

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX

THE PEOPLE OF THE VIRGIN ISLANDS **Plaintiff**)
)
 Vs.)
)
JOMAR AKA CHIPPA ENCARNACION **Defendant**)

CASE NO. SX-10-CR-0000342

ACTION FOR: 14 V.I.C. 922(A)(1)

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

TO: SUPERIOR COURT MAGISTRATES
SUPERIOR COURT LAW CLERKS
SUPERIOR COURT JUDGES
LAW LIBRARIES (STX/STT)
KIPPY ROBBERSON, ESQ.
INFORMATION TECHNOLOGY
COURT LOG
CHARLES LOCKWOOD, ESQ.

Please take notice that on September 22, 2010 a(n) MEMORANDUM
OPINION AND ORDER dated August 19, 2010 was entered by the Clerk in the
above-entitled matter.

Dated: September 22, 2010

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



CHERYL CLARKE
COURT CLERK II

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

PEOPLE OF THE VIRGIN ISLANDS,

PLAINTIFF,

v.

JOMAR "CHIPPA" ENCARNACION,
DEFENDANT.

SX-10-CR-342

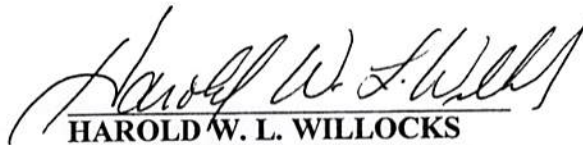
ORDER

THIS MATTER is before the Court on the People's Motion for Pretrial Detention of Defendant Jomar Encarnacion (hereafter "Defendant" or "Encarnacion"). A pre-trial detention hearing was held on the matter on June 28, 2010. For the reasons elucidated in the Court's Memorandum Opinion of even date, it is hereby

ORDERED that the People's Motion for Pretrial Detention of Defendant is **DENIED**; and it is further

ORDERED that the Court will set bail at \$250,000.00.

DONE and so **ORDERED** this 19th day of August 2010.



HAROLD W. L. WILLOCKS
Judge of the Superior Court

CERTIFIED TO BE A TRUE COPY

This 22 day of SEP, 20 10

VENETIA H. VELAZQUEZ, ESQ.

CLERK OF THE COURT

By [Signature] Court Clerk

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

By: [Signature]
Court Clerk Supervisor
Chief Deputy Clerk

Dated: 8/24/10

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

PEOPLE OF THE VIRGIN ISLANDS,

PLAINTIFF,

SX-10-CR-342

v.

JOMAR "CHIPPA" ENCARNACION,
DEFENDANT.

MEMORANDUM OPINION

(Dated August 11, 2010)

THIS MATTER is before the Court on the People's Motion for Pretrial Detention of Defendant Jomar "Chippa" Encarnacion (hereafter "Defendant" or "Encarnacion"). For the reasons that follow, this Court will deny the People's Motion for Pretrial Detention.

I. FACTUAL AND PROCEDURAL BACKGROUND

Investigation by the Virgin Islands Police Department revealed that on March 20, 2010, in the vicinity of Estate Castle Coakley, Christiansted, in the Judicial District of St. Croix, United States Virgin Islands the deceased Misael Morales (hereafter "Morales") was found murdered by a single gun shot wound to the back of the head. Detective Cureene Smith, employed as an investigator with the Criminal Investigation Bureau, St. Croix District, was assigned to the homicide of Morales. Detective Smith asserts that the evidence supports that Chyanne Trinidad, Co-Defendant (hereafter "Trinidad" or "Co-Defendant") and Encarnacion were hanging out together with Morales on the night of March 19, 2010. Morales was later found and reported murdered the following day. Based upon evidence uncovered during Detective Smith's investigation, the People charged Encarnacion with murder in the first degree as a principal. More specifically, the information alleges that Encarnacion, while aided and abetted by [Trinidad], unlawfully and with willful, deliberate and premeditated design, kill [Morales], a

human being, by shooting him with a firearm in the back of the head in violation of 14 V.I.C. § 922(a)(1) & 11(a). *Information People v. Chayanne Trinidad and Jomar "Chippa" Encarnacion at 4*. Immediately following Encarnacion's arrest and advise of rights, the People filed a motion to detain him without bail pending trial pursuant to Section 3 of the Revised Organic Act of 1954 as amended (ROA) and codified in 48 U.S.C. § 1561. In support thereof, the People also assert that based upon the instant charges and the facts of the case Encarnacion poses a great danger to the community, and is a flight risk. In opposition, Encarnacion argues that the People have clearly failed to meet the clear and convincing standard established in *Browne v. People*, 50 V.I. 241 (V.I.2008), *cert. denied*, No. 08-4186 (3d Cir.Oct.29, 2008). Encarnacion premises its argument chiefly on the fact that the People have offered no evidence beyond the self-serving hearsay statement of Trinidad, co-defendant that implicates Encarnacion to the murder of Misael.

II. ANALYSIS

"Section 3 of the [Revised Organic Act] governs the issue of pretrial detention for first degree murder defendants in local Virgin Islands courts, and title 5, section 3504a of the [Virgin Islands Code] 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 v. People*, 50 V.I. 241 (V.I.2008), *cert. denied*, No. 08-4186 (3d Cir.Oct.29, 2008). "Section 3 of the ROA mandates that Virgin Islands judges grant bail in sufficient sureties to all defendants other than those charged with first degree murder where the proof is evident or presumption great." [*Tobal v. People*, Crim No. 2009-070, 2009 WL 357975, at *7 (V.I. Feb. 11, 2009)].¹

¹ Section 3 of the Revised Organic Act ["ROA"], known as the "Bill of Rights," provides *inter alia*, 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 is great." The Revised Organic Act of 1984, § 3, 48 U.S.C. § 1561, *reprinted in* V.I. CODE ANN., tit. 1). By contrast, 5 V.I.C. § 3504a, titled "Detention prior to trial," purports to provide for the pre-trial detention of "person[s] charged with [the dangerous crimes of] murder in the first degree, rape in the

In *Browne*, the Supreme Court "established both the burden of proof and the standard of proof required to detain without bail a defendant charged with first degree murder." *Jalani Williams v. People*, Crim No. 2009-0111, 2010 WL 1565533, at *4 (V.I. April 19, 2010). "The burden of proof rests on the People to prove *clear and convincing evidence* that the defendant committed the crime of first degree murder." See *Jalani Williams* at *4 (citing from *Browne*, 50 V.I. at 260-63). However, "the purpose of the bail hearing is not to determine the ultimate question to be resolved at trial." *Jalani Williams* at *4 (citing from *Browne* at 262). Thus, in determining whether the evidence adduced at the pre-trial detention hearing is clear and convincing, this Court is mandated to "focus on the strength of the People's evidence rather than the defendant's ultimate guilt or innocence, see *Browne*, 50 V.I. at 262-63, and may not resolve direct conflicts as to inculpatory and exculpatory facts, see *Browne*, 50 V.I. at 266." *Id.*

Moreover, the *Jalani Williams*' Court expounds that 5 V.I.C. §§ 931-935, which govern the issue of the admissibility of hearsay evidence in local Virgin Islands courts, do not bar the admission of hearsay at pre-trial detention hearings." See *Jalani Williams* at *6. However, it aptly instructs that "when the People elect to present *exclusively* hearsay evidence at a pre-trial detention hearing, [this 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 statement when their accuracy is in question." *Jalani Williams* at *10.

At the hearing, the Government presented evidence through the testimony of Detective Cureene Smith. Detective Smith has been a police officer with the Virgin Islands Police Department for approximately eight (8) years and a detective assigned to the major crime unit for approximately three (3) years. On March 20, 2010, Detective Smith was dispatched on a call at

first degree, arson in the first degree, robbery in the first degree, burglary in the first degree, kidnapping for ransom, or drug trafficking." 5 V.I.C. § 3504a(a)(1).

about 7:00 a.m. to investigate a possible homicide in the vicinity of Plot 180 Old Coakley, St. Croix. She explained that upon her arrival to the scene she observed that a male individual laying on the ground with a single gunshot wound to his forehead². [The victim was later determined to be Misael Morales, Junior was found to be dead.] Her investigation further revealed—based upon an autopsy performed by Dr. Francisco Landrum, the forensic pathologist—that the cause of Misael Morales' death was a single gunshot wound to his head and that the manner of death was homicide.

At the crime scene, Detective Smith found on Morales' person a Cost U Less ID card and a check stub for approximately \$350.00 and some cents³. A pendant, identified by Misael's mother as being a pendant that Morales usually wore on a long gold chain around his neck, was also found in close proximity to his body. Statements obtained by Detective Smith from a Cost U Less manager further revealed that Morales had gotten paid and had cashed his check on March 19th (the day before he was murdered). Detective Smith testified that Morales pockets were turned inside out, no cash was found on him and his gold chain was missing. Smith also testified that W-1 upon questioning stated that after Morales finished work on the 19th he met her at Sunny Isles and gave her \$40.00 and told her that he was going to Peter's Rest to pay for a cell phone. Family members upon inquiry by Detective Smith that Morales was last seen in the El Sol Bar with Chayanne Trinidad. Through Detective Smith's testimony the Government established the existence of corroborative evidence obtained by the Forensic Department through subpoena prepared by the Attorney General's office of a recording by a surveillance camera at El Sol Bar showing Morales having drinks with Chayanne Trinidad on March 19, 2010. Trinidad was interrogated and during his initial interview Trinidad stated that on March 19, 2010 Morales

² Although Detective Smith testified that the gunshot wound was to the forehead all other statements appear to indicate that the gunshot wound was to the back of the head.

³ The amount of the check stub presented later in Detective Smith's testimony is actually \$375.03.

came to his residence to pay him the balance of the money for the cell phone and that after they left and went together to El Sol Bar. Trinidad made statements to Detective Smith that while at El Sol Bar Morales had told Trinidad that he was going to Castle Coakley to buy a bag of weed. Trinidad then told Detective Smith that Morales left El Sol Bar and that he [Trinidad] went to Sion Farm at around eight (8) p.m. Approximately a month later, Detective Smith interviewed Trinidad a second time. During the second interview Trinidad stated that while Morales and Trinidad were at the El Sol Bar, Encarnacion picked them up in his uncle's truck and drove them around for awhile. Encarnacion then drove them to his residence where he parked up his uncle's truck and they proceeded to walk through a shortcut. Trinidad also stated that while they were walking towards Castle Coakley Encarnacion told Trinidad that he was going to shoot Morales. Encarnacion who was walking behind of Morales then pulled out a .38 from his waist and shot Morales to the back of his head. Trinidad further stated that when Encarnacion had picked them up from El Sol Bar that Encarnacion had said that he was going to shoot somebody tonight. Trinidad upon interrogation described that weapon as a .38 with a brown, bronzish handle and that he had seen the gun before at Encarnacion's uncle' residence and that it was kept it in a dresser drawer.

During cross-examination of Detective Smith, the defense firmly established that absolutely no evidence has been uncovered to date on the murder weapon. It was clarified that neither a casing nor a projectile was ever found at the scene. Moreover, although Trinidad's statements to Detective Smith lead to the recovery of a .38 firearm at Encarnacion's uncle's residence, which is located in the rear of where Encarnacion lives, the police department has not yet had an opportunity to test the firearm for DNA or any other forensic evidence. Detective Smith likewise acknowledged that there is no evidence showing that Encarnacion's fingerprints are on the .38 seized from his uncle's residence. It was also clearly established that other than

Trinidad's prior hearsay statements to Detective Smith describing the .38 firearm found in Encarnacion's uncle's residence as being the murder weapon used by Encarnacion there is nothing that connects the .38 firearm seized and Encarnacion. Thus, there is obviously no forensic evidence produced at the hearing connecting the firearm seized by the police department at Mr. Soto's residence⁴ with this crime or with Encarnacion.

The Defense further established during cross-examination of Detective Smith that the first interview conducted of Trinidad by Detective Smith and Sergeant D. Herbert took place in April 2010 and that an affidavit had been prepared subsequent to the interview recording some of Trinidad's statements obtained during the interview. The Defense was also able to establish that the second interview conducted of Trinidad by Detective Smith and Sergeant Herbert was taken on approximately June 20, 2010. The Defense pointed out inconsistencies in Trinidad's statements. Trinidad had initially denied that he was at the murder scene of Morales during the course of his first interview, while during the second interview he said he was at the murder. The Defense also raised the issue that Trinidad during the first interview denied selling a Motorola cell phone to the alleged victim and during the second interview admitted to selling a cell phone to the alleged victim. The Defense also emphasized that Trinidad had in his first interview admitted that Morales had come to his house prior to the murder to pay him some money and that the police had discovered on Morales' person at the scene of the crime a check stub in the amount of three hundred and seventy-five dollars and change. The Defense also pointed at the fact that the video from the El Sol Bar showed Morales on the video drinking with Trinidad and Morales paying for the drinks in cash. The Defense also pointed out that at the scene of the crime that Morales' gold chain had been obviously taken off of him and that

⁴ Mr. Soto is Encarnacion's uncle.

according to statements made by Encarnacion to Detective Smith, Trinidad had sold the gold chain to a Hispanic guy.

The Defense also established from Detective Smith's testimony that Trinidad had confided that he had murdered Morales and threatened Encarnacion that he was going to murder Encarnacion if Encarnacion did not leave the island. Encarnacion told Detective Smith that Trinidad had taken him to the scene of the alleged murder. The Defense also established that Encarnacion has never declared that he was at the murder and watched Trinidad kill Morales. The Defense also pointed out that Encarnacion had made statements to Detective Smith regarding Trinidad's requesting ammunition from Encarnacion and that Encarnacion had provided .38 caliber bullets to Trinidad. Detective Smith's testimony also confirmed that Trinidad admitted that he had requested the bullets from Encarnacion.

The Defense established that Encarnacion has no other criminal contact prior to this case and no criminal record. Upon further cross-examination of Detective Smith the Defense also established that Encarnacion has strong family ties to the community.

Critically, Detective Smith upon questioning from the Court responded that the only connection that Encarnacion has to the murder of Morales is Trinidad's statement to Detective Smith and Sergeant Herbert stating that Encarnacion picked them up in his uncle's truck, a silver truck. Trinidad's statement that Encarnacion pulled out a .38 with a brownish or brownish handle. The fact that a .38 with a brownish, bronze handle was found at Encarnacion's uncle's residence, which is in the rear of where Encarnacion resides. There was also a statement by Morales' uncle that a truck had picked up Trinidad and Morales from El Sol Bar. Although Morales' uncle was unable to identify the person driving the truck or to give a clear description of the truck that he saw.

The Government relies on Encarnacion's ability to describe the murder scene as being probative of Encarnacion's involvement in the murder. In opposition, the Defense points out that according to Encarnacion's statements to Detective Smith, Encarnacion explained how he had learned from Trinidad about the murder of Morales and therefore able to describe the scene because Trinidad had taken Encarnacion to the scene in an attempt to find the pendant that had come off Morales' gold chain, which Trinidad had taken.

Accordingly, and based upon the testimony and evidence presented at the pre-trial detention hearing, the Court finds that the People have established the following facts relevant to proving that Encarnacion committed the crime of murder in the first degree, but finds that they plainly fail to rise to the clear and convincing standard:

1. Trinidad stated to Detective Smith that on March 19, 2010, Trinidad and Morales were picked up by Encarnacion at the El Sol Bar in Encarnacion's uncle's pickup truck.
2. Trinidad stated to Detective Smith that during ride in pickup truck Encarnacion said to Trinidad that he intended to kill someone.
3. Trinidad stated to Detective Smith that he, Encarnacion, and Morales got off the pickup truck and went on foot toward Castle Coakley and took a short cut through the bush by Bashment.
4. Trinidad stated to Detective Smith that as they were walking towards Castle Coakley, Encarnacion told Trinidad that he was going to kill Morales.
5. Trinidad stated that he saw Encarnacion follow Morales into the bush and shoot Morales with a .38 revolver.
6. Trinidad admits taking the cell phone from Morales after the shooting.

7. Encarnacion admits that he knew his uncle had a .38 caliber firearm in his room and that when Trinidad had previously asked Encarnacion for bullets for a .38 caliber Encarnacion had given Trinidad four bullets.
8. During the investigation, the police found a .38 caliber firearm in Encarnacion's uncle's house in the dresser drawer based upon Trinidad's statements to the police.
9. Encarnacion lives in front of his uncle's house where the .38 caliber firearm was found.
10. Encarnacion stated to Detective Smith that he was aware that Trinidad had sold Morales a phone and that Trinidad was mad because Morales had not paid in full and that he was being cheated by Morales.
11. After the shooting Encarnacion stated that Trinidad told him how he had shot Morales and killed him and threatened Encarnacion to leave the island or he was going to kill him too.
12. Encarnacion stated that Trinidad told him that he had sold Morales' gold chain to a Hispanic man.
13. Encarnacion stated that Trinidad described in detail to Encarnacion how he shot Morales and how he fell to the ground.
14. Encarnacion told police that Trinidad took him to the scene where Morales was shot and showed him the blood on the ground and described how he followed him through the bush and shot him in the back.
15. Encarnacion told police he looked in the area along with Trinidad for the gold pendant that was on Morales' gold chain when he was killed but could not find it.

16. The gold pendant had been recovered by police at the crime scene on March 20, 1010, the day they found Morales' dead body.

The Court finds that the *only* evidence adduced at the pre-detention hearing—introduced through the testimony of the Government's sole witness, Detective Smith—that actually implicates Encarnacion to the murder of Morales were the hearsay statements of Trinidad, his co-defendant made to the police. This fact clearly raises the *Jalani Williams* issue and, thereby, imposes on this Court the duty to ascertain the underlying "reliability" of Trinidad's hearsay statements where their accuracy are in question. In so assessing, therefore, it is critical that the Government fatally failed to present any materially relevant evidence sufficiently corroborating Trinidad's statements. Statements by Morales' Uncle regarding witnessing that Trinidad and Morales had been picked up by a truck without any further descriptive statements identifying Encarnacion as the driver or the color or make of the truck does not sufficiently corroborate Trinidad's hearsay statements. Thus, the fact that Morales' Uncle was unable to describe the truck they saw sufficiently to identify that it was in fact Encarnacion's Uncle's truck indicates that the evidence does not rise to the level of clear and convincing standard necessary to connect Encarnacion to the murder of Morales. Moreover, the fact that the police uncovered a .38 firearm at Encarnacion's Uncle's house without any additional evidence—other than Trinidad's hearsay statement connecting the weapon with Encarnacion—likewise fails to sufficiently corroborate Trinidad's hearsay statements made to the police during his interrogation. Accordingly, in the absence of any additional materially relevant evidence sufficiently corroborating Trinidad's statements and thereby substantially connecting Encarnacion to the murder of Morales, the Court finds that Trinidad's hearsay statements are *not*—standing alone—sufficiently "reliable" to meet the clear and convincing standing required under *Browne* and *Jalani Williams*.

II. CONCLUSION

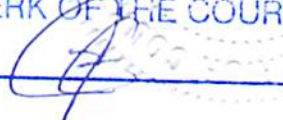
For the foregoing reasons, the Court finds that the People's evidence adduced at the pre-trial detention hearing *fails* to sufficiently meet the standard of clear and convincing evidence established in *Browne* and expounded in *Jalani Williams* with respect to the People's reliance on hearsay statements exclusively.

Dated: August 19 2010 
HAROLD W. L. WILLOCKS
Judge of the Superior Court

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

By: 
Court Clerk Supervisor
Chief Deputy Clerk

Dated: 8/24/10

CERTIFIED TO BE A TRUE COPY
This 22 day of SEP 20 10
VENETIA H. VELAZQUEZ, ESQ.
CLERK OF THE COURT
By  Court Clerk