

NOT FOR PUBLICATION

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

PEOPLE OF THE VIRGIN ISLANDS,

SX-12-CR-181

Plaintiff,

v.

AMBROSE DANIEL,

Defendant.

MEMORANDUM OPINION

THIS MATTER comes before the Court on Defendant Ambrose Daniel's (hereinafter "Defendant" or "Daniel") Motion For Judgment of Acquittal or New Trial, filed on April 7, 2015. The People of the Virgin Islands (hereinafter "the People") filed their Opposition to Daniel's Motion on April 14, 2015. Daniel filed a Supplemental Memorandum in Support of Motion For Judgment of Acquittal or New Trial on May 11, 2015 and the People filed a Supplemental Objection to the Defendant's Motion on May 19, 2015. For the reasons set forth, the Court shall deny Daniel's Motion to Acquit and deny his Motion for a New Trial.

I. FACTUAL AND PROCEDURAL HISTORY

On or about March 22, 2012, at 9:29 a.m, police stopped a silver colored Toyota Corolla being driven by Daniel. Hector SDankitts (hereinafter "Sankitts") was a passenger in the vehicle. In his affidavit, Police Officer Gregory Bennerson (hereinafter "Officer Bennerson") stated that he observed an object covering the license plate which impeded his ability to read the license plate in violation of

Title 20, section 334(f) of the Virgin Islands Code¹. Also, Officer Bennerson stated that the vehicle's window displayed a glaring tint that prevented him from seeing the number people in the automobile. As a result, the police officers stopped the vehicle and asked Daniel for his driver's license, proof of insurance, and registration. Daniel had no proof of registration for the automobile.

During Officer Bennerson's inquiry he smelled a strong odor of marijuana coming from the automobile. The officer asked Daniel if he had anything illegal in the automobile. Daniel responded that he had smoked a Black and Mild cigar. Officer Bennerson asked to search the automobile, but Daniel refused to allow a search. The Officer then ran his trained police dog, K-9 Officer Rico, (hereinafter "K-9 Officer") around the exterior of the automobile. The K-9 Officer alerted to a narcotic substance near the driver's door. Officer Bennerson advised the Defendants of what the K-9 Officer alerted to.

According to the police officer, they then conducted an "inventory search" of the vehicle before the vehicle was towed by the Police Wrecker. Officers searched the vehicle and uncovered a black rubber boot behind the front passenger seat. Inside the boot, officers found a plastic bag containing a green leafy substance. A forensic analyst conducted a field test on site and determined that the green leafy substance tested positive for marijuana. Daniel and Sankitts were Mirandized and arrested for Possession of a Controlled Substance. The officers impounded the vehicle to obtain a search warrant.

The impounded automobile was taken to a parking lot at the U.S. District Court Federal Building. On March 23, 2012 and March 28, 2012, search warrants were executed for the automobile and a brown cardboard box² found in the backseat of the automobile. The forensics unit recovered a silver .380 Bersa, Model 383-A, Serial number 214586, with a brown wooden handle, and an extended drum

¹ No license plate, or any portion of license plate may be covered with any tinted material, nor may any other material be placed on or around a license plate which would conceal or obscure any information contained on the license plate, including the registration expiration sticker. License plate frames that do not conceal or obscure any information contained on the license plate are not prohibited by this section. 20 V.I.C. § 334(f).

² The brown cardboard box was an Express Mail package allegedly from Jahmal Sankitts to Hector Sankitts.

magazine containing twenty one (21) .380 live rounds of ammunition from the right side of the vehicle behind the glove compartment. No fingerprints were recovered. Detective Karen Stout performed a search and discovered that the firearm and firearm ammunition were not registered and Daniel and Sankitts were not licensed to possess the firearm or the ammunition.

On March 22, 2012, the People charged Daniel and Sankitts with Unauthorized Possession of a Firearm/ Principal, Possession of Ammunition/ Principal, Failure to Report Firearms Obtained Outside or Brought Into the Virgin Islands/ Principal, Possession of Stolen Property/ Principal. On March 16, 2015, Sankitts plead guilty to Failure to Report a Firearm in case number SX-12-CR-182; and as part of the plea agreement, SX-12-CR-143 was dismissed with prejudice.

In its March 12, 2015 Opinion, this Court granted the suppression of the marijuana but denied Sankitts and Daniel's Motion to Suppress the two firearms and the magazines. On March 16, 2015 the Court denied Daniel's Motion for Reconsideration of the Denial of his Motion to Suppress the Firearms. In an Amended Information, the People charged Daniel with the following: Count I, Unauthorized Possession of a Firearm/ Principal, in violation of Title 14, Sections 2253(a) and 11(a) of the Virgin Islands Code; Count II, Possession of Ammunition/ Principal, in violation of Title 14, Sections 2256(a)(4) and 11(a) of the Virgin Islands Code; Count III, Failure to Report Firearms Obtained Outside or Brought Into the Virgin Islands/ Principal, in violation of Title 23, Sections 470(a) and 11(a) of the Virgin Islands Code.

Jury selection and trial in this matter commenced on March 23, 2015 and ended on March 24, 2015. At trial, Officer Bennerson testified that he was the officer that initiated the traffic stop of Daniel on March 22, 2012. Bennerson further testified that when he ran the license plate for the vehicle, it showed it was registered to Ms. Mosa Mathurin. During his testimony, Bennerson stated that when he was speaking with Daniel, he smelled "what emanated from the vehicle, a strong odor of marijuana." (Trial

Tr. Of Witness Gregory Bennerson vol.1, 97:15-16, March 23, 2015). This caused him to question Daniel whether any weapons, drugs, or contraband were in the vehicle. Bennerson then explained that at that point he brought his K-9 partner, Officer Rico, to further his investigation.³

Bennerson testified that during his investigation Maturin, the vehicle owner, arrived to the scene and when asked for consent to conduct a search she declined. At that point, Bennerson testified that he called a wrecker to tow the vehicle and its contents. Bennerson got a warrant to conduct a search the next day, March 23, 2012. Bennerson testified that upon receipt of the warrant he went with Lieutenant Sidney Elskoe, and task officers Donnell Samuel and Aldemar Santos to conduct the search of the vehicle.⁴ According to Bennerson, the officers checked the door panels, behind the glove box, underneath the seats and in the trunk. As a result, Bennerson found a silver colored handgun with a brown wooden handle and an extended magazine. Bennerson states after alerting the other officers of his findings, he contacted Forensic Officer Alan Lewit to retrieve the evidence. The People, asked Bennerson to identify the items in Exhibit 10 D, which was a photograph of the weapon that was found, magazine and extended magazine consistent with Bennerson's testimony. Bennerson also identified the locked handgun and magazine at trial, marked as Plaintiff's exhibits 7 and 7(a).

The People also called the vehicle owner, Ms. Mosa Mathurin to testify at the trial. Mathurin stated that she was the owner of the vehicle involved that Daniel was driving on March 22, 2012. Mathurin further testified that she did not have a firearm permit, had no knowledge of there being a firearm in the vehicle when she gave it to Daniel, and did not know of anyone that would have placed a firearm in the automobile on that time and date. Forensic Officer Alan Lewit also testified at the trial and identified exhibits 7 and 7(a) as the items he collected from the vehicle on March 22, 2012.

³ Trial Tr. Of Witness Gregory Bennerson vol.1, 98:4-9, March 23, 2015

⁴ Trial Tr. Of Witness Gregory Bennerson vol.1, 103:20-22, March 23, 2015

At the close of the People's case-in-chief, Daniel made a Rule 29 motion for dismissal of all Counts. The Court took this matter under advisement. On March 24, 2015, the jury entered a guilty verdict on all three counts. In his renewed Rule 29 Motion, Daniel moves this Court to dismiss all Counts or grant him a new trial.

II. LEGAL STANDARD

A. Motion for Judgment of Acquittal

When reviewing a motion for judgment of acquittal, 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). The Defendant bears a heavy burden when moving for judgment of acquittal. *Latalladi v. People*, 51 V.I. 137, 145 (V.I. 2009).

III. DISCUSSION

A. Motion For Acquittal

As stated *supra*, in the Court's determining whether there should be a judgment of acquittal, the Court's standard for ruling 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.* Daniel contends that the jury's verdict should be overturned because the People failed to introduce sufficient evidence for a rational trier of fact to find either constructive possession or aiding and abetting beyond a

reasonable doubt. Daniel contends that both of these were required elements of all three counts. The People filed an opposition, but failed to cite any law supporting their objection to Daniel's Motion.

B. The People Failed to Introduce Evidence of Daniel's Guilt Beyond a Reasonable Doubt

The People have charged in its amended information the Defendant with:

Count One

That Ambrose Daniel and Hector Sankitis, when aided and abetted by each other, did when unauthorized by law, possess, bear, transport, or carry either actually or constructively, open or concealed a firearm, to wit: one a 380 Bersa handgun, Model 383-A, bearing serial number 214586, in violation of Title 14 V.I.C. Section 2253(a) and 11(a) (UNAUTHORIZED POSSESSION OF A FIREARM/PRINCIPAL)

Count Two

That Ambrose Daniel and Hector Sankitts when aided and abetted by each other, when not authorized by law, did possess firearm ammunition, to wit: Twenty one (21) 380 caliber live rounds, contained in Bersa ACP handgun magazine, in violation of title 14 of V.I.C. Section 2256(a) and 11(a) (POSSESSION OF AMMUNITION/PRINCIPAL)

Count Three

That Ambrose Daniel and Hector Sankitts when aided and abetted by each other, who is not a licensed dealer, did purchase or otherwise obtain firearms and/or several live rounds, outside the Virgin Islands and failed to report same to the Commissioner immediately after receipt thereof in violation of title 23 V.I.C. Section 470 (a), Title 14 V.I.C. 11(a) (FAILURE TO REPORT FIREARMS OBTAINED OUTSIDE OR BROUGHT INTO THE VIRGIN ISLANDS/PRINCIPAL)

Here, the people in its Amended Information, chose to charge the Defendant under the aiding and abetting statute as stated in Title 14 Section 11(a) reads that "[w]hoever commits a crime or offense or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal."

The offense of aiding and abetting requires the People to prove: (1) that the substantive crime has been committed; and (2) the defendant knew of the crime and attempted to facilitate it. . *Rivera v. People of the Virgin Islands*, 2016 V.I. Supreme LEXIS 16, *1 (2016). Liability as an aider and abettor

requires proof that defendant associated himself with the venture, that he participated in it as something he wished to bring about, and that he sought by his words or action to make it succeed. *Id.* Further, a conviction cannot be based upon mere conjecture or speculation. As the Court stated in *Gov't of V.I. v. Navarro* :

An individual must have a "purposive attitude" to see the venture succeed and must participate in the criminal endeavor at least to the point of encouraging the perpetrator and "participate in it as something that he wishes to bring about" In determining whether a defendant has associated himself with and participated in a criminal undertaking, care must be taken that speculation is not permitted to substitute for evidence. , 513 F.2d 11, 14-15 (3d Cir. V.I. 1975).

The Supreme Court has held that a verdict may not rest on mere suspicion, speculation, or conjecture, or on an overly attenuated piling of inference on inference. *People of the Virgin Islands v. Clarke*, 55 V.I. 473, 474 (VI. 2011).

At trial, Officer Bennerson's testified that he was the officer that initiated the traffic stop of Daniel on March 22, 2012. Bennerson also testified that when he ran the license plate for the vehicle, it showed it was registered to Ms. Mosa Mathurin. During his testimony, Bennerson stated that when he was speaking with Daniel, he smelled "what emanated from the vehicle, a strong odor of marijuana." (Trial Tr. Of Witness Gregory Bennerson vol.1, 97:15-16, March 23, 2015). This caused him to question Daniel whether any weapons, drugs, or contraband were in the vehicle. Bennerson then explained that at that point he brought his K-9 partner, Officer Rico, to further his investigation.⁵

Bennerson testified that during his investigation Maturin, the vehicle owner, arrived to the scene and when asked for consent to conduct a search she declined. At that point. Bennerson testified that he called a wrecker to tow the vehicle and its contents. Bennerson got a warrant to conduct a search the next day, March 23, 2012. Bennerson testified that upon receipt of the warrant he went with Lieutenant Sidney

⁵ Trial Tr. Of Witness Gregory Bennerson vol.1, 98:4-9, March 23, 2015

Elskoe, and task officers Donnell Samuel and Aldemar Santos to conduct the search of the vehicle.⁶ According to Bennerson, the officers checked the door panels, behind the glove box, underneath the seats and in the trunk. As a result, Bennerson found a silver colored handgun with a brown wooden handle and an extended magazine. Bennerson states after alerting the other officers of his findings, he contacted Forensic Officer Alan Lewit to retrieve the evidence. The People, asked Bennerson to identify the items in Exhibit 10 D, which was a photograph of the weapon that was found, magazine and extended magazine consistent with Bennerson's testimony. Bennerson also identified the locked handgun and magazine at trial, marked as Plaintiff's exhibits 7 and 7(a).

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Under the aiding and abetting statute, a finding of guilt may still be upheld although there is insufficient proof that the defendants "personally did every act constituting the offense alleged." *Freeman v. People*, 61 V.I. 537, [quoting *Nanton v. People*, 52 V.I. 466, 484 (V.I. 2009)]. "In determining whether a defendant has associated himself with and participated in a criminal undertaking, care must be taken that speculation is not permitted to substitute for evidence." *Francis v. People of the Virgin Islands*, 52 V.I. 381, 384 (VI. 2009). The Supreme Court in *Francis* explained that: "the drawing of one inference upon another to reach a conclusion is entirely too tenuous, and goes beyond reasonable inferences to mere speculation"). The Supreme Court further held that to make a conclusion solely from

⁶ Trial Tr. Of Witness Gregory Bennerson vol.1, 103:20-22, March 23, 2015

statements was nothing short of pure speculation.” *Id.* Here, the People have presented nothing more than possibilities that the gun may have been placed in the vehicle by the Defendants, based on statements identifying the location of the firearm, Ms. Mathurin’s testimony that it was not hers and that she did not know the firearm to be in her car the day she gave the vehicle to Daniel; none of these facts indicate knowledge.

The People have not offered a scintilla of evidence as to how Daniel and Sankitts aided and abetted each other. There was no evidence presented that showed any proof that Daniel associated himself with the possession of a firearm, that he participated in any activity in attempt to hold or conceal it. The Court finds that to find that Daniel and Sankitts aided and abetted each other it would be based on pure speculation from which the Supreme Court protects. *Id.*

B. Defendant’s 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.

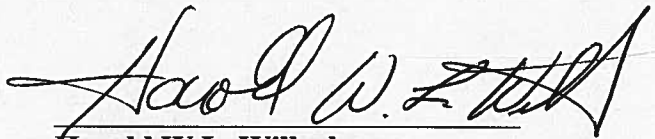
The Court may only order a new trial “if it believes that there is a serious danger that a miscarriage of justice has occurred—that is, that an innocent person has been convicted.” *Id.* at 305 (quoting *United States v. Silveus*, 542 F.3d 993, 1004-05 (3d Cir.2008)). The Court’s discretion in considering 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).

However, this Court has already ruled that the People have not proven their case against the Defendant and therefore it need not address this other issue.

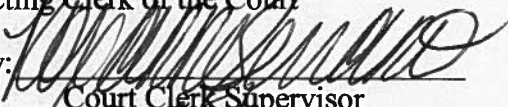
CONCLUSION

Upon review of the evidence in the light most favorable to the verdict, this Court finds that the evidence was insufficient to sustain a conviction on all counts. The Court will issue an Order consistent with this Opinion.

Dated: 5/15/16


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

ATTEST
Estrella George
Acting Clerk of the Court

By: 
Court Clerk Supervisor

Dated: 6/20/16