

NOT FOR PUBLICATION

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

	)	CASE NO. SX-09-CR-553
	)	
PEOPLE OF THE VIRGIN ISLANDS,	)	MURDER FIRST DEGREE
	)	14 V.I.C. § 922(a) & 11(a)
Plaintiff,	)	ASSAULT FIRST DEGREE
	)	(2 COUNTS)
v.	)	14 V.I.C. § 295(1) & 11(a)
	)	UNAUTHORIZED POSSESSION OF A
KHAREEM HUGHES,	)	FIREARM
	)	14 V.I.C. § 2253 & 11(a)
Defendant.	)	RECKLESS ENDANGERMENT
	)	14 V.I.C. § 625(a) & 11(a)
	)	
	)	
	)	

MEMORANDUM OPINION

THIS MATTER is before the Court on Defendant, Khareem Hughes' Renewed Motion for Judgment of Acquittal filed on December 5, 2011. The People of the Virgin Islands filed a Response on December 8, 2011. Hughes was charged, along with Joh Williams and Jalani Williams, in the Amended Criminal Information with aiding and abetting the first degree murder of Almanzo Williams.¹ He was tried jointly with Joh Williams and Jalani Williams. After trial, a jury found Hughes guilty of the lesser – included offense of voluntary manslaughter. Hughes challenges this conviction, arguing; 1) that the evidence is insufficient to establish beyond a reasonable doubt that he aided and abetted his co-defendants in the unlawful killing of Almanzo Williams; and 2) that the evidence was insufficient to prove beyond a reasonable doubt that he is guilty of voluntary manslaughter. Accordingly, Hughes asserts that the Court must vacate the jury's finding and enter a judgment of acquittal.

¹ 14 V.I.Code Ann. §§ 922(a)(1) and 14 V.I. C. § 11(a).

STANDARD

I. 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 issue 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

DISCUSSION

A. There was Sufficient Evidence that Hughes Aided and Abetted the Unlawful Killing of Almanzo Williams.

Whoever commits a crime or offense or aids and abets, counsels, commands, induces or procures its commission, is punishable as a principal.⁹ By statute, the People must establish two things in order to prove that Hughes aided and abetted in the unlawful killing of Almanzo Williams; (1) that the underlying substantive crime was committed and (2) that the defendant knew of the

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 *Latalladi v. People*, 51 V.I. 137, 145 (2009)).

⁸ *Id.* (quotation omitted).

⁹ V.I. Code Ann. tit. 14, § 11(a) (1996 & Supp. 2011).

crime and attempted to facilitate it.¹⁰ A defendant must be an actual participant, and not merely a knowing spectator.¹¹ Specifically, the People must prove that a defendant's involvement in the underlying crime(s) went beyond mere knowledge.¹² Thus, the Court will only sustain Hughes' conviction if there was sufficient evidence to prove that Joh Williams and Jalani Williams committed the unlawful killing of Almanzo Williams and that Hughes knew of and attempted to facilitate the unlawful killing of Almanzo Williams. Finally, the evidence must show that Hughes' had the specific intent to facilitate the crime.¹³

Hughes does not argue that the underlying conviction of Defendants Joh Williams and Jalani Williams for first degree murder was erroneous. Nor does he argue that Almanzo Williams' killing was anything other than unlawful. Rather, he focuses his argument on claiming that the evidence was insufficient to prove beyond a reasonable doubt that he committed or aided and abetted in the commission of the crime for which he was convicted. His argument relies heavily on *Charmaine Clarke v. People of the Virgin Islands*, a recent decision by the Supreme Court of the Virgin Islands.¹⁵ In *Clarke*, a witness claimed that she saw a man, later identified as Isaac Austrie, run across the street holding a gun and running away from where a body lay motionless on the ground. The witness also claimed that she saw the man get into the passenger seat of a White Ford Focus. The car sped off at a high rate of speed. The witness stated that she was able to get a view of the driver. She was also able to get a partial glimpse of the Ford Focus' license plate. Later via photo array, the witness identified the driver of the car. The driver was identified as a Charmaine

¹⁰ *St. Clair De Silvia v. People of the Virgin Islands*, S. Ct. Crim. No. 2010 – 0051, 4566431 (VI S. Ct. Sept. 29, 2011).

¹¹ *People of the Virgin Islands v. Charmaine Clarke*, S. Ct. Crim. No. 2009 – 0104, 2011 WL 2150103, at * 5 (VI S. Ct. April 12, 2011).

¹² *United States v. Garth*, 188 F.3d 99, 113 (3d. Cir. 1999).

¹³ *United States v. Mercado*, 610 F.3d 841, 846 (3d. Cir. 2010).

¹⁵ *Clarke*, 2011 WL 2150103.

Clarke. The Virgin Islands Police Department determined that Clarke owned a White Ford Focus. Further, her license plate matched the partial description given by the witness.

Clarke was found guilty of aiding and abetting in the unauthorized possession of a firearm during the commission of a crime. Post-trial, Clarke renewed her motion for judgment of acquittal, arguing that the evidence presented was insufficient to convict her of the underlying crimes charged. After reviewing the evidence in the light most favorable to the People, the trial court found that there was insufficient evidence to support the jury's verdict as to Clarke. On appeal, the Virgin Islands Supreme Court affirmed, finding an absence of evidence that Clarke knew Austrie possessed a firearm or that he intended to use the firearm during the commission of a crime of violence. The court determined that to reach that conclusion, the jury would have had to base that inference on the sole fact that Clarke drove Austrie to the crime scene. As a verdict "may not rest on mere suspicion, speculation, or conjecture, or an overly attenuated piling of inference on inference" the court affirmed Clarke's judgment of acquittal.¹⁶

Hughes argues that as in *Clarke*, the evidence presented against him at trial does not lead to the conclusion that he knew or had the intent to aid and abet his co-defendants in an unlawful killing. But after an exhaustive review of the evidence adduced at trial, the court cannot agree. At trial, the People presented evidence that on the night of August 2, 2009, Hughes was outside of the Gertrude's Restaurant area. Two family members, Hughes' aunts L. Hughes and A. Hughes arrived there shortly after he did. Because of Hughes' minor status, both aunts were surprised to see him there and questioned him about his presence. Hughes did not tell them why he was there. Instead, Hughes warned both of his aunts to leave the area. At this time, Joh Williams was seen in the immediate vicinity of Hughes holding a gun at his side. Immediately after Hughes warned his aunts

¹⁶ *Id.* at *2 (quoting *United States v. Pettigrew*, 77 F. 3d 1500, 1521 (5th Cir. 1996)).

to leave, his co-defendants shot the victim Almanzo Williams repeatedly. Once gunfire broke out, the crowd ran away from the scene of the shooting, including Hughes. But unlike the crowd, Hughes came back to pick up Defendant Jalani Williams. First, he ran and got his aunt's car and then sped back toward the scene of the shooting at a high rate of speed; slowing down only slightly so that Jalani Williams could jump into the passenger side window of the car. Then Hughes again took off at a high rate of speed. Police officers attempted to stop Hughes but he eluded them. Confronted by a police roadblock, Hughes sped past it. He did not stop until eventually he crashed into a truck. Upon crashing, Hughes and Jalani Williams jumped out of the car and continued to flee on foot until their eventual apprehension by police.

Hughes' actions contrast sharply from those of the defendant in *Clarke*. In that matter, the supreme court found that Clarke could not be convicted of aiding and abetting the crime of unauthorized possession of a weapon during a crime of violence because while defendant's flight from the scene of the crime with Austrie immediately after the shooting would have allowed a reasonable jury to infer that the defendant drove Austrie to the scene of the crime, the People presented no evidence that the defendant knew that Austrie possessed a weapon or that she helped facilitate the shooting of the victim in that matter.¹⁷ In contrast, the People presented evidence at trial that Hughes knew of his co-defendants intent to unlawfully kill Almanzo Williams, that he shared this intent and that he worked to facilitate this goal. Prior to the shooting, Hughes warned his family members to leave the area. A reasonable juror could have found from this evidence that Hughes knew what his co-defendants intended to do. Even so, if Hughes had acted no further, he would be just a mere knowing spectator, much like the defendant in *Clarke*. But Hughes' actions went beyond that of the defendant in *Clarke*'s. In this matter, Joh Williams and Jalani Williams

¹⁷ *Clarke*, 2011 WL 2150103, at *4.

opened fire on the victim in full view of a crowd of people, including Hughes. Thus, Hughes was aware of the crime committed in a way that the defendant in *Clarke* was not.

Further, unlike the defendant in *Clarke*, who passively waited in a car until her co-defendant returned, Hughes actually left the scene only to return moments later with a car, a car he'd taken from his aunt without her permission, and actually returned to the scene of the shooting to pick up Jalani Williams. The witness in *Clarke*, claimed that after Austrie got into the car with the defendant, she sped off at a high rate of speed. The appellate court found that this did not indicate that the defendant could be found to have aided and abetted Austrie in the underlying crime. But in this matter, Hughes didn't just speed off. He sped back to the scene of the shooting at a high rate of speed, and slowed down slightly so that he could pick Jalani Williams, a man who only moments prior fired multiple gunshots into the victim in full view of witnesses. Once Jalani Williams was inside the vehicle, Hughes proceeded to speed away. As police gave chase, Hughes purposefully eluded them. And even when confronted with a police roadblock, he refused to stop. In fact, Hughes only gave up his attempt to flee the police because he crashed the car. And even then, he attempted to flee the police on foot. Hughes' actions in this matter are far more proactive than those of the defendant in *Clarke*. Ultimately, the Court finds that the evidence presented at trial against Hughes was substantive. Based on this evidence, a rational trier of fact could find beyond a reasonable doubt that Hughes had the specific intent to facilitate the crime of first degree murder and that he actively worked to bring about that result.

B. Defendant's Conviction of the Lesser – Included Offense of Voluntary Manslaughter is Not Against the Weight of Evidence Adduced at Trial Nor Inconsistent.

Under Virgin Islands law, voluntary manslaughter is the unlawful killing of a human being without malice aforethought, upon a sudden quarrel or heat of passion.¹⁸ Hughes contends that his

¹⁸ V.I. Code Ann. tit. 14, § 924 (1996 & Supp. 2011).

conviction for voluntary manslaughter and Defendants' Joh Williams and Jalani Williams conviction for first degree murder are so inconsistent as to require a judgment of acquittal. He supports this assertion by pointing to the testimony of Lester Roberts, who testified that he did not witness an altercation or fight between the Defendants and the victim on the night of the shooting.¹⁹ It is true that one person cannot kill someone in the heat of passion and in a cool and deliberate manner at the same time.²⁰ For premeditation to be present, "[t]here must be some appreciable time for reflection and consideration before execution of the act, although the period of time "does not require the lapse of days or hours or even of minutes."²¹ Thus, premeditation is inapposite of the idea that a defendant acted in the heat of passion because this requires that a defendant act under a sudden intense passion, resulting from severe provocation by another.²² But Hughes misapplies the law. A determination that one particular defendant acted with premeditation and in the heat of passion would be inconsistent. In this matter, there were multiple Defendants. Different defendants may act independently but achieve one specific goal. Thus, jurors are tasked with evaluating the evidence as it applies to each defendant and rendering a verdict as to each defendant. Thru the Court's jury instructions, the jury was informed of their responsibility to separately consider the evidence against each individual Defendant in this matter on each offense charged.²³

[F]or each defendant and offense, you must decide whether the People have proven beyond a reasonable doubt that the particular defendant is guilty of the particular offense. Your decision on any one defendant or any one offense, whether guilty or not guilty, should not influence your decision on any of the other defendants or offenses. Each offense and each defendant should be considered separately.²⁴

¹⁹ Witness Lester Roberts was at Gertrude's Restaurant on the night of the shooting and was injured by gunfire. The jury found Joh and Jalani Williams guilty of assaulting Roberts.

²⁰ *Government of the Virgin Islands v. Sampson*, 94 F. Supp. 2d 639, 645 (D.V.I. App. Div. 2000).

²¹ *Id.* at 645 (quoting *United States v. Frady*, 456 U.S. 152, 173 (1982)).

²² *Id.* at * 646.

²³ See *Richardson v. Marsh*, 481 U.S. 200 (1987).

²⁴ (Jur. Instr. ¶ 34) *Zafiro v. United States*, 506 U.S. 534, 541 (1993) (finding that potential prejudice to defendants tried jointly was mitigated by proper curative instructions to the jury).

The jury's determination of the guilt or innocence of each Defendant is assumed to have been based solely on the evidence against that particular Defendant. Thus, the jury considered the evidence against the Defendant and each offense that he was charged with, separate and apart from the evidence against the other Defendants, Jalani Williams and Joh Williams. After doing so, a jury found that each Defendant's actions warranted a different conviction. Under the law, this is a determination that juries are allowed to make. *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.") *United States v. Mussare*, 405 F.3d 161, 167 (3d Cir.2005) ("[T]here is no requirement that a jury's verdict be consistent."),²⁵

Further, juries may be more lenient toward one defendant over another, which may lead to different or inconsistent verdicts. But an inconsistent verdict premised on jury leniency by itself is not enough to warrant a judgment of acquittal.²⁶ In *Dunn v. United States*, the Supreme Court held that inconsistent verdicts emanating from jury leniency may stand.²⁷ This is because a defendant is protected from jury irrationality by the review of the sufficiency of evidence undertaken by trial and appellate courts.²⁸ The law recognizes that issues of intent are rarely proven with direct evidence and must be inferred from the objective facts of the case.²⁹ "Consistency in the verdict is not necessary. . . . [and] verdicts cannot be upset by speculation or inquiry into such matters."³⁰ This matter provides no exception and thus, even if the verdict were inconsistent, there is no basis for setting aside the conviction.³¹

²⁵ See also *Government of the Virgin Islands v. Rosa* Civ. No. 040-1846, 399 F. 3d 283 (3d. Cir. Feb. 2005).

²⁶ *Government of the Virgin Islands v. Edwards*, No. 89-3509, 903 F.2d 267, 271 (3d. Cir. 1991) (citations and quotations omitted).

²⁷ *Dunn v. United States*, 284 U.S. 390 (1932).

²⁸ *United States v. Powell*, 469 U.S. 57, 64 -67 (1984) (reaffirming *Dunn*).

²⁹ *Government v. Lake*, 5 V.I. 594, 605, 362 F.2d 770 (3d. Cir. 1966).

³⁰ *Dunn v. United States*, 284 U.S. at 393. See also *United States v. Dotterweich*, 320 U.S. 277, 279, (1943)(holding that inconsistency is not a basis for reversal of verdicts of co-defendants in a joint trial).

³¹ *Id.*

CONCLUSION

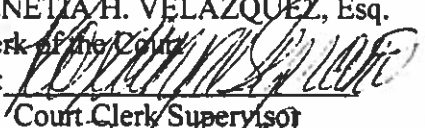
The Court finds that the evidence presented in this case does not weigh heavily against the verdict and was sufficient to sustain a finding that Defendant Khareem Hughes aided and abetted Joh Williams and Jalani Williams in the unlawful killing of Almanzo Williams. Moreover, Hughes' conviction of the lesser-included offense of voluntary manslaughter is not against the weight of evidence adduced at trial. Nor is it inconsistent with the convictions of Joh Williams and Jalani Williams for first-degree murder. Accordingly, Defendant Khareem Hughes' Renewed Motion for Judgment of Acquittal is denied. An order consistent with this opinion will follow.

DONE AND SO ORDERED this 18th day of July, 2012.



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

ATTEST:
VENETIA H. VELAZQUEZ, Esq.
Clerk of the Court

By: 
Court Clerk Supervisor

Dated: 7/17/12