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NOT FOR PUBLICATION

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

PEOPLE OF THE VIRGIN ISLANDS,
PLAINTIFF,

SX-10-CR-342

v.

JOMAR ENCARNACION,
DEFENDANT.

MEMORANDUM OPINION

THIS MATTER comes before the Court on Defendant Jomar Encarnacion's (hereinafter "Encarnacion") Motion to Acquit or in the Alternative for a New Trial, filed on July 15, 2014. The People of the Virgin Islands (hereinafter "the People") filed their Opposition to Encarnacion's Motion on July 29, 2014. Encarnacion's Reply to the People's Opposition was filed on September 4, 2014. For the reasons set forth, the Court shall deny Encarnacion's Motion to Acquit and grant his Motion for a New Trial.

I. FACTUAL AND PROCEDURAL HISTORY

After turning off her television on the night of March 19, 2010, Ms. Camella Nisbett, a resident of Estate Castle Coakley, heard a shot fired sometime between 9:00 p.m. and 9:15 p.m. The next day the body of Misael Morales was found in a vacant lot in the vicinity of Castle Coakley. Morales died from a single gunshot wound to the head.

On June 15, 2010, the People charged Encarnacion and his then co-defendant, Chayanne Trinidad, with the murder of Morales. The Information filed by the People charged both defendants with one count each of Conspiracy to Commit Murder/Principal in violation of Title

14, Sections 551(1) and 11(a) of the Virgin Islands Code; Murder First Degree/Principal in violation of Title 14, Sections 921, 922(a)(1)(2), and 11(a); Robbery First Degree/Principal in violation of Title 14, Sections 1863(1)(2) and 11(a); Reckless Endangerment First Degree/Principal in violation of Title 14, Sections 625(a) and 11(a); and Unauthorized Possession of a Firearm During the Commission of a Crime of Violence/Principal in violation of Title 14, Sections 2253(a) and 11(a). In addition to the aforementioned charges, Chayanne Trinidad was also charged with False Reporting, in violation of Title 14, Section 2145(c) and Interfering with an Officer Discharging His Duties in violation of Title 14, Section 1508.

On December 9, 2010, the People moved to bifurcate the trials of Encarnacion and Trinidad because they had both made incriminating statements regarding each other. This Court granted the People's Motion on June 17, 2011. On February 28, 2012, Chayanne Trinidad entered into a plea agreement with the People. As a result of the plea agreement, Trinidad pled guilty to False Reporting in the Third Degree and, in exchange, the People dismissed the remaining charges against him with prejudice. The Information in Encarnacion's case was later amended to eliminate all of the language and counts that referred to Trinidad either as Principal or Defendant and to remove the charge of Conspiracy to Commit Murder.

Jury selection and trial in this matter began on June 23, 2014 and ended on July 1, 2014. The facts presented at trial indicate that Morales was last seen with Trinidad at El Sol Bar. According to the testimony of Jenelle Stapleton, Morales' girlfriend, Morales had bought an HTC phone from Trinidad and planned to meet with him that day to pay him the balance. Trinidad later confirmed this through his testimony.

At trial, Trinidad, the People's key witness, testified that Morales came to his house and paid him for the phone. The two stayed at Trinidad's house for an hour or two and smoked marijuana, then left the house together and walked to El Sol. According to Trinidad, Encarnacion later showed up at El Sol in his uncle's truck and the three of them, Trinidad, Morales, and Encarnacion, left El Sol together. Trinidad testified that while in the truck he saw a gun, the same gun he had seen before in Encarnacion's uncle's room. Trinidad also stated that Encarnacion talked about wanting to kill someone, but Trinidad and Morales did not take him seriously.

After leaving El Sol, Trinidad stated that he, Morales, and Encarnacion went to Christiansted town, then Salt River, then back to Encarnacion's home where they decided to go buy marijuana in Castle Coakley. Trinidad then explained how Morales was killed while the three of them walked through a vacant lot in Castle Coakley. Trinidad also identified Encarnacion as the person who fired the fatal shot and identified the .38 caliber gun used to shoot Morales.

Dr. Francisco Landron testified as an expert witness on behalf of the People. In his testimony, Dr. Landron stated that no bullet was recovered at the scene of the crime because Morales had an exit wound. Dr. Landron also testified that he was not able to associate the wound with any particular gun.

At the close of the People's case-in-chief, Encarnacion moved for a judgment of acquittal on all charges. The Court denied the motion after hearing arguments from both parties. Encarnacion then called a number of alibi witnesses to contradict Trinidad's claim that Encarnacion was with Morales at the time of his death. Clarissa Rosario, Juan Parilla, Dory

Jacobs, and Deron Van Lange all testified that they had seen Encarnacion at the race track the night Morales was murdered. In addition, Encarnacion's grandmother, Felicitia Soto, testified that she went to church the night of Morales' murder and arrived home from church at 8:30 p.m. About five minutes later, Morales came to the house looking for Encarnacion and she told Morales that Encarnacion was not there. Soto stated that she knew Morales because he always came to the house for Encarnacion.

After Encarnacion rested, he renewed his motion for judgment of acquittal. The Court, again, denied his motion. On July 1, 2014, the jury found Encarnacion guilty of Count IV, Reckless Endangerment First Degree, but not guilty of Count I, Murder First Degree; Count II, Felony Murder First Degree; Count III, Robbery First Degree; and Count V, Unauthorized Possession of a Firearm During the Commission of a Crime of Violence. The Court later informed the parties that its ruling on Encarnacion's motion for judgment of acquittal would address the remaining count.

II. LEGAL STANDARD

A. Motion for Judgment of Acquittal

Federal Rule of Criminal Procedure 29(c)(1) permits a defendant to move for a judgment of acquittal, or renew such motion, within 14 days after a guilty verdict.¹ "If the jury has returned a guilty verdict, the court may set aside the verdict and enter an acquittal." Fed. R. Crim. P. 29(c)(2). The Court must enter a judgment of acquittal for any offense for which the evidence is insufficient to sustain the conviction. Fed. R. Crim. P. 29(a).

¹ Federal Rule of Criminal Procedure 29(c)(1) states:

(1) Time for a Motion. A defendant may move for a judgment of acquittal, or renew such a motion, within 14 days after a guilty verdict or after the court discharges the jury, whichever is later.

The Defendant bears a heavy burden when moving for judgment of acquittal. *Latalladi v. People*, 51 V.I. 137, 145 (V.I. 2009). This is because the Court's standard for ruling on such motions is whether there is substantial evidence, viewed in the light most favorable to the People, to sustain the jury's verdict of guilt. *Phillip v. People*, 58 V.I. 569, 583 (V.I. 2013). If a rational trier of fact could have found the defendant guilty beyond a reasonable doubt, and there is substantial evidence to support the conviction then the Court must sustain the jury's finding. *Id.* When determining the sufficiency of the evidence, it is not the Court's duty to weigh evidence or determine the credibility of the witnesses. *Smith v. People*, 51 V.I. 396, 401 (V.I. 2009).

B. Motion for New Trial

Unlike a motion for judgment of acquittal, the Court exercises its own judgment when considering a motion for new trial. *See Stevens v. People*, 52 V.I. 294, 306-7 (V.I. 2009). Pursuant to Rule 135 of the Rules of the Superior Court "[t]he court may grant a new trial to a defendant if required in the interest of justice." Although the Court is permitted to weigh the evidence when considering a motion for new trial, it is not necessary for the Court to act as a thirteenth juror when deciding whether to grant a new trial. *Stevens*, 52 V.I. at 306. The Court may only order a new trial "if it believes that there is a serious danger that a miscarriage of justice has occurred-that is, that an innocent person has been convicted." *Id.* at 305 (quoting *United States v. Silveus*, 542 F.3d 993, 1004-05 (3d Cir.2008)). The Court's discretion in considering a motion for new trial "should be exercised with extreme caution. In other words, the power to grant a new trial should be invoked only in exceptional cases in which the evidence

preponderates heavily against the verdict.” *Gov’t of the V.I. v. Grant*, 19 V.I. 440, 445 (Terr. Ct. 1983).

III. DISCUSSION

A. There Was Sufficient Evidence for a Jury to Convict Encarnacion of Reckless Endangerment

Encarnacion filed a timely Rule 29 Motion to Acquit on July 15, 2014, fourteen days after the jury reached its verdict. In his Motion, Encarnacion argues that there was insufficient evidence to sustain a conviction for reckless endangerment. Encarnacion contends that the overwhelming weight of the evidence demonstrates that he was not present when Morales was killed and the jury was influenced by sympathy, passion and prejudice when it decided to convict him of reckless endangerment. To support his assertion, Encarnacion points to the fact that the only evidence supporting the People’s charge of reckless endangerment came from the testimony of Chayanne Trinidad. According to Encarnacion, Trinidad’s testimony is insufficient to support a conviction for reckless endangerment because he is “a convicted felon, a convicted liar, [and] the person found selling the murder victim’s stolen property” (Def.’s Mot. to Acquit or in the Alternative for a New Trial at 6).

The People oppose Encarnacion’s argument that there was no way the jury could have based its decision on the testimony of Trinidad. According to the People, the testimony of a single witness is sufficient to establish guilt. The People argue that it was within the jury’s discretion to believe Trinidad’s eyewitness testimony over the testimony of Encarnacion’s alibi witnesses. Encarnacion counters that the jury acquitted him of murder, robbery, and possession of a firearm, therefore they could not have believed Trinidad’s testimony that he was present at the scene when Morales was murdered.

The People's argument is correct, "the testimony of a single witness, if credited by the jury, is sufficient to sustain a conviction." *Francis v. People*, 57 V.I. 201, 211-12 (V.I. 2012); see also *Connor v. People*, 59 V.I. 286, 290-91 (V.I. 2013). To prove Encarnacion committed the crime of reckless endangerment, the People had to provide evidence establishing:

That Jomar "Chippa" Encarnacion, did under circumstances evidencing a depraved indifference to human life, recklessly engaged in conduct in a public place, to wit: by discharging shots in the vicinity of Estate Castle Coakley, Christiansted, which created a great risk of death to other persons.

(Jury Instructions 26). To support its case, the People presented the testimony of Chayanne Trinidad, who testified that he was with Morales and Encarnacion in Castle Coakley, and it was there that Encarnacion fired a gun and killed Morales. Trinidad also testified that the .38 caliber gun used by Encarnacion was owned by his uncle and he had showed Trinidad the gun before on a previous occasion. The People introduced the gun described by Trinidad, and the ammunition, into evidence. Lieutenant Dino Herbert also testified that when the home of Angel Soto, Encarnacion's uncle, was searched, the firearm Trinidad described was found in the same area he said it would be located.

The testimony of Chayanne Trinidad was enough to place Encarnacion at the scene of the crime. At the close of trial, the jurors were advised that "[t]he weight of the evidence is not necessarily determined by the number of witnesses testifying on either side" (Jury Instructions 23). The Court also instructed the jurors to consider each count separately (Jury Instructions 35). In addition to the aforementioned instructions, the jurors were also advised that when weighing witness credibility, they "may believe some, all or no part of any witness' testimony" (Jury Instructions 18). The verdict suggests that the jurors did as they were instructed and properly assessed Trinidad's testimony to

decide whether they should believe all, some, or none of it. Although it appears that the jury did reach inconsistent verdicts, which may have been the result of compromise, that is still not an adequate reason for setting a verdict aside. *See Faulknor v. People*, 57 V.I. 327, 335 (V.I. 2013). The Supreme Court has made it clear that “it does not matter why the jury's verdicts were inconsistent . . . [it] will not reverse on [the basis of inconsistent verdicts] unless the record reveals that there was insufficient evidence to convict.”

Phillip v. People, 58 V.I. 569, 596 n. 31 (V.I. 2013). Again, the Court’s only concern is the sufficiency of the evidence. *People v. Fahie*, SX-2011-CR-448, 2014 WL 7186747 at *3 (V.I. Super. Ct. June 19, 2014) (unreported).

Trinidad placed Encarnacion at the scene of the crime and identified him as the person who shot and killed Misael Morales. This testimony was enough to satisfy the elements of reckless endangerment. According to Trinidad, Encarnacion fired a gunshot, in Trinidad and Morales’ presence, while in the vicinity of Estate Castle Coakley, Christiansted. The firing of a gunshot in a public place where there are two other people in plain view is not only evidence of a depraved indifference to human life, but also evidence of recklessly engaging in conduct in a public place, which creates a great risk of death to other persons. Thus, viewing the evidence in the light most favorable to the People, this Court finds that the evidence presented at trial was sufficient to sustain a conviction of guilt for Reckless Endangerment.

B. The Interest of Justice Requires that Encarnacion be Granted a New Trial

Encarnacion asserts that the Court should sit as the thirteenth juror when deciding whether to grant a new trial. However, as previously explained, the Supreme Court of the Virgin

Islands has stated that it is not necessary for the Court to act as a thirteenth juror when making its determination. *Stevens*, 52 V.I. at 306. The proper test is to grant a new trial if the Court determines that: (1) the verdict is contrary to the weight of the evidence, *and* (2) an innocent person has been convicted. *Id.* at 305.

“In the case of a motion for a new trial premised on a challenge to the credibility of witnesses, ‘it remains the law that a trial court should weigh the evidence.’” *Percival v. People*, S. Ct. Crim. No. 2013-0083, 2015 WL 113300 at *6 (V.I. Jan. 7, 2015). In *Stevens*, the Supreme Court of the Virgin Islands determined that the Superior Court did not err in its denial of Stevens’ motion for new trial. In that case, Stevens was charged and found guilty of the shooting of Jahlil Ward.² At trial, Ward testified against Stevens and identified him as the person who shot him. *Id.* at 299. In his defense, Stevens and three other witnesses took the stand to provide alibi evidence. *Id.* at 301. In reaching its decision regarding the motion for new trial, the Superior Court found that “Ward appeared certain and unwavering in his identification of Stevens as the perpetrator,” while “the alibi witnesses were impeached by inconsistencies.” *Id.* at 306-7. The Supreme Court affirmed the Superior Court’s decision to deny Stevens’ motion for new trial, finding that the Superior Court used the correct standard and clearly articulated that it was exercising its own judgment in assessing witness credibility and weighing the evidence. *Id.* at 306.

Unlike in *Stevens*, here the verdict is contrary to the weight of the evidence. All of the People’s direct evidence was based on the testimony of a single witness: Chayanne Trinidad,

² Specifically, Stevens was convicted of attempted first degree murder; possessing an unlicensed firearm during the commission of a crime of violence, attempted first degree murder; first degree assault with intent to commit murder; possessing an unlicensed firearm during the commission of a crime of violence, first degree assault; and unauthorized possession of ammunition.

Encarnacion's former co-defendant, who on cross-examination admitted that he cooperated with the prosecution in exchange for a dismissal of the murder charges against him. Trinidad was the sole witness to testify as to who fired the shot killing Morales and what gun was used to shoot him. Trinidad was also the last person seen with Misael Morales before he died, and was the person in possession of Morales' cell phone after he died. After Morales' death, Trinidad sold Morales' cell phone to a family member. When asked during trial how he obtained Morales' cell phone, Trinidad stated that Encarnacion gave it to him the morning after Morales was killed.

Trinidad's testimony was the only eye witness testimony presented by the People. During trial, Trinidad described how Morales was shot by Encarnacion and also testified that the gun used belonged to Encarnacion's uncle, Angel Soto. Detectives located the gun described by Trinidad in Soto's bedroom in the same location detailed by Trinidad, however, there was no DNA found on the gun, and the medical examiner was not able to associate the victim's wound with any particular gun. Thus, the only link to the gun as the murder weapon used by Encarnacion was Trinidad's testimony.

At trial, Trinidad admitted that he initially gave false information to the police regarding his knowledge of Morales' murder the first time he was questioned, but stated he did so because he was scared and did not know what to do. He went on to testify that he decided to tell the truth because he was told by Ms. Corrine Smith that Encarnacion had told investigators that Trinidad had killed Morales. After the People rested, Encarnacion focused his defense on rebutting Trinidad's testimony.

Encarnacion presented the testimony of four alibi witnesses to contradict Trinidad's assertion that he witnessed Encarnacion fatally shoot Morales. The first, Clarissa Rosario, stated

that she was at the car races on March 19, 2010, and saw Encarnacion immediately after she arrived around 8:30/9:00 p.m. She stated that Encarnacion was with Dory Jacobs when she saw him. Rosario also testified that she stayed at the race tack until about 11:30 p.m. and saw Encarnacion before she left. Rosario stated that she did not see Trinidad or Morales at the race track that night.

Encarnacion's cousin, Juan Parilla, also testified that he saw Encarnacion at the races on the night of March 19th. During trial Parilla stated that he worked at the race tracks and was there every race day. Parilla worked the tower that night and, according to his testimony, first saw Encarnacion around 7:30 p.m. when he arrived at the track, and also observed him throughout the night from where he was positioned in the tower. Parilla testified that the last time he observed Encarnacion was as he was leaving around 1:00/1:30 a.m. It had begun to rain at that time, so many people were leaving the track. On cross-examination Parilla admitted that during the investigation he initially told the prosecution that he could not remember what day he was at the race track.

Encarnacion's neighbor, Dory Jacobs, testified that he drove Encarnacion to the car races on March 19th and they left the house around 8:00/8:30 p.m.³ Jacobs had his daughter with him that night, and admitted that he was probably paying more attention to his daughter than Encarnacion but was always within speaking distance of him. Jacobs also stated that he did not see Trinidad or Morales at the track that night.

³ According to Jacob's testimony, it takes about 10-15 minutes to get to the race track from his house.

The final alibi witness was Deron Van Lange. Van Lange testified that he went to the car races on March 19th and arrived around 8:30 p.m. He saw Encarnacion soon after he arrived and greeted him. Van Lange stated that he also saw Juan Parilla and Dory Jacobs that night.

The People did not present any arguments in opposition to Encarnacion's Motion for New Trial. However, in their arguments opposing Encarnacion's Motion to Acquit, the People pointed out that all of Encarnacion's alibi witnesses were either family members or longtime friends. According to the People, the witnesses' relationship with Encarnacion shows bias or prejudice. This Court does not find that the testimonies of the alibi witnesses are any more biased or prejudiced than the testimony of Chayanne Trinidad. In addition, biased or not, their testimony was still more credible and more persuasive than the single testimony presented by the People placing Encarnacion at the scene of Morales' murder. The only information the People were able to extract from the witnesses to discredit their testimony during cross-examination was the fact that some of them never approached the police about what they knew after finding out Encarnacion was arrested and charged with the murder of Morales.

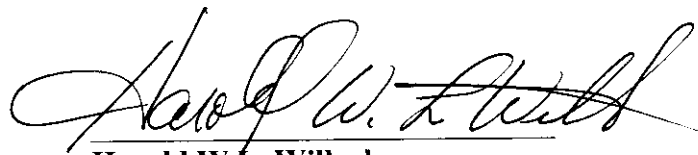
In addition to the testimony of Encarnacion's alibi witnesses, there was numerous testimony regarding the fact that there was only one shot fired the night Morales was killed. That single shot was the one that fatally struck Morales. The autopsy report (People's Exhibit 8) also indicated that Morales' cause of death was a gunshot wound to the head. Ms. Nisbett, a resident of Castle Coakley, testified that she heard a single gunshot sometime between 9:00 and 9:15 p.m. on March 19, 2010, the night Morales was murdered. Trinidad also testified that there was only one shot fired.

This Court simply cannot find that the weight of the evidence supports a finding of guilt beyond a reasonable doubt for the crime of reckless endangerment. From the evidence adduced at trial and the nature of the verdict, it is clear that the jury came to its final decision by way of compromise which resulted in an inconsistent verdict. The trial testimony indicated that there was only a single shot fired, and Morales' autopsy report indicated that he died from a single gunshot to the head. Encarnacion, however, was not convicted of firing the shot that killed Morales, and there is no evidence of any other shot being fired the night Morales was killed. Based on these details, the Court cannot be confident that justice has been properly served. Given the aforementioned, there is a serious danger that a miscarriage of justice occurred, thus this Court finds it necessary to grant Encarnacion's motion for a new trial.

CONCLUSION

Though the jury reached inconsistent verdicts, upon review of the evidence in the light most favorable to the verdict, this Court finds that the testimony of Chayanne Trinidad was sufficient to sustain a conviction for Reckless Endangerment. In contrast, under the motion for new trial standard, this Court finds that the verdict was contrary to the weight of the evidence. Because the standard of review for a motion for new trial requires the Court to weigh the evidence and assess witness credibility, the Court finds it necessary to grant Encarnacion's Motion for New Trial. The Court will issue an Order consistent with this Opinion.

Dated: 2-11-15



Harold W.L. Willocks
Administrative Judge of the Superior Court

ATTEST:
Estrella George

Acting Clerk of the Court

By: 

Court Clerk Supervisor

Dated: 2/12/15