin Islands. At about the same time, police officers also saw a 2001 blue Chrysler Neon, license plate number TBC-297 facing north on the road leading to the New Hernhut Moravian Church. When the police approached the vehicle to investigate, a black male in dark clothing ran from the vehicle, crossed the roadway and ran into the bushes. The police officers found a black stocking mask along the path that had been traveled by the black male. The officers collected physical evidence, including the black mask, debris from the white GMC cargo van, debris from the Neon, a bullet jacket retrieved from the white cargo van, cartridge cases found near the scene of the crime near Cost-U-Less and a .45 caliber Glock semi-automatic pistol found in the trunk of the blue Chrysler Neon.

¹ Julie Smith Todman, Esq., Territorial Public Defender, appeared with and on behalf of Defendant Rasheem A. Morton. Since that time, Samuel Joseph, Esq., was appointed as counsel for the Defendant. Assistant Attorney General Brenda Scales, Esq., appeared on behalf of the People of the Virgin Islands.

Later that day on December 26, 2001, a witness reported that the blue Chrysler Neon had been stolen from his² home. The same witness recanted this version of events the next day, and stated that, in fact, he had loaned the car to Reynaldo Rivera Jr. in the morning of December 26 and that when Rivera returned the car before sunrise, he stated: "I had to leave the car where it was; tell the police your car was stolen, and stick to that story; one man is dead; it wasn't supposed to happen this way."

Through investigation, the police learned that Rasheem Morton was a possible suspect in the shootings. Morton allowed the police to search his vehicle, a white Ford Explorer, and the police collected a red, green and yellow knitted hat from the automobile. Later, a DNA report on the result of the comparisons determined that hairs found on the knitted hat recovered from Morton's car were consistent with hair found in the mask discovered in the bush around the crime scene and hair found in the debris from the blue Chrysler Neon.

Also, ballistics reports on the bullet jacket found in the white GMC cargo van are consistent with having been fired from a barrel exhibiting polygonal rifling with eight grooves, right twist, such as the barrel of the Glock pistol recovered from the trunk of the blue Neon Chrysler. The two cartridge cases which were retrieved from the Market Square East crime scene were identified as having been fired from the Glock pistol recovered from the Neon.

The last piece of evidence in the case was a statement from an interview with a witness. That witness had a conversation with Rivera when Rivera visited him in North Carolina about a week after the shooting. Rivera stated to this witness that he and his cousin had been involved in a shooting of a security guard at Cost-U-Less. Rivera told the witness that he and his cousin were going to rob the store and hold the security guard hostage until the manager came to open the store. Rivera said that as they approached the security guard who was sitting in his van, the guard made a move, and they shot him. Further investigation revealed that Morton is Rivera's cousin, and that Morton does not have a license to possess a firearm in the Virgin Islands.

Pursuant to Section 3 of the Revised Organic Act and the case law interpreting this provision, this Court must determine whether the "proof is evident or the presumption great" that a murder in the first degree occurred and that the 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

² The gender of the witness was not determined. "His" is only used for convenience and smoothness of expression in this situation and throughout the text.

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 50 V.I. 241, 263 (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.”⁷ That is, “a judge must find clear and convincing evidence that the defendant committed the offense for which he is before the court.”⁸ 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*.”⁹

At this stage, the People have not proved by clear and convincing evidence that Morton committed the crime of murder in the first degree. The forensics evidence ties Morton to the crime. However, the People did not put forward an expert in either DNA comparison or fiber comparison to testify as to the degree of the results’ certainty. Therefore, at this juncture, the Court is not able to say whether the forensics evidence is clear and convincing as required by the case law. The only other evidence connecting Morton to this crime are Rivera’s statements to the witnesses that he was involved in a shooting during an attempted robbery at Cost-U-Less and that he and his cousin had intentionally killed someone. Rivera’s statements, though, can only implicate Rivera and cannot be used to implicate Morton.¹⁰ It may very well be that the People will call Rivera as a witness to testify against Morton, but it is not clear at this time whether Rivera would adopt his statements at trial and testify in accordance with his statements. Because the Court is instructed to “focus on the strength of the evidence offered by the People,”¹¹ to “determine basically whether or not . . . a conviction is fairly likely . . . ,”¹² the significant doubts about the likelihood of such a conviction raised by this *Bruton* problem weigh against a finding that the proof is evident that Morton committed murder in the first degree.

⁵ *Id.* at 257.

⁶ *Id.* at 260.

⁷ *Id.* at 263.

⁸ *Id.*

⁹ *Id.* at 265 (emphasis added) (citing *Black’s Law Dictionary* 596 (8th ed. 2004)).

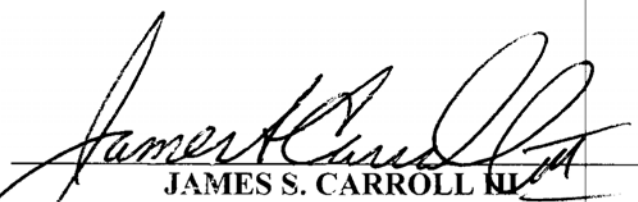
¹⁰ *Bruton v. United States*, 391 U.S. 123 (1968).

¹¹ *Browne*, 50 V.I. at 262.

¹² *In re Steigler*, 250 A.2d 379, 383 (Del. 1969) (quoted in *Browne*, 50 V.I. at 262).

In sum, the Court cannot find, on the record produced at the detention hearing, that such evidence is clear and convincing. Therefore, the motion to detain the Defendant pending trial is denied, and bail will be set in an appropriate amount with sufficient safeguards to protect members of the community.

DATED: July 28, 2011


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

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

BY: 

LORI BOYNES-TYSON
Court Clerk Supervisor

7/29/11

* * * * *

ORDER

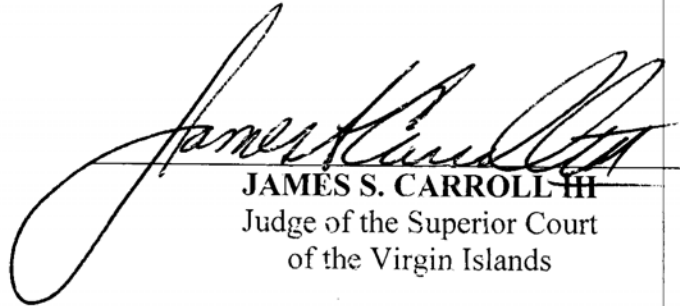
ORDERED that Defendant Rasheem A. Morton shall not violate any laws of the United

States or of the Virgin Islands during his release; and it is further

ORDERED that Defendant Rasheem A. Morton shall surrender to the Court his passport and any other travel documents; and it is further

ORDERED that a copy of this Order and the accompanying Memorandum Opinion shall be served personally upon Defendant Rasheem A. Morton, and copies thereof shall be directed to counsel of record.

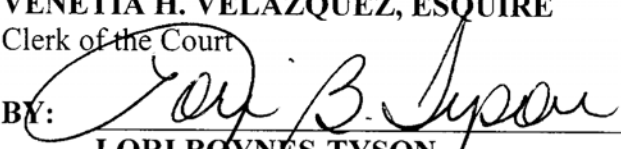
DATED: July 28, 2011


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

ATTEST:

VENETIA H. VELAZQUEZ, ESQUIRE
Clerk of the Court

BY:


LORI BOYNES-TYSON
Court Clerk Supervisor

7/29/11