

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX

THE PEOPLE OF THE VIRGIN ISLANDS **Plaintiff**)
)
 Vs.)
)
JAMASON CHARLES **Defendant**)

CASE NO. SX-10-CR-0000247

ACTION FOR: 14 V.I.C. 2253

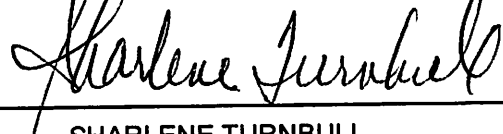
**NOTICE OF ENTRY OF
MEMORANDUM
OPINION AND ORDER**

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Please take notice that on June 16, 2010 a(n) MEMORANDUM OPINION AND ORDER dated June 15, 2010 was entered by the Clerk in the above-entitled matter.

Dated: June 16, 2010

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



SHARLENE TURNBULL
COURT CLERK SUPERVISOR

FOR PUBLICATION

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX

PEOPLE OF THE VIRGIN ISLANDS,)	
)	CRIMINAL CASE NO. SX-10-CR-247
Plaintiff,)	
)	MURDER FIRST DEGREE;
vs.)	RECKLESS ENDANGERMENT FIRST;
)	POSSESSION OF AN UNLICENSED
)	FIREARM DURING COMMISSION OF
JAMESON CHARLES,)	A CRIME OF VIOLENCE
)	
Defendant.)	

Counsel:

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Attorney for Defendant

BRADY, Julio A., Judge

MEMORANDUM OPINION AND ORDER

This matter came before the Court on May 17, 2010 for a Hearing on the People's Motion For Detention.

FACTUAL AND PROCEDURAL BACKGROUND

On May 6, 2010, this Court issued an arrest warrant for the Defendant, Jameson Charles, for the crimes of Murder in the First Degree, in violation of 14 V.I.C. § 922(a)(1), Reckless Endangerment in the First Degree, in violation of 14 V.I.C. § 625(a), and Possession of an Unlicensed Firearm During the Commission of a Crime of Violence, in violation of 14 V.I.C.

§ 2253(a). A search warrant was also issued, and bail was set at \$125,000.00. On the People's Motion, the affidavit supporting the arrest warrant was sealed. Defendant was arrested on the warrant on May 8, 2010, and was advised of his rights by the Honorable Harold W. L. Willocks on May 10, 2010. Defense Counsel moved for his release. The People objected to the Motion for Release, and further requested a Detention Hearing. A Detention Hearing was scheduled for May 11, 2010 by Judge Willocks, who, because of other pending matters, asked the undersigned to hear the Detention Motion.

On May 10, 2010, the People filed a formal Motion And Memorandum In Support Of Motion To Detain Without Bail. Also, the People filed a "Motion To Continue Pretrial Detention Hearing" on the same date. The Assistant Attorney General assigned to the case represented that he received this assignment on May 10, 2010 and, accordingly, needed "more time to properly prepare the evidence of the case for presentation to the Court." This Court granted the People's Motion to Continue by an Order signed on May 10, 2010 noting that the "Court believes it is in both parties' best interest to continue . . . to May 17, 2010." At that time and date, the Court was unaware that Defense Counsel had filed an Opposition to the People's Motion To Continue on May 11, 2010. In point of fact, this Opposition was not presented to the Court until Friday afternoon, May 14, 2010. These circumstances were revealed to the Parties before the start of the Detention Hearing.

Defense Counsel requested that the affidavit accompanying the arrest and search warrants be unsealed, over the objection of the People. The Court granted the request and the Prosecutor provided Defense Counsel with the affidavit of Detective Dino Herbert.

The People called only one witness and presented no exhibits. Thus, this Court's decision on the Defendant's detention is predicated on the testimony on both direct and cross-examinations by the People's Counsel and Defense Counsel and the few inquiries by the Court. The following is a summary of the evidence presented by the People through Detective Herbert's Affidavit and sworn testimony, which the Court found to be probative. As will be discerned, most of the evidence was either perceived by Detective Herbert (e.g., his description of the crime scene), or received directly by him (e.g., his interviews of Witness 1 and the confidential informant) in the course of his investigation.¹ Detective Dino Herbert, a three (3) year veteran of the Homicide Division of the Virgin Islands Police Department on St. Croix, testified as follows:

Detective Herbert was dispatched to a reported homicide on March 16, 2010 at about 1:30 a.m., on Fisher Street in Frederiksted. Upon his arrival, he observed a male lying on the ground. He recognized the body to be Dupert "Apache" Knowles, III. He stated that the Emergency Medical Technician who examined the body reported to him that there were no vital signs. He further stated that the victim had two (2) gunshot wounds to the back of his head and three (3) to his lower back. He said on both direct and cross examinations that the area where the corpse lay was well lighted.

Detective Herbert testified that the Police secured the scene by having Police Officers direct traffic around the area where the body was located. One of those officers told Detective Herbert that, while at the scene, the Defendant approached him and inquired if someone was dead at that location and further indicated that this inquiry was made within fifteen (15) minutes of the shooting. The Detective identified the Police Officer by name.

¹Any other testimony produced at the Detention Hearing not recounted herein the Court deemed to be insufficiently probative or reliable for the Court to consider.

Detective Herbert also said that during his investigation a confidential informant (who had provided him previously with reliable information) told him that the Defendant was making statements that he was responsible for Knowles' death. When asked by Defense Counsel if the statement was made by the Defendant to the informant, Detective Herbert's answer was "yes."

Detective Herbert also said that he spoke with an eye witness to the death of Mr. Knowles, who recounted that he observed the two (2) men (Defendant and Knowles) having a conversation when he was less than 30 feet from them and after hearing gunshots he saw the Defendant standing over the body of Mr. Knowles clicking a gun. That witness (whom he referred to as Witness 1) also said that the Defendant resides next to a bakery on King Street.² Detective Herbert further testified that Witness 1 also picked out the photograph of the Defendant as the shooter from a photo array of six (6) individuals.

Continuing his testimony, Detective Herbert then identified the Defendant sitting in the courtroom as the person whose photograph Witness 1 had selected from the photo array. He stated that Witness 1 also told him that the Defendant was standing behind the victim when he shot him. Detective Herbert further stated that his examination of the corpse indicated that the victim was shot at close range because the wounds bore gunshot residue.

On cross-examination, Defense Counsel conducted a vigorous and conscientious questioning of the Detective on all of his direct testimony. The Court specifically did not permit the Detective to identify Witness 1 and the confidential informant. When questioned on the results of the Search

²Detective Herbert, in his Arrest/Search Warrant Affidavit, asserted that the Defendant resided in the rear of his mother's Sica Health Food Store and Restaurant located at 19A & 20 King Street, Frederiksted. In his testimony, he confirmed that Defendant's mother's business was next to a bakery.

Warrant issued along with the Arrest Warrant, Detective Herbert admitted that no gun was confiscated.

After the People rested its case, the Defense offered no witnesses or evidence, but made a closing argument recommending denial of the Defendant's detention. The People made no rebuttal. The Court suggested written submissions if the Parties were so inclined, and took the matter under advisement. No submissions were made by either Party.

At the conclusion of the Hearing, the Court, at Defense Counsel's request and without objection by the People, arraigned the Defendant and entered his 'not-guilty' plea and demand for a speedy jury trial.

STANDARD OF REVIEW

In the *Tobal* case (filed February 11, 2009), the Supreme Court invalidated the long-standing practice of the Territorial Court and now Superior Court of detaining defendants charged with other major felonies and limited pre-trial detention only to defendants charged with First Degree Murder. *Tobal v. People of the Virgin Islands*, 51 V.I. 147 (VI 2009). In a prior decision, *Browne v. People of the Virgin Islands*, 50 V.I. 241 (VI 2008), wherein the Defendant/Appellant was charged with and ultimately convicted by a jury of, among other crimes, Murder First Degree, the Court set forth the applicable law on detention:

[W]e hold that section 3 of the ROA governs the issue of pretrial detention for first degree murder defendants in local Virgin Islands courts, and that title 5, section 3504a is inapplicable to the extent that it purports to grant pretrial bail for defendants charged with first degree murder in the Superior Court under Virgin Islands law where the proof is evident or the presumption great.

Browne, 50 V.I. at 257-258.

Although articulating the standard in various ways, the overwhelming majority of states require evidence that is greater than probable cause, but less than beyond a reasonable doubt.

Id. at 261.

In a later case wherein our Supreme Court remanded a detention determination by a trial court, it cited approvingly from a First Circuit Court of Appeals case:

Faced with the government's reliance upon hearsay evidence at a pre-trial detention hearing, the First Circuit Court of Appeals aptly explained the reasoning behind the admissibility of hearsay evidence at such proceedings:

[the] authority rests primarily upon the need to make the bail decision quickly, at a time when neither party may have fully marshalled all the evidence in its favor. It may also reflect the realization that at least some hearsay on some occasions may be fairly reliable, perhaps more reliable than certain direct evidence. For example, well-kept records, though hearsay, may be more reliable than eyewitness accounts of, say, a road accident on a foggy night. In any event, **the need for speed necessarily makes arraignments, "probable cause" determinations, and bail hearings typically informal affairs, not substitutes for trial or even for discovery.**

Williams v. People, 2010 WL 1565533 (V.I.), *6 (VI April 19, 2010) quoting *United States v. Acevedo-Ramos*, 755 F. 2d 203, 206 (1st Cir. 1985) (emphasis added).

Relying upon the Uniform Rules of Evidence (5 V.I.C. §§ 931-935) which permit the admission of hearsay at pre-trial detention hearings, the *Browne* case upheld the trial court accepting hearsay testimony in its detention hearings.³ In its unanimous Opinion issued on April 19, 2010,

³The passage by the Legislature of Act No. 7161 (sections 15(a) and (b)) on March 23, 2010, and its approval by the Governor on April 7, 2010, replaced the Uniform Rules of Evidence and made the Federal Rules of Evidence applicable to the Superior Court in criminal cases. The substitution of the Federal Rules of Evidence by legislative fiat would not negate the Court's decisions in *Browne* and *Williams* to permit hearsay evidence in pre-trial detention hearings.

the Supreme Court succinctly set the standard that must be followed by trial Judges in making a determination on detention hearings as this one:

We hold that, when the People elect to present exclusively hearsay evidence at a pre-trial detention hearing, **the trial 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 statements when their accuracy is in question.**

Williams at 10 (emphasis added).

Significantly, the Court added this *caveat*:

[T]he trial judge should focus on the strength of the People's evidence, rather than the defendant's ultimate guilt or innocence, and may not resolve direct conflicts as to inculpatory and exculpatory facts.

Williams at 3 (citation omitted).

During the Hearing, Defense Counsel objected several times to the use of hearsay testimony. However, there is a wealth of authority both in the Federal Rules of Criminal Procedure as well as relevant case law that allow for such testimony to be considered. Title 18 U.S.C. § 3142(f), under the heading of Detention Hearing, clearly states that in such hearings, “[t]he rules concerning admissibility of evidence in criminal trials do not apply to the presentation and consideration of information at the hearing.” *See United States v. Perry*, 788 F.2d 100, 106 (3rd Cir. 1986) (18 U.S.C. § 3142(f) “explicitly permits use of evidence [in pre-trial detention hearings] that would not be permissible in a criminal trial”); *see also United States v. Delker*, 757 F.2d 1390, 1397 (3rd Cir. 1985); and *see People v. Matthew*, 49 V.I. 285 (Super. Ct. 2008). Moreover, as previously stated, the *Browne* and *Williams* cases, *supra*, expressly permit hearsay evidence in detention hearings. The

People objected to the Defense Counsel's questions seeking disclosure of names of witnesses and informants. These objections were sustained for several reasons. Witness disclosure is heavily protected under the Federal Rules of Criminal Procedure. Under 18 U.S.C. § 119(a), revealing personal information about a "covered person" is a crime punishable by imprisonment of no more than five (5) years. The definition of a covered person in 18 U.S.C. § 119(b) includes informants or witnesses. It is clear that these statutes are aimed at maintaining the safety of informants and witnesses so that justice can ultimately be served. Furthermore, the statements made by the government witnesses or prospective government witnesses are similarly protected for safety reasons. Under 18 U.S.C. § 3500, no statement by any government witness, other than the defendant, can be the subject of subpoena, discovery, or inspection until after the witness has testified on direct examination in the trial of the case. Only after such testimony on direct examination has occurred can the defense petition the government to produce the statements of the witness. The reality in this case is that the Defense Counsel was given the Affidavit of Detective Herbert who was the sole testifier at the Detention Hearing. Given the nature of the crime alleged against the Defendant – allegedly a revenge killing – the Government had ample justification to protect the identity of its prospective trial witnesses.⁴

The only charge which makes the Defendant eligible for pre-trial detention is the First Degree Murder charge. Count One of the Information charges "That Jameson (Jama) Charles did unlawfully and with willful, deliberate and premeditated design, kill Dupert "Apache" Knowles, III, a human

⁴The front page article in the June 13-14, 2010 edition of *The St. Croix Avis* informs the reader: "Within the past year, from June 2009 to June 13, 2010 there have been 63 homicides throughout the Territory." This horrific statistic provides the legitimate obligation of the Prosecution and the Courts to protect the identity of witnesses (at least at this stage) to preserve the integrity of the criminal justice system.

being, by shooting him with a firearm in the back of the head and lower back.” *See* Information, filed May 6, 2010. The following recitation consists of the evidence that the Court deemed to be both probative and reliable in evaluating the People’s Motion For Detention.

DISCUSSION

Detective Herbert, as an experienced homicide investigator, observed that the gunshot wounds of the victim were caused by a gun fired at very close range due to the presence of gunshot residue. This testimony is corroborated by the statement given to the investigator by Witness 1 who said that the Defendant (whom he knew personally) was standing behind the victim when he shot him and was clicking his gun over the prostate body of the victim after he had collapsed on the ground. Also, Detective Herbert repeated the statement in his Affidavit that he provided Witness 1 with a six (6) picture photo array, and that Witness 1 identified Defendant’s photo as the shooter.

Moreover, Detective Herbert said that the Emergency Medical Technician who responded to the call examined the victim in his presence and stated he found no vital signs. In his Affidavit, Detective Herbert reported that Dr. Fernando Landron, the Territory’s Forensic Pathologist, performed an autopsy on the victim and concluded that he died as a result of five (5) gunshot wounds, removed five (5) projectiles from the corpse, and concluded that the manner of death was homicide.

Finally, when Defense Counsel questioned Detective Herbert about the autopsy report, both Detective Herbert and the Prosecutor acknowledged that an autopsy was performed on the victim but that it had not as yet been delivered to the Attorney General’s Office. Detective Herbert, in both his Affidavit and his testimony, said that he interviewed an informant who told him that the

Defendant had said to him (the unnamed informant) that he (the Defendant) had killed Knowles due to his belief that Knowles had killed someone named Vincent "Sensi" Johnson.

The Court's task now is to determine the probative value of the evidence produced at the hearing as to the essential elements of First Degree Murder with which the Defendant is charged.

Unlawful Killing

The evidence adduced at the Detention Hearing clearly and convincingly shows that the victim was shot at close range with a gun inflicting wounds to the back of his head and his lower back, resulting in his death. Nothing in this scenario suggests – much less interposes – any other cause of death such as accident or any lesser degree of murder or manslaughter.

Wilful, Deliberate and Premeditated Design

In addition to the above analysis, the hearsay statement given by Witness 1 that he witnessed the shooting of the victim by the Defendant leaves no rational explanation for the killing other than malicious intent, which ultimately will be determined by the triers of fact. The eyewitness account, at this stage, is buttressed by the hearsay statement by an informant who told the investigator that the Defendant had told him that he had killed the victim due to his belief that the victim had killed another human being (Vincent "Sensei" Johnson). While the People bear no burden of establishing a motive for the murder, it is more likely than not to be an issue that will be raised at a jury trial. Also, the autopsy referenced in Detective Herbert's probable cause Affidavit reveals that five (5) firearm projectiles were taken from the body of the victim. This degree of violence supports the People's charge that the Defendant's intent was to kill the victim.

CONCLUSION

Based on the evidence presented at the Detention Hearing and applying the criteria set forth most recently in *Williams*, this Court concludes that there is a substantial probability that the Defendant, Jameson Charles, committed, among other crimes, Murder First Degree against Dupert Knowles on March 16, 2010 as charged by the People in the Information.

In recognition of the Supreme Court's caution about resolving conflicts between "inculpatory and exculpatory facts," this Court concludes that there were no such conflicts in this case. Indeed, the only significant non-inculpatory testimony was Detective Herbert's admission that no gun was recovered by the searches that he executed pursuant to a warrant in an attempt to locate the murder weapon. This testimony does not establish a "fact" in this Court's estimation and, moreover, is merely non-probative, not exculpatory in nature.

Accordingly, the premises considered, it is hereby

ORDERED that the People's Motion for Detention is GRANTED. It is further

ORDERED that the Defendant is detained pending his trial on the charge of First Degree Murder.

ORDERED that a copy of this Order be served on all the parties.

Dated: June 15, 2010

A T T E S T:
VENETIA H. VELAZQUEZ, ESQ.
Clerk of the Court

By: [Signature]
Court Clerk Supervisor
6/16/10

[Signature]
JULIO A. BRADY
Judge
CERTIFIED TO BE A TRUE COPY
This 15th day of June, 2010
VENETIA H. VELAZQUEZ, ESQ.
CLERK OF THE COURT
By: [Signature] Court Clerk