

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

PEOPLE OF THE VIRGIN ISLANDS,	)	CASE NO. SX-07-CR-041
	)	
Plaintiff,	)	CHARGES: RAPE IN THE FIRST
	)	DEGREE (TWO COUNTS); ASSAULT IN
v.	)	THE FIRST DEGREE (THREE COUNTS)
	)	
TEDDY B. SMITH,	)	
	)	
Defendant.	)	
	)	

MEMORANDUM

BEFORE THE COURT is Defendant Teddy B. Smith's Renewed Motion for Judgment of Acquittal. A jury found Smith guilty of one count of assault with intent to commit rape. The jury found Smith not guilty on four related counts: two counts of first-degree rape and two counts of assault with intent to commit rape. Smith argues that the People failed to present sufficient evidence of his intent to commit rape by means of force or fear. For the reasons stated below, the Court will deny Smith's motion and affirm the jury's verdict.

I. PROCEDURAL BACKGROUND

In February 2007, J.D., a female, reported that Smith had sexually assaulted her at her home on three separate occasions in January and February 2007. (*See generally* Information, filed Feb. 14, 2007.) Accordingly, the People brought six charges against Smith. *Id.* Regarding the first two alleged incidents, the People charged Smith with first-degree rape, in violation of title 14, section 1701(2) of the Virgin Islands Code. *Id.* at 1-2. Regarding the third alleged incident, the People charged Smith with aggravated rape in the first-degree, in violation of title 14, section 1700(b) of the Virgin Islands Code. *Id.* at 4.¹ Regarding all three alleged

¹ Counts V and VI appear on the third page of the Information, but the Information's pagination inadvertently skipped to page four. (*See generally* Information, filed Feb. 14, 2007.)

incidents, the People also charged the lesser-included offense of assault with intent to commit rape, a violation of title 14, section 295(3) of the Virgin Islands Code. *Id.* at 1-4.

Jury selection and trial commenced in November 2010.² Four witnesses testified on behalf of the People: the complainant, the complainant's brother, the complainant's sister-in-law, and a police officer. At the close of the People's case, Smith moved for judgment of acquittal on the charges of first-degree rape and first-degree assault regarding the second alleged incident and the charges of aggravated rape and first-degree assault regarding the third alleged incident. (R. of Proc. 2, filed Nov. 9, 2010.) The Court granted Smith's motion and acquitted him of aggravated rape, but denied the motion as to the other charges. *Id.* In response to the Court's ruling, the People filed an Amended Information to remove the aggravated rape charge and substitute the remaining charge in its place. (2d Am. Info., filed Nov. 10, 2010.³)

During the defense stage, Smith called a police officer and himself to testify. Smith admitted to having had sex with J.D. and to having hit J.D. during the third alleged incident, but denied ever raping or assaulting J.D. with intent to commit rape. According to Smith, any sexual encounters were consensual. After the defense rested, the People recalled the complainant's brother to rebut Smith's testimony. After the parties rested, Smith renewed his motion for judgment of acquittal regarding the charges from the second and third alleged incidents. The Court reserved ruling and submitted the case to the jury. Per Smith's request, the Court also submitted to the jury the lesser-included offense of simple assault and battery.

² This matter initially came on for jury selection and trial in August 2010, but later discharged the jury when a mistrial was declared. (*See generally* Mem. Op., entered Nov. 8, 2010.)

³ On November 10, 2010, the People filed an Amended Information as well as a Second Amended Information shortly thereafter in order to correct typographical errors. (*See* Amend. Information, filed Nov. 10, 2010; 2d Amend Information, filed Nov. 10, 2010.) Thus, the final charging document was titled Second Amended Information.

The jury returned a verdict of not-guilty as to the charges, including the lesser-included offenses, stemming from the first and second alleged incidents. The jury returned a verdict of guilty, however, as the charge stemming from the third alleged incident: assault in the first degree. After the jury was discharged, Smith again moved for judgment of acquittal regarding his conviction for assault with intent to commit rape. The Court ordered the parties to submit arguments in writing. For the reasons stated below, the Court will deny Smith's motion for judgment of acquittal and affirm the verdict.

II. FACTUAL BACKGROUND

The Complainant, J.D., testified that she and Smith went to high school together. (Trial Tr. 7:4, Nov. 9, 2010.) They knew each other casually but were not close. *Id.* at 7:8-11. In early January 2007, J.D. and Smith crossed paths when Smith spotted her outside a Cingular store in the Sunny Isles Shopping Center, in Christiansted, St. Croix. *Id.* at 6:8-7:2. J.D. was shopping for a cell phone. *Id.* at 8:12-13. After Smith called to her, they "hug[ged] as usual." *Id.* at 38:2-5. She and Smith talked for a few minutes. *Id.* at 7:14-16. Smith then asked J.D. for her home telephone number. *Id.* at 7:18. J.D. gave it to him, but not before reminding him that she had given him her telephone number twice before. *Id.* at 7:18-20.

A few days later, Smith phoned J.D. *Id.* at 8:11. He asked what she had been doing at the Cingular store. *Id.* at 8:11-12. J.D. explained that she was shopping for a cellphone, but left without purchasing one. *Id.* at 8:12-13. Smith said that he had an extra cellphone and offered to let J.D. use it. *Id.* at 8:14-15. J.D. accepted but only if there were "no strings attach[ed]" *Id.* at 8:25. Smith "agreed and said no strings [were] attach[ed]." *Id.* at 8:25-9:1.

Smith called J.D. shortly thereafter to find out when he could bring the cell phone over. *Id.* at 9:6-8. J.D. gave Smith her address and asked him to bring the phone to her at her home. *Id.* at 9:9-10. When Smith arrived, he and J.D. "spoke outside for a while" *Id.* at 9:15. J.D. then offered Smith a drink and invited him in; they sat and talked for about two hours. *Id.* at 9:16-20. Smith left some time later. *Id.* at 9:19-20.

J.D. testified that she and Smith did call each other after she borrowed his cell phone. *Id.* at 40:21-22, 41:2-10. "Most of the conversations that [they] had was on the house phone," however. *Id.* at 41:9-10. After a while though Smith began calling her "[e]very day; sometimes three, four times for the day." *Id.* at 10:17-18. Smith called not only "on the cell phone, [but] on the house phone and at work." *Id.* at 10:20-21. J.D. testified that Smith knew she did not appreciate the volume of his calls. *Id.* at 9:20-25.

From J.D.'s testimony, Smith visited J.D. at her home on at least five occasions during the time in question. During his first visit, Smith dropped-off the cellphone. During his second visit, Smith allegedly raped and assaulted J.D. for the first time. Regarding the first alleged incident, J.D. testified that Smith just showed up at her door. *Id.* at 11:15-17. Smith had been "cursing and calling [her] bitch, whore," but had called that morning to "apologize for how he was acting." *Id.* at 11:21, 13. When she saw him, J.D. refused to open the door. *Id.* at 11:16-17. Smith threatened "to pull a scene and that is when [she] opened the door." *Id.* at 11:18. Soon after letting him in, Smith asked J.D. "to have sex with him." *Id.* at 12:14. When J.D. refused, Smith demanded oral sex which she also refused. *Id.* at 12:15-17. J.D. testified that Smith then called her a bitch and a whore, informed her that she didn't know who she was messing with, and demanded she return his phone. *Id.* at 13:1-7. When she tried to return the phone, Smith grabbed her, pushed her on the floor, and assaulted her, J.D. testified. *Id.* at 13:6-

14:8. Smith departed approximately an hour later but only after J.D. convinced him she had calmed down. *Id.* at 14:17-20.

When Smith tried to visit a third time, J.D. testified that she hid, pretending to not be home. She said that she “just happen[ed] to look out the window and there he was coming up by the gate. . . . So [she] ran into the bedroom, ran into the bathroom, and . . . fit [her]self in between the bidet and the toilet and put her daughter between [her] legs and cover[ed] her mouth and [told] her to be quiet.” *Id.* at 15:19-16:7. Smith left only after J.D. telephoned her brother, who returned home while Smith was outside, and asked him to tell Smith she was not home. *Id.* at 16:23-25.

During Smith’s fourth visit, the second alleged incident occurred. As J.D. walked out on her porch, Smith was coming up the steps. *Id.* at 18:1-4. When asked what he was doing there, Smith told J.D. “[h]e had to see his woman.” *Id.* at 18:5. According to J.D., when she told Smith she was not “his woman,” Smith grabbed her and forced her inside. *Id.* at 18:6-8. When she tried to resist, Smith threatened to hit her. *Id.* at 18:9. J.D. testified that shortly after she let Smith in the house, Smith asked J.D. for sex. *Id.* at 18:14. J.D. testified she refused due to her menstruation. *Id.* at 18:15-16. Smith disbelieved her, began calling her names, asked for oral sex, removed her pants and underwear, smelled her underwear and her pad, and then inserted his finger insider her. *Id.* at 19:3-17. J.D. testified that Smith then sexually assaulted her for the second time. *Id.* at 19:17-20:22.

The third and final alleged incident occurred on Smith’s fifth visit, discussed below. When Smith’s attorney questioned J.D. on cross-examination about the number of visits, however, J.D. noted additional visits:

Q: That’s five occasions?

A: Yes, but there are more occasions that he –

Q: There were more occasions?

A: Yes.

Q: No assaults took place; right?

A: No assault took place.

Id. at 43:9-14.

Regarding the third alleged incident, J.D. testified that Smith had arrived at her home unannounced one morning when she was returning home from work. J.D. could not recall precisely, but either “[h]e was already on the porch waiting for [her], or while [she] was getting in the house he was coming up the porch.” *Id.* at 22:1-3. J.D. testified that

I told him the stuff that he is doing to me has to stop. We need to talk and it has to stop. I let him in. I let him in and he sat on the sofa and I sat on the love seat. . . . I was telling him I don’t want to be with him. We are not together. Why is he acting like that?

At one point he got really quiet. Didn’t say anything. Then he just ask me for his cell phone. I said, okay. I got up[,] went and got the cell phone in the bedroom. While I was looking for the charger he ran into the bedroom grabbed the cell phone and told me I am deleting numbers off of the cell phone. I told him I am not deleting numbers because your number is the only one. He took the cell phone and he threw it on the floor first and pick it back up and threw it against the wall and it broke into pieces and trying to calm him down I told him, you know, you can’t be doing that. Why are you doing that?

Then I walk out the bedroom in the hallway. He started to punch me and I just punch him and I went into the living room to check on my daughter and I was sitting down and that is when he asked me for sex. I told him no. I told him no I will not have sex with you.

Id. at 22:3-25. J.D. then testified that Smith directed her to go take a shower. *Id.* at 23:3. When she refused, “[h]e grabbed [her] and started to take off [her] clothes.” *Id.* at 23:6-7. At that, she told him she “will do it [her]self. [She] went in the bathroom take off [her] clothes and jumped in the shower” *Id.* at 23:7-9. Smith thought her shower was too quick, however, so he told her to take another shower. *Id.* at 23:12-13. After drying off from the second shower, Smith took J.D. to her bedroom where he asked her to perform oral sex. *Id.* at

23:16-18. At the time of the incident, she was wearing only a towel. *Id.* at 53:3-4. When she refused his request, J.D. testified that Smith “threatened [her], you know, [that] he would shoot [her].” *Id.* at 23:21-22. J.D. testified that she complied with Smith’s demand. *Id.* at 23:22. When she complained that her mouth began to get sore, Smith then penetrated her vaginally. *Id.* at 23:23-24:8. He did not ejaculate, however. *Id.* at 24:9-10. J.D. could not recall the duration of the third incident. *Id.* at 24:12.

After the incident ended, J.D. testified that she reminded Smith of an appointment he said he had later that day. *Id.* at 24:16-17. Smith asked J.D. to fill out the paperwork he needed for the interview. *Id.* at 24:20-24. About an hour after J.D. completed the form, Smith got dressed and left. *Id.* at 54:11-15. “[N]o more than two minutes [later] the phone rang and [Smith] asked [J.D.] . . . to com[e] back to have sex because he did not [ejaculate].” *Id.* at 24:25-25:2. J.D. testified that told him she would come by his house later. Immediately after ending the call with Smith, J.D. telephoned her brother to ask about getting a restraining order. *Id.* at 25:8-9. J.D. testified that she “told [her brother] about the incident that happened” *Id.* at 25:10. J.D. later reported what happened to the police.

Later that day, the police took J.D. to the hospital where she was examined. *Id.* at 29:20-23. When asked at trial what her injuries were, J.D. testified: “[b]ruises.” *Id.* at 31:15. She could not recall any other injury. *Id.* at 31:18-19. In addition to J.D.’s testimony, the People also moved into evidence four photographs taken at the hospital depicting bruises to J.D.’s right arm and shoulder, and back. (*See generally* People’s Ex. 1-2, & 4.) Medical records were not admitted nor did a treating physician testify.

III. ANALYSIS

The court must grant a defendant's motion for judgment of acquittal where "the evidence is insufficient to sustain a conviction." Fed. R. Crim. P. 29(a) (applicable via Super. Ct. R. 7). The court must evaluate the evidence at the stage of the proceeding when the motion is made. *See* Fed. R. Crim. P. 29(b). In evaluating a motion for judgment of acquittal, the court must "consider[] the evidence as a whole, taken in the light most favorable to the government, together with all legitimate inferences to be drawn therefrom, to determine whether a rational trier of fact could have found guilt beyond a reasonable doubt." *Gov't of the V.I. v. Joseph*, 770 F.2d 343, 345 (3d Cir. 1985). The court is not called upon to assess witness credibility or weigh evidence. *Id.* at 348. Instead, if "the conclusion be reached that a reasonable doubt must exist in the mind of a reasonable juror, acquittal must be granted." *Id.* at 345 (citations omitted). The jury's verdict must be sustained, however, "if any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Williams v. People of the V.I.*, No. S. Ct. Crim. 2007-0008, 2011 WL 4072738, *1, *7 (V.I. Sept. 12, 2011) (internal quotation omitted).

a. Judgment of Acquittal: Aggravated Rape

At the close of the People's case-in-chief, Smith moved for judgment of acquittal, challenging, *inter alia*, the sufficiency of the evidence admitted to prove aggravated rape. Under Virgin Islands law, a person is guilty of aggravated rape when, in the course of an act of rape, he "causes personal injury to a victim" V.I. Code Ann. tit. 14, § 1700(b) (1996 & Supp. 2011.) Personal injury is defined as "serious bodily injury, disfigurement, chronic pain, disease, or loss or impairment of a sexual or reproductive organ." *Id.* § 1699(a). Smith claimed the People failed to prove J.D. suffered any personal injury as defined by statute.

Bruises, he asserted, do not rise to the level of serious bodily injury, disfigurement, or impairment of a sexual organ as a matter of law. The People conceded as much. The Court orally granted Smith's Rule 29(a) motion. Pursuant to Superior Court Rule 5, that ruling is now reduced writing herein.

b. Judgment of Acquittal: First-Degree Assault

Under Virgin Islands law, a person commits assault in the first degree when he assaults another with the intent to commit rape, sodomy, mayhem, robbery, or larceny. V.I. Code Ann. tit. 14, § 295(3) (1996). Smith was found guilty of one count of assault with intent to rape. To prove assault with intent to commit rape the People had to show:

- (1) that the defendant made an assault upon the complainant; and
- (2) that he did so with specific intent to have intercourse with the complainant; and
- (3) that he intended to achieve penetration of the complainant's sexual organs against her will and by using such force or threat of force as might be necessary to overcome resistance or make further resistance useless.

Gov't of the V.I. v. Greenidge, 600 F.2d 437, 439 (3d Cir. 1979) (citing *United States v. Bryant*, 420 F.2d 1327, 1336 (D.C. Cir. 1969)). Here, to prove Smith assaulted J.D. with the intent to rape her, the People had to prove beyond a reasonable doubt: (1) that Smith assaulted J.D.; (2) that when Smith assaulted J.D. he had the specific intent to have intercourse with her; and (3) that Smith intended to achieve penetration of J.D.'s sexual organs against her will by force or by threatening to use force to overcome any resistance.

Smith argues that "there is insufficient evidence from which a reasonable jury could have concluded that [he] had a *specific intent* to achieve non-consensual intercourse with the Complainant *at the time he assaulted her* in the hallway." (Acq. Mot. 3 (emphasis added).) Smith argues that "[i]t was only after the two of them had gone back into the living room that

[he] mentioned or demanded sex.” *Id.* at 2. The requisite *mens rea* is lacking here, Smith claims, because the physical altercation preceded the intent to rape. In opposition, the People assert “[i]t is disingenuous for Defendant to argue that because the assault took place in the hallway, and the sexual act occurred in the bedroom, that the jury could not find that the defendant did not assault J.D. with the intent to have sexual intercourse with her against her will.” (People’s Resp. to Def. Renew. Mot. for J. of Acq. 3, filed Dec. 30, 2010.) Smith’s intent to rape J.D. can be inferred, the People argue, “through his actions, namely, that he disrobed, and his statements to J.D., to ‘suck his dick,’ that she was his woman, and that they were going to ‘have sex,’ and that actual penetration did then occur.” *Id.* at 3. The People highlight that “J.D. testified that not only was she physically struck by the Defendant, [but] that he threatened to shoot her, that she was in fear, and that he then did rape her.” *Id.* Smith never filed a reply to the People’s opposition.

The testimony before the jury revealed that Smith presented himself at J.D.’s residence where J.D. told Smith that she wanted him to stop what he was doing given the totality of her trial testimony having forcible sex with her. She did not want a sexual relationship with him. In response, Smith demanded the return of his cellphone, then came after her, punched her, and demanded sex from her. Smith further threatened to forcibly disrobe and bathe J.D., which was punctuated with his threatening to shoot her.⁴ The culmination of this was the sexual intercourse that followed.

Smith has not pointed the Court to any authority sequencing the elements of this crime. Specific intent crimes do require a temporal connection between the acts and the mental state.

⁴ Neither party presented testimony regarding any weapon on Smith’s person during the third alleged incident or the access, if any, he might have had to firearms in general. In fact, according to J.D.’s testimony, at the moment Smith threatened to shoot her, he was, at the most, wearing boxers, thus casting doubt on the believability of that particular threat.

The more time passes the less tenable the criminal mental state. Here, however, the lapse of time between the punches in the hallway and Smith's request for sex was minimal—a few seconds at least, maybe minutes at most. A reasonable juror could have concluded that Smith punched J.D. to make her more compliant when he asked for sex moments later. “The law recognizes that . . . issues of intent . . . can seldom be proven with direct evidence and must necessarily be inferred from the objective facts of the case . . .” *Rosa v. Gov't of the V.I.*, 48 V.I. 513, 517 (D.V.I. App. Div. 2006). “[A]lthough the actor's intent cannot be inferred from the mere fact of the assault, it is well-settled that the nature or character of an assault . . . are factors that may support a jury inference of intent.” *Davis v. Gov't of the V.I.*, 48 V.I. 860, 878 (D.V.I. App. Div. 2007), *rev'd on other grounds*, *Gov't of the V.I. v. Davis*, 561 F.3d 159 (3d Cir. 2009). Here, it was not unreasonable for the jury to see the third incident as one continuing sequence of events. Although the jury acquitted Smith of all charges involving the first and second alleged incidents, the jury did hear testimony regarding all incidents and could have considered J.D.'s entire testimony. Acquitting Smith of all charges, including simple assault and battery, regarding the first two incidents might be inconsistent with finding Smith guilty of first-degree assault regarding the third incident. However, “[c]onsistency in the verdict is not necessary. . . . [and] verdicts cannot be upset by speculation or inquiry into such matters.” *Dunn v. United States*, 284 U.S. 390, 393 (1932). *Cf. Yeager v. United States*, 129 S.Ct. 2360, 2362 (2009) (“a logical inconsistency between a guilty verdict and a verdict of acquittal does not impugn the validity of either verdict.”) (citing *Dunn*). *See also Gov't of the V.I. v. Martinez*, 620 F.3d 321, 332 (3d Cir. 2010) (“Hypothesizing about contradictory jury verdicts does not afford a basis for reversing a conviction on sufficiency-of-the-evidence review.”). “[T]he basis for the inconsistency may be in the jury's lenity leading to the acquittal

rather than in the conviction” *Gov’t of the V.I. v. Edwards*, 903 F.2d 267, 271 (3d Cir. 1990).

Even assuming, *arguendo*, the correctness of Smith’s sequencing of the requisite elements, his approach ignores the statutory definition of assault. Unlike other jurisdictions, the Virgin Islands has not merged the crime of assault with the crime of battery. *See, e.g., Gov’t of the V.I. v. Knowles*, 20 V.I. 94, 96 (Terr. Ct. 1983) (“Many jurisdictions have eliminated the somewhat confusing distinction between Assault and Assault and Battery by eliminating the latter term Assault and Battery and assimilating both common law actions of assault, the threat of violence, and battery, a harmful or offensive contact, into the offense of Assault.”). Under Virgin Islands law, a criminal assault occurs whenever someone either “*attempts to commit a battery; or makes a threatening gesture showing in itself an immediate intention coupled with an ability to commit a battery*” V.I. Code Ann. tit. 14, § 291 (1996) (emphasis added). Technically-speaking, the jury could have found that Smith committed multiple “assaults” on the date in question. For example, when J.D. refused sex, Smith grabbed her and began removing her clothes. When J.D. refused to take a shower, Smith threatened to wash her himself. The jury could have concluded that Smith threatened to disrobe J.D. or to wash J.D. with the intent of achieving intercourse. Thus, the jury had before it testimony of multiple “assaults” coming after Smith’s request for sex that may have supplied the jury with the basis for finding Smith assaulted J.D. with intent to rape her.

IV. CONCLUSION

For the reasons stated above, Defendant Teddy B. Smith’s motion for judgment of acquittal as to the charge of aggravated rape is granted. Smith’s motion for judgment of

acquittal as to the charge of assault with intent to commit rape is denied. An appropriate order follows.

DONE AND SO ORDERED this 15th day of December, 2011.

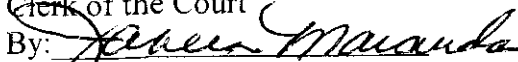


DARRYL DEAN DONOHUE, SR.
Presiding Judge of the Superior Court

ATTEST:

VENETIA H. VELAZQUEZ, Esq.

Clerk of the Court

By: 

Court Clerk Supervisor

Dated: 12/1/11