IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN
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PEOPLE OF THE VIRGIN ISLANDS,	)
	) **CASE NO. ST-2016-CR-0000328**
Plaintiff,	)
vs.	) V.I. Code Ann. tit. 14, § 921, 922(a)(1), 11(a);
	) 2251(a)(2)(B), 11(a) (3 Counts); 295(1), 11(a);
JACQUES CAJUSTE,	) 297(a)(2), 11(a)
(D.O.B.: 01-08-61)	)
	)
Defendant.	)

MEMORANDUM OPINION

THIS MATTER is before the Court on the following:

1. Defendant's Motion for Reduction of Bail filed on November 4, 2016;
2. People's Response and Opposition to Defendant's Motion for Reduction of Bail filed on December 7, 2016;
3. Defendant's Reply to People's Opposition for Reduction of Bail filed on December 9, 2016; and
4. Defendant's Motion for Ruling on Motion for Reduction of Bail Conditions filed on January 24, 2017.

The Court finds that the People failed to establish that Defendant Jacques Cajuste is a danger to the community by clear and convincing evidence. The Court further finds, based upon a preponderance of the evidence, that the Defendant is a risk of flight. While Defendant Cajuste is not entitled to release on his own recognizance or on an unsecured bond, a reduction of bail is appropriate to meet the guidelines of Rule 141 of the Rules of the Superior Court and the federal Bail Reform Act. Therefore, Defendant's Motion for Reduction of Bail will be granted in part and an appropriate Order with the terms and conditions of his pretrial release will be issued.

I. Factual and Procedural Background.

This case stems from the murder of Egbert Stuart, which occurred sometime during the night of June 21, 2005, and the early morning hours of June 22, 2005. At the time of his death, Stuart was married to co-Defendant Viviane Stuart. It is alleged that at the time of Stuart's death, the two Defendants, Viviane Stuart and Jacques Cajuste, were having an affair. Both Defendants are charged with participating in the death of Egbert Stuart, who died from multiple stab wounds.

Defendants Jacques Cajuste and Viviane Stuart are charged with First Degree Murder in violation of 14 V.I.C. §§ 921, 922(a)(1); 14 V.I.C. § 11(a); Using a Dangerous Weapon During the Commission of a First Degree Murder in violation of 14 V.I.C. 2251(a)(2)(B) and 14 V.I.C. § 11(a); First Degree Assault in violation of 14 V.I.C. § 295(1) and 14 V.I.C. § 11(a); Using a

Dangerous Weapon During the Commission of a First Degree Assault in violation of 14 V.I.C. 2251(a)(2)(B) and 14 V.I.C. § 11(a); Third Degree Assault in violation of 14 V.I.C. § 297(a)(2) and 14 V.I.C. § 11(a); and Using a Dangerous Weapon During the Commission of a Third Degree Assault in violation of 14 V.I.C. 2251(a)(2)(B) and 14 V.I.C. § 11(a).

Defendant was arrested in Pennsylvania on October 14, 2016. After waiving extradition, he was brought back to St. Thomas on or about October 15, 2016. At his October 17, 2016 Advice of Rights hearing, Defendant's bail was set at One Million Dollars. On November 4, 2016, Defendant filed his Motion for Reduction of Bail.

A bail hearing was held on January 10, 2017, during which Defendant's sister, Margaret Cajuste testified on the family's finances, her relationship with the Defendant, and her suitability to serve as a third-party custodian.[1] Margaret, who has lived on St. Thomas since 1993, testified as to her longstanding ties to the Virgin Islands community and the occasions on which Jacques lived with her. According to Margaret, she and Defendant have lived in New York, St. Marten, and Tortola. After Defendant moved to St. Thomas in 2005, he lived with Margaret for six months to a year. Margaret testified that she became a U. S. citizen in 2006 and Jacques was naturalized in 2010. Jacques is her only brother and Margaret testified she is positive that he would obey her rules should she serve as his third-party custodian.

While Margaret has led a stable life on St. Thomas, the Defendant has not. After moving to St. Thomas, Defendant lived with his sister for six months to a year between 1995 and 2005. During that time, he worked for two different security companies. According to Margaret, while the Defendant was living with her, he travelled off-island frequently, including trips to visit a girlfriend. Margaret also testified that she was present when her brother was married in Brooklyn in 1992 and that prior to charges being filed, the Defendant lived in Philadelphia with his wife and three children. At the time of the murder, the Defendant was renting a room in a private home in St. Thomas.

With respect to funds to post as bail, Margaret testified that Defendant does not own real property in St Thomas. The only real property Defendant owns is in Haiti. Margaret testified also that she has $3,500.00 in a savings account which she is willing to post, in its entirety, for her brother's bail.

Based upon Margaret's testimony, Defendant has spent more time away than living or working on St. Thomas.

[1] To avoid confusion, Margaret Cajuste will be referred to by her first name because she has the same last name as her brother Jacques Cajuste.

II. Legal Standard to be Applied on a Motion for Reduction of Bail.

The analysis of Defendant's Motion begins with Section 3 of the Revised Organic Act of 1954 which 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."[2] Superior Court Rule 141(a) provides that "[a]ll persons shall, before conviction, be bailable by sufficient sureties approved by a judge or magistrate, provided, however, that any real property utilized by such sureties to secure the defendant's appearance shall have a fair market value which is double the amount of bail set or reduced by the Court."

Super. Ct. Rule 141(b) goes on to state that "[w]henever a person charged with an offense is before a judge or magistrate of this court for release on bail prior to trial, pursuant to these rules, the judge or magistrate shall, in considering the release of such person be guided by and apply the appropriate provisions of 'The Bail Reform Act'…."

However, provisions of the Bail Reform Act only serve as a guide which should be applied when appropriate.[3] "Furthermore, although the Eighth Amendment to the U.S. Constitution prohibits excessive bail, "[t]he plain meaning of 'excessive bail' does not require that it be beyond one's means, only that it be greater than necessary to achieve the purposes for which bail is imposed."[4]

Under the guidance of the BRA, the general presumption is that a criminal defendant should be released on his personal recognizance or an unsecured bond, unless a judicial officer determines that the defendant's release would not assure his appearance at trial or may result in harm to the general community or a specific person.[5]

The Defendant's bail is presently set at One Million Dollars. The People oppose any reduction of bail on the grounds that: (1) "the evidence against the Defendant is extensive and he is facing serious charges;" (2) the Defendant is a risk of flight; and (3) "Defendant is a great danger to the community."

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[2] 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.).

[3] See Super. Ct. R. 141(b) and *People of the V.I. v. Stevens*, 2013 V.I. LEXIS 68, *8-9 (V.I. Super. Ct. Nov. 26, 2013)

[4] *People of the V.I. v. Stevens*, 2013 V.I. LEXIS 68, *8-9 (V.I. Super. Ct. Nov. 26, 2013) (citing *Galen v. County of Los Angeles,* 477 F.3d 652, 661-62 (9th Cir. 2007). *Galen* was cited with approval by the Supreme Court of the Virgin Islands. See *Rivera*, 57 V.I. at 667.

[5] 18 U.S.C. § 3142(b); *see also People of the V.I. v. Saldana*, Super. Ct. Crim. No. 187/2014, 2015 V.I. LEXIS 1, at *10 (V.I. Super. Ct. 2015).

Defendant moves this Court to reduce his bail bond to $100,000.00, with a cash requirement of ten percent (10%), or $10,000.00. Defendant argues he "has no substantial funds which may be deposited as surety." Defendant also relies upon 18 U.S.C. § 3142(c)(2) in support of his position that his bail should be reduced substantially, and that "[t]he judicial officer may not impose a financial condition that results in the pretrial detention of the person." However, a defendant's available funds or sureties is not the determining factor as to whether bail is excessive because "[t]he purpose of bail … is to assure the defendant's attendance in court, and [it] cannot be a means of punishing the defendant, nor of protecting the public." [6] "Any bail or conditions of release that are not tailored to achieve the purpose of bail are considered excessive and therefore unconstitutional."[7] "The plain meaning of 'excessive bail' does not require that it be beyond one's means, only that it be greater than necessary to achieve the purposes for which bail is imposed."[8] Lack of financial resources to pay bail does not automatically render the bail amount excessive or unconstitutional.[9]

A. Danger to the Community

In support of their position that Defendant is a danger to the community, the People claim Defendant "has been arrested and charged with burglary in the third degree, criminal mischief and disorderly conduct in New York on several occasions and is likely to continue with criminal activity if released." However, the People provide no documentation, such as a judgment or order of conviction to substantiate this claim. Other than the pending charges, People have failed to prove sufficient information for this Court to make a determination that Defendant is a danger to the community.

The People also argue that the evidence against Defendant "is extensive and he is facing serious charges." After summarizing sections of the probable cause affidavit of Detective Granville Christopher, the People further assert that their "case is solid and there is a strong likelihood of conviction." If this is an attempt by the People to show that Defendant is not bailable pursuant to Section 3 of the Revised Organic Act of 1954, then they have failed to meet their burden of proof which "is greater than the probable cause standard but not as high as the 'beyond a reasonable doubt standard.'"[10] The People called no witnesses and did not introduce any exhibits at the bail hearing.

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[6] *Cantois v. People of the Virgin Islands*, 61 V.I. 257, 260 (VI. 2014) (citing *Tobal v. People*, 51 V.I. 147, 155 n.4 (V.I. 2009) (quoting *Vermont v. Pray*, 133 Vt. 537, 346 A.2d 227, 229-30 (1975)). "Any bail or conditions of release that are not tailored to achieve the purpose of bail are considered excessive and therefore unconstitutional." *Rieara v. People of the Virgin Islands*, 57 V.I. 659, 667 (V.I. 2012) (citing 48 U.S.C. § 1561).

[7] *Rieara v. People of the Virgin Islands*, 57 V.I. 659, 667 (V.I. 2012) (citing 48 U.S.C. § 1561).

[8] *Rieara,* at 667 (VI. 2012).

[9] *People of the V.I. v. Powell*, 2014 V.I. LEXIS 17, at *9 (V.I. Super. Ct. 2014) (citing *United States v. McConnell*, 842 F.2d 105, 107 (5th Cir. 1988)); *Karpouzis*, 961 F. Supp. at 849 (considering the legislative history of the BRA) ("However, its application does not necessarily require the release of a person who says he is unable to meet a financial condition of release which the judge has determined is the only form of conditional release that will assure the person's future appearance").

[10] *People of the Virgin Islands v. Velasquez*, 2014 V.I. LEXIS 2, *10-11 (V.I. Super. Ct. 2014).

B. Risk of Flight

Having heard the testimony of Margaret Cajuste and reviewed the parties' filings with respect to the pending bail motion, the Court finds that Defendant is a flight risk. Defendant argues that he did not flee the jurisdiction or disappear for eleven years. Defendant points out that there was no order prohibiting him from leaving the island and that after voluntarily giving a statement to law enforcement he "thereafter returned to his daily life, which eventually, routed him back to his home" in Pennsylvania where he has resided for the last eleven years.

Contrary to the People's assertions, there is no direct evidence that Defendant left the Territory to avoid arrest. Defendant claims he was interviewed by the police and then left the Virgin Islands "for better economic opportunities." However, the Court finds the timing of Defendant's departure from the U. S. Virgin Islands for "better economic opportunities," and the amount of time he has been away from the jurisdiction to be suspect, and more than coincidental. According to Margaret, the Defendant has lived in New York, St. Martin, and Tortola. In 2005, the Defendant lived in St. Thomas and his wife lived in New York. While living in St. Thomas, Defendant travelled off island frequently. These travel patterns changed after 2005 when Defendant moved to Pennsylvania. There is no evidence that he travelled back to St. Thomas after 2005, which is the year of Egbert Stuart's murder.

"It is settled that where a defendant faces a lengthy sentence if convicted, the risk of flight is present."[11] If convicted of first degree murder, Defendant is facing life in prison without parole. The seriousness of the charges against Defendant weighs against reducing his cash bond to $10,000.00. Defendant proposes posting his sister's savings of Three Thousand Five Hundred Dollars ($3,500.00) as cash bail and the surrendering of his passport to mitigate the risk of flight. The Court finds that $3,500.00 is insufficient to deter Defendant from fleeing this jurisdiction to avoid prosecution. The Court is not persuaded that surrender of his passport will mitigate the risk of flight as argued by the Defendant. There are ways to leave St. Thomas without having to show a passport. The Court finds that, given Defendant's history of frequent travel, his 2005 departure from St. Thomas for eleven years without returning, Defendant is a substantial risk of flight even if he surrenders his passport.

Although Defendant's sister is a long time resident of St. Thomas, the Court finds that Defendant is a flight risk having travelled frequently to other Caribbean countries in the past. The Court further finds that releasing Defendant on a cash bond of $3,500.00 will not reasonably assure his appearance at trial or related proceedings. The Court finds that only a significant bail bond will

[11] *Camacho*, 47 V.I. at 309 (V.I. Super. Ct. 2005); *see also People of the V.I. v. Stevens*, 2013 V.I. LEXIS 68, at *6 (V.I. Super. Ct. 2013) ("These offenses are punishable by up to life in prison, fifteen years in prison, thirty years in prison, and twenty years in prison, respectively. The Court finds that [defendant] is charged with serious crimes that weigh against releasing him on an unsecured bond or on personal recognizance"); *Gov't of the VI. v. Texido*, 35 V.I. 3, 6 (V.I. Terr. Ct. 1996) ("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").

assure that Defendant will appear for Court proceedings and trial in this matter. Therefore, the $1,000,000.00 bail bond requirement will be reduced to a cash bail bond of Two Hundred Thousand Dollars ($200,000.00).

Having heard the testimony of Margaret Cajuste and observed her demeanor, the Court finds that she is an appropriate third-party custodian, and will require that she serve as Defendant's third-party custodian along with other terms and conditions of pretrial release which will be set forth in a separate order.

An appropriate Order follows.

DATED: February 15, 2017

Denise M Francois
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
LORI BOYNES-TYSON
Acting Chief Deputy Clerk 2/15/17