



**PRESS RELEASE**  
**(May 24, 2010):**

**SUPERIOR COURT JUDGES AND MAGISTRATES FOLLOW LAW, AS SET FORTH BY THE REVISED ORGANIC ACT, LOCAL STATUTES AND THE VIRGIN ISLANDS SUPREME COURT, IN SETTING BAIL AND DETENTION**

In a press release issued Saturday, May 22, 2010, the Honorable John P. DeJongh, Jr. reported a shooting at Canegata Ball Park that left three(3) innocent victims wounded. While such levels of violence in any community is troubling, it was also disturbing that the Executive Branch has attempted, without accurate facts, to lay blame for the incident upon the Judiciary.

The Court, and any other Government official, is prohibited by law from publicly discussing the specifics of this case or any juvenile matter, in accordance with 5 V.I.C. Sections 2527-2529. However, the Executive Branch's press release suggesting that the offender of Friday's shooting was a 17- year old minor who was on "house arrest" on St. Thomas, is inaccurate.

Moreover, the Governor's proposal that "defendants must be detained pending trial and the practice of pretrial release must end " is contrary to law. Significantly, judges and magistrates, as well as members of the Executive and Legislative Branches, take an oath of office and are required to follow the law. The laws include not only the Revised Organic Act and Virgin Islands statutes, as enacted by the Legislature, but also case law as developed by the Virgin Islands Supreme Court or other higher courts interpreting those statutes. These laws must be adhered to by all, whether we agree with the laws or the interpretation of those laws.

In this regard, the Supreme Court of the Virgin Islands made clear in *Tobal v. People of the Virgin Islands*, 51 V.I. 147, 161 (V.I. 2009) that the only crime for

## **SUPERIOR COURT PRESS RELEASE**

**May 24, 2010**

**Page 2 of 3**

which one can be detained without bail pending trial is first degree murder-- not rape, robbery, witness intimidation, or even attempted murder. Further, detention for first degree murder is only permitted where the “proof is evident or the presumption is great” that the defendant committed the murder. This evidence must be developed at a detention hearing through reliable evidence, as the V.I. Supreme Court explained recently in *Williams v. People of Virgin Islands*, S. Ct. Crim. 2009-0111 (April 19, 2010). The likelihood that the defendant committed the murder must be shown by clear and convincing evidence, based on the evidence presented by the Attorney General, before a judge may detain even one held for first-degree murder.

### **DETENTION OF DEFENDANTS**

On February 11, 2009, the Supreme Court of the Virgin Islands issued an opinion in which it ruled that “a defendant may no longer be detained pending trial pursuant to title 5, section 3504a of the Virgin Islands Code...and a judge may not deny bail completely upon finding that the defendant presents a flight risk or a danger to the community.” Prior to that decision, in *Tobal v. People of the Virgin Islands*, 51 V.I. 147, 161 (V.I. 2009), the Superior Court made detention decisions based on the defendant’s danger to the community or risk of flight, as established by the Attorney General at a detention hearing.

In *Tobal*, bail was originally set at \$500,000. However, after a detention hearing, the judge determined that there was sufficient evidence to revoke bail and have the defendant detained until trial. On appeal, the Supreme Court of the Virgin Islands reversed the order of the judge of the Superior Court and remanded the case to the trial judge to determine bail for Tobal with sufficient sureties. The Supreme Court of the Virgin Islands determined that the trial judge’s decision to detain Tobal without bail pending trial was not supported by the Virgin Islands Supreme Court’s interpretation of the law. In its opinion, the Supreme Court of the Virgin Islands ruled that the Legislature of the Virgin Islands lacked the authority to enact the detention provision of title 5, section 3504a of the Virgin Islands Code; that “the appropriate provisions of the BRA [Bail Reform Act] merely guide trial judges with respect to *release* of defendants pending trial, but not with respect to the *detention* of such defendants”, and cited section 3 of the Revised Organic Act of 1954, as amended, which allows for bail with sufficient sureties for all defendants except those defendants charged with first degree murder or any capital offense when the proof is evident or the presumption great.

Prior to the Supreme Court’s decision in *Tobal*, the judges of the Superior Court relied heavily on the Bail Reform Act and title 5, section 3504a of the Virgin Islands, to support the detention of all defendants. However, in light of the *Tobal* decision, the judges and magistrates are now required to apply the law as interpreted by the Supreme Court of the Virgin Islands and grant bail, with sufficient sureties, to all defendants except those charged with first degree murder.

## **SUPERIOR COURT PRESS RELEASE**

**May 24, 2010**

**Page 3 of 3**

In its decision, the Supreme Court of the Virgin Islands reiterated that a judge may consider the defendant's flight risk or danger to the community only for the purpose of determining the sufficiency of the sureties in setting bail and the conditions to be imposed, but held that defendants cannot be detained pending trial **EXCEPT** for those defendants charged with murder in the first degree. (*See also Williams v. People of the Virgin Islands*. S. Ct. Crim. No. 2009-0111 (April 19, 2010), in which the V.I. Supreme Court reiterated that 5 V.I.C. §3504a(b) cannot be relied upon for the purpose of determining detention but upheld the provisions of that statute governing the conduct or procedures for detention hearings.)

As a result of the appellate court's decisions in *Tobal, Browne and Williams*, a trial judge must grant bail and cannot detain defendants charged with most offenses. The defendant's danger to the community or risk of flight are no longer factors that may be used to decide to detain. Rather, such factors may only be used to aid in deciding the amount of bail that may be set. (It should be noted that there are still other laws restricting a judge from setting an excessively high bail for bailable offenses). Additionally, as a result of the V.I. Supreme Court's decisions, a trial judge may detain individuals only if they are charged with first-degree murder and only if the Government (Attorney General's office) can produce sufficient evidence to establish, by clear and convincing evidence, that there is a strong presumption that the individual committed the murder. These are the facts.

### **APPLICATION OF THE LAW**

The judges and magistrates of the Superior Court do not make the laws. They are responsible for applying the law. All of the nine judges and four magistrates individually hear the cases assigned to them. Based on the evidence presented to them by both the prosecutors and defense attorneys, judges and magistrates are required to render decisions based on the facts and the law. The law, however, places a restriction on what a judge or magistrate can actually order or impose.

Moreover, the decisions of the Superior Court may be challenged by an immediate appeal to the appropriate forum. However, the independence of judges making those decisions has long been respected, under the principles of judicial independence. Judicial independence is the foundation of the judiciary and judicial integrity. Based in part on the separation of powers doctrine, the principle of judicial independence is an important principle in assuring the community that judicial decisions are free from public opinion, political influences or directions from the other two branches of government. In sum, the current "law" only allows for the pretrial detention of those defendants charged with first degree murder and only where the presumption of guilt is great. That is the law on which all decisions by judges and magistrates must now be based, given the interpretation by the V.I. Supreme Court.

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