

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. THOMAS AND ST. JOHN

THE PEOPLE OF THE VIRGIN ISLANDS
Plaintiff)
Vs.)
NESTA JAMES)
Defendant)

CASE NO. ST-09-CR-0000622

ACTION FOR: 14 V.I.C. 922

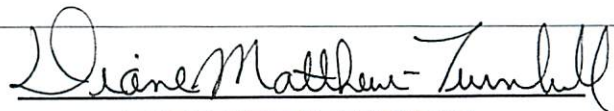
**NOTICE OF ENTRY OF
MEMORANDUM
OPINION AND ORDER
(4)**

TO: ROBERT A. LEYCOCK, ESQ., ASSISTANT TERRITORIAL PUBLIC DEFENDER
RENEE GUMBS CARTY, ESQ., ASSISTANT ATTORNEY GENERAL
ORDER BOOK
LIBRARIAN
JUDGES & MAGISTRATES, SUPERIOR COURT
✓ IT DIVISION

Please take notice that on March 12, 2010 a(n) MEMORANDUM OPINION
AND ORDER (4) dated March 11, 2010 was entered by the Clerk in the
above-entitled matter.

Dated: March 12, 2010

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



DIANE MATTHEW-TURNBULL
COURT CLERK II

IN THE SUPERIOR COURT THE VIRGIN ISLANDS

DIVISION OF ST. THOMAS AND ST. JOHN

PEOPLE OF THE VIRGIN ISLANDS,

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Plaintiff,

vs.

**NESTA JAMES ✓
JUNNIE ETIENNE
DENALSON W. MERRIFIELD**

) **CASE NO. ST-09-CR-622 ✓**
) **CASE NO. ST-09-CR-624**
) **CASE NO. ST-09-CR-625**

Defendants.

MEMORANDUM OPINION

This matter is before the Court on Defendant Merrifield’s Motion for Disclosure of Confidential Informants and/or Witness #1 and #3 (“the Motion”) filed on January 11, 2010. On January 15, 2010, Defendant Etienne joined Defendant Merrifield’s Motion and additionally requested the disclosure of the identity of Witness #2. The People filed an Opposition to Defendant Merrifield’s Motion¹ (“the Opposition”) on February 4, 2010, and filed an Opposition to Defendant Etienne’s Motion on February 8, 2010. Defendant Merrifield filed a Reply to the People’s Opposition on February 5, 2010.

FACTS AND PROCEDURAL HISTORY

Defendants were arraigned on January 7, 2010, on one count each of First Degree Murder, Unauthorized Use of a Firearm During the Commission of a First Degree Murder, First Degree Assault, the Unauthorized Use of a Firearm During the Commission

¹ The People’s February 4, 2010, Opposition is titled “People’s Opposition to Defendants Merrifield and James’ Motion to Disclose Identities of Confidential Informants and/or Witnesses #1 & #3. However, the Court finds no record in the file of Defendant NESTA JAMES filing such a Motion.

of a First Degree Assault, Attempted First Degree Murder, the Unauthorized Use of a Firearm During the Commission of Attempted First Degree Murder, Third Degree Assault, the Unauthorized Use of a Firearm During the Commission of a Third Degree Assault, and Reckless Endangerment in the First Degree.

Police Corporal Mario Stout's October 8, 2009, Affidavit ("the Affidavit") stated that on August 21, 2009, Witness#1, victim Tameka Edwards, Jesse Smalls, and a friend went to Club Lexus in Smith Bay, St. Thomas, and on the morning of August 22, 2009², Jesse Smalls was killed outside Club Lexus. Witness #1 further stated that he/she and Ms. Edwards were blamed for the death of Jesse Smalls and stated that Defendant Nesta James, with a black gun in his hand, later knocked on his/her door asking for the "Crucian Girl," Tameka Edwards, accused Ms. Edwards of setting up Jesse Smalls, and stated that he was going to kill Ms. Edwards. Moments later, Defendant James returned to Witness #1's residence with a machine gun wrapped in a sheet asking again for Tameka Edwards, and Witness#1 again informed James that she did not know the whereabouts of Ms. Edwards. Subsequently, on August 23, 2009, sometime in the afternoon, Witness#1 found the motionless body of Ms. Edwards.

Witness #2 also informed Corporal Stout that he/she was in the Contant Area, St. Thomas, when she saw Nesta James with two (2) black plastic bags containing long guns.

Then, she saw Defendant Denalson Merrifield and Defendant Junnie Etienne run up and take the guns from Defendant James. The three (3) Defendants, with guns in hand, ran toward Witness #1 asking for the whereabouts of Ms. Edwards. Shortly, thereafter,

² Affidavit of Corporal Stout states that on August 21, 2009 sometime after midnight that Witness#1, Ms. Edwards, a friend, and Jesse Smalls went to Club Lexus. However, Witness #1 also stated "on the same morning" of August 22, 2009, that was the last time he/she saw Ms. Edwards when Jesse Smalls was killed.

Witness #2 left the area, and when she returned to the Contant area she was informed by several neighbors that shots were fired around 3:00 p.m. on August 22, 2009, and a body was found in the area.

The interview of Witness #3 revealed that on August 22, 2009, at approximately 2:00 p.m., she was by the bar at Romano's Restaurant when Ms. Edwards asked her for a ride to the Contant area. When they arrived and stopped in the Contant area, Witness #3 heard a male say, "Don't move." Witness #3 also saw a rifle pointed at him/her covered with a pillowcase. Witness #3 then saw Ms. Edwards accompanied by another male walking away from the vehicle towards her home. Witness #3 suddenly drove off at a high rate of speed and the black male fired several shots at her vehicle, striking her vehicle multiple times.

On August 27, 2009, Dr. Francisco Landron, the Medical Examiner, performed an autopsy on the body of Ms. Edwards. Dr. Landron indicated that Ms. Edwards died as a result of multiple gunshot wounds to the body. Dr. Landron also reported that there were three (3) visible gunshot wounds to Ms. Edward's body.

In addition, a firearms check was conducted at the Firearms Division in the District Court of St. Thomas, St. John and Water Island, as well as the District of St. Croix. The firearms check revealed that none of the Defendants was authorized to possess firearms in the Virgin Islands. Also, the projectiles recovered from Ms. Edward's body were sent to the FBI, which concluded that they were fired from an AK-47.

STANDARD OF REVIEW

When determining whether to grant a defendant's request for disclosure of a government informant's identity, the court must "weigh the public interest in protecting the flow of information against the individual's right to prepare his defense." *United States v. Brown*, 3 F.3d 673, 679 (3d Cir. 1993) (quoting *Roviaro v. United States*, 353 U.S. 53 (1957)). In addition, criminal defendants do not have a right to complete discovery of the government's case. See *United States v. Casseus*, 282 F.3d 253, 257 (3d Cir. 2002); See also *United States v. Addonizio* 451 F.2d 49, 62 (3d Cir. 1972) (the government is not required to provide the defense with the identity of its witnesses in non-capital murder cases). Moreover, even a defendant in a capital case need not be furnished with a list of witnesses until "at least three days prior to trial." *Casseus, supra* at 257 (citing 18 U.S.C.A. § 3432).

DISCUSSION

Defendants contend that they need the identities of Witness #1 and Witness #3 because they are key witnesses and Defendant Etienne simply requests the disclosure of the identity of Witness #2. Defendants argue that the identities of Witness #1 and #3 must be revealed because Witness #3 alleges that she was shot at by the Defendants and Witness #1 found the dead body of Ms. Edwards. Defendants assert they must know the identities of the witnesses in order to properly prepare for pretrial hearings and to challenge the reliability, accuracy, and credibility of the witnesses. However, Defendants' request for the identity of the witnesses is premature. Even in capital

offenses, the government is not required to disclose the identity of witnesses until three (3) days before the trial. See 18 U.S.C. § 3432. Moreover, this is not a capital case.

Defendants have not made a preliminary showing that the identity of the witnesses is necessary to counteract their statements. For example, in *United States v. Brown, et al.*, 3 F.3d 676, 675 (3d Cir. 1993), the police executed a search warrant for the defendant's home that was supported by an affidavit of a police detective. The affidavit stated that a confidential informant had observed the defendant and other individuals in the possession and sale of drugs. *Id.* The defendant asserted that the identity of the informant should be revealed to prove that the search was based on false information. *Id.* at 679. However, the court held that "[a] defendant who merely hopes (without showing a likelihood) that disclosure will lead to evidence supporting suppression has not shown that disclosure will be 'relevant and helpful to the defense.'" *Id.* (quoting *Roviaro, supra* at 60-61). Likewise, in the case at bar, Defendants have presented only evidence of a mere hope that providing the identity of the witnesses will assist in their challenge to the witness' reliability and credibility.

Balancing the continued flow of public information against Defendants' right to prepare for trial, the Court concludes that revealing the identity of the witnesses will severely hinder the flow of information. Witness #1 asserted that she was threatened by

Defendants and Witness #3 asserted that she was shot at by Defendants. Providing their identity to the very Defendants that are accused of committing these acts will likely have an adverse impact on public communication. Accordingly, the Court will deny Defendants' Motion.

A separate Order shall follow.

Dated: March 11, 2010



HON. MICHAEL C. DUNSTON
JUDGE OF THE SUPERIOR COURT
OF THE VIRGIN ISLANDS

Attest:


Date: March _____, 2010

Venetia H. Velasquez, Esq.

Court Clerk Supervisor ___/___/___

CERTIFIED A TRUE COPY

Date: 3/12/10
Venetia H. Velasquez, Esq.
Clerk of the Court

by: 
Rosalie Griffith
Court Clerk Supervisor 3/12/10

By: Drane M. Turnhill
Court Clerk



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

PEOPLE OF THE VIRGIN ISLANDS,)

Plaintiff,)

vs.)

NESTA JAMES
JUNNIE ETIENNE
DENALSON W. MERRIFIELD

) CASE NO. ST-09-CR-622
) CASE NO. ST-09-CR-624
) CASE NO. ST-09-CR-625

Defendants.)

ORDER

The Court having rendered a Memorandum Opinion this date. in accordance with that opinion it is

ORDERED that Defendants Denalson Merrifield and Junnie Etienne's Motion for Disclosure of Confidential Informants and/or Witnesses #1 and #3 is **DENIED**; and it is

ORDERED that Defendant Junnie Etienne's Motion for Disclosure of Confidential Informant and/or Witness #2 is **DENIED**; and it is


ORDERED that copies of this Order be directed to counsel of record.

Dated: March 11, 2010

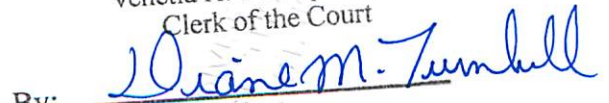


HON. MICHAEL C. DUNSTON
JUDGE OF THE SUPERIOR COURT
OF THE VIRGIN ISLANDS

ATTEST: Venetia H. Velazquez, Esq.
Clerk of Court ___/___/___

By: 
Rosalie Griffith
Court Clerk Supervisor 3/12/10

CERTIFIED A TRUE COPY
Date: 3/12/10
Venetia H. Velazquez, Esq.
Clerk of the Court

By: 
Court Clerk

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

PEOPLE OF THE VIRGIN ISLANDS,)	
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Plaintiff,)	
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vs.)	
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NESTA JAMES ✓)	CASE NO. ST-09-CR-622 ✓
JUNNIE ETIENNE)	CASE NO. ST-09-CR-624
DENALSON W. MERRIFIELD)	CASE NO. ST-09-CR-625
)	
)	
Defendants.)	
)	

MEMORANDUM OPINION

This matter is before the Court on Defendant Denalson Merrifield’s Motion to Sever Counts 23-27 (“the Motion”) filed on February 3, 2010. No Opposition to Defendant’s Motion was filed by the People.

FACTS AND PROCEDURAL HISTORY

Defendant was arraigned on January 7, 2010, on Count Nineteen, First Degree Murder, Count Twenty, the Unauthorized Use of a Firearm During the Commission of a First Degree Murder, Count Twenty-One, First Degree Assault, Count Twenty-Two, the Unauthorized Use of a Firearm During the Commission of a First Degree Murder, Count Twenty-Three, Attempted First Degree Murder, County Twenty-Four, the Unauthorized Use of a Firearm During the Commission of Attempted First Degree Murder, Count Twenty-Five, Third Degree Assault, Count Twenty-Six, the Unauthorized Use of a

Firearm During the Commission of a Third Degree Assault, and Count Twenty-Seven, Reckless Endangerment in the First Degree.

Police Corporal Mario Stout's October 8, 2009, Affidavit ("the Affidavit") stated that on August 21, 2009, Witness #1, victim Tameka Edwards, Jesse Smalls, and a friend went to Club Lexus in Smith Bay, St. Thomas and on the morning of August 22, 2009¹, Jesse Smalls was killed outside Club Lexus. Witness #1 further stated that he/she and Ms. Edwards were blamed for the death of Jesse Smalls and stated that Defendant Nesta James, with a black gun in his hand, later knocked on his/her door asking for the "Crucian Girl," Tameka Edwards, accused Ms. Edwards of setting up Jesse Smalls, and stated that he was going to kill Ms. Edwards. Moments later, Defendant James returned to Witness #1's residence with a machine gun wrapped in a sheet asking again for Tameka Edwards, and Witness #1 again informed James that she did not know the whereabouts of Ms. Edwards. Subsequently, on August 23, 2009, sometime in the afternoon, Witness #1 found the motionless body of Ms. Edwards.

Witness #2 also informed Corporal Stout that he/she was in the Contant Area, St. Thomas, USVI, when she saw Nesta James with two (2) black plastic bags containing long guns. Then, she saw Defendant Denalson Merrifield and Defendant Junnie Etienne run up and take the guns from Defendant James. The three (3) Defendants, with guns in hand, ran toward Witness #1 asking for the whereabouts of Ms. Edwards. Shortly, thereafter, Witness #2 left the area, and when she returned to the Contant area she was

¹ Affidavit of Corporal Stout states that on August 21, 2009 sometime after midnight that Witness#1, Ms. Edwards, a friend, and Jesse Smalls went to Club Lexus. However, Witness #1 also stated "on the same morning" of August 22, 2009, that was the last time he/she saw Ms. Edwards when Jesse Smalls was killed.

informed by several neighbors that shots were fired around 3:00 p.m. on August 22, 2009, and a body was found in the area.

The interview of Witness #3 revealed that on August 22, 2009, at approximately 2:00 p.m., she was by the bar at Romano's Restaurant when Ms. Edwards asked her for a ride to the Contant area. When they arrived and stopped in the Contant area, Witness #3 heard a male say, "Don't move." Witness #3 also saw a rifle pointed at him/her covered with a pillowcase. Witness #3 then saw Ms. Edwards accompanied by another male walking away from the vehicle towards her home. Witness #3 suddenly drove off at a high rate of speed and the black male fired several shots at her vehicle, striking her vehicle multiple times.

On August 27, 2009, Dr. Francisco Landron, the Medical Examiner, performed an autopsy on the body of Ms. Edwards. Dr. Landron indicated that Ms. Edwards died as a result of multiple gunshot wounds to the body. Dr. Landron also reported that there were three (3) visible gunshot wounds to Ms. Edward's body.

In addition, a firearms check was conducted at the Firearms Division in the District Court of St. Thomas, St. John and Water Island, as well as the District of St. Croix. The firearms check revealed that none of the Defendants was authorized to possess firearms in the Virgin Islands. Also, the projectiles recovered from Ms.

Edward's body were sent to the FBI, which concluded that they were fired from an AK-

DISCUSSION

Defendant seeks a severance due to alleged prejudicial joinder pursuant to Fed. R. Crim. P. 14(a), which states in pertinent part, “If the joinder of offenses or defendants in an indictment, an information, or a consolidation for trial appears to prejudice a defendant or the government, the court may order separate trials of counts, sever the defendants’ trials, or provide any other relief that justice requires.” Trial judges have broad discretion in deciding motions for severance and must “weigh possible prejudice to the defendant against interests of judicial economy.” *United States v. Reicherter*, 647 F.2d 397, 400 (3d Cir. 1981).

Defendant Merrifield argues that he may suffer prejudice by having Counts 23-27 remain with the other counts because Counts 23-27 involve the alleged shooting of Witness #3, which occurred the day before the alleged murder of Ms. Edwards. As a result, he claims evidence from the alleged shooting of Witness #3 may overlap with evidence of the alleged murder of Ms. Edwards. However, Defendant Merrifield fails to provide any specific facts or evidence of how allowing all of the counts to remain in the same case will cause overlap and prejudice. In *United States v. Holloway*, 1 F.3d 307, 310-11 (5th Cir. 1993), the court granted a defendant’s motion to sever a weapons charge from charges of robbery. The court held that the charges must be severed because the government failed to provide any evidence that the weapons charge was remotely related to his robbery charge. *Id.* The court reasoned that “the government does not contend that the weapon found in Holloway’s [the defendant] possession when he was arrested was the weapon used in the robberies.” *Id.* The facts of this case are substantially different. Witness #3 testified that she had just been with Ms. Edwards when shots were fired at her

vehicle and that the person who pointed a gun at her asked why she was with Ms. Edwards. In addition, she was giving Ms. Edwards a ride home. Clearly, Counts 23-27 are related to the other counts against Defendant because they all have matters related to the victim, Ms. Edwards, in common.

Therefore, the Court finds that joinder of the offenses was proper and Defendant Merrifield has failed to demonstrate evidence of prejudice to his defense. A separate Order shall follow.

Dated: March 11, 2010

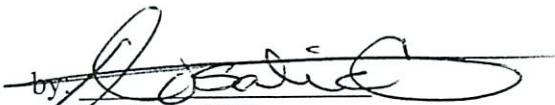

HON. MICHAEL C. DUNSTON
JUDGE OF THE SUPERIOR COURT
OF THE VIRGIN ISLANDS

Attest:

Date: March , 2010

Venetia H. Velasquez, Esq.

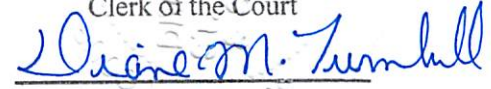
Court Clerk Supervisor / /

by: 
Rosalie Griffith
Court Clerk Supervisor 3/12/10

CERTIFIED A TRUE COPY

Date: 3/12/10

Venetia H. Velasquez, Esq.
Clerk of the Court

By: 
Court Clerk

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

PEOPLE OF THE VIRGIN ISLANDS,

Plaintiff,

vs.

NESTA JAMES
 JUNNIE ETIENNE
 DENALSON W. MERRIFIELD

Defendants.

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) CASE NO. ST-09-CR-622

) CASE NO. ST-09-CR-624

) CASE NO. ST-09-CR-625

ORDER

The Court having rendered a Memorandum Opinion this date, in accordance with that opinion it is

ORDERED that the Defendant's Motion to Sever Counts 23-27 is **DENIED WITHOUT PREJUDICE**; and it is

ORDERED that copies of this Order be directed to counsel of record.

Dated: March 11, 2010




HON. MICHAEL C. DUNSTON
 JUDGE OF THE SUPERIOR COURT
 OF THE VIRGIN ISLANDS

Attest:

Date: March , 2010

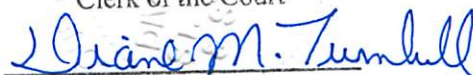
Venetia H. Velasquez, Esq.
 Court Clerk Supervisor / /

by: 
 Rosalie Griffith
 Court Clerk Supervisor 3/12+10

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Date: 3/12/10

Venetia H. Velasquez, Esq.
 Clerk of the Court

By: 
 Court Clerk

IN THE SUPERIOR COURT THE VIRGIN ISLANDS

DIVISION OF ST. THOMAS AND ST. JOHN

PEOPLE OF THE VIRGIN ISLANDS,

Plaintiff,

vs.

**NESTA JAMES ✓
JUNNIE ETIENNE
DENALSON W. MERRIFIELD**

Defendants.

**CASE NO. ST-09-CR-622 ✓
CASE NO. ST-09-CR-624
CASE NO. ST-09-CR-625**

MEMORANDUM OPINION

This matter is before the Court on Defendant Junnie Etienne's Motion for Reduction of Bail filed on January 26, 2010, and Defendant Denalson Merrifield's January 26, 2010, Motion to Release Defendant Upon His Personal Recognizance ("the Motions") or in the Alternative to Reduce Bond. The People filed an Opposition to Defendants' Motions on February 5, 2010.

FACTS AND PROCEDURAL HISTORY

Defendants were each arraigned on January 7, 2010, on charges of First Degree Murder, Unauthorized Use of a Firearm During the Commission of a First Degree Murder, First Degree Assault, Unauthorized Use of a Firearm During the Commission of a First Degree Assault, Attempted First Degree Murder, Unauthorized Use of a Firearm During the Commission of Attempted First Degree Murder, Third Degree Assault,

Unauthorized Use of a Firearm During the Commission of a Third Degree Assault, and Reckless Endangerment in the First Degree. If convicted of murder in the first degree, Defendants must be sentenced to life imprisonment without parole.

STANDARD OF REVIEW

When setting bail, Super. Ct. R. 141(b) requires judges to apply the provisions of the Bail Reform Act of 1984 (“the B.R.A.”).

The B.R.A. mandates that when a person charged with a crime is brought before a Judge, he/she shall order the person’s release on personal recognizance or execution of an unsecured bond pending trial unless the Judge ‘determines that such release will not reasonably assure the appearance of the person as required or will endanger the safety of any other person or the community.’ *People of the Virgin Islands v. Simmonds*, 48 V.I. 320, 322 (Super. Ct. 2007) (citing 18 U.S.C. § 3142(a)(b)).

Essentially, the B.R.A. requires “that an arrested person be admitted to bail only under conditions which will ‘reasonably assure both the appearance of the person as required and the safety of any other person and the community.’” *United States v. Himler, Jr.*, 797 F.2d 156, 158 (3d Cir. 1986) (quoting U.S.C. § 3142(b), (c) (Supp. II, 1985)). Conversely, the B.R.A. provides judges with the authority to refuse release on bail if there are no conditions that will assure both the safety of the community and the appearance of the defendant at trial. *Id.*, at 159.

DISCUSSION

Defendants argue that the One hundred fifty thousand dollar (\$150,000.00) bail set by the Magistrate for each of them is excessive because they are not flight risks. Defendants assert that they have strong family ties to St. Thomas. However, Defendants were both born in Dominica, West Indies, and

simply because they may have some family in the Virgin Islands does not ensure that they will not return to Dominica. Defendant Merrifield provided Affidavits of family members living on St. Thomas demonstrating he has six (6) aunts, one (1) uncle, and one (1) grandmother living on St. Thomas. Although Defendant Merrifield has shown that he has family living on St. Thomas, he failed to provide evidence of strong family ties with these family members.

Defendants have not presented sufficient evidence to convince the Court that they are not flight risks. Defendant Merrifield listed family members that he has on St. Thomas, but failed to demonstrate that the presence of these family members would encourage him to remain in St. Thomas. Defendant Etienne stated that he has family ties to St. Thomas, but he failed to either identify these family ties or demonstrate their role in representing his ties to the community.

Defendants also assert that because the Government has a weak case against them their bail should be reduced or they should be released. However, the Affidavit indicates that Witness #1 was threatened by Defendants and heard them threaten to kill Ms. Edwards. Additionally, Witness #2 asserted that she saw Defendants carrying machine guns and threatening Witness #1. Further, Witness #3 revealed that she saw one of the Defendants pointing a rifle at her, and, when she fled, she was shot at by the Defendants. Finally, the projectiles recovered from Ms. Edwards' body were fired from an AK 47, and the witnesses testified to seeing Defendants in possession of AK 47s. In short, the People have a reasonably strong circumstantial case against Defendants, and Defendants have

provided no evidence demonstrating that their bail should be reduced. The Court must conclude, based on the nature of offenses charged, that Defendants represent a danger to the community.

Defendants contend that the One hundred fifty thousand dollar (\$150,000.00) bail amount is an injustice because Defendants are indigent and lack the funds to post bail. In *People of the V.I. v. Matthew*, 49 V.I. 285, 289 (Super. Ct. 2008), the court determined that "bail as a condition of release must be reasonable and within the financial means of the defendant....unless they are detainable under either section 3504(a) or the Bail Reform Act." (citing *Karpouzis v. Gov't of the V.I.*, 961 F.Supp. 841, 850-51 (D.V.I. 1997)). Here, the Court finds that the sum of One hundred fifty thousand dollars (\$150,000.00) to be reasonable under all the circumstances. Accordingly, Defendants' Motions for Reduction of Bail or to be Released Upon Personal Recognizance will be denied.


A separate Order shall follow.

Dated: March 11, 2010


HON. MICHAEL C. DUNSTON
JUDGE OF THE SUPERIOR COURT
OF THE VIRGIN ISLANDS

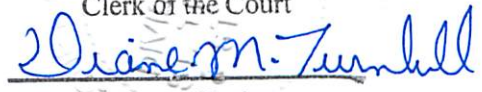
Attest:

Date: March 11, 2010
Venetia H. Velasquez, Esq.
Court Clerk Supervisor 1/1/1

by 
Rosalie Griffith
Court Clerk Supervisor 3/12/10

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Clerk of the Court

By: 
Court Clerk

IN THE SUPERIOR COURT THE VIRGIN ISLANDS

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PEOPLE OF THE VIRGIN ISLANDS,)

Plaintiff,)

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DENALSON W. MERRIFIELD)

Defendants.)

) CASE NO. ST-09-CR-622
) CASE NO. ST-09-CR-624
) CASE NO. ST-09-CR-625

ORDER

The Court having rendered a Memorandum Opinion this date, in accordance with that opinion it is

ORDERED that Defendant Denalson Merrifield's Motion to Release Defendant Upon His Own Personal Recognizance or in the Alternative to Reduce Bond is **DENIED**; and it is

ORDERED that Defendant Junnie Etienne's Motion for Reduction of Bail is **DENIED**; and it is

ORDERED that copies of this Order be directed to counsel of record.

Dated: March 11, 2010

ATTEST: Venetia H. Velazquez, Esq.
Clerk of Court / /

By: Rosalie Griffith
Rosalie Griffith
Court Clerk Supervisor 3/12/10

[Signature]
HON. MICHAEL C. DUNSTON
JUDGE OF THE SUPERIOR COURT
OF THE VIRGIN ISLANDS

CERTIFIED A TRUE COPY

Date: 3/12/10
Venetia H. Velazquez, Esq.
Clerk of the Court

By: Orane M. Tumbull
Court Clerk

IN THE SUPERIOR COURT THE VIRGIN ISLANDS
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PEOPLE OF THE VIRGIN ISLANDS,

Plaintiff,

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NESTA JAMES ✓
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DENALSON W. MERRIFIELD

Defendants.

CASE NO. ST-09-CR-622 ✓
CASE NO. ST-09-CR-624
CASE NO. ST-09-CR-625

MEMORANDUM OPINION

This matter is before the Court on Defendants Denalson Merrifield and Junnie Etienne's Motion for a Bill of Particulars ("the Motion") filed by Defendant Merrifield on January 11, 2010 and joined by Defendant Etienne on January 15, 2010. The People filed an Opposition to Defendants' Motion ("the Opposition") on February 8, 2010, and Defendant Merrifield filed a Reply to the People's Opposition or in the Alternative Motion to Strike People's Alibi Demand on February 8, 2010, and Defendant Etienne filed a Reply to the People's Opposition and Motion for an Extension of Time to Provide Notice of Alibi on February 12, 2010.

FACTS AND PROCEDURAL HISTORY

Defendants were charged with First Degree Murder, Unauthorized Use of a Firearm During the Commission of a First Degree Murder, First Degree Assault,

Unauthorized Use of a Firearm During the Commission of a First Degree Assault, Attempted First Degree Murder, Unauthorized Use of a Firearm During the Commission of Attempted First Degree Murder, Third Degree Assault, Unauthorized Use of a Firearm During the Commission of a Third Degree Assault, and Reckless Endangerment in the First Degree.

Police Corporal Mario Stout's October 8, 2009, Affidavit ("the Affidavit") stated that on August 21, 2009, Witness #1, victim Tameka Edwards, Jesse Smalls and a friend went to Club Lexus in Smith Bay, St. Thomas, and on the morning of August 22, 2009¹, Jesse Smalls was killed outside Club Lexus. Witness #1 further stated that he/she and Ms. Edwards were blamed for the death of Jesse Smalls and stated that Defendant Nesta James, with a black gun in his hand, later knocked on his/her door asking for the "Crucian Girl," Tameka Edwards, accused Ms. Edwards of setting up Jesse Smalls, and stated that he was going to kill Ms. Edwards. Moments later, Defendant James returned to Witness #1's residence with a machine gun wrapped in a sheet asking again for Tameka Edwards, and Witness #1 again informed James that she did not know the whereabouts of Ms. Edwards. Subsequently, on August 23, 2009, sometime in the afternoon, Witness#1 found the motionless body of Ms. Edwards.

Witness #2 also informed Corporal Stout that he/she was in the Contant Area St.

Thomas, when she saw Defendant James with two (2) black plastic bags containing long guns. Then, she saw Defendant Merrifield and Defendant Junnie Etienne run up and take the guns from Defendant James. The three (3) Defendants, with guns in hand, ran toward

¹ Affidavit of Corporal Stout states that on August 21, 2009 sometime after midnight that Witness#1, Ms. Edwards, a friend, and Jesse Smalls went to Club Lexus. However, Witness #1 also stated "on the same morning" of August 22, 2009, that was the last time he/she saw Ms. Edwards when Jesse Smalls was killed.

Witness #1 asking for the whereabouts of Ms. Edwards. Shortly, thereafter, Witness #2 left the area, and when she returned to the Contant area, she was informed by several neighbors that shots were fired around 3:00 p.m. on August 22, 2009, and a body was found in the area.

The interview of Witness #3 revealed that on August 22, 2009, at approximately 2:00 p.m., she was by the bar at Romano's Restaurant when Ms. Edwards asked her for a ride to the Contant area. When they arrived and stopped in the Contant area, Witness #3 heard a male say, "Don't move." Witness #3 also saw a rifle pointed at him/her covered with a pillowcase. Witness #3 then saw Ms. Edwards accompanied by another male walking away from the vehicle towards her home. Witness #3 suddenly drove off at a high rate of speed and the black male fired several shots at her vehicle, striking her vehicle multiple times.

On August 27, 2009, Dr. Francisco Landron, the Medical Examiner, performed an autopsy on the body of Ms. Edwards. Dr. Landron indicated that Ms. Edwards died as a result of multiple gunshot wounds to the body. Dr. Landron also reported that there were three (3) visible gunshot wounds to Ms. Edward's body.

In addition, a firearms check was conducted at the Firearms Division in the District Court of St. Thomas, St. John and Water Island, as well as the District of St.

Croix. The firearms check revealed that none of the Defendants was authorized to possess firearms in the Virgin Islands. Also the projectiles recovered from Ms. Edward's body were sent to the FBI, which concluded that they were fired from an AK-

STANDARD OF REVIEW

A bill of particulars is a “formal, detailed statement of the claims or charges brought by a plaintiff or prosecutor [.]” *United States v. Urban*, 404 F.3d 754, 771 (3d Cir. 2005) (quoting Black’s Law Dictionary 177 (8th ed.2004)). Fed. R. Crim. P. 7(f)² states that: “The defendant may move for a bill of particulars before or within 14 days after arraignment or at a later time if the court permits.” A bill of particulars is used to “inform the defendant of the nature of the charges brought against him, to adequately prepare his defense, to avoid surprise during the trial and to protect him against a second prosecution for an inadequately described offense.” *Id.* The burden is on the defendant to prove he is entitled to a bill of particulars because there will be a surprise at trial that is so substantial it will “prejudice his substantial rights.” *United States v. Plaskett, et al.*, Criminal No. 2007-60, 2008 WL 3833838, at *7 (D.V.I. Aug. 13, 2008). A bill of particulars is granted when “an indictment significantly impairs the defendant’s ability to prepare his defense or is likely to lead to prejudicial surprise at trial....” *Urban, supra* at 772.

DISCUSSION

Defendants assert that the People must disclose the identity of Witness #3 through a bill of particulars because Defendant is charged with firing shots at Witness #3.

However, that portion of Corporal Stout’s Affidavit regarding the witness’ testimony provides a detailed description of the evidence against Defendant³ concerning those allegations and Defendant has been provided other substantive discovery in this regard by

² Made applicable to the Superior Court pursuant to Super. Ct. R. 7.

³ See Oct. 8, 2009, Affidavit of Police Corporal Mario Stout, pg. 3-4, lines 14-15.


the People. Defendant Etienne also argues that the identity of Witness #2 must be revealed. However, he provides no explanation for why the identity of Witness #2 is necessary in preparing his defense. Furthermore, Defendants have failed to demonstrate why later disclosure of the identities of Witness #3 and Witness #2 will result in an unfair surprise.

Defendants' Replies both argue that the People's Demand for Alibi is inadequate. Defendant Merrifield further argues that if the Court denies his Motion to Strike the People's Alibi Demand, in the alternative, a bill of particulars must be provided to the defense delineating the exact time, location, and date that Defendant fired shots at Witness #3. Defendant asserts that without this specific information he is unable to provide information about an alibi because he is unaware of the specific date and time that Witness #3 is alleging that Defendant fired shots at her.

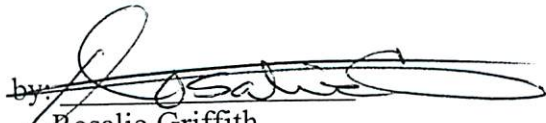
The Information and Affidavit do not contain the exact date, time, and location of the offense. In *Bennett, supra* at 7, the court held that an indictment containing "the approximate location, month, and year of the conduct at the heart of each count" provides enough information for the defendant to understand the offense he is required to defend. However, in the case at bar, while the Information provides Defendants with an approximate date for each count, the Affidavit contains vague locations and conflicting dates and times. Moreover, the Affidavit fails to identify the date, time, and location of the offenses. The conflicting information contained in the Affidavit impairs Defendants' ability to prepare a defense. Accordingly, Defendant Merrifield's Motion for a Bill of Particulars will be granted in part and the People will be required to provide a more

specific date, location, and time of the alleged offenses or, if they cannot do so, a reasonably specific range of dates and times between which the offenses are alleged to have occurred. Defendant Etienne's Motion for an Extension of Time to Provide Notice of Alibi will also be granted. A separate Order shall follow.

Dated: March 11, 2010


HON. MICHAEL C. DUNSTON
JUDGE OF THE SUPERIOR COURT
OF THE VIRGIN ISLANDS

Attest:
Date: March , 2010
Venetia H. Velasquez, Esq.
Court Clerk Supervisor / /

by: 
Rosalie Griffith
Court Clerk Supervisor 3/12/10

CERTIFIED A TRUE COPY
Date: 3/12/10
Venetia H. Velasquez, Esq.
Clerk of the Court
By: Deane M. Tumbull
Court Clerk

IN THE SUPERIOR COURT THE VIRGIN ISLANDS

DIVISION OF ST. THOMAS AND ST. JOHN

PEOPLE OF THE VIRGIN ISLANDS,)

Plaintiff,)

vs.)

NESTA JAMES)

JUNNIE ETIENNE)

DENALSON W. MERRIFIELD)

CASE NO. ST-09-CR-622

CASE NO. ST-09-CR-624

CASE NO. ST-09-CR-625

Defendants.)
_____)

ORDER

The Court having rendered a Memorandum Opinion this date, in accordance with that opinion it is

ORDERED that Defendants' Motion for Bill of Particulars is GRANTED IN PART to the extent that the that the People shall provide Defendants with a Bill of Particulars containing the date, time, and location of the alleged offenses, but if the People are unable to provide exact dates and times, they must provide the dates and times within a reasonably limited range; and it is

ORDERED that Defendants' Motion for Bill of Particulars is DENIED IN

PART to the extent that the identity of the witnesses need not be revealed; and it is

ORDERED that Defendant's Motion for an Extension of Time to Provide Notice of Alibi is GRANTED and Defendants shall respond to the People's Demand Notice of Alibi within fifteen (15) days, after the People provide the Bill of Particulars; and it is

People of the Virgin Islands v. Denalson W. Merrifield, et al.


Case Nos. ST-09-CR-625 & ST-09-CR-624

Order

2 of 2

ORDERED that copies of this Order be directed to counsel of record.

Dated: March 11, 2010


HON. MICHAEL C. DUNSTON
JUDGE OF THE SUPERIOR COURT
OF THE VIRGIN ISLANDS

Attest:

Date: March _____, 2010

Venetia H. Velasquez, Esq.

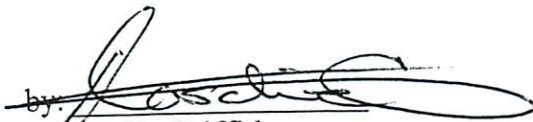
Court Clerk Supervisor / /

CERTIFIED A TRUE COPY

Date: 3/12/10

Venetia H. Velasquez, Esq.
Clerk of the Court

By: Orlene M. Turnbull
Court Clerk

by: 
Rosalie Griffith
Court Clerk Supervisor 3/12/10