

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

PEOPLE OF THE VIRGIN ISLANDS,	)	CASE NO. SX-10-CR-059
	)	
Plaintiff,	)	MURDER IN THE FIRST DEGREE;
	)	RECKLESS ENDANGERMENT IN THE
v.	)	FIRST DEGREE/ PRINCIPAL;
	)	ASSAULT IN THE FIRST DEGREE/
	)	PRINCIPAL; POSSESSION OF A
	)	FIREARM DURING THE COMMISSION
	)	OF A CRIME OF
	)	VIOLENCE/PRINCIPAL
	)	
JESUS BROWNE,	)	
	)	
	)	
Defendant.	)	
	)	
	)	
	)	
	)	

MEMORANDUM OPINION

BEFORE THE COURT is Defendant Browne's Renewed Motion for Judgment of Acquittal. Trial was held in this matter from May 1, 2012 through May 4, 2012 and May 7, 2012 through May 11, 2012. The trial resulted in a hung jury and a mistrial was declared on May 12, 2012. Defendant Browne had moved for judgment of acquittal at the end of the government's case in chief and again at the close of all of the evidence. The Court reserved ruling on the motion, which the Defendant timely renewed. A hearing was held on this matter on October 10, 2012. Defendant Browne argues that the People failed to introduce evidence from which a reasonable jury could have found beyond a reasonable doubt that Defendant Browne aided or abetted any other person in the commission or attempted commission of a

crime. Browne urges that a judgment of acquittal be granted. For the following reasons, Defendant's Motion will be GRANTED.

The following are the facts on the record presented at trial: Defendant Browne and Shantelle Simmons were at Divi Casino in Christiansted, St. Croix the evening of January 5, 2010. While Simmons waited in the car in the parking lot, she observed five men running up and down the stairs, jump into a vehicle and leave the casino. (Tr., Vol. II, pp. 5, 12). A video clip of the exterior of the casino was also presented to the jury which showed Jesus Browne, and the Graham twins (Dwayne and Wayne Dennis) involved in a chase at the casino. (*Id.*, Vol. V, pp. 143-149). Another clip presented showed Halik Milligan exiting the casino with another individual and walking down the stairs at approximately 11:02p.m. (*Id.* at p. 149). Sayonara Williams, a security officer at the casino, corroborated that she saw two Rastafarian men, whom she identified as the Graham twins, chasing Jesus Browne around the exterior of the casino by the steps. (*Id.*, Vol. II, pp. 130, 133, 141). Fifteen to twenty minutes after Simmons saw the five men at the casino jump into a vehicle, she left the casino with Jesus Browne and drove him to his house with no communication between them. (*Id.* Vol. II, p. 13-14). Simmons then picked up "Skittles"¹ and "Tech" in a ballpark in Sion Farm and drove them to Chris' Hideaway, a bar located in Christiansted. (*Id.*, pp. 21-22). Simmons herself made the decision to go to Chris' Hideaway and such was never suggested by "Skittles" or "Tech." (*Id.* at pp. 73, 85, 125, 127). Furthermore, no one guided them to the bar that night. *Id.*

¹ Simmons does not know the given names of "Skittles" and "Tech" but only their nicknames. (Tr. Vol. II, pp. 60-61). "Skittles" was later identified as Hillman Faucher by his mother and a concerned citizen according to the testimony of Vanessa Richardson, former security officer at Juan F. Luis Hospital. (Tr., Vol. III, p. 59. Richardson testified that "Tech" was later identified as Shamir James. (*Id.*)

When Ms. Simmons arrived at Chris' Hideaway, a silver vehicle parked next to her car but closer to the bar. She later identified Jesus Browne in the silver vehicle. *Id.* at p. 45. The driver of the silver vehicle, Lloyd Henry, went inside of Chris' Hideaway and stayed in the bar for approximately five (5) minutes while Jesus Browne remained in the vehicle talking on his cell phone. *Id.* Vol. II at p. 49; Vol. 6 at p. 32 (Henry's testimony)). While Henry was inside the bar, Simmons heard her backseat passengers say, "That is him." (*Id.* Vol. II, p. 49). Ms. Simmons testified that she did not know who they were discussing and could not make out the faces of the people on the porch. (*Id.* at p. 50). After Henry returned to the car, Skittles or Tech told Simmons, "Let's go." *Id.* Ms. Simmons testified that she drove her car around to the other side of the convenience store in a dark section, as she was told to do. (*Id.* at 51). She stated that the silver car pulled up next to her. (*Id.* at 52). At that point, the men in her backseat began to disguise themselves and adorned a black t-shirt over their heads and black handkerchiefs around their faces. (*Id.* at 54). Her passengers exited her vehicle and "within minutes, moments later," she heard gunshots. (*Id.* at 55) Simmons, however, did not see any weapons and could not tell which direction Skittles and Tech went after exiting the vehicle, but continued to hear gunshots coming for the other side of Chris' Hideaway. (*Id.* at 55-56). Simmons testified that the silver car did not move when the gunshots started. (*Id.* at 57). Simmons testified that she saw Tech fall and heard a clang like something metal had fallen on the ground. (*Id.* at 57-58). She noticed that Skittles was firmly grasping a small black object in his hand when he picked Tech up off of the ground. (*Id.* at 57). After Tech fell, Skittles lifted him and put him in the front passenger's seat of Simmons' vehicle. (*Id.* at 59). Skittles also was shot and suffered a gunshot wound to the chest; however, Simmons saw nothing in his hands when he put Tech into the car. (*Id.* at 60). When they arrived at the hospital, the silver

car was right behind them and Jesus Browne took Tech out of the car and carried him into the hospital. (*Id.* at 61).

Ms. Simmons left the hospital and went to the Lagoon to clean her vehicle by herself. She did not discover a weapon in her car when cleaning her vehicle; furthermore, she did not see anyone enter the hospital with a weapon. (*Id.* at 75). Simmons also did not see weapons on Skittles and Tech when she picked them up at the ballpark, even though she could see them clearly because they were under bright lights. (*Id.* at 121-122).

Shamir James ("Tech") died at the hospital. Dr. Francisco Landron performed an autopsy on his body on January 13, 2010 and determined that his cause of death was homicide, gunshot wound to the head. (*Id.* at Vol. VI, pp. 65-67).

Lloyd Henry's testimony differs slightly from that of Shantelle Simmons. Mr. Henry testified that he picked up Jesus Browne, a friend from his neighborhood, when Jesus Browne asked him for a ride around 12:50a.m. on January 6, 2010. (*Id.*, Vol. VI, p. 23). Henry himself suggested that they go to Chris' Hideaway although Browne had stated that he wanted a ride home. (*Id.* at 26, 31). Henry testified that he did not see any weapons on Browne. (*Id.* at 32). When Henry went in to the bar for a drink, Browne stayed in the car to make phone calls as he did not drink. (*Id.* at 32, 45). Henry noticed his cousin, Halik Milligan, on the patio of Chris' Hideaway. (*Id.* at 36). After Henry got his drink, Henry and Browne drove off to the nightclub, Two Plus Two. (*Id.* at 37, 38). They did not observe any shooting. (*Id.*) A short time later, Browne received a phone call stating that someone had been shot and asked Henry to drive him to the hospital, where he helped the injured man. (*Id.* at 38, 43). Browne left the

hospital crying that his friend had been shot. (*Id.* at 39). Henry then took Browne home and testified that Browne did not have a gun with him. (*Id.* at 43).

Karim Woodley was also present at the shooting. He received immunity from the People in exchange for his testimony, although he could have faced charges for unauthorized use of a firearm, and had a prior gun violation. (Tr., Vol. III, p. 87, 90). Woodley stated that he was sitting at Chris' Hideaway on January 6, 2010 with Halik Milligan when a black SUV pulled up, stayed, and pulled off. (*Id.* at pp. 91-92). Woodley saw two individuals with weapons open fire. They fired two shots in his direction, which caused him to return fire with his .40 caliber semi-automatic pistol, emptying his clip. (*Id.* at p. 93, 104-105). Woodley saw one of the men fall down. (*Id.* at 94). Shortly thereafter, the other individual went behind the building, came back and picked the fallen man up. (*Id.*) Woodley identified one of the men as holding a handgun, whereas the other had a long rifle (*Id.* at pp. 97, 100). Upon cross-examination Woodley testified that his view to the end of the building where the men were shooting at him was a little obscured by darkness. (*Id.* at p. 104).

Several officers investigated the scene of the shooting. Officer Keisha Benjamin was dispatched to the scene and arrived fifteen minutes after she received reports of gunshots. (Tr., Vol. III, p. 42). She saw several vehicles at Chris' Hideaway and numerous shell casings. (Tr., Vol. III, p. 14). In addition, she saw a "trail of blood and a puddle of blood." (*Id.* at p. 15). There were bullet strikes to the concrete and shell casings alongside the abandoned building and from the left side of Chris' Hideaway heading toward the abandoned building and more casings in the roadway. (*Id.* at p. 16, 20). Benjamin also observed a black t-shirt on the ground. (*Id.* at 35). On cross-examination, she admitted, however, that she did not know if the evidence, such as the casings, had been moved before she got there or how long the t-shirt had

been on the ground or how it came to be in that position. (*Id.* at p. 40, 41). Although she thoroughly canvassed the area for weapons, she did not find any. (*Id.* at 45).

Officer M'Wathia Hector, the lead forensic agent, also collected evidence of the scene, including casings, clothing and blood projectiles. She arrived on the scene 30-45 minutes after the incident and took several photographs of bullet strikes and shell casings and recovered some as well, including .40 caliber casings from Chris' Hideaway. (*Id.* at Vol. III pp. 108, 124, 172). She also found 7.62 casings, which come from high powered rifles. (*Id.*, Vol. IV. at 44-45). She took several blood samples from the scene as well as buccal swabs from Shamir James from his autopsy and from Hillman Faucher. (*Id.* at 92, 99). Officer Hector could not recall however if buccal swabs were taken from Jesus Browne. (*Id.* at p. 125). On cross examination, Hector admitted that the crime scene may have been contaminated before her arrival and that some casings were disfigured, probably not by exiting a firearm. (*Id.* at 126-127). In addition, she stated that vehicles and foot traffic may have contaminated the crime scene. (*Id.* at 131). Hector also admitted that the t-shirt found at the scene was not tested as it did not appear to have hair or fiber on it. (*Id.* at 130).

Kevin Noppinger, an expert in DNA analysis who was retired from DNA International Laboratory, testified that the crime scene blood swab sample taken from the white truck, left rear wheel near Chris' Hideaway matched the DNA of Hillman Faucher ("Skittles"). (*Id.* Vol. VI, pp. 130-133). Furthermore, he stated that the swab of blood in the southeastern corner of the Riverdale warehouse, as well as the blood on the Ford Explorer's steering wheel, matched that of Shamir James. (*Id.* at pp. 134, 136).

George Felix, the supervisor of the Forensics Unit, explained to the jury the swabbing of blood stains that was done from different vehicles and Simmons' Ford Explorer. He stated that blood swabs were taken from the Ford Explorer's steering wheel, glove compartment, roof, rare seat floor area, and front seat cushion. (*Id.*, Vol. V, pp. 17-21). On cross-examination, Felix admitted that he did not know how the blood splatters originated. (*Id.* at 28).

On January 30, 2010, police executed a lawful search warrant of Defendant Browne's bedroom and recovered a .40 caliber Beretta semi-automatic pistol according to the testimony of Sergeant Jonathan Hitesman. This pistol was traced to the parking lot of Chris' Hideaway in the early morning hours of January 6, 2010 and discharged approximately eleven (11) shots. After the shooting, the police investigated whether Jesus Browne, Hillman Faucher, and Shamir James were licensed to carry firearms. Karen Stout, the supervisor of the firearms division of the Virgin Islands Police Department, testified that James, Faucher and Browne did not have such licenses. (*Id.*, Vol. VI, p. 93). The Court admitted evidence of the certificates of absence of entry of firearm registers of these individuals. (*Id.* at 93).

In the Amended Consolidated Information, Defendant Browne was charged with Murder in the First Degree, in violation of sections 922(a)(2) and 11(a) of title 14 of the Virgin Islands Code, for aiding and abetting Hilman Faucher and Shamir James to perpetrate a felony (Assault in the Third Degree) by supplying Faucher and James with a deadly weapon, which was used in a shootout that ultimately caused the death of Shamir James. Browne was also charged with aiding and abetting and Reckless Endangerment, in violation of sections 625(a) and 11(a) of Title 14 of the Virgin Islands Code for allegedly providing weapons, including an assault weapon, to Faucher and James, who fired shots at Halik Milligan and "W-1" in a public place, namely Chris' Hideaway. Browne was also charged with two counts of aiding and

abetting and Assault in the First Degree, in violation of section 295(1) and 11(a) of Title 14 of the Virgin Islands Code, for allegedly providing weapons to Faucher and James with the intent to murder Halik Milligan and Karim Woodley. Defendant Browne was also charged with Possession of a Firearm During the Commission of a Crime of Violence, in violation of section 2253(a) and 11(a) of Title 14 of the Virgin Islands Code, for possessing a .40 caliber firearm and an AK-47 or assault weapon, which were used in the assaults of Halik Milligan and Karim Woodley.

Notably, as Defendant points out, the following facts are not supported by the evidence presented to the jury:

1. That Defendant Browne was in possession of the .40 caliber Beretta semi-automatic pistol on or prior to January 6, 2010;
2. That Defendant Browne was in possession of any firearms prior to January 30, 2010;
3. That Defendant Browne communicated with Faucher and James on any subject whatsoever;
4. That Browne provided firearms to Faucher and/or James at any time;
5. That Browne participated in any assault or attempted assault upon Halik Milligan and/or Karim Woodley on or about January 6, 2010;
6. That Browne knowingly caused any persons to assault or attempt to assault Milligan and/or Woodley or any other persons on or about January 6, 2010;
7. That Browne knowingly rendered any material assistance to any persons to assault or attempt to assault Milligan and/or Woodley or any other persons on or about January 6, 2010.

While the People argue that a reasonable juror had sufficient evidence to find that Browne was guilty of all of the charges, the People's Response to Defendant's Motion for Judgment of Acquittal is very conclusory. The People state, for instance, that the charges against Browne and Faucher are "supported by the testimony of Ms. Simmons, Mr. Henry who's (sic) statements were corroborated by the physical evidence." Charges related to

unlawful possession are “supported by the testimony of Ms. Simmons, and Mr. Woodley and the expert testimony of M.L. Cooper who’s (sic) testimony were corroborated by the physical evidence at the scene of the crime and from the search of Defendant’s Browne’s home.” Without knowing exactly what testimony and what evidence the People are referring to, the Court does not find the People’s Response to be very helpful.

STANDARD

I. Standard of Review for Judgment of Acquittal

A judgment of acquittal must be entered for any offense for which the evidence is insufficient to sustain a conviction.² The rule allows courts to “reserve decision on the motion ... submit the case to the jury, and decide the motion either before the jury returns a verdict or after it returns a verdict of guilty or is discharged without having returned a verdict.”³ Under the standard for a judgment of acquittal, the sufficiency of the evidence presented at trial is reviewed in the light most favorable to the People.⁴ Courts are tasked with reviewing all issues of credibility under the province of the jury.⁵ However, a court is not called upon to assess witness credibility or weigh evidence.⁶ A conviction will be affirmed if a rational trier of fact could have found the defendant guilty beyond a reasonable doubt and the convictions are supported by substantive evidence.⁷ Nevertheless, “this evidence does not need to be inconsistent with every conclusion save that of guilt in order to sustain the verdict.”⁸ A trial

² Fed.R.Crim.P. 29(a).

³ *Id.*

⁴ *United States v. Gonzalez*, 918 F.2d 1129, 1132 (3d Cir. 1990).

⁵ *Id.*

⁶ *Gov’t of the V.I. v. Joseph*, 770 F.2d 343, 348 (3d Cir. 1985).

⁷ *Bowry v. People*, 52 V.I. 264, 268 (2009) (quoting *Latalaudi v. People*, 51 V.I. 137, 145 (2009)).

⁸ *Id.* (quotation omitted).

court has the duty to grant a judgment of acquittal when the evidence is so sparse that the fact finder could only speculate as to the defendant's guilt.⁹

II. Analysis

a. Count I: Felony Murder

As stated previously, Defendant is charged with aiding and abetting a felony murder, which occurred when Shamir James died while participating in an assault in the first and third degree on Halik Milligan and Karim Woodley. Section 922(a)(2) of Title 14 of the Virgin Islands Code, the felony murder statute, provides:

(a) All murder which --

(2) is committed in the perpetration or attempt to perpetrate arson, burglary, kidnapping, rape, robbery, mayhem, assault in the first degree, assault in the second degree, assault in the third degree and larceny -- is murder in the first degree'

Furthermore, Section 295 of Title 14 of the Virgin Islands Code provides that:

"Whoever --

(1) with intent to commit murder, assaults another

(2) ...

(3) With intent to commit rape, sodomy, mayhem, robbery or larceny, assaults another

is guilty of assault in the first degree.

Lastly, the elements of assault in the third degree are set out in section 297 of Title 14 of the Virgin Islands Code.

"Whoever, under circumstances not amounting to an assault in the first or second degree --

(1) Assaults another person with intent to commit a felony;

(2) Assaults another with a deadly weapon;

(3) Assaults another with premeditated design and by use of means calculated to inflict great bodily harm;

⁹ *Virgin Islands v. Clark*, 2010 WL 5582939 at *2 (V.I. Super. Ct. Dec. 22, 2010).

(4) Assaults another and inflicts serious bodily injury upon the person assaulted

(5) ...

Shall be fined not less than \$500 and not more than \$3,000 or imprisoned not more than 5 years or both.

14 V.I.C. § 297

Browne is accused of these crimes as an aider and abetter. Under Section 11(a) of Title 14 of the Virgin Islands Code, the aiding and abetting statute, "Whoever commits a crime or offense or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal."

Before a defendant may be held criminally responsible for the acts of others, it is necessary that the accused willfully associated himself or herself in some way with the criminal venture and willfully participated in it as he or she would in something he or she wished to bring about. *United States v. Gomez*, 733 F.2d 69, 72-73 (8th Cir. 1984). The Government's burden is to prove beyond a reasonable doubt that the defendant knowingly and deliberately associated himself or herself in some way with the crime charged and that he or she participated, with intent to commit the crime. *Id.* Mere presence at the scene of a crime is not sufficient to establish that a defendant aided and abetted the crime unless the Government proves beyond a reasonable doubt that the defendant was a participant and not merely a knowing spectator. *United States v. Wright*, 742 F.2d 1215, 1221 (9th Cir. 1984).

Gov't of Virgin Islands v. Davis, Crim. No. 184/1996, 1997 WL 55952 (Terr. V.I. Jan. 10, 1997).

The People have not met their burden in this case. No evidence was presented that Browne willfully participated in this crime or that he had the intent that it be carried out. The People did not present evidence that Browne communicated with Faucher and James about the attack. There was no evidence presented that Browne supplied the two with firearms or that he even had firearms in his possession before the attack or immediately after the attack. (Tr., Vol. VI, p. 32, 43). The only evidence linking Browne to the shooting incident was his mere presence at Chris' Hideaway and the discovery of a .40

caliber Beretta semi-automatic pistol on January 30, 2010 – over three weeks after the shooting – which may have been used by one of the gunmen and which Browne could have picked up at the hospital. According to the testimony, Browne only acquiesced in accompanying Henry to Chris' Hideaway. (*Id.* at 26). Browne wanted to go home. (*Id.* at 31). Going to the bar, where the crime occurred was not Browne's idea and he did not even exit the car the entire time that he was with Henry at Chris' Hideaway. (*Id.* at 32). "Thus, liability for aiding and abetting someone else in the commission of a crime requires the specific intent of facilitating the crime, and mere knowledge of the underlying offense is not sufficient for conviction." *People v. Clarke*, S. Ct. Crim. No. 2009-0104 (V.I. Apr. 12, 2011). Linking Browne to James' death and the attacks on Milligan and Woodley would require inference upon inference, which is not permissible for a finding of guilt. "A verdict may not rest on mere suspicion, speculation, or conjecture, or on an overly attenuated piling of inference on inference." *Merrifield v. People of the Virgin Islands*, S.Ct. Crim. No. 2011/034, 2012 WL 2308431 (V.I. June 15, 2012) (quoting *Mendoza v. People*, 55 V.I. 660, 677 (V.I. 2011)).

Furthermore, the testimony on the record that places Browne at the casino at the same time as Halik Milligan and regarding the chase between Browne and the Graham twins is wholly insufficient to establish that Browne had some sort of intent to assault Milligan. The jury heard testimony that Browne was being chased around the casino by the Graham twins. (Tr. Transcript, Vol. II, pp. 12-13, 133-135). They were running up and down the stairs outside the casino and chasing each other, ran into the parking lot into their vehicles and left Divi. According to Sayonara Williams, a Divi security guard, one of the Graham twins had a pistol. (*Id.* at 133). The video clips that the jury saw from January 5, 2010 at

Divi showed that Jesus Browne was in front of Halik Milligan and the Graham twins when he exited the casino. They left the casino at approximately 11:02pm. (*Id.* Vol. V, pp. 143-149.) This evidence is hardly enough for a jury to find that Jesus Browne had formed an intent to have Halik Milligan assaulted. Moreover, it is not unusual that Jesus Browne would find himself around 1:00a.m. in the same place as Halik Milligan when the two had just been in each other's presence at the casino. St. Croix is not Las Vegas. There are only a certain number of establishments open on the island at 1:00a.m. on an early Wednesday morning.

b. Reckless Endangerment

In Count Two, Browne is charged with Reckless Endangerment. Specifically, the Amended Consolidated Information alleges that Browne "recklessly engaged in conduct in a public place (Chris' Hideaway) which created a grave risk of death to another person (Halik Milligan and Karim Woodley) by providing weapons, including an assault weapon to Faucher and James, who fired shots at Halik Milligan and (Karim Woodley)" at Chris' Hideaway, where the public had congregated. Browne's act is alleged to have violated sections 625(a) and 11(a) of Title 14 of the Virgin Islands Code.

Pursuant to section 625(a) of title 14 of the Virgin Islands Code,

A person is guilty of reckless endangerment in the first degree when, under the circumstances evidencing a depraved indifference to human life, he recklessly engages in conduct in a public place which creates a grave risk of death to another person. Reckless endangerment in the first degree shall be considered a felony.

Again, as explained previously, no evidence was presented that Browne provided weapons of any sort to Hillman Faucher and Shamir James. Nor was any evidence presented that Browne aided, abetted, counseled, commanded, induced or procured Faucher or James to point a gun at

anymore. No evidence was presented that Browne pointed a gun at anyone. Browne was present at Chris' Hideaway on the morning of January 6, 2010; however, there is conflicting testimony about whether he was present during the shootout. There is no evidence, however, that he exited Henry's car while he was at the bar. (Tr. Vol. II, p. 56, Vol. VI, p.32). Furthermore, no one ever reported seeing Browne with a gun until one was found in his apartment over three weeks after the shooting. (Tr., Vol. II, p. 75, Vol. VI, p. 32). The People did not put on any evidence that Browne had a plan to go to Chris' Hideaway. All of the evidence showed that Browne asked only for a ride home but was at the mercy of the whim of his driver, Lloyd Henry, who took him first to Chris' Hideaway. (Tr. Vol. 6, p. 31). The mere fact that Browne was a passenger sitting in a nearby vehicle before the shootout or possibly during the shootout without more is insufficient to sustain a conviction for reckless endangerment. *See, e.g. People v. Nieves*, 135 A.D.2d 579, 522 N.Y.S.2d 166 (N.Y.A.D. 1987) (throwing out reckless endangerment conviction where defendant was merely a passenger in back seat of vehicle that was engaged in high-speed chase with police).

c. Counts Three and Four: First Degree Assault

In Counts Three and Four, Browne is charged with aiding and abetting Faucher and James in assaulting Halik Milligan and Karim Woodley with the intent to murder them by providing Faucher and James with firearms, including an assault weapon, in violation of sections 295(1) and 11(a) of title 14.

Section 295(1) provides:

Whoever –

- (1) With intent to commit murder, assaults another;
- (2) With intent to kill, administers or causes to be administered to another, any poison or other noxious or destructive substance or liquid, and death does not result;

- (3) With intent to commit rape, sodomy, mayhem, robbery or larceny, assaults another;
Shall be imprisoned not more than 15 years. . .

“To convict [Browne] of first degree assault as a principal actor, the People would be required to prove, beyond a reasonable doubt, that [he] assaulted another with the intent to commit murder, see 14 V.I.C. § 295(1); yet to convict [Browne] of first degree assault as an aider and abettor, the People would have to prove that someone else committed a first degree assault, but that [Browne] knew of the first degree assault and specifically did some act intending to facilitate its commission.” *Fontaine v. People*, WL 1264535, at *2-3 (V.I. Apr. 12, 2012). Again, no evidence was put before the jury that Browne had any inkling of the assaults of Milligan and Woodley, much less that he did some act to facilitate them or participated in them in some way. There was no evidence that Browne communicated in any way with James and Faucher. Browne’s mere presence close in time to the shoot-out does not make him a facilitator or a participant. Furthermore, “liability for aiding and abetting someone else in the commission of a crime requires the specific intent of facilitating the crime, and mere knowledge of the underlying offense is not sufficient for a conviction.” *United States v. Garth*, 188 F.3d 99, 113 (3d Cir. 1999). Because the People did not prove that Browne had knowledge of the assaults or that he did any act to facilitate their commission, Browne must be acquitted of these counts.

d. Counts Five: Possession of a Firearm During the Commission of a Crime of Violence

Browne is charged with possession of a firearm during the commission of a crime of violence for allegedly possessing a .40 caliber firearm, which was utilized during the attempted murder in the first degree, assault in the first degree and assault in the third degree of Halik

Milligan and Karim Woodley in violation of sections 2253(a) and 11(a) of title 14 of the Virgin Islands Code.

Section 2253(a) provides:

Whoever, unless otherwise authorized by law, has possesses, bears, transports or carries either, actually or constructively, openly or concealed any firearm, as defined in Title 23, section 451(d) of this code, loaded or unloaded, may be arrested without a warrant, and shall be sentenced to imprisonment of not less than one year nor more than five years and shall be fined not less than \$5,000 nor more than \$15,000, or both the fine and imprisonment, except that if such person shall have been convicted of a felony in any state, territory, or federal court of the United States, or if such firearm or an imitation thereof was had, possessed, borne, transported or carried by or under the proximate control of such person during the commission or attempted commission of a crime of violence, as defined in subsection (d) hereof, then such person shall be fined \$25,000 and imprisoned not less than fifteen (15) years nor more than twenty (20) years. The foregoing penalties provided for violation of this section shall be in addition to the penalty provided for the commission of, or attempt to commit, the felony or crime of violence.

"In order to be convicted of aiding and abetting the use or carrying of a firearm offense. . . the defendant must act with the knowledge or specific intent of advancing the 'use' of the firearm in relation to the underlying offense. . . . In addition to requiring proof of knowledge or intent for a conviction of aiding and abetting, 'there must also be proof that the defendant performed some affirmative act relating to the firearm.' . . . The link to the firearm is necessary because the defendant is punished as a principal for 'using' a firearm in relation to another offense, and therefore must facilitate in the 'use' of the firearm rather than simply assist in the crime underlying the use or carrying of a firearm violation." *People v. Clarke*, S.Ct.Crim No. 2009-0104 (V.I. Apr. 12, 2011) (quoting *United States v. Sorrellis*, 145 F.3d 744, 753-54 (5th Cir. 1998). Again, the People have failed to meet their burden. The People presented no evidence that Browne knew or facilitated Faucher and James' use of the firearm in the commission of these

assaults. No evidence was presented that Browne knew about the firearms or the intended assaults. No evidence was presented that Browne facilitated these crimes of violence or that he facilitated the possession of the firearms.

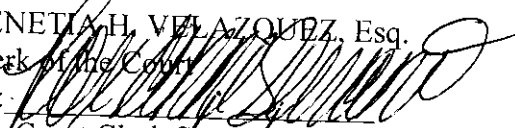
Browne's mere presence at Chris' Hideaway close in time to the shooting and his arrival at the hospital after he learned of James and Faucher's injuries is not enough to sustain a conviction under this count. *Id.* Furthermore, the fact that Browne was found to possess a firearm that was apparently utilized in the shooting over three weeks after the shooting is not sufficient to show that he was involved in the shooting. Evidence allowing a jury to make connections between the discovery of the gun at Browne's apartment and his involvement in the shoot-out at Chris' Hideaway is non-existent and would be pure speculation as Browne could have picked up the weapon at the hospital. Nevertheless, this does not preclude the People from charging Browne for unauthorized possession of a firearm on January 30, 2010.

III. Conclusion

In this case, the Government failed to put forth evidence at trial that would allow a reasonable juror to find Defendant Jesus Browne guilty of aiding and abetting felony murder, reckless endangerment, assault in the first degree, and possession of a firearm during the commission of a crime of violence. The Court will grant Browne's Judgment of Acquittal.

DONE AND SO ORDERED this 7th day of June, 2013.


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

ATTEST:
VENETIA H. VELAZQUEZ, Esq.
Clerk of the Court
By: 
Court Clerk Supervisor
Dated: 6/7/13