For Publication

IN THE SUPREME COURT OF THE VIRGIN ISLANDS

EDWIN PONCE, Appellant/Defendant, v. **PEOPLE OF THE VIRGIN ISLANDS** Appellee/Plaintiff.	)	**S. Ct. Crim. No. 2015-0067** Re: Super. Ct. Crim. No. 736/2011 (STX)

On Appeal from the Superior Court of the Virgin Islands
Division of St. Croix
Superior Court Judge: Hon. Douglas A. Brady

Argued: February 16, 2016
Filed: April 1, 2020

Cite as: 2020 VI 2

BEFORE: **RHYS S. HODGE**, Chief Justice; **MARIA M. CABRET**, Associate Justice; and **IVE ARLINGTON SWAN**, Associate Justice.

APPEARANCES:

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OPINION OF THE COURT

HODGE, Chief Justice.

¶1 Appellant Edwin Ponce appeals from the Superior Court's July 30, 2015 judgment and commitment, which adjudicated him guilty of numerous offenses, including first-degree murder.

For the reasons that follow, we affirm.

I. BACKGROUND

¶2 The People of the Virgin Islands charged Ponce and Edwin "Cepi" Rivera with multiple offenses stemming from the death of Carlos Juan Rosa. The Superior Court had consolidated the cases for trial, and jury selection concluded on May 28, 2013. The Superior Court conferred with counsel for all parties on the morning of May 29, 2013, to address various issues that remained outstanding. At this hearing, Ponce moved to exclude various photographs of his home—taken when the police executed a search warrant on September 24, 2011—that the prosecution had only presented the morning of jury selection. After hearing arguments, the Superior Court denied the motion but stated that it would bring the jury in for preliminary instructions, recess for lunch, and not reconvene until the next morning, so as to give Ponce's counsel time to review the photographs or engage in any other investigation necessary to prepare for trial.

¶3 The next morning, outside the presence of the jury, the Superior Court stated on the record that Rivera's counsel had advised that he experienced cardiac issues overnight, and that he needed to meet with a cardiologist that day and could not participate in trial that day. The Superior Court stated its intent to release the jury for the day and reconvene the next morning but asked to first hear from the parties. The People stated that given the uncertain health situation of Rivera's counsel, it would stipulate to a severance so that the trial could proceed only with respect to Ponce. Ponce agreed with the People, and orally moved to sever the cases because "[t]he defense for – neither his defense for, the defense of Edwin Ponce, the defense of Edwin 'Cepi' Rivera relies on either of the other. They each stand charged before this Court as individuals and they each should be treated as such." (J.A. 336-37.) In doing so, Ponce also asserted his speedy trial rights, and emphasized the significant delay between the trial date and when charges had been filed against

him. The Superior Court stated that it would be imprudent to sever the cases before Rivera's counsel met with the cardiologist, and that it would release the jury for the day and issue a ruling on the severance issue the next morning.

¶4 The trial reconvened on the morning of May 31, 2013, and the Superior Court again met with the parties outside the presence of the jury. Rivera's counsel appeared by telephone and informed the court that his cardiologist had advised him that he needed to travel to the continental United States to have a specific procedure performed that could not be done in the Virgin Islands. However, immediately after the Superior Court mentioned the pending motion for a severance, Ponce's counsel interrupted to state that she was withdrawing the motion and was instead moving for a mistrial. Although Ponce's counsel had represented the prior day that Ponce and Rivera's defenses were not related to each other, she now argued that the Superior Court should grant a mistrial because the empaneled jury "ha[s] been exposed to two defendants [a]nd the defendant can no longer go on with his defense, to put on his defense that it wasn't me, it was him." (J.A. 354.) Nevertheless, despite taking this position, Ponce agreed that Rivera's counsel should not be required to represent Rivera at the trial, given his medical issues. After hearing from both parties, the Superior Court denied the motion for a mistrial and stated that it would have granted the motion to sever had it not been withdrawn. At that point, the People moved to sever, to which Ponce objected, again on grounds that a severance would purportedly prejudice his defense. After considering arguments from all parties, the Superior Court granted the People's motion to sever, declared a mistrial as to Rivera, and stated that the trial would proceed only with respect to Ponce.

¶5 At trial, the People called Bettina Rosa—the decedent's wife—to testify to the events that led to her husband's death. She testified that after going to bed on the night of August 28, 2011, she and her husband heard stones thrown at their house. Mrs. Rosa further testified that both she

and her husband saw Ponce and Rivera—whom she recognized as two of their neighbors—standing outside. According to Mrs. Rosa, Ponce accused her husband of stealing from him and then aimed a gun at her and said he would shoot her if she did not move. Mrs. Rosa testified that Mr. Rosa pulled her away from the window and asked Ponce to lower his gun. Shortly thereafter, Ponce and Rivera left, but Mrs. Rosa then saw Ponce fire four gunshots into the air.

¶6 Mrs. Rosa then testified that the next day, she saw Rivera and Mr. Rosa fighting outside, with Ponce watching and laughing. According to Mrs. Rosa, when the fighting stopped and she and her husband left, she heard Rivera say, "Don't worry, you gon see what gon happen to you." (J.A. 440.) Mrs. Rosa further testified that later that same day, Ponce approached her when she was sitting under a tamarind tree near her home and told her that if Mr. Rosa did not return certain property to him, "something will go on in there." (J.A. 452.) Mrs. Rosa then testified that she and her husband heard rocks thrown at their window again that night, and that Mr. Rosa took a rifle, approached his front door, and was shot immediately after partially opening the door. Mrs. Rosa testified that her husband retreated to their bedroom and told her that Rivera had shot him in his belly. Mrs. Rosa stated that she then looked through the window and saw Ponce leaving the yard in a crouched position while holding a gun, as well as Rivera standing outside her gate without a gun in his hand. According to Mrs. Rosa, Ponce fired the gun into the air as he left their property. Mr. Rosa died shortly before the police arrived at the scene.

¶7 The People also called several other witnesses to testify to the execution of a search warrant at Ponce's residence on September 24, 2011, which resulted in discovery of bullets found in a pair of pants on the floor and a firearm with an obliterated serial number found in a neighboring yard. This included testimony that when officers knocked on the door to execute the warrant, they heard "running" sounds in the house, (J.A. 1054), as well as testimony from Ponce's then-girlfriend that

on hearing the knocks Ponce "jumped out of bed" and "rushed" to an adjacent room before ultimately returning to their bed. (J.A. 979-81.) The People also introduced the testimony of Detective Karen Stout, who testified that her review of licensing records from the islands of St. Croix, St. Thomas, St. John, and Water Island revealed that Ponce was not authorized to possess or carry a firearm on either August 28, August 29, or September 24, 2011. The People did not present any other eyewitness testimony before resting their case.

¶8 After the People rested, Ponce orally moved for a judgment of acquittal, which the Superior Court denied. Ponce called several witnesses in his defense, including his mother, who testified that he had been with her the night of August 29, 2011. The matter was submitted to the jury after Ponce rested his case.

¶9 Ultimately, the jury found Ponce guilty of first-degree murder, two counts of third-degree assault, two counts of reckless endangerment, three counts of unlawful possession of ammunition, three counts of unauthorized possession of a firearm, and one count of possession of a firearm with altered or obliterated marks. Ponce filed a written motion for judgment of acquittal, which the Superior Court denied in a June 26, 2015 opinion and order. The Superior Court orally sentenced Ponce on July 27, 2015, to life imprisonment without parole on the first-degree murder charge, and to various terms of imprisonment on the remaining charges, to be served concurrently with each other but consecutive to his life sentence. The Superior Court memorialized its sentence in a July 30, 2015 judgment and commitment. Ponce timely filed his notice of appeal with this Court on July 27, 2015. *See* V.I. R. APP. P. 4(b)(1) ("A notice of appeal filed after the announcement of a decision, sentence, or order -- but before entry of the judgment or order -- is treated as filed on the date of and after the entry of judgment.").

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II. DISCUSSION

A. Jurisdiction and Standard of Review

¶10 We have jurisdiction over "all appeals from the decisions of the courts of the Virgin Islands established by local law[.]" 48 U.S.C. § 1613a(d); *see also* 4 V.I.C. § 32(a) (granting this Court jurisdiction over "all appeals arising from final judgments, final decrees or final orders of the Superior Court"). Because the Superior Court's July 30, 2015 judgment and commitment was a final order, this Court has jurisdiction over this appeal. *See Allen v. HOVENSA, L.L.C.*, 59 V.I. 430, 434 (V.I. 2013).

¶11 This Court exercises plenary review of the Superior Court's application of law. *St. Thomas–St. John Bd. of Elections v. Daniel*, 49 V.I. 322, 329 (V.I. 2007). However, in ruling on the correctness of discretionary rulings, such as those granting or denying motions to suppress evidence or for severance, we review only for abuse of discretion. *See, e.g.*, *George v. People*, 59 V.I. 368, 377 (V.I. 2013).

B. Sufficiency of the Evidence

¶12 In his appellate brief, Ponce argues that the People failed to introduce sufficient evidence to sustain his convictions. Ponce recognizes that this Court applies a "particularly deferential standard of review" to sufficiency claims, *James v. People*, 60 V.I. 311, 317 (V.I. 2013), and will affirm the verdict so long as the evidence, when viewed in the light most favorable to the People—including the benefit of all reasonable inferences—would allow a rational jury to find all elements of each offense proven beyond a reasonable doubt. *Fahie v. People*, 62 V.I. 625, 630 (V.I. 2015). Each group of offenses is addressed in turn.

1. <u>August 28, 2011 and August 29, 2011 Offenses</u>

¶13 Ponce does not claim that the People failed to prove any specific element of the first-degree murder, third-degree assault, reckless endangerment, possession of ammunition, or unauthorized possession of a firearm charges stemming from the events that occurred on August 28, 2011, and August 29, 2011. Rather, Ponce contends that the evidence is insufficient to sustain these convictions because the only evidence to support those charges is "the uncorroborated statement of Bettina Rosa," with "no forensic evidence tying Edwin Ponce to the crime scene" and "no motive for the actions on behalf of Edwin Ponce." (Appellant's Br. 14.)

¶14 Ponce's argument lacks merit. This Court has repeatedly held that the testimony from a single eyewitness is sufficient to prove the elements of a crime, even if uncorroborated by other eyewitness testimony or forensic evidence. *Rivera v. People*, 64 V.I. 540, 553 (V.I. 2016); *Ventura v. People*, 64 V.I. 589, 606 (V.I. 2016); *Percival v. People*, 62 V.I. 477, 487 (V.I. 2015). And while "motive is a relevant factor for a jury to consider in a homicide case," it is well-established "that the People need not prove motive in order to obtain a conviction on these charges." *Ostalaza v. People*, 58 V.I. 531, 557 (V.I. 2013). Thus, because Ponce's entire sufficiency argument is predicated on Mrs. Rosa not being a credible witness and the People failing to show why Ponce committed the charged offenses, the challenge must fail.[1] *Fontaine v. People*, 59 V.I. 650 (V.I. 2013); *Billu v. People*, 57 V.I. 455, 466 (V.I. 2012).

2. September 24, 2011 Offenses

¶15 Ponce argues that the People failed to introduce sufficient evidence to sustain his

[1] Because Ponce does not allege that the People did not prove any particular element of these offenses, but only asks this Court to improperly re-weigh the evidence by discounting Mrs. Rosa's testimony, we decline to *sua sponte* scour the entire evidentiary record to essentially develop an argument for him. *See* V.I. R. APP. P. 22(m); *see also, Commonwealth v. Beshore*, 916 A.2d 1128, 1140 (Pa. Super. Ct. 2007).

convictions on the three weapons charges—one count of unauthorized possession of a firearm, one count of unlawful possession of ammunition, and one count of possession of a firearm with altered or obliterated marks—stemming from the firearm and bullets found at the September 24, 2011 search of his residence. Specifically, Ponce argues that "[n]o nexus between Ponce and the firearm in question was proven," in that the gun had been found in a neighboring yard rather than within the residence itself, and "at no time did law enforcement [witnesses] identify the pants in which the bullets were found as those belong[ing] to Edwin Ponce." (Appellant's Br. 15.)

¶16 As noted earlier, when determining the sufficiency of the evidence, this Court not only views the evidence in the light most favorable to the People, but also grants the People the benefit of all reasonable inferences. *People v. Clarke*, 55 V.I. 473, 477 (V.I. 2011). Although the People did not introduce evidence establishing that the pants containing the bullets belonged to Ponce, the jury could infer that Ponce constructively possessed those items because they were found in his house. *See Codrington v. People*, 57 V.I. 176, 199 (V.I. 2012) (collecting cases discussing constructive possession, which can be proven by circumstantial evidence). And while the firearm was not found on Ponce's property but in a neighboring yard, the People introduced testimony that when officers knocked on the door to execute the warrant, they heard "running" sounds in the house, (J.A. 1054), with Ponce's then-girlfriend testifying that when hearing the knocks Ponce "jumped out of bed" and "rushed" to an adjacent room before ultimately returning to their bed. (J.A. 979-81.) The jury could reasonably infer from this testimony that Ponce had thrown the firearm into the neighboring yard after the police knocked on his door but before they executed the search warrant. Therefore, we affirm the three convictions that stem from the September 24, 2011 search.

C. Motion to Sever

¶17 According to Ponce, the Superior Court erred when it granted the People's motion to sever his trial from that of Rivera. At the May 31, 2013 hearing, Ponce argued that the motion to sever should be denied and a mistrial ordered because the jury was purportedly tainted in that it knew Rivera had also been charged and that a medical issue occurred, and that one or more jurors might hold it against him if he argued that Rivera committed the offenses if Rivera was not there to defend himself. (J.A. 354-56, 362-55). However, Ponce does not renew this argument in his appellate brief. Rather, he asserts that the Superior Court should have denied the motion to sever because Rivera participated in the jury selection process—including challenging jurors for cause—and therefore "in essence what occurred herein is Ponce being tried by a jury that . . . Rivera helped select[]." (Appellant's Br. 10.)

¶18 Because Ponce objected on completely different grounds at the May 31, 2013 hearing, this argument was not fairly presented to the Superior Court at the time it ruled on the motion to sever. Consequently, we review only for plain error. V.I. R. APP. P. 4(h). "Under plain error review, there must be an error, that was plain, that affected the defendant's substantial rights." *Cascen v. People*, 60 V.I. 392, 413 (V.I. 2014). "Even then, this Court will only reverse where 'the error seriously affects the fairness, integrity, or public reputation of judicial proceedings.'" *Id.* (quoting *Williams v. People*, 59 V.I. 1024, 1032 (V.I. 2013)).

¶19 We conclude that the Superior Court committed no error, let alone an error that affected substantial rights or the fairness, integrity, or public reputation of the proceeding. Ponce has cited no legal authority—and we can find none—in which a court has ever held that it is reversible error to permit a defendant to be tried before a jury in which a co-defendant participated in jury selection prior to the co-defendant pleading guilty or the charges being severed. *See* V.I. R. APP. P. 22(m). On the contrary, numerous courts have held precisely the opposite: that a trial court commits no

error when it permits a jury trial to proceed in which a co-defendant participated in jury selection and subsequently dropped out of the case. *See, e.g., United States v. Rodriguez*, Nos. 99-1120, 99-124, 99-1227, 2000 WL 639954, at *2 (2d Cir. May 17, 2000) (unpublished) ("Joined defendants have substantially the same interests in exercising their peremptory challenges and thus, [the codefendants proceeding to trial] were in the same position with regard to peremptory challenges before and after their co-defendants pleaded guilty."); *United States v. Phillips*, 874 F.2d 123, 130 (3d Cir. 1989) (rejecting the argument that the defendant's rights were violated when the co-defendant "participated in the shaping of the jury" since at the time the co-defendant "had every right to participate in juror selection"); *United States v. Amer*, 924 F.2d 906, 907-08 (11th Cir. 1987) ("A defendant is not entitled to a jury composed only of members of his own choosing, if at the time of selection he properly has a codefendant, regardless of whether the codefendant ends up being jointly tried."); *People v. Maass*, 981 P.2d 177, 182 (Colo. Ct. App. 1998) ("If the jury was fairly selected in accordance with the applicable law, and if no facts are presented that show the jury as finally selected was other than representative and impartial to the remaining defendant, the trial may proceed to its conclusion.").[2] Therefore, we affirm the Superior Court's judgment

[2] While not determinative to our decision, we also cannot ignore that Ponce placed the Superior Court in the position of being "whip-sawed." *Najawicz v. People*, 58 V.I. 315, 337-40 (V.I. 2013) (discussing the effects of a defendant's simultaneous arguments). On May 29, 2013, Ponce agreed with the People that the cases should be severed, represented that serving the cases would have no effect on his or Rivera's defenses, and expressly asserted his speedy trial rights. However, the next morning, Ponce opposed severance while simultaneously urging that Rivera's counsel not be required to participate in the trial, and requesting a mistrial without arguing that there was manifest necessity for the mistrial or waiving Ponce's speedy trial rights. In other words, the position taken by Ponce made it impossible for the Superior Court to take any action to satisfy him. Were the Superior Court to deny the motion to sever and order a mistrial, Ponce would presumably argue that both his double jeopardy and speedy trials were violated, in that manifest necessity did not exist since other options existed besides a mistrial and the events that led to the mistrial could not be attributed to him. And were the Superior Court to grant the motion to sever and refuse to declare

because there was no abuse of discretion in granting the People's motion to sever.[3]

D. Late Disclosure of Photographs

¶20 Ponce also argues that the Superior Court erred when it denied his oral motion to exclude photographs of Ponce's residence that were taken by the police during the September 24, 2011 search, but which the People did not provide for inspection by the defense until the morning of jury selection.[4] This Court has previously identified three factors that the Superior Court must balance in determining the appropriate sanction for a violation of discovery obligations by the prosecution:

> (1) The reasons the government delayed producing the requested materials, including whether or not the government acted in bad faith when it failed to comply with the discovery order;
> (2) the extent of prejudice to the defendant as a result of the government's delay; and
> (3) the feasibility of curing the prejudice with a continuance.

People v. Rodriguez, S. Ct. Crim. No. 2009-0028, 2010 WL 1576441, at *4 (V.I. Apr. 14, 2010) (unpublished).

¶21 In its oral decision, the Superior Court weighed these factors and found that the extreme

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a mistrial—as it ultimately did—Ponce would, as he does now, argue that the motion to sever violated his rights.

[3] Ponce also argues that the Superior Court erred when it denied his post-trial motion for judgment of acquittal. However, because that motion only challenged the sufficiency of the evidence and the grant of the People's motion to sever—issues we have already considered and regarding which we have found no error—we affirm the Superior Court's June 26, 2015 opinion and order denying that motion.

[4] In his appellate brief, Ponce cites to *Brady v. Maryland*, 373 U.S. 83 (1963), but does not outright state that the People's late disclosure constituted a violation of their *Brady* obligations. However, "[a]s we have repeatedly held, a *Brady* violation only occurs if exculpatory information is not disclosed until *after* trial." *Williams v. People*, 59 V.I. 1024, 1040 (V.I. 2013) (emphasis in original). Since the photographs were disclosed during jury selection, the People's late disclosure does not implicate *Brady*. *Id.*

sanction of exclusion was not warranted. The Superior Court found that the People did not act in bad faith, in that the non-disclosure was not intentional and was the result of "sloppy work on the side of the prosecution." (J.A. 294.) It further found that the prejudice to Ponce was minimal and easily cured with a one-day continuance. Indeed, in his appellate brief, Ponce does not offer any rationale under which the Superior Court's finding that the People did not act in bad faith is clearly erroneous. *See* V.I. R. APP. P. 22(m). Nor does he explain, in anything other than the most general terms, how his defense was actually prejudiced by the late disclosure. *See United States v. de Cruz*, 82 F.3d 856, 861 (9th Cir. 1996) (holding that claims of general prejudice stemming from less preparation time or a theoretical possibility that timely disclosure would have led to additional evidence are not sufficient reasons to reverse a conviction). Therefore, there was no abuse of discretion in the Superior Court's oral ruling denying Ponce's motion to exclude the photographs.

III. CONCLUSION

¶22 Ponce has failed to demonstrate that the People did not introduce sufficient evidence to sustain his convictions. Moreover, the Superior Court did not abuse its discretion when it granted the People's motion to sever and denied Ponce's motion to exclude the untimely-disclosed photographs. Accordingly, we affirm the July 30, 2015 judgment and commitment.

Dated this 1st day of April, 2020.

BY THE COURT:

/s/ Rhys S. Hodge
RHYS S. HODGE
Chief Justice

ATTEST:

VERONICA J. HANDY, ESQ.
Clerk of the Court

SWAN, Associate Justice, concurring in judgment only, in part, and dissenting in part.

¶23 Edwin Ponce appeals a judgment and commitment entered in the Superior Court of the Virgin Islands ("Superior Court") on July 30, 2015, following a trial that commenced on May 28, 2013, and the return of the verdict on June 6, 2013. While I agree with most of the majority's conclusions, I diverge significantly in my analysis. As such, I write separately to explain my reasoning, as it would lead to a disposition contrary to the majority's as to the sufficiency of the evidence underlying one of Ponce's convictions.

¶24 Ponce seeks reversal of his convictions on two counts—counts one and two of the June 6, 2013 fourth superseding information—of "Third Degree Assault," V.I. CODE ANN. tit 14, §§ 297(2), 11(a) and respectively, on each of the following counts, count three—of "First Degree Reckless Endangerment," 14 V.I.C. §§ 625(a), 11(a); count four—of "Unauthorized Possession of a Firearm," 14 V.I.C. §§ 2253(a), 11(a); and count five—of "Unauthorized Possession of Ammunition," 14 V.I.C. §§ 2256(a), 11(a), for his conduct on August 28, 2011.

¶25 For Ponce's actions on August 29, 2011, he seeks reversal of his convictions for count six—of "First Degree Murder," 14 V.I.C. §§ 921, 922(a), 11(a); count seven—of "Possession of a Firearm During a Crime of Violence," 14 V.I.C. §§ 2253(a), 11(a); count eight—of "First Degree Reckless Endangerment," 14 V.I.C. §§ 625(a), 11(a); and count nine—of "Unauthorized Possession of Ammunition," 14 V.I.C. § 2256(a); 11(a). Each of the foregoing counts, counts one through nine, included a citation to subsection 11(a) of title 14 but indicated that Ponce was charged as a principal who was aided and abetted by Rivera and "others unknown."[1]

[1] Each count of the "Fourth Superseding [sic] Information" alleged as follows: "Edwin Ponce, while aided and abetted by Edwin 'Cepi' Rivera, and others unknown." However, prior to this amended information, the language of the charges in question was as follows, "Edwin 'Cepi' Rivera, and Edwin Ponce, while aided and abetted by each other and others unknown." *See generally United States v. Wilson*, 28 F. Cas. 699, 711 (E.D. Pa. 1830) ("[A]ll who were present at the commission of an act, and assenting to it, were principals; we said that this was a rule of universal application; we repeat it now, and go further—it applies not only to crimes but to trespass and contracts. When two

¶26 Finally, for Ponce's possession of the firearm at the time the search warrant was executed at the premises where he was present on September 24, 2011, Ponce was convicted of one count—count ten—of "Unauthorized Possession of a Firearm," 14 V.I.C. § 2253(a); one count—count

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or more persons act together, in pursuance of a common object, one is answerable for the acts of the other tending to effectuate their common object. If this rule is broken in upon, it will derange the law in many of its most important provisions. As it affects criminal jurisprudence, it would go far to operate as a general jail delivery. No case can illustrate it more thoroughly than the one before you. Who robbed the carrier of the mail?—who robbed him, by putting his life in jeopardy, by the use of dangerous weapons? The night was dark; the robbers were unknown. Some one did one act, and some another; but each identical act was not done by one alone; there were three concerned and no more, and the deed was done by them in conjunction. If the prisoner's counsel are correct then, from the nature of the case there can be no conviction of anyone, for no one with his own hands committed the whole offence. The law becomes a dead letter; future prosecutions will become useless, if, where one holds the horse, a second puts the pistol to the driver's head, and the third takes the mail form the box, all and each are not guilty."); *compare United States v. Gooding*, 25 U.S. (12 Wheat.) 460, 469 (1827) ("Whatever the agent does, within the scope of his authority, binds his principal, and is deemed his act. It must, indeed, be shown, that the agent has the authority, and that the act is within its scope; but these being conceded, or proved, either by the course of business, or by express authorization, the same conclusion arises, in point of law, in both cases. . . . [I]t is the known and familiar principle of criminal jurisprudence, that he who commands, or procures a crime to be done, if it is done, is guilty of the crime, and the act is his act. This is so true, that even the agent may be innocent, when the procurer or principal may be convicted of guilt, as in the case of infants, or idiots, employed to administer poison. The proof of the command, or procurement, may be direct or indirect, positive or circumstantial; but this is a matter for the consideration of the jury, not of legal competency. So, in cases of conspiracy and riot, when once the conspiracy or combination sis established, the act of one conspirator, in the prosecution of the enterprise, is considered the act of all, and is evidence against all. Each is deemed to consent to, or command, what is done by any other in furtherance of the common object."); *with Wilson*, 28 F. Cas. at 709-10 ("It is certainly a correct legal principle [of the common law], that an accessory cannot be convicted of an indictment against him as a principal; the offences are distinct, though the punishment may be the same, and so they are considered in this law—but it does not define what shall be the legal line of discrimination between the procuring of, advising or assisting in the doing or perpetrating any of the enumerated acts or crimes forbidden by the law, and the actually doing or perpetrating them. The rules laid down as to the meaning and legal import of words used in laws must be applied to this; if they have acquired it by long usage, judicial exposition and common acceptation by legislative adoption, they must be presumed to be so intended, unless a different sense is affixed to them by the laws in which they are found. There are no words in the law which have so acquired a more definite and specific meaning, than procure, advise and assist, as contradistinguished from the actual commission of a crime—the latter is the principal offence, the former only accessary. If a person does no more than procure, advise or assist, he is only an accessory; but if he is present, consenting, aiding, procuring, advising or assisting, he is a principal, and must be indicted as such. A crime may consist of many acts, which must all be committed in order to complete the offence; but each person present consenting to the commission of the offence, and doing any one act which is either ran ingredient in the crime, or immediately connected with or leading to its commission, is a much a principal as if he had with his own hand committed the whole offence. You could not respect the laws of your country if they punished with less severity, or made any discrimination between the man who bound and held the victim and the one who gave a fatal blow—the robber who held the pistol to your breast, or the one who rifled your pockets—both are murders, both are robbers, in the eye of the law, of reason and of justice. No principle can be better settled or ought to be maintained with more care than this. It would be in vain to pass laws for the prevention or punishment of crimes, if courts and juries were bound so to administer them as to require definite proof that a party accused committed the very act necessary to bring them within the law, though it was manifest that it was the joint act of himself, and associates who took an active part in the actual perpetration: there is no such rule in our jurisprudence.").

eleven—of "Unauthorized Possession of Ammunition," 14 V.I.C. §§ 2256(a); and one count—count twelve—of "Obliteration of a Firearm ID," 23 V.I.C. § 481(a).

¶27 Ponce first argues that the trial court committed reversible error by allowing Ponce's codefendant, Edwin Rivera, to have his case severed from Ponce's on the second morning of trial after completion of both jury selection and the court's preliminary instructions. Indeed, as presented, it appears Ponce considers the Superior Court's granting of a severance of Rivera's trial from Ponce's after jury selection to be the pivotal issue in this appeal. Ponce further argues that this decision denied him a trial by an impartial jury. However, Ponce has failed to both address the cause for the severance, i.e., the sudden and debilitating illness of the codefendant's counsel, and to identify any prejudice suffered by him that was occasioned by Rivera's severance from the trial. As such, I have provided a more extensive recitation of the *voir dire* of the jury venire than is usually done, as it is necessary to consider the process as a whole, *State v. Van Sant*, 503 A.2d 577 (Conn. 1986) ("A reviewing court looks for manifest necessity by examining the entire record in the case . . . . It is the examination of the propriety of the trial court's actions against the backdrop of the record . . . ."), in determining whether Ponce suffered any prejudice when the severance of Rivera's trial was occasioned by the sudden and disabling illness of his codefendant's counsel, making it impossible for that counsel to continue to represent Rivera at trial.

¶28 For his second issue, Ponce asserts that there was insufficient evidence to allow a rational fact finder to find beyond a reasonable doubt that he committed the crimes charged. If it is analytically possible to have more than one "pivotal issue," then the lack of sufficient evidence would be Ponce's. In his notice of appeal, Ponce informed the court that he took issue with "[w]hether the evidence was insufficient to convict on the charge of aiding and abetting" and

"[w]hether the evidence was sufficient to sustain a conviction on all the counts of the Information." Similarly, in his appellant's brief, Ponce states as his second issue that "the evidence was insufficient to sustain a conviction on all counts of the information" and again argues that the testimony of the police officers was inadequate to establish his guilt beyond a reasonable doubt. While his arguments could be read myopically (with the goal of achieving a refusal to consider his full arguments), Ponce effectively argues that there was "no nexus between Ponce and the firearm in question" and that the testimony was that the police were stationed around the building, which had all its windows closed at the time of the search. After further elaboration regarding what facts were missing from that testimony, Ponce concludes by arguing that the evidence was insufficient to establish, *inter alia*, that Ponce ever possessed the firearm, much less obliterated its ID. Therefore, I consider fully the evidence in the record supporting the elements of each crime for which Ponce was convicted.

¶29 Finally, Ponce argues that the trial court abused its discretion when it allowed the prosecution to utilize evidence that was not disclosed to the defense until less than a week before trial. For the reasons elucidated below, I would affirm Ponce's convictions except for his conviction of Obliteration of a Firearm ID, count twelve, which I would reverse for insufficient evidence due to the complete lack of evidence even remotely indicating Ponce did anything but receive a firearm that had previously had its ID mark obliterated.

I. BACKGROUND

¶30 On October 5, 2011, the Superior Court issued an arrest warrant for Ponce, who was arrested and afforded an advice of rights hearing on October 7, 2011. That same day a superseding information was filed, and ultimately, Ponce was tried on a fourth superseding information that

had been filed June 6, 2013, with permission of the court.[2] It was alleged that, on the dates of August 28-29, 2011, and September 24, 2011, Ponce engaged in conduct that, if proved beyond a reasonable doubt, constituted violations of multiple Virgin Islands criminal statutes and that these acts occurred on the island of St. Croix in the U.S. Virgin Islands.

¶31 The information upon which Ponce was convicted enumerated twelve charges, which alleged the following: (1) Third Degree Assault upon Carlos Juan Rosa on August 28, 2011; (2) Third Degree Assault upon Bettina Rosa on August 28, 2011; (3) First Degree Reckless Endangerment on August 28, 2011; (4) Unauthorized Possession of a Firearm on August 28, 2011; (5) Unauthorized Possession of Ammunition on August 28, 2011; (6) First Degree Murder on August 29, 2011; (7) Possession of a Firearm During a Crime of Violence on August 29, 2011; (8) First Degree Reckless Endangerment on August 29, 2011; (9) Unauthorized Possession of Ammunition on August 29, 2011; (10) Unauthorized Possession of a Firearm on September 24, 2011; (11) Unauthorized Possession of Ammunition on September 24, 2011; and (12) Obliteration of a Firearm ID on September 24, 2011.

¶32 Trial commenced with jury selection on May 28, 2013. At that time, both Ponce and Edwin Rivera were defendants to be tried jointly and, thus, selected the jury jointly. At the outset, the court stated to the jury, "as you answer the questions, I ask you to ask yourself, is there any reason to question my own impartiality or to suspect that I may be prejudiced in any way against the

[2] On May 31, 2013, the People filed a "Fourth Superseding Information." Then, on June 6, 2013, after voluntarily dismissing count six of the May 31, 2013 fourth superseding information, the People filed a substituted "Fourth Superseding Information" with only twelve counts, having eliminated what was count six in the May 31, 2013 fourth superseding information. In truth, the latter document should have been captioned as the "Fourth Superseding Information (as amended June 6, 2013)," but it was not. This practice of substituting, *sub slientio*, a later-amended version of an earlier-filed information, without a plain indication of what is being amended, is strongly discouraged, as it creates utter confusion in the trial record. The People, in the future, are directed to file consecutively numbered, amended informations if there has been an information previously filed and approved. The waste of judicial resources occasioned by this practice is unacceptable.

People of the Virgin Islands, or against defendant, Edwin Ponce, or against defendant, Edwin 'Cepi' Rivera." After asking questions to determine conflicts based on jury members' relationships (there were multiple coworkers in the jury pool) and scheduling and health issues that may have adversely impacted a given juror's ability to sit on the jury, the jury was asked if they were related by blood or marriage to either of the defendants.

¶33 The court continued the usual course of *voir dire*, and through this process, three jurors with potential conflicts related to Rivera's participation in the trial were identified. Juror 71 had known Rivera's attorney because they had worked together "a hundred years ago and . . . do have a passing friendship." Jurors 71 and 34, who also knew Rivera's attorney, both stated they could be fair and impartial and were not excused. Juror 11 knew both attorneys and felt she could be impartial and was not excused. The next morning, the court had received a note from Juror 12 stating he had discovered his wife's family relationship with Rivera, and the juror was dismissed.

¶34 Ponce's counsel then orally challenged the court's choice of methodology for the exercise of preemptory challenges arguing that it precluded Ponce from reviewing the prosecution's preemptive strikes of the jury, which allowed the prosecution to remove, exclusively, potential jurors of Latine[3] ethnicity in violation of *Batson v. Kentucky*, 476 U.S. 79 (1986).[4] The prosecution

[3] *See generally* Ecleen Luzmila Caraballo, *This Comic Breaks Down Latinx v. Latine for Those Who Want to be Gender-inclusive*, REMEZCLA, Oct. 24, 2019, https://remezcla.com/culture/latinx-latine-comic/ (explaining that "Latine" is a gender-inclusive descriptor that is more easily conjugated in the Spanish language than "Latinx.") (last visited Jan. 27, 2010).

[4] *See generally Pena-Rodriguez v. Colorado*, 137 S. Ct. 855, 867-68 (2017) ("[T]he Fourteenth Amendment [prohibits] the exclusion of jurors on the basis of race . . . and practices that systematically exclude racial minorities from juries. . . . [N]o litigant may exclude a prospective juror on the basis of race. . . . The jury is to be 'a criminal defendant's fundamental protection of life and liberty against race or color prejudice.'" (quoting *McCleskey v. Kemp*, 481 U.S. 279, 310 (1987); and citing *Strauder v. West Virginia*, 100 U.S. 303, 305-09 (1880); *Neal v. Delaware*, 103 U.S. 3790 (1881); *Hollins v. Oklahoma*, 295 U.S. 394 (1935) (*per curiam*); *Avery v. Georgia*, 345 U.S. 559 (1953); *Hernandez v. Texas*, 347 U.S. 475 (1954); *Ham v. South Carolina*, 409 U.S. 524 (1973); *Casteneda v. Partida*, 430

responded that he was unsure if two of the potential jurors he struck, with surnames Serrano and Nieves, respectively, were Latine. The prosecution acknowledge that a third juror was Latine but explained that he had exercised the preemptory challenge because that individual reported that he worked at the hospital but never identified himself when asked if he knew any of three co-workers who were also in the jury pool. The prosecution disputed that any of the other three preemptory challenges were Latine. The court ultimately found that there was no factual basis to support the motion and denied it.

¶35 The court then began to address the evidence to be presented at trial. With respect to certain photographic exhibits, Ponce's counsel objected to People's Exhibits 8-12 and 15-17. Ponce's counsel first argued that the entire set of exhibits should be excluded because of its late disclosure. The People responded that these photos were disclosed to defense counsel over a year prior to trial. Generally, Ponce's counsel argued these exhibits were irrelevant. After a proffer by the prosecution, the court found that Exhibits 8-12 were relevant and denied their exclusion. Ponce's counsel further argued that Exhibits 8-12 and 15-17 must also be excluded because there was no expert witness qualified to testify to the subject matter involved. The prosecution intended to utilize these photos to prove that the victim had been shot through the door of his home, arguing that lay witness testimony as to first-hand observation of splinters and debris, blood spatter, etc. at the crime scene was admissible to inferentially show the path of the bullet. The court found

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U.S. 482 (1977); *Rose v. Mitchell*, 443 U.S. 545, 555 (1979); *Rosales-Lopez v. United States*, 451 U.S. 182, 189-90 (1981); *Batson*, 476 U.S. 79; *Turner v. Murray*, 476 U.S. 28 (1986); *Edmonson v. Leesville Concrete Co.*, 500 U.S. 614 (1991); *Georgia v. McCollum*, 505 U.S. 42 (1992))); *Chinnery v. People*, 55 V.I. 508, 513-24 (V.I. 2011) (discussing *Batson*); *but see Norris v. Alabama*, 294 U.S. 587, 598-99 (1935) ("If, in the presence of such [evidence indicating the exclusion of a single race or ethnicity] as defendant adduced, the mere general assertions by officials of their performance of duty were to be accepted as an adequate justification for the complete exclusion of negroes from jury service, the constitutional provision—adopted with special reference to their protection—would be but a vain and illusory requirement.").

Exhibits 8-12 relevant but admonished the prosecution to ensure its questioning is limited to those observations of a lay witness that are observable in light of everyday life experience and common sense—not scientific, technical, or other specialized knowledge. This same objection was presented as to People's Exhibits 40-41, and the court reserved ruling.

¶36 As to Exhibits 15, the court found it to potentially be cumulative and reserved its ruling with the option of this exhibit being admitted if it were to be presented in black and white coloration. Exhibit 16, a photo of a tattoo on the victim's body, was opposed as cumulative to the testimony of other witnesses who could confirm the victim was Rosa. Exhibit 17 was objected to as unduly prejudicial and irrelevant. However, the prosecution proffered that the exhibit, a photograph taken shortly after the shooting, bolstered the testimony of the victim's wife by depicting her appearance at the time she gave her first statement to police. Based on the foregoing, the court allowed the exhibit. Regarding Exhibits 13-14, Ponce's attorney objected, asserting that, though the photographs accurately depicted the physical layout of the crime scene, they were taken during the day—as opposed to at night when the shooting occurred—and were, therefore, not an accurate representation of the crime scene. The trial court allowed the photo because it accurately depicted the physical relation of the roadway, fence, window, etc. but admonished the prosecution not to misrepresent the accuracy as to time of day and specifically invited defense counsel to cross-examine on these matters.

¶37 Ponce's counsel then objected to People's Exhibits 58-69 because they had not been disclosed until immediately before trial—but had been taken when the police executed the search warrant on September 24, 2011. Specifically, counsel argued that the photograph did not depict the location of the firearm, as discovered during the execution of a search warrant, relative to

Ponce's living space in the residence; therefore, it was inaccurate. Further, defense counsel argued that the failure to disclose the photograph that depicted the location of the firearm outside of Ponce's residence precluded any defense efforts to measure the location of the gun relative to Ponce's residence to demonstrate that the gun was actually found in proximity to the residence of a neighbor. The court allowed the exhibit because cross-examination could achieve much of the same goals that taking specific measurements would, thus diminishing any prejudice. Further, the court recessed for the afternoon to allow defense counsel to investigate the scene and find witnesses in order to alleviate any prejudice that may have arisen from the People's late disclosure.

¶38 The court then provided preliminary instructions to the jury. The court read to the jury all the charges against the defendants and gave the common instruction relating to the burden of proof being upon the prosecution to prove every element of every charge beyond a reasonable doubt, that the defendants are presumed innocent, and that each count required a unanimous agreement of the jurors. The jury was also instructed that the information, opening and closing statements of counsel, and questions asked of witnesses by counsel were not evidence. The court then instructed that the evidence consisted of testimony of witnesses, exhibits received in evidence, and any stipulated facts or facts taken by judicial notice. Further, the jurors were admonished that the defendants had no obligation to put on any evidence but were permitted to do so. Upon completion of the preliminary instructions, the court inquired if there was a need for any further instructions or any curative instructions, and Ponce's counsel stated there was none.

¶39 On the morning of May 30, 2013, counsel for Rivera reported medical issues that required urgent attention. The People agreed to delay the trial for the day, and Rivera's counsel was allowed the day to meet with his doctor. Ponce's counsel objected to this recess of the trial, stating "I

strongly object to the jury be[ing] released and this matter being continue[d] until tomorrow." Ponce's counsel explained, "the merits of Mr. Ponce's trial, and the merits of his[Rivera's] trial, stand on their own. Mr. Ponce, through no fault of his own, having been here and been prepared every . . . day to go to court, is now being denied his right to a speedy trial, being denied his right to go to court." Ponce's counsel concluded by further explaining that "neither his defense [nor] the defense of . . . Edwin 'Cepi' Rivera relies on either of the other. They[, the defendants,] each stand charged before this Court as individuals and they each should be treated as such." The court determined that a recess was most appropriate and, over Ponce's objection to further delaying the trial, adjourned for the day.

¶40 The next day, May 31, 2013, Ponce's counsel had filed a motion to sever the defendants' trials, which was subsequently withdrawn. Counsel then made a motion for mistrial, which was considered outside the jury's presence and denied. Ponce's counsel further argued that he had been denied an impartial jury. Counsel explained, "the inference that they may have a medical issue, it negatively impacts [Ponce's] defense because human nature being what it is. As I said, the jury is going to empathize, sympathize that something medical, not something that you can plan for or something that you can necessarily wish for, has occurred with regard to either the defendant or his counsel. As a result, Your Honor, the defendant can no longer go forward with its defense in front of this panel who have been exposed to two defendants. And the defendant can no longer go on with his defense, to put on his defense that it wasn't me, it was him."[5] The

[5] This may be the most blatant evidence of the efforts of defense counsel to "whip-saw," *Najawicz v. People*, 58 V.I. 315, 337-40 (V.I. 2013) (discussing the effects of a defendant's simultaneous arguments), the trial court, as the majority describes it. Within less than 24 hours, Ponce's counsel asserted both that neither Ponce's defense nor the defense of Rivera depended upon the other, thus making a continuance a violation of Ponce's due process rights, and that Ponce could no longer proceed with his defense that Rivera was the shooter. These blatantly contradictory

general thrust of this argument appears to have been that the sympathy created as a result of the dismissal of Rivera's counsel for medical reasons would cause the jurors to feel sympathy toward Rivera such that they would disregard Ponce's theory of defense that it was Rivera who shot the victim, not Ponce. The prosecution responded by stating that there is logically no prejudice under the circumstance and, assuming there was prejudice, suggested giving the following curative instruction, "You will notice that Mr. Rivera and his attorney are not here today. And the Court would ask that you place no inferences and no weight on the fact that they are not here."

¶41 The trial court, applying the "Manifest Necessity" test of whether there existed a manifest necessity for the declaration of a mistrial and considering if there are less disruptive alternatives, noted that the asserted prejudice was simply speculation as to what the jurors might infer, and any such prejudice could be cured with a corrective instruction. The prosecution then moved for severance of the trials on the basis of judicial economy and the distinct charges as to each defendant. Ponce's counsel opposed severance by reiterating the prejudice as asserted in the defense's previous motion for a mistrial and stating, *inter alia*, "The possibility of that prejudice to Mr. Ponce is what abrogates his right to a fair and impartial jury as guaranteed by the Sixth Amendment to the Constitution." The People then moved for a mistrial as to Rivera, which was granted, and the prosecution's motion to sever Ponce's trial from Rivera's was also granted. Ponce's counsel was afforded a half an hour to review the amended information and determine if

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assertions on the back of one another forcefully and immediately give rise to the inference that these were arguments of convenience that were entirely lacking in integrity. This conclusion is only reinforced by the fact that Ponce has never once articulated any potential prejudice and has, instead, relied on histrionics and hyperbole. Such contentions may make for entertaining television, but they are worthless in legal argument when a party cannot support them by pointing out a single instance of even potential prejudice.

any new allegations required a delay in order to provide an opportunity to adjust the defense's strategy; no request for additional time to prepare was made.

¶42 The court then instructed the jury that the trial would proceed only as to Ponce and not to draw any inferences from this procedure. In the jury's presence, Ponce's counsel objected, stating "the defendant is not ready to proceed." At side-bar, defense counsel explained, "the defendant is not ready to proceed because there is likely prejudicial development in the case, a highly prejudice [sic] to the defendant because of the ruling on severance, and, therefore, the defendant is not prepared to proceed." When asked what relief Ponce sought, defense counsel reiterated Ponce's request for a mistrial as "the only recourse available."[6] The court again denied the request for a

[6] This appears to be a blatant attempt by defense counsel to taint the jury. Counsel had objected, on the record, to going forward and had thoroughly stated the reasons supporting this objection. The appropriate corrective process, if counsel felt this ruling was in legal error, was, *inter alia*, revision of the ruling by seeking an appeal after trial. *E.g.*, *Dowdye v. People*, 55 V.I. 736, 762 (V.I. 2011) (reversing a criminal conviction due to the failure of the trial judge to properly conduct a hearing when there was blatant conduct by a juror indicating the individual was not impartial); *see United States v. Gibert*, 25 F. Cas. 1287, 1302 (D. Mass. 1834) ("[I]f any error in point of law has been committed by the court, injurious to the defendant, or upon established principles of law, they ought to have a new trial. I feel it [to be the judge's] duty to make a direct application in their behalf to the executive for a pardon, to redress the error. It is against the founding principles of this country that any man . . . should suffer loss of life or liberty against the law, from the mere infirmity of judgment of those who are appointed to preside at his trial."). If the trial court's ruling was incorrect and the procedure employed in this specific case had violated Ponce's rights, he would be awarded a new trial (with a new jury) by a ruling of a duly constituted court of this Territory. Instead of doing this, Ponce's counsel took it upon herself to assume to role of an appellate tribunal and stood in front the jury announcing she was not prepared for trial and then, at side bar, reasserted all the same legal arguments that had already been rejected. Leading up to this conduct on her part, Ponce's counsel indicated several different times her intent to taint the jury, stating, for example, "The defendant is in no way prepared to go forward, and I will make that clear on the record when the jury is called in." (J.A. at 376), "The defendant would not be ready to present an opening statement even if I review the superseding information." (J.A. at 377), "The defendant is unaware at this time because the defendant has not had an opportunity to research the issue as to whether or not there is anything else." (J.A. at 377 (after having been given a half-hour recess to do just such an investigation)). Perhaps the most blatant example of the willful and intentional conduct of defense counsel in this regard was when she stood up immediately upon the jury's being seated and stated, "before we begin, the defendant would like to say for the record that defendant is not ready to proceed and I would like an opportunity to provide the reason on the record." (J.A. at 382.) Counsel then, yet again, reiterated all the arguments that had been unsuccessful in her previous motions for a mistrial, e.g., "there is likely prejudicial development in the case, a high prejudice to the defendant because of the ruling on severance, and, therefore, the defendant is not prepared to proceed."

Upon complaint from the prosecutor that this conduct was unethical and sanctionable, defense counsel gave a vexingly flippant response demonstrating a serious lack of understanding of both her ethical obligations and basic civics relating to judicial procedure when she stated, "I know I have tried cases in this jurisdiction for 28 years, and

mistrial noting, additionally, that, due to the delays, Ponce's counsel would be afforded the weekend to re-evaluate her strategy in light of the severance.

¶43 Bettina Rosa was the prosecution's first witness. Bettina was the wife of the victim, Carlos Rosa; they had been married for seven years. The two resided in a home in Old Fredensborg

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each and every time in a jury trial when the case is called . . . the Court will then ask each attorney, are you prepared to proceed? If you are, then you say yes. If you are not, you say you are not. And I don't see anything sanctionable about that. That's the process. That's how it is done. What is sanctionable would be if I noted my reason for not being ready . . . in front of the jury. That would have been sanctionable and that's why I requested the side bar." She went further to say, "after the Court's ruling on severing this matter, it changed the nature and the way in which the defendant now has to move forward, to put on a defense . . . because the defendant has no opportunity to rethink its defense while it is in trial. The defen[se] is saying that it is not ready and that the reason why the defen[se] is not ready is because the Court's recent ruling on the severance." (J.A. at 389.) This claim was made despite the fact that the court gave defense counsel a recess to compare the informations and determine exactly how Ponce's defense strategy would be affected and then specifically asked, repeatedly, how Ponce's strategy would be changed such that more time was needed. Defense counsel failed at every instance to give any specific examples of strategy change and/or prejudice. Furthermore, defense counsel abjectly failed to indicate in what manner she was somehow unprepared. For example, she did not indicate there was further evidence to obtain in light of what had happened; she did not indicate that different rules of evidence might be implicated warranting a recess to review alternate rules of evidence that had not been considered previously; and other examples in the record are, likewise, lacking. Instead, counsel, directly to the jury, voiced her disagreement with a legal ruling of the trial court rather than leaving such legal error to be corrected by the appellate procedure, as mandated by the Legislature. *Joseph v. Zinke-Smith, Inc.*, 6 V.I. 219, 222 (V.I. Super. Ct. 1967) ("If counsel is unsatisfied with the [trial court's] ruling on matters of law, or the court's request for authority on action counsel requests the court to take, [they] may take an appeal from any ruling [they consider] adverse."); *see Montee v. Commonwealth*, 26 Ky. 132, 149-50 (1830) ("If the court erroneously decide the law, and the jury, in consequence thereof, improperly convict, a new trial must be awarded."); *Williams v. Gov't of the V.I.*, 51 V.I. 1053, 1064 (D.V.I. App. Div. 2009) ("In order to affect a substantial right, an error must have been prejudicial, and must have 'affected the outcome of the trial court proceedings.'" (quoting *United States v. Olano*, 507 U.S. 725, 734 (1993); *United States v. Davis*, 407 F.3d 162, 164 (3d Cir. 2005))); *Gov't of the V.I. v. Smith*, 949 F.2d 677, 680 (3d Cir. 1991) ("As with the 'harmless error' doctrine, the plain error doctrine requires that an error affect a 'substantial right' of a defendant. But plain error review, which applies in the absence of a proper objection, is more limited. For example, constitutional defects are subjected to a greater scrutiny under the harmless error doctrine, which requires reversal unless the error is harmless beyond a reasonable doubt. When no objection is made at trial, however, this Court may affirm a conviction even when a constitutional error does not meet that standard. Nevertheless, 'the constitutional nature of the error certainly makes it easier to conclude that fundamental fairness requires reversal.' . . . The plain error doctrine requires that a plain error affecting a substantial right of a defendant cannot be overlooked." (quoting *United States v. Thame*, 846 F.2d 200, 207 (3d Cir. 1988); *United States v. Castro*, 776 F.2d 1118, 1129 (3d Cir. 1985))); *Gov't of the V.I. v. Knight*, 989 F.2d 619, 630 (3d Cir. 1993) ("Although the district court should not have excluded this opinion, the exclusion of the opinion was harmless error as it did not prejudice Knight. To find [a non-constitutional, trial] error harmless, a court must be able to say that it is highly probable that the error did not contribute to the jury's judgment of conviction." (citing *United States v. McGlory*, 968 F.2d 309, 337 n.19 (3d Cir. 1992); *Gov't of the V.I. v. Toto*, 529 F.2d 278, 284 (3d Cir. 1976))). Counsel is reminded that "a lawyer shall not knowingly make a false statement of fact or law to a tribunal . . . ." V.I. S. CT. R. 211.3.3(a)(1).

Village on St. Croix. People's Exhibit 3 was shown to Bettina, which she identified as a photograph of her residence in Old Fredensborg, and it was admitted in evidence. Bettina was then asked if she knew a man by the name of Edwin Ponce, which she did, and was then asked to identify him. She was permitted to leave the witness stand and point to the man in the courtroom who she believed to be Ponce. Bettina then described what was depicted in People's Exhibit 3, the house where she and Rosa resided, the road, the window to her and Rosa's bedroom, the front door, and further explained that the front room is the room immediately entered when one comes through the front door, while the kitchen is the next room after the front room.

¶44 Bettina identified People's Exhibit 4, which was admitted in evidence, as a photo of the front of their house in Old Fredensborg. This photo showed the house in relation to the gate and fence and their yard. People's Exhibits 5 and 6 were also identified and entered in evidence. These, together, depicted their home, which was green, and the door to their home. The next exhibit admitted in evidence was a photo of the interior of the Rosa's home in the condition as it existed the night Rosa was shot.

¶45 Bettina then described the events of the day prior to when her husband was shot and at the time of the shooting. On August 28, 2011, the night prior to Rosa's death, at around 9:45 or 10:00 p.m., he and Bettina were lying in their bed when they heard stones hitting their window, which was identified in Exhibit 5. Therefore, Rosa opened the window and shouted out to inquire who was there, but he received no response and shouted again. Bettina could see outside and saw that it was Rivera and Ponce. Ponce shouted to Rosa that he had been informed that Rosa had gone into Ponce's home and stolen some of his personal property. Rosa then responded that he did not

have any of Ponce's property. Bettina did not know what property her husband could have had, and she testified that Rosa had proclaimed ignorance, as well.

¶46 Bettina then identified on Exhibit 5 where Ponce was standing when this verbal exchange occurred. Bettina further explained that, at this time, she was positioned in front of the window, and Ponce was shouting expletives at her while demanding she move from in front of her husband. Rosa then stepped in front of Bettina in order to inquire as to what specific property was the subject of Ponce's vexation. Bettina described Ponce's gun as a silver revolver and identified People's Exhibit 65 as a photograph of the firearm Ponce pointed at her on August 28, 2011, and Exhibit 5 was used to identify Bettina's location relative to Ponce's at that time. She further explained that, on the night of August 28, 2011, when this all occurred, Ponce discharged the firearm "in the air" four times, "[i]n front of the house where I lived" "in the village of Old Fredensborg."

¶47 Bettina was then questioned as to the events of August 29, 2011. On that day, a child had approached Bettina and informed her that her husband was fighting; therefore, she followed the child to the scene. When she arrived, Rosa was embroiled in an altercation with Rivera, who, at that time, referred to her as the expletive commonly used by sexist individuals to derogatorily refer to women. Rosa responded by demanding that Rivera not refer to Bettina with such language. During the fisticuffs between Rosa and Rivera, Ponce was present and laughing at the commotion. Bettina and Rosa then turned to leave when they heard Rivera warn Rosa, "don't worry you gon see what gon happen to you" or "Don't worry you will see what gon happen to your punk mother skunt tonight." After this threat, Bettina and Rosa went inside their home for something to eat. Subsequently, they came outside to relax under a tamarind tree nearby—which she identified on

Exhibit 3. When Rosa left Bettina under the tree, Ponce approached her and demanded his property again. Ponce said he was going to hurt Bettina and Rosa, and then he left.

¶48 That night, Bettina and Rosa were lying in their bed, and again, they heard stones hitting their window—they were being thrown "hard." Rosa left his bed and went to the front door, at approximately 9:35 p.m., armed with a "rifle." Bettina then identified People's Exhibits 8 and 9, which were entered in evidence, as depicting the interior of the house, including the front door of the house, before and after the shooting. Immediately upon Rosa's opening the front door, he was fired upon. Consequently, he closed the door; thereafter, another bullet penetrated the door and struck him in the hand. On Exhibits 9, 10, and 11, which were admitted in evidence, Bettina explained where she and Rosa were when the shooting occurred. After Rosa had been shot, he went toward the back exit, but Bettina warned him not to go outside. Rosa then went to their bedroom and laid down on the bed. In that time, Rosa told Bettina to call for emergency assistance and exclaimed, "Cepi mother skunt hit me in my belly." Bettina, when questioned about how many shots she heard, could only say, "a lot."

¶49 Bettina then identified People's Exhibit 12, which was admitted in evidence, and explained that it displayed her bed and her living room and reflected the contents and layout of the room as it existed on the day Rosa was killed. Rosa had walked to the bedroom, opened the front window, and laid down on the bed. Bettina and Rosa looked outside and saw Rivera and Ponce, whom she had known for seven years. It is noteworthy that neither Bettina nor any other witness testified that, on the day of the murder, either Ponce or Rivera (or both) were wearing a mask (or similar apparel) that would have hidden or concealed their faces and undermined any identification. Exhibit 13 was entered in evidence, and Bettina identified it as a photo of the front of her house

and specifically identified the bedroom window she and Rosa had looked outside after the shooting and saw Rivera and Ponce.

¶50 Bettina explained, by reference to Exhibit 13, which depicted the house relative to the yard, fence, and street, that Ponce was crouching or ducking as he was walking away. The prosecution questioned, "And what area did you see him move through when he was walking duck down like that?" Bettina answered, "He going outside—he going outside to the gate," which she demonstrated on Exhibit 13. Bettina was then asked, "Did you see anything next?" In response, Bettina stated, while demonstrating on Exhibit 13, "I seeing Ponce standing up right there. He shooting to the air, shooting fire in the air," and was standing near "a short cut," which she pointed out on Exhibit 13. Bettina described the firearm as a black automatic, which was a different gun than what Ponce had used to threaten her the previous day. When questioned how many shots were fired by Ponce at that time, she responded, "A lot. I can't count. It been so much." People's Exhibit 15, a photo of Rosa lying on the bed after he had been shot, was admitted in evidence. Due to difficulties with her and a neighbor's cellphones being unable to receive a signal, it took approximately twenty minutes to contact emergency services. Prior to when Bettina had gone outside in an effort to use her cell phone, Rosa was conscious and had been talking, but when she returned to him, he appeared to her to be dead.

¶51 Bettina then identified People's Exhibit 16 as a photo of her husband's tattoo, and it was entered in evidence. She also verified that the Edwin Ponce whom she had identified as being at her house on the night of the shooting was the same Edwin Ponce who was in the courtroom.

¶52 People's Exhibit 17, a photo of Bettina on the night of the shooting after Rosa had been shot, was entered in evidence. Bettina explained that mentally and emotionally, at that time, her

condition was "bad" and frankly admitted she had been upset, but also confirmed that she was thinking clearly when she made her statement to the police, which she gave while wearing the same clothes as depicted in Exhibit 17 because she had not been home since the shooting. Bettina next identified People's Exhibit 18, a photo of the "rifle" her husband had carried to the door on the night of his death, which was entered in evidence. She further stated that Rosa had not discharged his rifle when he went to the door.

¶53 Upon cross-examination, Ponce's counsel revisited the procedure employed when taking Bettina's statement on the night of the shooting, which was taken after midnight on August 30, 2011. The officer would ask her a question, she would answer, and the officer would record her response. This procedure continued until the officer asked his last question, and he then asked Bettina to read and sign what he had written. Ponce's counsel then asked questions designed to impeach Bettina and her statement. For example, counsel asked if Bettina was aware that the officer to whom she was speaking was investigating the shooting of Rosa, her husband—she did. Counsel then inquired, "you, being the wife of Mr. Carlos Rosa, wanted to help the police to find the person responsible; is that correct?" Bettina's response, "Not to help the police. To say the truth." Upon further questioning, Bettina admitted that she both wanted to tell the truth and help the police—Bettina was aware that the officer's purpose of questioning was to apprehend the person or persons responsible for her husband's death.

¶54 As to the details of the statement, Bettina was cross-examined and did not know why the statement did not contain the fact that she had seen Ponce discharge a gun into the air the night before her husband was shot. Similarly, she had forgotten that Rosa and Ponce had been arguing over a firearm during the prior exchanges between the two but now remembered it was an "AK."

During this questioning, Bettina testified that, in addition to Ponce and Rosa arguing, Rivera too had been involved.

¶55 During this cross-examination, it was stipulated that Bettina's August 30, 2011 statement made no mention of her ever having gone to the window with her husband prior to him being shot and made no mention of her seeing Ponce or Rivera just prior to the shooting. Also, during cross-examination, Ponce's counsel elicited testimony that both Bettina and Rosa had fought with Rivera, and both she and her husband had inflicted injuries upon him. Due to confusion in the cross-examination over Bettina's August 30 statement, the prosecution asked that it be entered in evidence, which it was. Upon further cross-examination, it was revealed that Bettina had taken her husband's firearm and moved it outside the house. Questioning also elicited details of a fight that had occurred between Rivera and Rosa at approximately 11:00 p.m. on August 29, 2011.

¶56 Ponce's counsel further inquired as to Bettina's photo identifications of the assailants on August 30, 2011. Bettina had signed a photo identifying Rivera as the man who shot her husband—Rosa. She also signed a second photo. During this cross-examination, Bettina testified that she saw Rivera outside of their gate and, when asked directly if Rivera discharged a firearm at that time, said, "Nope." She elaborated, "One alone run out my gate and it was Ponce. And Rivera been standing up in the fence to the next side of the yard." This statement was never included in Bettina's August 30, 2011 statement to the police.

¶57 Bettina's September 19, 2011 statement was also used as a basis for cross-examination. In this second statement, Bettina explained that, because she had seen Ponce walking every day since they lived in proximity to each other, she recognized the silhouette and outline of his body as well as his gait and manner of walking when he discharged a firearm into the air before exiting the gate

to her yard. She could see his back and arm and the hand with the gun, and she saw Ponce "looking around while firing shots." Defendant's Exhibit 2, a photograph on which Bettina had signed and dated her identification of Ponce, was admitted in evidence.

¶58 On re-direct examination, the prosecution used Exhibit 4 to have Bettina identify exactly where Ponce had been standing when he discharged the firearm. She had never seen Rivera with a firearm. She further explained that, on the night of the shooting, when she gave her statement to the police, she referred to Ponce as "Edwin," using his first name and to Rivera as "Cepi," using his sobriquet. In an effort to clarify inconsistencies in the statements to the police, Bettina was questioned about the interview, during which the statement was recorded and explained she had only mentioned Rivera's surname when she gave her statement. Therefore, the detective would have known the name of only one of the assailants.

¶59 Officer Herminia Rivera was next called to testify. On the days of August 27-30, 2011, Officer Rivera was employed as an officer with the Virgin Islands Police Department ("VIPD"). On August 28, 2011, Officer Rivera was dispatched to Old Fredensborg, at approximately 9:40 a.m., to investigate a disturbance coming from the green house, number 165 Old Fredensborg. Officer Rivera then identified the house on Exhibit 5. She spoke with Rosa and Bettina at that time. They had been awakened by the sound of stones hitting their bedroom roof. Rosa and Bettina, at that time, had identified Ponce and Rivera as being in their front yard, and Rivera had "walked in [Rosa's] yard and fired shots; three shots" and had threatened that he would come back. They then left "heading towards the exit of Old Fredensborg in Mr. Ponce[‘s] gray jeep." A search for ammunition casings did not reveal any, but a revolver does not discharge casings when fired. Officer Rivera clarified that, during this interview, both Rosa and Bettina referred to Rivera as

Cepi. Officer Rivera was then, again, dispatched to this same home on August 30, 2011, in the early morning, because shots had been fired.

¶60 The People then called Jose Crispin. Crispin and Ponce worked together, with Crispin providing mechanical services to Ponce, and the two were friendly acquaintances. Crispin was present and observed the fisticuffs between Rivera and Rosa on August 28, 2011. He confirmed that, from what he observed, the fight was in regards to some stolen property. Crispin was presented with People's Exhibit 20 in an effort to refresh his memory as to what Crispin had said to the investigating officers on August 28, 2011, but he disputed that what was contained in the type-written statement was what he said, though he confirmed his signature was at the end of the statement. The prosecution was granted permission to treat Crispin as a hostile witness due to this discrepancy, as well as different body language and mannerisms—indicating Crispin was being mendacious—pointed out by the prosecution. Exhibit 20 was then entered in evidence. Crispin refused to confirm under oath that he had read the statement before he signed it.

¶61 As to the contents of the statement, Crispin's testimony was contradictory. He asserted that he had informed the police that it was Rivera and Rosa, "the guy what got killed," who had been fighting on August 29, 2011, but Crispin followed up by adding "and also his wife." Later on, Crispin was asked "you said that Mr. Ponce parted the fight; is that correct?" to which he replied, "mm-hmm, yep." Crispin confirmed he had told the police that the fight was in regards to stolen clothes and a stolen gun, though Crispin had never seen a gun because "they hide things from people." On the night of the shooting, Ponce had taken Crispin home at approximately 7:00-7:30. Crispin testified that, at night, there is very little lighting in the neighborhood of Old Fredensborg.

¶62 The people then called Aracelis Rivera. Aracelis was a neighbor of Rosa and Bettina and showed the jury the location of her home with the aid of Exhibit 5. She had been home the night Rosa was shot and heard rocks being thrown—one landing on her cistern. Immediately after this, it sounded like a "war, combat zone." She was familiar with Ponce, having knowing him for six years, and she identified him. Aracelis then described Rivera and Ponce's prior attack on her son. Aracelis had been at her home when Rivera had come there to speak with her son. Her son was not there, and Rivera declined to state his reason for wanting to speak with him. Instead, Rivera left, and after hearing noise coming from the direction in which Rivera had departed, Aracelis ran to see what happened. She found that Rivera and Ponce had cornered her son and had him in a headlock while they demanded that he return some property that had been stolen from Rivera and Ponce's home.

¶63 Officer Franklin Bencosme then testified. On August 29, 2011, Bencosme was a police officer and was dispatched to Old Fredensborg. Upon arrival at the home, he found, in the eastern bedroom, a male lying face down on the bed. Officer Bencosme was informed that the man had been shot by "Cepi," and Bettina likewise informed him that Rivera, who resided at 169 Old Fredensborg, had shot her husband. Emergency personnel arrived and examined Rosa for vital signs; having failed to find any, they contacted the medical examiner. Officer Bencosme described Bettina at this time as "very scared," and he needed to calm her down. The officer confirmed that he needed to use a flashlight to inspect the area and that, without the flashlight, it was very dark with minimal lighting. Defense counsel thoroughly explored the fact that Bettina, at that time, failed to mention to Officer Bencosme Ponce's presence at the scene.

¶64 The People next called Corporal Luis Encarnacion, who was employed with the VIPD on August 28, 2011. Corporal Encarnacion was on duty when he was called to Old Fredensborg late on August 29 or in the very early morning hours of August 30, 2011. Encarnacion's role at the crime scene was to preserve the scene and locate, identify, and collect the evidence. During questioning, spent shell cartridges were identified on different photo exhibits and the scene on another, pointing out that, on the night of the shooting, there was a functional streetlight illuminating the area. Specifically, as to Exhibit 6, the corporal explained that it was a photo of the hole discovered in the exterior of Rosa's front door, and he further explained how the hole appeared to be newly made. Similarly, Exhibit 7 depicted the interior side of the door; indeed, Corporal Encarnacion indicated that there was a trail of blood leading from the interior of the door to where Rosa was found.

¶65 Rosa was found in the bedroom on the bed but did not display any signs of life. Encarnacion then explained that Exhibit 16 was a photo, which he had taken, of Rosa's tattoo and confirmed that the victim he saw on August 30, 2011, had the same tattoo. People's Exhibit 26, the record of property collected as evidence, was entered in evidence and reflected that ammunition casings had been collected at the scene of the shooting. Specifically, People's Exhibit 27 was a photograph of "a casing that was found in the roadway where the incident occurred," "the road leading to where the crime occurred next to the house," and was admitted in evidence in addition to People's Exhibit 27A, which was the shell casing, a .223 caliber, depicted in Exhibit 27. People's Exhibits 28, 30, and 32, along with Exhibits 28A, 30A, and 32A, all entered in evidence, depicted .223 caliber ammunition casings, the caliber of a high-powered rifle, "at the scene in the roadway." Likewise, People's Exhibit 31, which depicted a .40 caliber ammunition casing, a

common caliber of ammunition used in handguns, found "on the roadway leading to the house," and People's Exhibit 31A, the casing, were entered in evidence, along with People's Exhibit 33, which was a photo depicting the crime scene with the evidence markers indicating where all the spent shell casings were located.

¶66 Ultimately, evidence markers 1, 2, 3, and 5 indicated spent ammunition casings that were designed for use in a high-powered rifle. Encarnacion also identified the location of the spent ammunition casings depicted in the photograph of the scene taken the day after the shooting during daylight hours, thereby giving the jury a more accurate understanding of the location of each casing. People's Exhibit 35, which was admitted in evidence, depicted an additional three ammunition casings that were found at the scene but were "in another trail that was leading on the easterly direction," approximately 90-100 feet from the house. These casings were "9 by 17" caliber made to be discharged from a pistol.

¶67 Encarnacion then explained that People's Exhibit 36, which was admitted in evidence—subject to the objection of defense counsel that it could not be used as evidence of "an impact of a high powered rifle" because that required expert qualifications and could not be presented through lay testimony—was a photo of the doorframe and adjacent wall depicting a fresh "break" in the concrete.[7] People's Exhibit 37, which was a photo that Encarnacion took because it depicted an

[7] *E.g.*, *People v. Caldwell*, 43 P.3d 663, 667-68 (Co. Ct. App. 2001) ("On an issue of first impression, defendant contends that the trial court erred in admitting the testimony of a lay witness concerning ballistics and bullet trajectory. We disagree. A nonexpert witness may testify to opinions or inferences, in addition to perceptions, as long as they are rationally based on the witness' own perceptions and are helpful to the jury in understanding the testimony or determining a fact in issue. If, however, the opinion or inference expressed is beyond common experience or is based on knowledge of a scientific, technical, or specialized nature, the witness must qualify as an expert in the relevant field. . . . Here, a former police officer, employed as a crime scene technician at the time of the shooting, testified that, after the shooting, he photographed and collected evidence from the deputy's patrol car. He also testified about the appearance and location of the two bullet holes on the outside of the car, the hole inside the car, and the dimpling of the metal inside the car. From his own observations and the use of a dowel and string, the technician testified that

"impact of a bullet," was also entered in evidence. Encarnacion had been a forensic technician on St. Croix for almost 20 years and had seen bullet impacts numerous times and understood the different appearances of an impact of small versus large caliber firearms. He explained that the "groove" was deep. Encarnacion then explained that People's Exhibit 38, admitted in evidence, depicted the area of the wall around the door and showed a "shallow impact." He further explained that the impact in Exhibit 37 was caused by a larger caliber weapon; whereas, the impact depicted in Exhibit 38 was due to an impact from a smaller caliber firearm. This conclusion is corroborated by the fact that two different caliber shell casings were recovered. Encarnacion explained that the .233 would leave the larger impact crater seen in Exhibit 37, and the .40 caliber would leave the smaller impact crater seen in Exhibit 38.

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he tracked the paths of the two bullets, one that entered the vehicle just in front of the driver's side window near the spotlight and another that entered the vehicle through the metal frame behind the rear window, also on the driver's side. The photos of the vehicle depicting the bullet holes, fragments, and the dowel and string used by the technician were also introduced into evidence. Defendant objected to the introduction of the photographs and to the witness' opinion testimony regarding the trajectory of the bullets. Defendant asserted that the witness was not qualified as an expert . . . , and that such testimony was of a scientific nature, beyond the common experience of the jury. The trial court overruled the objections. We note that, generally, expert testimony is required when introducing ballistics evidence, because such testimony is often introduced to explain how the shooting occurred, the position and proximity of the shooter in relation to the victim, and the existence or absence of self-defense. Here, however, the witness' testimony included only his observations about the entry locations of the bullets and the path they traveled inside the vehicle. Such observations could just as easily have been made by the jury from the photographs. No special expertise is required to look at the hole made by the bullet and realize that it followed a straight-line path." (citing *State v. Mincey*, 636 P.2d 637 (Ariz. 1981); *State v. Saunders*, 345 S.E.2d 212 (N.C. 1986); *State v. Walters*, 551 A.2d 15 (R.I. 1988); *United States v. Pierson*, 503 F.2d 173 (D.C. Cir. 1974))); *see generally Jackson-Flavius v. People*, 57 V.I. 716, 731-32 (V.I. 2012) ("'The distinction between lay and expert witness testimony is that lay testimony results from a process of reasoning familiar in everyday life, while expert testimony results from a process of reasoning which can be mastered only by specialists in the field.' A lay opinion is based on an observation that can be made by the average person based on common trends, knowledge or experiences in everyday life." (quoting *United States v. Ebron*, 683 F.3d 105, 136–37 (5th Cir. 2012))); *State v. Bay*, 722 P.2d 280, 283 (Ariz. 1986) ("The general rule is that a lay witness, if competent, may testify to relevant evidence. . . . Foundationally, . . . the fact that he is a lay witness goes not to the admissibility of the testimony but rather to its weight. If lay testimony is admitted, logically, a jury is free to accept it as a basis for its verdict. This is so even if there is conflicting . . . testimony on the issue." (citing A.R.S. § 13-502(B); *Jones v. Pak-Mor Mfg. Co.*, 700 P.2d 8919, 827 (Ariz. 1985); *State v. Sanchez*, 573 P.2d 60, 64 (Ariz. 1977); *State v. Coey*, 309 P.2d 260, 264 (Ariz. 1957); *State v. Overton*, 562 P.2d 726 (Ariz. 1977); *State v. Murtrey*, 664 P.2d 637, 644 (Ariz. 1983); M. UDALL AND J. LIVERMORE, ARIZONA LAW OF EVIDENCE §§ 13, 21 (2d ed. 1982))). In keeping with this objection, the trial court struck Encarnacion's testimony that the firearm was a high-powered rifle. (J.A. at 700.).

¶68 People's Exhibits 39, 40, and 41 were entered in evidence; these depicted the entry (Ex. 39) and exit (Ex. 40) of the bullet. During defense counsel's *voir dire*, Encarnacion further explained that he had taken a stick, "probe," and inserted it in the impact hole on the door, which passed entirely through the door. He then extended a string from there to where the ammunition casings were found. Exhibit 41 further depicted blood spatter on the interior of the door and home and showed a measurement of the distance from the floor to the exit hole in the door. Encarnacion explained that the procedure used required him to measure the height from the floor to the various exit holes in the door in order to determine if any of them were consistent with the height from which Rosa was shot. People's Exhibits 42, 43, 44, 45, 46, 48, 49, and 50, all photos of bullet impacts and exits on or around the door of the Rosa home, were entered in evidence.

¶69 The examination on these photos revealed that the larger impacts were all fired from the same location. Encarnacion explicated that a probe was inserted into the holes in the door, and then the angle of the probe was extended using a string. The direction of each probe in each hole demonstrated the ammunition was discharged from a firearm in the location where the .233 rifle ammunition casings were found. People's Exhibits 51 and 52 corroborated this conclusion, as they were photos of a post in the yard with a bullet hole through it, and the post was in line with the door and the location of the .233 caliber ammunition casings. Encarnacion further corroborated that the spent ammunition casings were "located on the other side of this pole, on the other side of the fence line" where "the roadway would be on the other side of the fence." People's Exhibit 53 was admitted in evidence and showed bullet holes in the sofa inside the Rosa home, which created a danger to anyone inside.

¶70 Encarnacion was a forensic investigator in August and September of 2011. As part of his duties, he attended the autopsy of Rosa and also returned to Old Fredensborg on September 24, 2011, to execute a search warrant and conduct further investigation. As to People's Exhibit 57, Encarnacion explained that it confirmed that a .38 caliber revolver—with an obliterated serial number and five rounds loaded—as well as twelve rounds of loose ammunition, were confiscated during the execution of a search warrant. People's Exhibits 58 and 59 were photos taken the day the search warrant was executed and were admitted in evidence. Exhibit 58 delineated the residence in which Ponce was staying, and Exhibit 59 was a photo of the room in which Ponce had been sleeping when the police arrived to execute the warrant. On the day of the search, Ponce was present in the building, along with another person. When the police entered the premises, Ponce was "right by the window" in the room in which he slept. During the search of this room, a pair of "jersey" pants and twelve rounds of .38 caliber ammunition were found—shown in People's Exhibits 60, 60A, and 61—along with approximately $13,000 in cash.

¶71 Encarnacion then identified People's Exhibits 62, 63, 64, and 65, photos, and 65A, the firearm that was collected during the search, and they were entered in evidence. The photos were taken when the search warrant was executed and depicted the .30 caliber firearm loaded with five rounds of ammunition located many feet from Ponce's residence, but within throwing distance, according to Encarnacion. The firearm, Exhibit 65A, had an obliterated serial number and held the same caliber ammunition as that recovered from the pants at the time of the search. People's Exhibits 66 and 67 were admitted in evidence and disclosed the location of the gun, the measurements, and the ammunition alongside the firearm, as found.

¶72 During cross-examination, defense counsel reviewed the procedure used to secure the searched premises. Encarnacion confirmed that a team of VIPD officers surrounded the property as best it could, but as to the back door, they could not enter through it because a neighboring property and vegetation prevented such access. In response to cross-examination regarding Exhibit 63, Encarnacion admitted he had made a mistake in his earlier testimony and identified the fence incorrectly; immediately, he candidly admitted the mistake to the jury and corrected himself. Further, despite having testified that the firearm was found 35 feet from the house, upon reviewing his report of the search, he noted that it was actually found 52 feet from the house.[8]

¶73 Encarnacion's cross-examination was then suspended; therefore, the prosecution called its next witness, George Felix, who was the forensic supervisor with the VIPD. Sergeant Felix was employed with the VIPD on August 28-30, 2011, and responded to an order to inspect the Rosa

[8] Cross-examination of Encarnacion thoroughly exposed the weaknesses of his testimony. First, he confidently asserted he was certain the firearm was within throwing distance but then estimated the distance of the firearm from Ponce's location as approximately half the distance it was. Second, he incorrectly identified the fence on the picture presented to him. Third, when asked the height of the fence, Encarnacion testified that he did not get sufficiently close to the fence to know if it was taller than him, despite having testified to the fact that he found the firearm 5 to 8 feet from the fence. In contrast, Hebert's testimony indicated that, in walking in the yard of the property where Ponce was found, one passed so close to the fence that the gun could be seen through its gaps. Given that (1) Encarnacion was able to testify to his height and could confidently testify that the firearm was within "throwing distance" and could also confidently estimate that distance, (2) his inability to estimate the height of the fence that he walked past (3) seems such a convenient inability to make this specific estimate in the face of his prior demonstrations of his possession of this exact ability (while utilizing less accurate criteria by which to judge) that (4) the conclusion that he was being mendacious is all too compelling. Similarly, while testifying that ammunition casings—.223, "9-by-7," and .40 caliber—were collected, when asked if these sorts of ammunition could be fired from a .40 caliber revolver, Encarnacion disclaimed any knowledge of the subject matter, despite being a police officer who carries a firearm. Again, when asked if there is an "acid test" that will reveal an obliterated serial number on the metal of the firearm, Encarnacion explained that he was not an expert and lacked any such knowledge, despite having worked as a police officer and forensics technician for almost twenty years. The jury would have been well warranted to view Encarnacion's testimony as to his "convenient" inabilities as contrasted with his testimony regarding his certainties as to "facts" that would indicate Ponce's guilt as entirely lacking in credibility and would have been entitled to disregard his testimony entirely. *See generally* Joseph Goldstein, *Testilying by Police: A Stubborn Problem*, N.Y. TIMES, Mar. 18, 2018, *available at* https://www.nytimes.com/2018/03/18/nyregion/testilying-police-perjury-new-york.html (last visited March 25, 2020). However, even assuming the jury did disregard Encarnacion's testimony, there was still sufficient circumstantial and direct evidence to support beyond a reasonable doubt the conclusion that Ponce constructively possessed the firearm.

home in Old Fredensborg during daylight hours the morning after the shooting. Felix explained, with the aid of Exhibit 6, that there were nine impacts from ammunition to and surrounding the door to Rosa's home, with four actually striking the door. Felix then identified People's Exhibits 72-74, and they were entered in evidence. Felix corroborated finding a spent shell casing of a .40 caliber firearm in the roadway outside Rosa's home, next to the fence. Exhibit 73 showed the .40 caliber ammunition casing as found on the edge of the road "in front of or south of the residence, 47 of Old Fredensborg Village." Exhibit 73A, the .40 caliber spent ammunition casing, was entered in evidence, along with 76A, the evidence bag in which it was stored. Similarly, People's Exhibits 75-77 showed the location of spent .40 caliber casing and were admitted in evidence. Felix further confirmed that the street light was on and functioning the night Rosa was shot. Felix then explained that People's Exhibits 78-80 were photos of a spent .40 ammunition casing as found at the scene, and these were entered in evidence along with People's Exhibit 79A, the spent .40 caliber ammunition casing—the type of ammunition used in a pistol. Specifically, Exhibit 80 showed the .40 caliber casing in relation to the roadway, residence, fence, and other notable features.

¶74 People's Exhibits 81, 82, and 83 were next identified and admitted in evidence. These depicted a spent .223 caliber rifle ammunition casing as it was found at the scene. The casing was admitted in evidence as People's Exhibit 83A. Felix explained how he and Encarnacion placed probes into the impact holes on the door of the home and used strings to determine the location from which the ammunition was fired. Felix specifically corroborated the testimony of Encarnacion as to the "bullet hole" in a pole in the area between the door with the bullet impacts and the ammunition casing, indicating the line of travel of the ammunition projectiles. Felix

further explained that a close examination of a hole left by ammunition traversing the object will show "beveling" toward the direction the projectile was traveling.

¶75 Upon cross-examination, defense counsel thoroughly questioned Felix as to the specific steps, actions, and procedures utilized in the course of his search and processing of the crime scene. Particularly, Felix explained that he failed to make a sketch of the scene or where the investigation, utilizing the probes and strings, occurred and what it demonstrated. In this questioning, Felix noted that none of the ammunition casings that were recovered could have been used in a .38 caliber firearm.

¶76 Reynold de Souza, the VIPD firearms examiner, then testified. He verified that the firearm, which was operable, was in the package in which he had placed it and that his initials and signature on the container confirmed as much.

¶77 Following this testimony, the trial recessed and recommenced that afternoon with a hearing in chambers. Defense counsel moved for a mistrial due to the People's failure to turn over photographs that were taken by the VIPD in August of 2011 but were not disclosed to the defendant, and not turned over, until June 4, 2013, at the time of trial. In particular, the defense objected to the failure to disclose a photograph that showed a .38 caliber revolver was found on September 24, 2011, the day of the search of Ponce's residence, and revealed "an individual in the background . . . in close proximity to where the gun is. [T]he defendant could have located this individual and interviewed him as to what he witnessed on September 24, 2011"—presumably to investigate whether this person saw the firearm thrown from Ponce's bedroom window.

¶78 In response to this claim of prejudice, the prosecution argued that the defense had not indicated they had made any effort to search the area of the crime scene or the neighborhood in

which the shooting occurred. In particular, the prosecution objected to a claim of prejudice when the defense had failed to interview "the people in the two or three houses right around where the gun was found" since "Old Fredensborg is a very small area" with "only three houses." Further, the prosecution argued that, because these photos were provided to the defense on the day of jury selection, there was sufficent of time to investigate—again suggesting that the trial be suspended.

¶79 The court reasoned that this photo, Defendant's Exhibit 3, while showing an individual in the background observing the actions of the police, "may not be the same individual who lives in the area, but defendant did not apparently canvas the area and the residence to determine what anybody knew about the search. And I don't see that the existence of a[n] individual in this photograph really changes the circumstances dramatically, certainly not dramatically enough that a mistrial is a necessity." The court then recited the curative measures already taken, including the delay of trial to allow defense counsel to view the site, allowing free use of the photos by the defense, and "giving leeway in scheduling and presentation of evidence to the extent that the delivery of these photographs inhibits the defense from going forward."

¶80 Encarncion's testimony was then resumed with cross-examination by defense counsel. Defendant's Exhibits 4, 5, and 6 were entered in evidence, as well as Defendant's Exhibit 3. It was established that Encarnacion did not examine the size of the pants in which he found the ammunition and did not collect them as evidence. Encarnacion used Defendant's Exhibit 3 to identify the home in which the search was conducted on September 24, 2011, and testified that the residence was 5 to 8 feet from the fence line. Similarly, Defendant's Exhibit 7, entered in evidence, depicted the residence of Ponce that was searched on September 24, 2011. During this portion of cross-examination, it was revealed that the firearm recovered was actually found on the

neighboring property and that the only access to that property from the searched residence would have required a person to scale the fence separating the properties.

¶81 Importantly, when asked the height of the fence, Encarnacion testified that he did not get sufficiently close to the fence to know if it was taller than him, despite having testified to the fact that he found the firearm 5 to 8 feet from the fence. Similarly, while testifying that ammunition casings—.223, "9-by-7," and .40 caliber—were collected, when asked if these sorts of ammunition could be fired from a .40 caliber revolver, Encarnacion disclaimed any knowledge of the subject matter, despite being a police officer who carries a firearm. Again, when asked if there is an "acid test" that will reveal an obliterated serial number on the metal of the firearm, Encarnacion explained that he was not an expert and lacked any such knowledge, despite having worked as a police officer and forensics technician for almost twenty years.

¶82 Encarnacion was further questioned as to why he did not collect the ammunition projectiles from the various bullet impacts on Rosa's home and explained that projectiles often ricochet and cannot be located. No projectile was recovered from within Rosa's home either. Encarnacion was, likewise, questioned why he had not drawn a diagram of the scene. He responded that photos and measurements were taken in substitution of a diagram.

¶83 On re-direct examination, Encarnacion noted that he found the twelve pieces of firearm ammunition in the trousers located just inches from the money that was recovered during the search. The prosecution than asked that judicial notice be taken of the fact that Ponce, in a court filing, declared the money to be his, asking that it be returned to him, which it was. The court informed the jurors of these facts after overruling the defense's objection.

¶84 In response to Defendant's Exhibit 3 and a question of how Encarnacion retrieved the firearm from the neighboring yard if the fence had to be scaled, he explained that the neighbor allowed access. Encarnacion further explained that testing for traces of DNA on the firearm was not requested because it is cost prohibitive. However, "there is no cost to do fingerprinting in our department," he said.

¶85 The People then called Karen Stout, the supervisor of firearms with the VIPD. Stout was responsible for maintaining the records for application and issuance of firearms licenses in the St. Croix administrative district. In this capacity, she had been asked to search the records of the St. Croix district as well as the St. Thomas/St. John and Water Island district and determine if Ponce had been issued a firearms license that was valid on the dates of August 28, 29, 30, and September 24, 2011. Ponce had never been issued a firearms license and did not possess a license to carry a firearm on the dates alleged in the information.

¶86 On cross-examination, defense counsel exposed that the certificates prepared by Stout actually only certified that, on August 29, 2011, Ponce did not possess a firearms license. However, upon re-direct examination, Stout reiterated that she had consulted the entire body of records encompassing the dates of August 28, 30 and September 24, 2011. The Court then allowed the prosecution to suspended its re-direct examination of Stout to allow her to return to her office and consult the VIPD's firearms registration records to verify the dates not certified, while preserving the defendant's right to assert objections at that time.

¶87 The territorial medical examiner, Dr. Francisco Landron, then testified. Dr. Landron authenticated People's Exhibit 94, the autopsy diagram of Rosa, and it was admitted in evidence. Dr. Landron explained that he performed the autopsy, and Rosa's death was a homicide resulting

from a gunshot wound to the chest. The autopsy revealed no other health problems in Rosa's body, and Dr. Landron confirmed that Exhibit 16 was a photo of Rosa's tattoo and that he had utilized that tattoo when identifying Rosa.

¶88 Christi Tuttle was next to testify on behalf of the People. She knew Ponce and identified him in court. She had been with him to Old Fredensborg and confirmed that Old Fredensborg was a neighborhood on St. Croix, U.S. Virgin Islands. Tuttle was with Ponce on September 24, 2011, the day the VIPD executed the search warrant on the residence in which Ponce was present. At the time the police arrived, Ponce was asleep. When she woke him, Ponce jumped out of bed and went to the adjacent room. Shortly thereafter, the police knocked again and announced it was the police; immediately Ponce returned to the room where he had been sleeping.

¶89 Tuttle clarified the physical layout of the house, explaining that it consisted of two rooms in the front and one room in the back that was as large as the other two combined, and in order to access the rear of the house, a person had to go through the front room. She further clarified that, when Ponce had rushed to the room with access to the rear of the house, he was only there for "a matter of second[s]." Ponce had gone to the second room in the front and was standing directly next to the bedroom door when the police forcibly entered the home.

¶90 Cross-examination revealed that Ponce was not living at this residence when Rosa had been shot. Tuttle explained that "to [her] knowledge it was an abandoned building. He kept his fowl in the yard, his chickens and roosters; and we would go and care for the chickens. We were there that evening. We . . . didn't usually dwell there. We happened to be there that evening because we were out fishing very late, past hour, and he wanted to check on the roosters." They had spent

nights there in the past, and people from the neighborhood had accessed it such that Tuttle did not believe it was exclusively in Ponce's possession.

¶91 Through re-direct examination, the prosecution elicited testimony that, since their arrival that day, Ponce and Tuttle had been the only ones in the building during the five hours they had been there. In response, on re-cross examination, defense counsel elicited testimony from Tuttle explaining that the building regularly had signs of people having been in there. However, on that night, though Tuttle could not remember anything specific, she noted that the building interior appeared as it usually did with bottles, food containers, and clothes left behind by people other than Ponce or herself.

¶92 Dr. Dedrick Luikens, the attending physician in the emergency room at the Juan F. Luis Hospital on August 30, 2011, was the next prosecution witness. On that day, employees of the medical examiner's office brought a lifeless, male body to the emergency room. Dr. Luikens pronounced the man dead and completed a death certificate for Carlos Juan Rosa.

¶93 At this time, the testimony of Stout, the official responsible for maintaining the records of firearms applications and licenses in the Territory, resumed. She confirmed that Ponce had never possessed a license to possess a firearm in the Territory.

¶94 Dino Herbert, the supervisor of the major crimes division of the VIPD, was the next witness to testify for the prosecution. Ponce was then identified in the presence of the jury, and Herbert confirmed that the shooting of Rosa occurred on the island of St. Croix.

¶95 On August 29 and 30, 2011, Herbert was on duty and responded to an emergency call reporting a possible homicide in Fredensborg. Upon arrival, Herbert spoke with Officer Bencosme, the officer who was first to arrive on the scene. Herbert asked the officer to transport

a potential witness, whom he later identified as Bettina, to the investigation unit and proceeded to inspect the scene.

¶96 Herbert first looked at the door to the Rosa home and noticed what looked like fresh bullet holes. He then entered and noticed blood splattered on the door and blood on the floor. Herbert proceeded to where he had been told the victim was located and found an African American male laying on the bed, apparently deceased. Eventually, the man was identified as Carlos Juan Rosa. Herbert stayed at the scene for some time, spoke with some witnesses, and then proceeded to the investigation unit where he spoke with Bettina.

¶97 Bettina was shaking and distraught and required quite a bit of comforting before she was able to give a statement. When giving her statement, Bettina referred to the individuals who had shot her husband as Cepi, Edwin, and Edwin Rivera, such that Herbert mistakenly understood them to be the same person. However, Bettina repeatedly referred to the perpetrators in the plural, stating "they were throwing stones" and "they threw stones the day before." As a result of this confusion, Herbert had received the distinct impression that there was more than one person involved in the shooting, but also had the distinct impression that Bettina was only able to identify one, Cepi. At the time of his interview with Bettina, Herbert did not realize that Rivera and Ponce shared the same forename.

¶98 Rivera was arrested shortly after this interview, or perhaps during the interview, and Herbert spoke with him. Rivera informed Herbert as to where he and Ponce had been staying, and based on this information, Herbert returned to Old Fredensborg to continue his investigation. Specifically recognizing that the shooting occurred at night and that Bettina had claimed to be able

to see the shooters, Herbert returned to the scene at night and verified that there was sufficient artificial lighting to allow him to adequately see the shooters from Bettina's observation point.

¶99 After realizing his confusion about the number of suspects, the next day Herbert sought clarification from Bettina and conducted a second interview. With the information gathered, Herbert was able to determine that Rivera and Ponce resided in the same building; he identified the house on Exhibit 3, which was not the house in which Ponce was found during the search on September 24, 2011. As part of the investigation, the VIPD executed eight searches in an attempt to locate and arrest Ponce. On the morning of the search—which was also the morning of Ponce's arrest—the police arrived at approximately 6:30. Because of the number of places that were subject to the searches, the VIPD was unable to surround each location and, specifically, was unable to surround the building in which they located Ponce.

¶100 Upon arrival at the house in which Ponce was found that morning, the officers knocked on the front door and announced their presence. They waited and heard noise as if someone inside was running. Herbert explained that the building was wood and concrete and that there were distinctly audible footsteps hurriedly moving inside. Upon hearing this, Herbert ordered the door breached, and the VIPD entered. Upon entry, Ponce was standing, and Tuttle, his girlfriend, was lying still on the bed. Herbert then radioed the forensics unit and secured the building until the staff's arrival. Herbert observed as the forensics unit processed the scene of the arrest and conducted the search.

¶101 During the search, the VIPD found a pair of pants, currency, and other items. Inside the pants, the VIPD found several rounds of .38 caliber firearm ammunition, and these were located very close to the currency. Herbert explained that, having found ammunition in the trousers

located in the room in which Ponce was arrested—he noted many times just how small the room was—and having heard footsteps rushing inside just after the VIPD had knocked and announced its presence, he concluded Ponce had "tossed" the firearm out of the window. Herbert then went to investigate in the yard inside the fenced in the area of the building.

¶102 Herbert was shown Defendant's Exhibit 3 and indicated the location of the home in which Ponce was found. He further explained that there was a fence separating the property being searched from an adjacent property on which was located a home, constructed of galvanized tin, with dogs protecting the compound. Herbert had to speak to Maria Alicea, who lived in the home, and obtain permission to enter the yard. However, Herbert further explained that, as he was passing the fence between the property where Ponce was found and the adjacent property, he was able to see a firearm in plain view on the ground by looking through the cracks in the fence. Also in this photo was Maria Alicea.

¶103 The firearm was retrieved, and Herbert noted that it appeared to match the description of one of the firearms described by Bettina during her interview—a silver handgun that did not eject the ammunition casings as it was fired. Herbert, therefore, believed the firearm could have been the weapon used to kill Rosa, as it was a silver revolver.

¶104 Herbert further explained that, during his initial interview with Bettina, she signed a photograph identifying Rivera. Then, on a later date, Bettina signed a second photograph identifying Ponce.

¶105 During cross-examination, defense counsel probed Herbert's training as a police officer in general and specifically in forensic investigation and interviewing. As the defense focused its questioning, Herbert explained that the first interview with Bettina lasted an hour and twenty-five

minutes. During this time, Bettina had explained that her husband, Rosa, and Rivera and Ponce had been in an argument and had specifically stated their full names "Three of them, Edwin Rivera, Edwin Ponce and Carlos Rosa." Defense counsel further highlighted that Ponce was completely naked and had no clothing in his possession when the VIPD entered the building in which they found him when he was arrested. Defense counsel then invited the jury's attention to the fact that Herbert was aware of the fight among Rosa and Rivera and Ponce as of August 30, 2011, but did not conduct the follow up interview to clarify Bettina's statement until September 19, 2011. On re-direct examination, Herbert explained his process of investigation and why it took as many days as it did to follow up with Bettina and to arrest Ponce.

¶106 Upon the conclusion of Herbert's testimony, the People rested. The court then heard motions in chambers. The People voluntarily dismissed the charge of disturbance of the peace, Count Six, for lack of evidence against Ponce. The People requested, and the court granted, that they be allowed to amend count four to reflect Third Degree Assault rather than First Degree Assault. At this time, the court allowed the People to file a "substituted" fourth superseding information.

¶107 Ponce argued that there was no evidence that he was the primary actor in the assault with a deadly weapon on August 28, 2011. Furthermore, it was asserted that there was no evidence confirming that Ponce encouraged or otherwise participated in the August 28, 2011 assault. As to count two, the assault on Bettina, defense counsel argued that there was no testimony indicating that Ponce was involved with that incident and that there was testimony that Ponce was the one to separate those who were fighting. Regarding count three, defense counsel argued that the evidence only showed that Rivera was in the Rosa's yard when he fired the shots, and there was no testimony

indicating that Ponce said or did anything to encourage this act by Rivera. This same argument was advanced for count four. Similarly, with regard to count five, because it was Rivera who fired the shots into the air and Ponce had not participated in the fight, it was argued that such actions did not prove that Ponce aided and abetted Rivera in the possession of firearm ammunition.

¶108 Addressed to counts six, seven, eight, and nine, the counts relating to the events of August 29, 2011, defense counsel argued that there was no evidence, beyond Ponce's presence at the shooting, to indicate he ever encouraged or facilitated Rivera's actions. Likewise, it was argued that, because Ponce did not facilitate the possession of the firearm, he could not have aided and abetted the possession of ammunition.

¶109 Count ten was challenged because the twelve rounds of firearms ammunition were found in a pair of pants not being worn by anyone. In a similar line of argument, count eleven was challenged because it charged Ponce with possession of the .38 caliber revolver on the day the search warrant was executed and he was arrested. However, there was no evidence placing the firearm in Ponce's hand, and the testimony did not connect Ponce's presence in the home with the revolver found in the yard next door or the twelve rounds of live ammunition found in the pants. The same argument was advanced as to count twelve. The motion for judgment of acquittal was denied as to all counts.

¶110 With regard to counts one and two, the motion for judgment of acquittal was denied because Bettina testified that Ponce had made threats and pointed the silver revolver at her and her husband the day before Rosa was shot and killed. Similarly, on count three, there was testimony that it was Ponce who fired shots into the air in Old Fredensborg, a residential neighborhood with the buildings closely laid out in a small area. The inference that the ammunition projectiles

discharged from a firearm into the air will come down and could injure people in the community nearby was not an unreasonable inference and justified a finding of guilt; therefore, the court denied the motion as to count three. With regard to count four, there was testimony that Ponce actually possessed the silver handgun on the date of the shooting; at which time, he did not possess a firearms license. Similarly, because Ponce discharged the firearm, it was reasonable for the jury to infer Ponce also possessed the ammunition, providing sufficient evidence to support count five.

¶111 The motion for judgment of acquittal on count six, First Degree Murder, was denied due to the testimony that Rivera and Ponce acted in concert—throwing rocks at the house together—and there were two sets of shell casing found at the scene indicating both Rivera and Ponce discharged their firearms at that time. Bettina further testified that, at the time of Rosa's murder, she saw Ponce with a black automatic handgun discharging shots. Ponce's act of discharging the firearm in the air in Old Fredensborg presented a grave risk of death to those who would be in the area. The fact that Ponce did fire the black automatic pistol allowed the inference that he also possessed the ammunition. Therefore, the court denied the motion for judgment of acquittal on counts six, seven, eight, and nine.

¶112 Finally, given Ponce's actions when the police knocked and announced their presence at the house, the fact that Ponce was naked when the police entered the building, and the fact that the trousers containing the ammunition were in proximity to Ponce's money, which he acknowledged to be his, allowed the inference that Ponce had constructive possession of the firearm and ammunition discovered on the day of the search.

¶113 The court also denied Ponce's renewed motion for a mistrial, as it did not find any prejudice to Ponce because the jury had been empaneled with two defendants but only heard evidence

regarding Ponce, the sole defendant being tried after the severance of Rivera's trial. There was a curative instruction given that each defendant was to be treated separately, and a further instruction would cure any remaining lack of clarity.

¶114 Defense then called Herbert as its first witness in its case. Herbert authenticated Defendant's Exhibits 12, 13, and 14, which were admitted in evidence. He also confirmed that certain documents were collected during the execution of the search warrant.

¶115 Christi Tuttle was then called as Ponce's second witness. She and Ponce had been in Old Fredensborg on the morning of August 29, 2011, along with some other fishermen, "Buddy," "Crispin," and Cepi. Tuttle indicated Buddy had been in the courtroom during the trial and had his hair in dreadlocks. Tuttle and Ponce left the area that morning along with Crispin and Buddy, with Ponce driving the vehicle; they dropped Tuttle at her home by herself and left. Later that night, Ponce returned to Tuttle's home, and at some point, he received a phone call. Noting some "alarm in his voice," Tuttle inquired if anything was wrong, and Ponce responded that a man in Old Fredensborg had been shot, a man by the sobriquet "Carlito."

¶116 The prosecution then cross-examined Tuttle. She admitted that she had a difficult time remembering dates and times. Likewise, she admitted that, on the night of the shooting, she had not been with Ponce all night.

¶117 Ramona Ponce then testified as Ponce's next witness. Ramona was Ponce's mother and resided in the Mon Bijou neighborhood of St. Croix. She testified that, on August 29, 2011, Ponce was at her house from approximately 6:00-6:30 p.m. until 11:00 p.m. Ponce and Ramona's other sons and some friends had come over to socialize, she explained.

¶118 On cross-examination, the prosecution questioned Ramona as to why Ponce's visit on August 29, 2011, stuck in her mind so much that she remembered he left at 11:00 p.m. She explained that she had an important errand to accomplish the next day; Ramona stated she had "a very important errand for my mom," "because she's not from here." Ramona further explained that she needed to take "the cards, the letters of the old man" to get "a letter for me from the old people, like, an identification that I had to go get." While the prosecution questioned her, Ramona contradicted herself saying "No, I didn't need to take them. I had to take them out for myself." Ramona explained she took these documents to Christiansted "where they give the food stamps," but she did not have any records to verify this fact. Upon further questioning, she explained that she was obtaining an "elderly identification for medication and whatnot that I had to get for my mom." Ramona could not remember the staff member with whom she spoke that day but described her as "a big lady, Puerto Rican."

¶119 She testified that, at that time, Ponce lived with Tuttle. Ramona admitted she was unaware Ponce was a suspect in this case or in any way "in trouble" prior to his arrest on September 24, 2011.

¶120 The defense then renewed its motion for judgment of acquittal. The court denied this motion because the facts as presented did not place the factual determination "outside the realm of what could properly happen in the jury room for the jury to find that the [P]eople have met the elements." The jury returned a verdict of guilty on all counts, and sentencing was held on June 27, 2015.

¶121 A judgment and commitment was entered on July 30, 2015, adjudicating Ponce guilty of all charges and imposing concurrent sentences as to counts 1 through 5 and 7 through 12, which

were to be served consecutively to the sentence imposed on Count 6, First Degree Murder, a sentence of prison without the possibility of parole. Ponce filed his notice of appeal on July 27, 2015.

II. DISCUSSION

A. Issues and Standard of Review

¶122 On appeal, Ponce propounds several issues. Because a reversal of a defendant's conviction for insufficient evidence is the appellate equivalent of an acquittal, the Court addresses these issues in a different order than Ponce presented them in his briefs, and considers the sufficiency of the evidence first[9] because such a finding awards greater relief than a finding of reversible trial or other constitutional error, i.e., reversal of the conviction and, *inter alia*, a new trial. *Ambrose v. People*, 56 V.I. 99, 107 (V.I. 2012) (This Court "must 'consider all the evidence . . . , including any evidence that is later determined to be inadmissible' because '. . . it would be unfair to the People because other evidence might have been produced . . . .").[10]

¶123 Ponce challenged the sufficiency of the evidence on all his convictions by making motions for judgment of acquittal pursuant to former Superior Court Rule 7 and Federal Rule of Criminal Procedure 29,[11] and this Court exercises plenary, i.e., *de novo*, review over the denial of such

[9] *See generally People v. Strollo*, 83 N.E. 573, 574 (N.Y. 1908) ("Since these questions depend in varying degree upon our conclusions respecting the case in its entirety, we shall determine whether the verdict of the jury is supported by the weight of the evidence, and then address ourselves to the specific attacks made upon the validity of the judgment.").

[10] *See Galloway v. People*, 57 V.I. 693, 700 n.3 (V.I. 2012); *Strollo*, 83 N.E. at 578-79 ("Having thus given, as briefly as possible, a resume of the salient facts which the jury had the right to regard as established by the evidence, it remains to be ascertained whether, assuming the competency and relevancy of the evidence by which the facts were established, the proof as a whole warranted the verdict upon which the jdugemn6 of conviction was entered.").

[11] Former Superior Court Rule 7 made the Federal Rules of Criminal Procedure applicable in the Superior Court. However, effective December 1, 2017, the Virgin Islands Rules of Criminal Procedure became operative and were

motions and applies the same standard as the trial court. *See United States v. McLean*, 802 F.3d 1228, 1233 (11th Cir. 2015); *United States v. Hope*, 487 F.3d 224, 227-28 (5th Cir. 2007); *see also M. Davis v. People*, 69 V.I. 619, 652 (V.I. 2018) (Swan, J. concurring) (citing *Stanislas v. People*,

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subsequently amended on December 19, 2017. S. Ct. Prom. Orders 2017-010 (Dec. 1 & 19, 2017). Because this court applies the rules in effect at the time the Superior Court decided the issue under consideration, I apply former Superior Court Rule 7 and Federal Rule of Criminal Procedure 29. *Toussaint v. Stewart*, 67 V.I. 931, 941 n.5 (V.I. 2017) (explaining that the rule in effect at the time of entry of the order appealed from is the rule applied on appeal); *compare* FED. R. CRIM. P. 29(a) ("[T]he court on the defendant's motion must enter a judgment of acquittal of any offense for which the evidence is insufficient to sustain a conviction.") *with* V.I. R. CRIM. P. 29(a) ("[T]he court on the defendant's motion must enter a judgment of acquittal of any offense for which the evidence is insufficient to sustain a conviction."). For whatever reason, Ponce splits this argument into two sections of his brief. The first presents a substantive argument as to sufficiency of the evidence, and the second presents this argument by asserting that the denial of the Rule 29 motion was an error. However, these arguments assert the exact same error subject to the exact same standard of review. *United States v. McLean*, 802 F.3d 1228, 1233 (11th Cir. 2015) ("We review the grant of a motion for judgment of acquittal *de novo*, giving no deference to the district court's determination that the evidence was insufficient to support the jury's verdict." (citing *United States v. Vernon*, 723 F.3d 1234, 1252 (11th Cir. 2013))); *United States v. Silveus*, 542 F.3d 993, 1002 (3d Cir. 2008) (ruling that an appellate court exercises, *de novo*, i.e, "plenary[,] review over a [trial] court's grant or denial of a motion for acquittal based on the sufficiency of the evidence, applying the same standard as the [trial] court"). Therefore, "both" these "arguments" are addressed in the first section of this opinion. *E.g.*, *Merrifield v. People*, 56 V.I. 769, 775 (V.I. 2012) (First stating that, "Merrifield argues that the trial court erred in not granting his Rule 29 Motions for Judgment of Acquittal. Merrifield further argues that the evidence was insufficient to prove that he committed or aided and abetted in committing of the crimes for which he was convicted[,]" and then proceeding to conduct one analysis of both arguments); *Stevens v. People*, 52 V.I. 294, 304 (V.I. 2009) (quoting *Smith v. People*, S. Ct. Crim. No. 20007-0078, 2009 WL 1530694, at *1 (V.I. May 19, 2009) (unpublished); *Silveus*, 542 F.3d at 1002).

Indeed, the only difference between a Plain Error Review of the sufficiency of the evidence in an appeal and a *de novo*, i.e., plenary, review of the denial of a Rule 29 motion is that the People would usually bear the burden of establishing harmless error beyond a reasonable doubt in order to avoid the consequences of any legal or factual error. However, under Plain Error Review, it is the defendant who has the burden of establishing the third Plain Error element, that the lack of evidence affected a substantial right, as well as the burden of establishing that the Plain Error (the existence of the first three elements of a Plain Error Review) adversely affects the reputation of the proceeding or the court. The issue is the same under either analysis; it is the burden of proof of various elements that shifts. *Cornelius v. Bank of Nova Scotia*, 67 V.I. 806, 816-17 (V.I. 2017) ("A finding of Plain Error requires the existence of (1) an error, (2) that was obvious under existing law, and (3) affected substantial rights. . . . When Plain Error exists, this Court will conduct a Plain Error Review to determine if the error, though affecting a substantial right, seriously affected 'fairness, integrity, or public reputation of the judicial proceeding,' thus warranting reversal." (citing *Dupigny v. Tyson*, 66 V.I. 434, 452 (V.I. 2017); *Francis v. People*, 52 V.I. 381, 390-91 (V.I. 2009))); *Percival v. People*, 62 V.I. 477, 484 (V.I. 2015) ("[A] conviction entered on insufficient evidence is always plain error . . . ." (citing *Webster v. People*, 60 V.I. 666, 678-79 (V.I. 2014); *Francis v. People*, 59 V.I. 1075, 1079 (V.I. 2013); *United States v. Flyer*, 633 F.3d 911, 917 (9th Cir. 2011))); *Fahie v. People*, 59 V.I. 505, 511, 517 n.5 (V.I. 2013) ("To affect [the defendant's] substantial rights, the 'error must be prejudicial, which means there must be a reasonable probability that the error affected the outcome of the trial.' Unlike harmless error analysis, under [Plain Error Review], the burden falls on the [defendant] to show how the error prejudiced him." (quoting *Elizee v. People*, 54 V.I. 466, 475 (V.I. 2010); and citing *Neder v. United States*, 527 U.S. 1, 19 (1999); *Chapman v. California*, 386 U.S. 18 (1967); *Olano*, 507 U.S. at 734; *Francis*, 52 V.I. at 391-93; *Prince v. People*, 57 V.I. 399, 405 (V.I. 2012*); State v. Jordan*, 19 A.3d 241, 247 (Conn. App. Ct. 2011); *Barnard v. State*, 290 P.3d 759, 764 (Okla. Crim. App. 2012); *State v. Vance*, 734 N.W.2d 650, 660 n.8 (Minn. 2007))).

55 V.I. 485, 491 (V.I. 2011); *Prince v. People*, 57 V.I. 399, 405 (V.I. 2012)). When conducting a review of the sufficiency of the evidence, this Court is required to consider all evidence presented, including any evidence that is ultimately determined to be inadmissible. *Fontaine v. People*, 56 V.I. 571, 585 n.9 (V.I. 2012); *see also Ambrose*, 56 V.I. at 107 (quoting *State v. Frazier*, 622 N.W.2d 2456, 261 (S.D. 2001)); *see generally McDaniel v. Brown*, 558 U.S. 120, 131 (2010).

¶124 Ponce further argues that the granting of the People's request to sever Rivera's trial from his and subsequent refusal to grant a mistrial prejudiced Ponce requiring reversal of his convictions and a new trial. In determining whether severance should have been granted, this Court reviews the Superior Court's ruling for abuse of discretion. *United States v. Walker*, 657 F.3d 160, 170 (3d Cir. 2011); *United States v. Davis*, 397 F.3d 173, 182 (3d Cir. 2005). Likewise, this Court reviews the trial court's denial of a motion for a mistrial for abuse of discretion. *George v. People*, 59 V.I. 368, 377 (V.I. 2013) (citing *United States v. Self*, 681 F.3d 190, 199 (3d Cir. 2012)).

¶125 When analyzing these issues, "[s]ound discretion requires that, although the trial court need not state expressly its findings on the record, the record must reflect an adequate factual basis to inform the court's reasoned decision to order a mistrial in lieu of other alternatives that would allow the trial to continue." *State v. Anderson*, 988 A.2d 276, 292 (Conn. 2010) (citing *Ross v. Rogers*, 129 S. Ct. 906 (2009); *Arizona v. Washington*, 434 U.S. 497, 517 (1978); *United States v. Lara-Ramirez*, 519 F.3d 76, 84-85 (1st Cir. 2008); *Dunkerley v. Hogan*, 579 F.2d 141, 146 (2d Cir. 1978); *United States v. Razmilovic*, 507 F.3d 130, 140 (2d Cir. 2007); *Ross v. Petro*, 515 F.3d 653, 664 (6th Cir. 2008); *United States v. Bates*, 917 F.2d 388, 395-97 n.12 (9th Cir. 1990); *United States v. Smith*, 621 F.2d 350, 351 (9th Cir. 1980))). Therefore, "a trial judge's characterization of his own action cannot control the classification of the action," and the trial court's use of the

words "manifest necessity" have no talismanic significance. *United States v. Scott*, 437 U.S. 82, 96 (1978). Furthermore, "the prosecutor must shoulder the burden of justifying the mistrial if he is to avoid the double jeopardy bar. His burden is a heavy one. The prosecutor must demonstrate 'manifest necessity' for any mistrial declared over the objection of the defendant." *Arizona v. Washington*, 434 U.S. at 505-06.

¶126 "A reviewing court looks for manifest necessity by examining the entire record in the case without limiting itself to the actual finding of the trial court . . . . It is the examination of the propriety of the trial court's action against the backdrop of the record that leads to the determination of whether, in the context of a particular case, the mistrial declaration was proper. Given the constitutionally protected interest involved, reviewing courts must be satisfied . . . that the trial judge exercised sound discretion in declaring a mistrial." *Van Sant*, 503 A.2d 577. "[I]n all cases of this nature, the law has invested courts of justice with the authority to discharge a jury from giving any verdict, whenever, in their opinion, taking all the circumstances into consideration, there is a manifest necessity for the act, or the ends of public justice would otherwise be defeated. They are to exercise a sound discretion on the subject; and it is impossible to define all the circumstances . . . which would render it proper to interfere. To be sure, the power ought to be used with the greatest caution, under urgent circumstances, and for very plain and obvious causes . . . . [T]he faithful, sound, and conscientious exercise of this discretion . . . rests . . . upon the responsibility of the judges, under their oaths of office." *United States v. Perez*, 22 U.S. (9 Wheat.) 579, 580 (1824). Appellate courts "resolve any doubt in favor of the liberty of the citizen, rather than exercise what would be an unlimited, uncertain, and arbitrary judicial discretion."

Downum v. United States, 372 U.S. 734, 738 (1963); *Sanchez v. United States*, 919 A.2d 1148, 1151 (D.C. 2007).

¶127 For his final issue, Ponce asserts that the late disclosure of photographs within a week of jury selection and the beginning of the trial warranted their exclusion; therefore, Ponce argues he was prejudiced in preparing his defense. This Court also reviews a trial court's decision to admit evidence for abuse of discretion. *Fahie v. People*, 62 V.I. 625, 630 (V.I. 2015); *John v. People*, 63 V.I. 629, 644-45 (V.I. 2015); *Canton v. People*, 61 V.I. 511, 515 (V.I. 2014).

¶104 Generally, a court abuses its discretion if it acts arbitrarily or irrationally. *Alexander v. People*, 60 V.I. 486, 494 (V.I. 2014) (citing *Francis v. People*, 56 V.I. 370, 379 (V.I. 2012)). A trial court acts arbitrarily or irrationally if its ruling is founded upon "'a clearly erroneous finding of fact, an errant conclusion of law[,] or an improper application of law to fact'" "or its actions were 'clearly contrary to reason and not justified by the evidence.'" *Appleton v. Harrigan*, 61 V.I. 262, 268 (V.I. 2014) (quoting *Stevens v. People*, 55 V.I. 550, 556 (V.I. 2011)).[12] Furthermore, a court cannot "exercise its discretion" by choosing to ignore a claim or issue that was properly before it. *Bryan v. Fawkes*, 61 V.I. 416, 476 (V.I. 2014) (citing *Garcia v. Garcia*, 59 V.I. 758, 771 (V.I. 2013)). "It is axiomatic that, when a court with discretion fails to balance the pertinent factors required for it to properly exercise that discretion, such failure constitutes an abuse of discretion." *Rivera-Mercado v. Gen. Motors Corp.*, 51 V.I. 307, 330 (V.I. 2009) (Swan, J., concurring); *see Beachside Assocs., LLC v. Fishman*, 53 V.I. 700, 719 (V.I. 2010).

[12] *See also Smith v. Gov't of the V.I.*, 67 V.I. 797, 803-04 (V.I. 2017); *Billu v. People*, 57 V.I. 455, 461-62 (V.I. 2012) (quoting *Petrus v. Queen Charlotte Hotel Corp.*, 56 V.I. 548, 554 (V.I. 2012)); *Pelle v. Certain Underwriters at Lloyd's of London*, 66 V.I. 315, 318 (V.I. 2017); *Gore v. Tilden*, 50 V.I. 233, 236 (V.I. 2008).

B. Jurisdiction

¶128 "Before this Court can decide the merits of [this] appeal, we must determine if we have jurisdiction." *Brown v. People*, 49 V.I. 378, 379 (V.I. 2008).[13] "The jurisdiction of the [Supreme Court of the Virgin Islands] depends upon the acts passed by [C]ongress pursuant to the power conferred upon it by the ['Territorial Clause' of the C]onstitution of the United States[, U.S. CONST. art. IV, § 3, cl. 2], and cannot be enlarged or abridged by any statute of a [Territory]." *Goldey v. Morning News*, 156 U.S. 518, 523 (1895). This Court has appellate subject matter jurisdiction over "all appeals from the decisions of the courts of the Virgin Islands established by local law[.]" 48 U.S.C. § 1613a(d). Pursuant to this grant of authority from Congress, the Legislature of the Virgin Islands has established this Court and granted it jurisdiction over all appeals arising from a "Final Judgment" of the Superior Court. 4 V.I.C. § 32(a); *see* 4 V.I.C. § 33(a) ("Appealable judgments and orders . . . shall be available only upon entry of final judgment in the Superior Court.").[14]

¶129 "'A Final Judgment is a judgment from a court [that] ends the litigation on the merits leaving nothing else for the court to do except execute the judgment.'" *Toussaint v. Stewart*, 67 V.I. 931, 939 (V.I. 2017) (quoting *Ramirez v. People*, 56 V.I. 409, 416 (V.I. 2012) (citations omitted)). "In a criminal case, the written judgment embodying the adjudication of guilt and sentence imposed based on that adjudication constitutes a Final Judgment for purposes of 4 V.I.C.

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[13] *See also First Am. Dev. Group/Carib, LLC*, 55 V.I. 594, 601 (V.I. 2011) ("Prior to considering the merits of an appeal, this Court must first determine if it has appellate [subject matter] jurisdiction over the matter." (citing *V.I. Gov't Hosp. & Health Facilities Corp. v. Gov't of the V.I.*, 50 V.I. 276, 279 (V.I. 2008)).

[14] *See also Enrietto v. Rogers Townsend & Thomas PC*, 49 V.I. 311, 315 (V.I. 2007) (quoting 4 V.I.C. § 32(a)); *Toussaint*, 67 V.I. at 939-40 (discussing what constitutes a "Final Judgment"); *see generally Penn v. Mosley*, 67 V.I. 879, 891 n.4 (V.I. 2017) (discussing the distinctions between a judgment, order, and decree); *Miller v. Sorenson*, 67 V.I. 861, 871-72 (V.I. 2017) (discussing the distinctions between a judgment and decree); *Cianci v. Chaput*, 68 V.I. 682, 688 (V.I. 2016) (quoting *In re Estate of George*, 59 V.I. 913, 919 (V.I. 2013)).

§ 32(a)." *Gonsalves v. People*, 70 V.I. 812, ¶33 (V.I. 2019) (citing *Percival v. People*, 62 V.I. 477, 483 (V.I. 2015)). The judgment and commitment was entered on July 30, 2015, following a sentencing hearing on June 27, 2015. Ponce filed his notice of appeal with this Court on July 27, 2015, and in this notice, he presents each of the issues briefed on appeal.

¶130 Ponce having prematurely filed his notice of appeal prior to the Superior Court's entry of the Final Judgment, V.I.R. APP. P. 5(a)(9), appellate jurisdiction vested in this Court upon entry of the Final Judgment on July 30, 2015. V.I. R. APP. P. 5(a)(1); *Allen v. HOVENSA, L.L.C.*, 59 V.I. 430, 434 (V.I. 2013); *see* V.I. R. APP. P. 5(a)(4). Therefore, this court has appellate jurisdiction to decide this case. V.I. R. APP. P. 5(a)(1); *Allen*, 59 V.I. at 434; *see* V.I.R. APP. P. 5(a)(4).

C. Sufficiency of the Evidence

¶131 When an appellant seeks to have his conviction overturned for lack of evidence, he bears a heavy burden. *Ritter v. People*, 51 V.I. 354, 359 (V.I. 2009). Because the only appropriate justification for granting a judgment of acquittal is that the evidence was insufficient to sustain the conviction, *United States v. Mi Sun Cho*, 713 F.3d 716, 720 (2d Cir. 2013); *United States v. Jones*, 713 F.3d 336, 340 (7th Cir. 2013), "[t]his standard of review is formidable and 'defendants challenging convictions for insufficiency of evidence face an uphill battle on appeal.'" *United States v. Santos-Rivera*, 726 F.3d 17, 23 (1st Cir. 2013) (citations omitted). Furthermore, this Court applies to the jury's verdict a "particularly deferential standard of review." *James v. People*, 60 V.I. 311, 317 (V.I. 2013); *Castor v. People*, 57 V.I. 482, 488 (V.I. 2012).[15] This Court must affirm a jury's verdict as long as substantial evidence was presented at trial to allow a rational trier

[15] *See also United States v. Bosen*, 491 F.3d 852, 856 (8th Cir. 2007); *see generally McLean*, 802 F.3d at 1233 (noting that an appellate court owes no deference to a trial court's determination of sufficient evidence, because that is a question of law).

of fact to convict, under the standard of beyond a reasonable doubt, when the evidence is viewed in a light most favorable to the prosecution. *Fahie*, 62 V.I. at 630; *Webster v. People*, 60 V.I. 666, 678-79 (V.I. 2014); *Cascen v. People*, 60 V.I. 392, 401 (V.I. 2014).[16]

¶132 In order for the evidence to rationally support a verdict, there must be a logical and convincing nexus between the evidence, both direct and circumstantial, and the guilty verdict. *Gov't of the V.I. v. Williams*, 739 F.2d 936, 940 (3d Cir. 1984).[17] A trier of fact acts rationally if, in light of reason and everyday experience, the evidence, properly presented, rationally and logically supports the existence of the facts establishing the elements of the crime. *M. Davis*, 69 V.I. at 652-53 & n.25 (Swan, J. concurring) (citing *Leary v. United States*, 395 U.S. 6, 33-35 (1969); *Ventura v. People*, 64 V.I. 589, 601 (V.I. 2016)); *Tot v. United States*, 319 U.S. 463, 466-67 (1943). A verdict is irrational if there is a lack of connection between the facts offered in evidence and the essential elements of the crime charged. *Jackson v. Virginia*, 443 U.S. 307, 317 (1979) ("The *Winship* doctrine[, *see* 397 U.S. 358 (1970),] requires more than simply a trial ritual.

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[16] *See also Coleman v. Johnson*, 566 U.S. 650 (2012); *Cavazos v. Smith*, 565 U.S. 1 (2011); *United States v. Atkins*, 881 F.3d 621 (8th Cir. 2018); *United States v. Taylor*, 816 F.3d 12, 22 (2d Cir. 2016); *United States v. Ramos*, 814 F.3d 910, 915 (8th Cir. 2016); *see generally Crane v. Morris's Lessee*, 31 U.S. (6 Pet.) 598, 617 (1832) ("This instruction plainly called upon the court to decide mere matters of fact, which were in controversy before the jury, and upon the assumption of such matters of fact direct the jury that they rebutted other matters of fact. **It was not part of the duty of the court to decide upon the relative weight and force of these facts. They exclusively belonged to the jury**; and the instruction was properly denied." (emphasis added)); *Ambrose*, 56 V.I. at 107 (noting that even evidence ultimately deemed to have been improperly admitted is considered when reviewing the sufficiency of the evidence (quoting *Frazier*, 622 N.W.2d at 261; *People v. Sisneros*, 606 P.2d 1317, 1319 (Colo. App. 1980); and citing *United States v. McClain*, 377 F.3d 219, 222 (2d Cir. 2004); *United States v. Mandel*, 591 F.2d 1347 (4th Cir. 1979))).

[17] *See also United States v. Acevedo*, 882 F.3d 251, 259 (1st Cir. 2018); *United States v. Shoemaker*, 746 F.3d 614, 619 (5th Cir. 2014); *United States v. Serrano-Lopez*, 366 F.3d 628, 634 (8th Cir. 2004*); see generally State v. Kelly*, 15 N.W. 2d 554, 562 (Minn. 1944) ("[R]eason, as well as respect for the rights of accused persons so firmly engrafted upon our system of jurisprudence, would prompt us to adopt the view taken by the United States Supreme Court, even were its views not binding upon us so far as federal constitutional requirements are concerned. The requirement of rationality appears to us a necessary safeguard to the constitutional rights of our citizens—a safeguard which is far more important than the practical advantage gained by our prosecutors in a few extreme cases where, under the Wigmore rule, a statutory presumption would be sustained notwithstanding its unreasonableness." (citing 4 WIGMORE, EVIDENCE § 1356 (3d ed. 1940)).

A doctrine establishing so fundamental a substantive constitutional standard must also require that the factfinder will rationally apply that standard to the facts in evidence."); *see Tot*, 319 U.S. at 467-68; *Jones*, 713 F.3d at 339-40. Indeed, when the logical connection between the record evidence and the elements of the crime is so strained as not to have a reasonable and rational relation to everyday experience, common sense, and the circumstance of life as they are in reality, the verdict cannot stand. *See Thompson v. Louisville*, 362 U.S. 199, 204 (1960) ("The city correctly assumes here that if there is no support for these convictions in the record they are void as denials of due process."); *Tot*, 319 U.S. at 468. Furthermore, if the whole of the evidence is equipollent supporting equally a conclusion of guilt and a conclusion of innocence, the jury must necessarily possess a reasonable doubt. *United States v. Glenn & Thompson*, 312 F.3d 58, 70 (2d Cir. 2002); *United States v. Hernandez-Bautista*, 293 F.3d 845, 854 (5th Cir. 2002).

¶133 In order to sustain the jury's verdict, the credibility of witnesses and the weighing of evidence is not for this Court to second guess on appeal, and justices view the evidence in the light most favorable to the jury verdict. *Williams v. People*, 55 V.I. 721, 734 (V.I. 2011); *Ritter*, 51 V.I. at 359.[18] "'[W]here a cause fairly depends upon the effect or weight of testimony, it is one for consideration and determination of the jury, under proper directions as to the principles of law involved. It should never be withdrawn from them unless the testimony be of such conclusive

[18] *See also Glasser v. United States*, 315 U.S. 60, 80 (1942); *United States v. McIntosh*, 860 F.3d 624 (8th Cir. 2017); *Santos-Rivera*, 726 F.3d at 25; *United States v. White*, 698 F.3d 1005, 1013 (7th Cir. 2012); *United States v. Truman*, 688 F.3d 129, 139 (2d Cir. 2012); *United States v. Williams*, 549 F.3d 84, 92 (2d Cir. 2008); *United States v. Stiger*, 371 F.3d 732, 738-39 (10th Cir. 2004); *cf. Rivera v. People*, 64 V.I. 540, 553-57 (V.I. 2016) (standard for credibility determination on appeal); *Gonsalves*, 70 V.I. at ¶40 n.8; *Phillip v. People*, 58 V.I. 569, 583-84 (V.I. 2013) (recognizing that "an appellate court may disregard a jury's reliance on a witness's testimony when that testimony is 'inherently incredible or improbable'" (quoting *Williams*, 51 V.I. at 1086); *see generally* 29A AM. JUR. *Evidence* § 1375 (2008) ("Testimony is deemed inherently incredible or improbable where it is 'either so manifestly false that reasonable [people] ought not to believe it, or it must be shown to be false by objects or things as to the existence and meaning of which reasonable [people] should not differ.").

character as to compel the court, in the exercise of a sound legal discretion, to set aside a verdict retuned . . . .'" *Conn. Mut. Life Ins. Co. v. Lathrop*, 111 U.S. 612, 615 (1884) (quoting *Phoenix Ins. Co v. Doster*, 106 U.S. 30, 31 (1882)).[19] In other words, there is no requirement that the evidence be consistent with only the conclusion of guilt, and the evidence is not insufficient because testimony from witnesses may be contradictory or in conflict, which, in reality, means that the finder of fact must make a credibility determination. *Marcelle v. People*, 55 V.I. 536, 547 (V.I. 2011); *Smith v. People*, 51 V.I. 396, 401 (V.I. 2009).[20] Importantly, evidence need not exclude every hypothesis of innocence; if the evidence rationally supports two conflicting conclusions, the conviction will not be reversed because a conviction must be affirmed if, in light of common sense and everyday experience, the conviction is logically and rationally supported by substantial evidence, and a rational trier of fact, taking the evidence in the light most favorable to the verdict, could have found the defendant guilty beyond a reasonable doubt. *United States v. Jimenez-Serrato*, 336 F.3d 713, 715 (8th Cir. 2003); *United States v. Khanu*, 675 F. Supp. 2d 55, 60 (D.D.C. 2009).[21]

1. Sufficiency of the Evidence: Counts One and Two—Third Degree Assault—14 V.I.C. § 297(a)(2)

¶134 Counts one and two charged Ponce with Third Degree Assault on August 28, 2011. The elements of Third Degree Assault, subsections 297(a)(1)-(4), are: (1) the defendant; (2) under

[19] *See also United States v. Alarcon-Simi*, 300 F.3d 1172, 1176 (9th Cir. 2002); *United States v. Baker*, 367 F.3d 790, 798-99 (8th Cir. 2004); *United States v. Owusu*, 199 F.3d 329, 341-42 (6th Cir. 2000).

[20] *See also Acevedo*, 882 F.3d at 259; *Serrano-Lopez*, 366 F.3d at 634; *United States v. Patel*, 370 F.3d 108, 111 (1st Cir. 2004); *United States v. Kone*, 307 F.3d 430, 433 (6th Cir. 2002).

[21] *See Coleman*, 566 U.S. at 655-56; *Ritter*, 51 V.I. at 359; *see also Shoemaker*, 746 F.3d at 619; *United States v. Williams*, 549 F.3d 84, 92 (2d Cir. 2008); *United States v. Brodie*, 403 F.3d 123, 133 (3d Cir. 2005); *United States v. McCormack*, 371 F.3d 22, 27 (1st Cir. 2004).

circumstances wherein the gestures made could be immediately performed (attendant circumstance); (3) made gestures (*actus reus*); (4) those gestures communicated an immediate ability and specific intent to use unlawful violence against another (attendant circumstance); and (5) specific intent (*mens rea*), i.e., such actions (a) were taken with the specific intent to commit a felony, (b) were taken with the use of a deadly weapon, (c) were taken with a premeditated design and by use of means calculated to inflict great bodily injury, or (d) inflicted great bodily injury upon the victim. 14 V.I.C. § 297(a)(1-4); *see* 1 V.I.C. §§ 41-42; 14 V.I.C. § 291(2); *Hiibel v. Sixth Judicial Dist. Ct. of Nev.*, 542 U.S. 177, 191 (2004).

¶135 Ponce argues that, on August 29, 2011, the day of the murder, there was an argument and fracas between Rivera, on one side, and Rosa and Bettina, on the opposite side, but that he did not participate in the fight. Inexplicably, Ponce avoids mention of Bettina's testimony regarding the events of the night of August 28, 2011, on which counts one and two were based.

¶136 Bettina testified that, on the night of August 28, 2011, she heard rocks being thrown against the window of her home. Bettina further testified that she then saw Ponce and Rivera standing outside. While Bettina was looking through the window, "not too far" from Ponce, Ponce pointed a silver revolver at her and ordered her to move from where she stood. He warned that, if she did not comply, he would shoot her. Rosa then pulled his wife away from the window and told Ponce to "hold [the gun] down." Bettina testified that it was sufficiently bright that she was able to clearly see Ponce. Bettina also specifically identified Ponce in the presence of the jury.

¶137 Ponce's actions irrefutably exemplified a threatening gesture and demonstrated an ability to commit a battery accomplished through the use of a deadly weapon. *See* 14 V.I.C. § 297(a)(2). Consequently, when viewed in the light most favorable to the People, the evidence was sufficient

to sustain the conviction for Third Degree Assault upon Bettina. Furthermore, the testimony established that Rosa immediately pulled Bettina aside and stepped into view of Ponce. The timing of these actions while Ponce held his firearm aimed at Bettina was sufficient circumstantial evidence from which the jury could have inferred that Ponce also aimed the firearm at Rosa on August 28, 2011. Therefore, the People presented sufficient evidence for a jury to convict Ponce of counts one and two of the fourth superseding information.

2. Sufficiency of the Evidence: Counts Three and Eight—First Degree Reckless Endangerment—14 V.I.C. § 625(a)

¶138 Ponce was charged with two counts of First Degree Reckless Endangerment for discharging shots into the air in the vicinity of #165 Old Fredensborg on August 28 and August 29, 2011. Ponce's sole argument on these counts seems to be that the People exclusively relied on the "uncorroborated" testimony of a single eye witness, Bettina. *See People v. Strollo*, 83 N.E. 573, 580 (N.Y. 1908) ("We regard the argument of defendant's counsel against this evidence as more cogent upon its weight than its competency. The jury might well have thought that this evidence was weak, but we cannot say it was incompetent."). Again, this Court cannot overturn Ponce's convictions "if *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt"; and "'[t]his court has consistently held that the testimony of a single witness is sufficient to support a conviction, even if uncorroborated and contradicted by other testimony.'" *Williams v. People*, 56 V.I. 821, 835-36 (V.I. 2012) (emphasis added).[22] The

[22] *See United States v. Hamilton*, 334 F.3d 170, 179 (2d Cir. 2003); *see also Ventura*, 64 V.I. at 605-06 ("The inconsistencies in [any witness's] statements over the years call into question her credibly. But ultimately, it was up to the jury to weigh [the witness's] credibility when deciding if there was proof beyond a reasonable doubt that Ventura shot and killed Williams or aided and abetted his murder. And despite the strong attack on [the witness's] credibility, the jury still chose to believe her in-court testimony, as it was permitted to do. Therefore, we conclude that because the jury could reasonably have believed [the] testimony, and her testimony established each element of first degree

persuasiveness of the witness's testimony is an issue of credibility, which is solely determined by the jury.

¶139 As this Court explained in *Tyson v. People*, 59 V.I. 391 (V.I. 2013), regarding the "Public Place" attendant circumstance, "[b]y its plain terms, the statute[, section 625(a),] requires only a showing that the conduct was done in a place that is open to the public or where the public has a right to be, thereby posing a [grave] risk of death to members of the public who may be in the area." 14 V.I.C. § 625(a), (c)(1)-(2); *Tyson*, 59 V.I. at 417-18 (citing *Alcindor v. Gov't of the V.I.*, D.C. Crim. App. No. 2004/84, 2006 U.S. Dist. LEXIS 88212, at *11 (D.V.I. App. Div. Nov. 28, 2006) (unpublished)). "A '[Public Place]' may include ostensibly private areas that are nevertheless actually accessible to the public, or which are so close to areas that are used by the public that the defendant's conduct could cause a grave risk of death to those in the public area." *Powell v. People*, 70 V.I. 745, 754 (V.I. 2019) (citing *M. Davis*, 69 V.I. at 636-37); *see, e.g.*, *Wallace v. People*, 2019 VI 24, ¶26. The inherent dangers of discharging a firearm into the air in a populated area are patently obvious. *E.g.*, *Joseph v. People*, 60 V.I. 338, 350 (V.I. 2013) ("In addition, even if [the defendant] and [the victim] were, in fact, playing a game [of "stick up"], others present, including Clervil, could have been injured in the area of the Frydenhoj Ball Park, a public place where members of the public, including the participants and witness in this case, gathered."). The Supreme Court of Illinois similarly explained that the prosecution is not required to "introduce evidence concerning the force or velocity of bullets as they fall to the ground, or the

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murder, the Superior Court correctly denied [the defendant's] motion for a judgment of acquittal." (quoting *Estick v. People*, 62 V.I. 604, 612 n.2 (V.I. 2015); and citing *Tyson*, 59 V.I. at 402-03; *Phillip*, 58 V.I. at 587; *Brathwaite v. People*, 60 V.I. 419, 432 (V.I. 2014); *Simonds v. People*, 59 V.I. 480, 486 (V.I. 2013); *Billu*, 57 V.I. at 466; *Hurley v. State*, 483 A.2d 1298, 1304 (Md. Ct. App. 1984); *People v. Manion*, 367 N.E.2d 1313, 1320 (Ill. 1977); *Epperly v. Commonwealth*, 294 S.E.2d 882, 890 (Va. 1982); *Ex parte Bell*, 475 So.2d 609, 616 (Ala. 1985); *Campbell v. State*, 500 N.E.2d 174, 179 (Ind. 1986))).

angle or direction of the discharge. The inherent danger caused by the reckless discharge of a firearm into the air, and the obvious ricochet effect that may occur when bullets fall to the ground, are matters of common sense." *People v. Collins*, 824 N.E.2d 262, 268 (Ill. 2005).[23]

¶140 Bettina testified that, as Ponce was leaving her residence first on August 28, 2011, he shot into the air four times with a silver revolver. She later testified that, when Ponce was leaving her residence on August 29, 2011, he was "shooting to the air, shooting fire in the air," this time, with a black automatic handgun. When asked how many times Ponce shot the weapon, she responded, "[a] lot. I can't count. It [was] so much." The jury also heard testimony that the neighborhood homes were compactly laid out. In fact, Rosa's neighbor testified that her residence was so close to the Rosa's that she too heard the sounds of rocks being thrown, with one rock landing on her cistern. *See Strollo*, 83 N.E. at 580 ("Her testimony in that respect was amply fortified and corroborated by other oral and circumstantial evidence. We think, therefore, that the trial court was fully justified in receiving the testimony of this witness and submitting it to the jury for what it was worth.").

¶141 Ponce's conduct created a grave risk of death to the public who might have happened to have been in proximity to the area of the shooting, which was a public place. According to Bettina's testimony, Rivera also stood in the roadway on both nights. The officers who responded to the scene on August 30, 2011, retrieved .40 caliber and .223 caliber shell casings from the roadway abutting Rosa's home and in nearby bushes. Additionally, the People introduced numerous photographs depicting the area where the shooting occurred, including the roadway

[23] *See also United States v. Maxon*, 250 Fed. Appx. 129, 133 (6th Cir. 2007) ("Even if Defendant fired the bullet into the air, basic principles of gravity dictate that what comes up generally must come down. By shooting the gun into the air while others stood in the 'immediate vicinity,' Defendant placed those individuals in a "reasonable probability of danger.'").

located directly in front of the residence. Specifically, there was testimony from police officers that the road was the main point of ingress and egress to Old Fredensborg, and Tuttle testified to riding with Ponce and two others to leave the neighborhood. Additionally, there were streetlights installed in this area. These facts were sufficient to establish the public nature of the road, even if it was, in point of fact, private. *Compare Wallace*, 2019 VI 24, ¶¶31-32; *with id.* at ¶¶91-94. (Swan, J., concurring).

¶142 The jury was presented with evidence that Ponce was firing numerous gunshots into the air in a populated, residential area, accessible to the public on the nights of August 28, 2011, and August 29, 2011. There existed ample evidence from which a rational jury could find beyond a reasonable doubt that Ponce's actions created a grave risk of death to other people who might have been on the roadway, which was regularly accessible to and utilized by the public, and the evidence was sufficient to support a guilty verdict on the two counts—counts three and eight—of First Degree Reckless Endangerment. *E.g.*, *Viera v. People*, 2019 VI 22, ¶46 (shooting on a public street); *Wallace*, 2019 VI 24, ¶27 (shooting on a street in a housing project); *see Hiibel*, 542 U.S. at 191.

3. Sufficiency of the Evidence: Count Six—First Degree Murder—14 V.I.C. §§ 921, 922(a)

¶143 This discussion of the sufficiency of the evidence of a charge of First Degree Murder begins with the basic definition of the crime set forth in subsection 921 of title 14—"the unlawful killing of a human being with malice aforethought." 14 V.I.C. § 921; *Ubiles v. People*, 66 V.I. 572, 590-91 (V.I. 2017) ("In ascertaining the plain meaning of the words in the statue, we apply any specific definitions that are statutorily prescribed. When no statutory definition is provided, the words that have an accumulated legal meaning will be given that meaning, and other words will be given their

common, 'dictionary,' meaning." (citing 1 V.I.C. § 42; *United States v. Wells*, 519 U.S. 482, 491 (1997); *Mahabir v. Heirs of George*, 63 V.I. 651, 660 (V.I. 2015); *Cascen*, 60 V.I. at 403; *Ward v. People*, 58 V.I. 277, 283-84 (V.I. 2013))).[24] Section 922 of title 14 further provides for aggravating factors that increase the degree of the crime to First Degree Murder and declares that "all other kinds of murder are murder in the second degree." 14 V.I.C. § 922(b). The full text of section 922 is as follows:

> (a) All murder which—
> (1) is perpetrated by means of poison, lying in wait, torture, detonation of a bomb or by any other kind of willful, deliberate and premeditated killing;
> (2) is committed in the perpetration or attempt to perpetrate arson, burglary, kidnapping, rape, robbery or mayhem, assault in the first degree, assault in the second degree, assault in the third degree and larceny; or
> (3) is committed against (A) an official, law enforcement officer, or other officer or employee of the Government of the Virgin Islands while working with law enforcement officials in furtherance of a criminal investigation (i) while the victim is engaged in the performance of official duties; (ii) because of the performance of the victim's official duties; or (iii) because of the victim's status as a public servant; or (B) any person assisting a criminal investigation, while that assistance is being rendered and because it is first degree murder;
> is murder in the first degree.
> (b) All other kinds of murder are murder in the second degree.

14 V.I.C. § 922. Ponce was charged pursuant to subsection 922(a)(1) of title 14, which defines one mode of accomplishing First Degree Murder; that is by means of: (a) poison, (b) lying in wait,

[24] *See generally* 1 V.I.C. § 42; *Cornelius*, 67 V.I. at 822 ("[W]e must give effect to all the words and provisions of a statue by considering the plain language in light of any statutory definitions, any words that have an accumulated legal meaning, and, absent such definitions, we apply the common, 'dictionary,' definition of any words." (citing 1 V.I.C. § 42; *Ubiles*, 66 V.I. at 590-91)).

(c) torture, (d) detonation of a bomb, or (e) by any other willful, deliberate, and premeditated act of killing.

¶144 Accordingly, subsection 922(a)(1) of title 14, read while incorporating the definition of "murder" into the statutory provision defining First Degree Murder provides as follows (paraphrased): First Degree Murder is the unlawful killing of a human being done with malice aforethought that is perpetrated by means of either: (a) poison, (b) lying in wait, (c) torture, (d) detonation of a bomb, or (e) any other kind of willful, deliberate, and premeditated conduct. 14 V.I.C. §§ 921, 922(a)(1); *e.g.*, *Phillip v. People*, 58 V.I. 569, 586 n.22 (V.I. 2013) ("'14 V.I.C. 922(a)(1) does not limit first-degree murder to those committed by means of poison, lying in wait, torture, detonation of a bomb, or similar means, and instead encompasses [any murders] so long as they are also 'willful, deliberate and premeditated.'" (citations omitted)); *see generally* 1 V.I.C. §§ 41-42. Therefore, the prosecution was required to prove that: (1) the defendant; (2) killed a human being (*actus reus*/criminal act); (3) the killing was unlawful (attendant circumstance); (4) the killing was done with malice aforethought (*mens rea*/intent); and (5) the murder was accomplished with the specific intent of "willful, deliberate, and premeditated" (*mens rea*/intent). 14 V.I.C. §§ 921, 922(a)(1); *Hiibel*, 542 U.S. at 191.

¶145 Ponce emphasizes that, when Rosa was shot, he told his wife that Rivera had shot him and did not implicate Ponce. Ponce also argues that Bettina was the only eyewitness to the murder, that she was biased since her husband had just died, and that her testimony was not corroborated. However, Ponce thoroughly and extensively challenged Bettina's credibility before the jury, and it was entirely within the jury's province to accept or reject Bettina's version of events. Second, Ponce's corroboration argument is inconsistent with this Court's long history of holding that the

testimony of a single witness is sufficient to support a conviction, even if uncorroborated and contradicted by other testimony. *Percival*, 62 V.I. at 487 (quoting *Connor v. People*, 59 V.I. 286, 291 (V.I. 2013)); *Webster*, 60 V.I. at 681-82; *Cascen*, 60 V.I. at 406 n.4; *Thomas v. People*, 60 V.I. 183, 193 (V.I. 2013); *Francis v. People*, 57 V.I. 201, 211 (V.I. 2012); *see also United States v. Hamilton*, 334 F.3d 170, 179 (2d Cir. 2003). Thus, I remind Ponce that a "sufficiency challenge is not a vehicle to relitigate credibility arguments that were unpersuasive to a jury." *Billu*, 57 V.I. at 466.

¶146 Moreover, Ponce's argument that there was insufficient evidence to sustain a conviction on the murder charge is especially unpersuasive given Bettina's testimony and the supporting circumstantial evidence. Bettina testified that, when Ponce came to her home on the night of August 28, 2011, he was demanding property he believed Rosa had stolen from him. The following day, Rivera and Rosa had a physical altercation, at which Ponce was present. After the fight, Rivera stated to Rosa, "[d]on't worry[,] you will see what [will] happen to [you] . . . tonight." Bettina testified that, later that day, while she sat beneath a tamarind tree, Ponce approached her and told her that he wanted his property, and that if it was not returned, "something will go on in there." At this moment, Ponce's motive for Rosa's murder was etched in granite and animated his (and Rivera's) actions that followed.

¶147 On the night of August 29, 2011, Bettina was again lying in bed with her husband, at which time she, again, heard stones being thrown against the front window. When Rosa approached the door and opened it partially, he was met with a barrage of gunshots, one of which killed him. Before he died, Rosa asked his wife to call the police and the ambulance, and said, "Cepi . . . hit me in my belly." Bettina also testified that, when she approached the window after the shooting,

she saw both Rivera and Ponce. In fact, she specifically testified that Ponce was ducking and leaving her yard through a gate while holding a black automatic gun and that Rivera was standing on the other end of her yard.[25]

¶148 Although Ponce belabors the point that the murder occurred at night, Bettina also explained that she was familiar with Ponce's physical frame and the manner in which both Ponce and Rivera walked, having seen them walking in the neighborhood regularly. Indeed, she specified that she had known both men for years, that Rivera walks as if "he want[s] to fly," and that Ponce was "looking around" while firing shots into the air after the shooting. Furthermore, the physical

[25] *See generally Gibert*, 25 F. Cas. at 1291 ("There are three questions in this case. The first is, whether a robbery was actually committed on the *Mexican*, on the high seas, as charged in the indictment. The second is, whether it was committed by the officers or crew of the *Panda*. The third is, whether, if committed by the officers or crew of the *Panda*, all of them are guilty, or a part only; and if a part, who in particular are guilty. Upon the first questions, there is no controversy at the bar. The robbery was committed; and, indeed, is established, if any fact in the case is so, by entirely satisfactory evidence. Upon the second question, it is indispensable to go into a minute and accurate survey of the whole evidence, circumstantial and positive. . . . If the jury shall be satisfied that the *Mexican* was robbed by the *Panda*, then, upon the third question, there are some principles of law, which require to be accurately considered, in order to arrive at a just conclusion, as to the guilt or innocence of any or all of the parties accused. Here it is most important to ascertain, whether the original voyage of the *Panda* from Cuba was intended to be a piratical expedition or not. If it was originally intended to be a piratical expedition, then all of the officers and crew, who knew of such intended expedition, and acted upon it, are to be considered as equally guilty of the robbery of the *Mexican*, (if the offence was committed,) whether at the moment, they are proved to have been active in the acts then done, or not; for, under such circumstances, they must, in the absence of all countervailing evidence, be presumed to co-operate in furtherance of the original design, each doing the duty assigned to him. If, on the other hand, the original expedition was not intended to be piratical, then those only are to be deemed guilty, who knowingly co-operated in the act of robbery of the *Mexican*. Co-operation or combination may be express, or it may be implied from circumstances. **All, who were present and acting in the robbery, are to be deemed principals. All who were present, advising, directing, encouraging or assisting in the accomplishment of the robbery, thus performing the part assigned to them in the common piratical enterprise, are to be deemed equally principals.** But the other persons, whether they were of the officers or of the crew of the *Panda*, who did not know of the piratical design, and did not co-operate or aid or take any part in it, though they were present on board of the *Panda*, are not to be deemed guilty. In this view of the matter, the nature of the original enterprise, and of the outfit and voyage of the *Panda* from Cuba become the most material for the consideration of the jury. It is not sufficient to affect all the officers and crew of the *Panda* with guilt, that they should have known, that the voyage was intended to be an illegal voyage—as a voyage in the slave trade, contrary to the laws of Spain. The evidence must go farther, and satisfy the jury, that the voyage in contemplation by all of them, was to be piratical, as well as illegal. If the voyage was simply illegal, then those only are to be deemed guilty, who co-operated in the piratical act upon the principles above stated." (emphasis added)); *cf.* 14 V.I.C. §§ 11(a) ("Whoever commits a crime or offense or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal."); (c) ("Persons within this section shall be prosecuted and tried as principals, and no fact need be alleged in the information against them other than is required in the information against the principal.").

evidence presented to the jury corroborated significant material portions of Bettina's testimony. When viewed in the light most favorable to the People, the evidence presented was sufficient for the jury to find beyond a reasonable doubt that Ponce, acting in concert with Rivera, unlawfully killed Rosa with a premeditated design and malice aforethought. 14 V.I.C. §§ 922(a)(1); 11(a).[26] Therefore, I find no reason to disturb the jury's guilty verdict as to the charge of First Degree Murder alleged in count six.

4. Sufficiency of the Evidence: Count Ten—Unauthorized Possession of a Firearm—14 V.I.C. § 2253(a)

¶149 Ponce was tried on three counts stemming from the search warrant that was executed on September 24, 2011. In count ten, he was charged with unlawfully possessing a firearm on that date. The relevant portion of subsection (a) of 14 V.I.C. § 2253 is as follows:

> 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 . . . .

[26] *Cf. Wilson*, 28 F. Cas. at 710 (In England there are "statutes [that] are construed with extreme strictness out of tenderness towards human life. But this principle is not applied to newly created statutory felonies. They possess, in England, all the incidents which appertain to felony by the rules and principals of the common law, one of which is, that all those who are present, aiding and abetting when a felony is committed, are principals. This has never been questioned there; the principle has been adopted here, and has become one of universal application. . . . If Wilson was one of those who formed a plan of robbing the carrier of the mail, of the mail; if all were present; if each consented to the commission of the robbery, took any part in effecting it, or did any act tending to tis commission, all are principals, and in an equal degree. It is wholly immaterial which held or stopped the horses, threatened the driver, held the pistol at him or took the mail from the boot, all the various acts in relation to the driver and the mail constituted the crime, of which each was as completely guilty as if he had effected it unassisted. Each one put the driver's life in jeopardy with dangerous weapons, whether they were used by himself or accomplice. It is hard to decide which took the most efficient part in the scene; the night was dark, and it was impossible for the driver or the passengers to identify which of the three committed the various specific acts which have been detailed. They were all unknown, and they took especial pains to conceal their persons from observation." (citing *Gooding*, 25 U.S. (12 Wheat.) at 467; 4 Burrows 2073, 2083)).

14 V.I.C. § 2253(a) (2011).[27] The enumerated elements of the crime of Unauthorized Possession of a Firearm, as addressed in subsection 2253(a), require proof beyond a reasonable doubt of: (1) the defendant;[28] (2) the firearm; (3) possession of the firearm by the defendant (*actus reus*); (4) knowledge of the firearm by the defendant (*mens rea*);[29] and (5) lack of lawful authorization for the defendant to possess the firearm (attendant circumstance).[30] 14 V.I.C. § 2253(a); *see Woodrup v. People*, 63 V.I. 696, 710-11 (V.I. 2015); *Phillip*, 58 V.I. at 589 n.24 (stating that it is the person, rather than the firearm, who is subject to licensing and holding it was the People's burden to prove the defendant was not authorized to possess a firearm (citing *United States v. McKie*, 112 F.3d 626

[27] An annotated legislative history of the Virgin Islands "Weapons Control Statues," 14 V.I.C. §§ 2251-2258a; 23 V.I.C. §§ 451-489a, is provided in Appendix A of this opinion (hereafter "Legislative History Appendix") and is expressly incorporated herewith.

[28] 14 V.I.C. § 2253(a) ("Whoever . . . ."); *Hiibel*, 542 U.S. at 191; *see generally* 1 V.I.C. § 41 (indicating that the definitions of "person" and "whoever" include business organizations "as well as individuals"); BLACK'S LAW DICTIONARY 1324 (10th ed. 2014) (defining "person" as "A human being. — Also termed *natural person*." (emphasis in the original)); COMPACT AM. DICTIONARY: A CONCISE DICTIONARY OF AM. ENGLISH 920 (1998); s*ee generally Duggins v. People*, 56 V.I. 295, 308 (V.I. 2012) (holding that the Government of the Virgin Islands is not a person and defining entities that are considered a person); *People v. Henley*, 1 V.I.C. 397, 398 (D.V.I. 1937) (holding that a deceased person is not a natural person or corporation within the meaning of Virgin Islands criminal law).

[29] *Duggins*, 56 V.I. at 301 (citing 14 V.I.C. § 14; *Gov't of the V.I. v. Rodriguez*, 423 F.2d 9, 12-14, nn.4-17 (3d Cir. 1970)).

[30] As I noted in *M. Davis*, 69 V.I. at 663 n.34 (Swan J., concurring) (discussing the statutory ambiguity and history of interpretations), whether the phrase "unless otherwise authorized by law" is an element of the crime defined therein is an open question. The phrase has been held to establish what makes the possession of a firearm a crime; such possession is a crime unless authorized by law. This interpretation is open to question. *See generally* 1 V.I.C. § 45(a)(2)-(3) (providing that "catchlines . . . immediately preceding the texts of the individual sections" and "any descriptive catchlines immediately preceding the texts of any subsections or paragraphs" do "not constitute part of the law"); *Gov't of the V.I. v. King*, 31 V.I. 78, 84 (V.I. Super. Ct. 1995); *cf. Toussaint v. Gov't of the V.I.* (*G. Toussaint*), 964 F. Supp. 193, 198 (D.V.I. App. Div. 1997), *overruled on other grounds*, 301 F. Supp. 2d 420, 460 (D.V.I. App. Div. 2004). For example, in *Ambrose*, 56 V.I. at 107 n.6 (citing *McKie*, 112 F.3d at 631), we expressly held the licensing exceptions in other sections to be affirmative defenses. Similarly, this Court noted in *Murrell v. People*, 56 V.I. 796, 808-14 (V.I. 2012), that section 488 of title 23 indicates a complete prohibition on the possession of firearms, which would indicate that the "unless otherwise authorized by law," language is an affirmative defense rather than an essential element. *Cf. United States v. Santiago*, Crim. No. 2016-17, 2017 WL 187152, at *6 (D.V.I. Jan. 16, 2017). For purposes of this opinion, I include in the statement of elements the language, "unless otherwise authorized by law," and reserve for further consideration the question of whether the statutory language read *in pari materia* supports the conclusion that this language is an element of the crime rather than an affirmative defense. *See also A. Davis v. People*, 69 V.I. 600, at *8 (V.I. 2018); *see generally* Legislative History Appendix *post* at A-1—A-30.

(3d Cir. 1997))); *Percival*, 62 V.I. at 488-89 ("[A]ll that is required for a conviction under section 2253(a) is evidence that the defendant had an unlicensed firearm in his possession . . . ." (citation omitted)); *see generally* 1 V.I.C. §§ 41-42.

¶150 This Court has already addressed the state of mind element and held that the necessary *mens rea* to be proved is that of knowingly—knowledge of the firearm in question is necessary. *See Alfred v. People*, 56 V.I. 286, 290-91 (V.I. 2012). Possession includes both actual and constructive possession. 14 V.I.C. §§ 2253(d)(4)-(5); *Sonson v. People*, 59 V.I. 590, 602 (V.I. 2013); *Thomas v. Gov't of the V.I.*, 49 V.I. 569, 576 (D.V.I. App. Div. 2007). These terms, therefore, should be considered as modes by which a defendant may act to complete this element of the crime defined in section 2253(a), and may be stated in shorthand as simply the element of "possession." Further, the descriptors such as "actually or constructively," "openly or concealed," and "loaded or unloaded" are, likewise, descriptions of varying modes of action that constitute committing the crime.

¶151 Constructive possession is a legal concept requiring that a defendant have both the power and intention to exercise dominion over the firearm directly or through another person. 14 V.I.C. § 2253(d)(5). However, "constructive possession does not require proof that the defendant actually owned the property on which the contraband was found." *United States v. Griffin*, 175 Fed. Appx. 627, 628 (4th Cir. 2006). Further, "[a]lthough a defendant's mere presence at, or joint tenancy of, a location where contraband is found . . . is insufficient to establish constructive possession . . . where other circumstantial evidence . . . is sufficiently probative, proximity to contraband coupled with inferred knowledge of its presence will support such a finding." *Id.* (citations and internal quotation marks omitted).

¶152 First, constructive possession requires knowledge of the existence of the firearm. *Alfred*, 56 V.I. at 290-91. Knowing conduct, or to do something knowingly, requires that the defendant knew the fact at issue when he acted, e.g., that the firearm was in the car. *See Duggins v. People*, 56 V.I. 295, 304 (V.I. 2012); *cf.* 1 V.I.C. § 41 (defining "willful" and "willfully"). To act knowingly only requires that an act be committed with an awareness, by the defendant, of what he is doing. *Duggins*, 56 V.I. at 304; 1 V.I.C. § 41 ("'[K]nowingly' imports a personal knowledge; but it does not require any knowledge of the unlawfulness of an act or omission.").

¶153 Constructive possession further requires intent to exercise dominion and control over the firearm. While the issue of what "intent" means, as used in these statutes, has not been addressed by this Court, the language of the statutes does not appear to be open for interpretation. If a person must intend to control the firearm in addition to having knowledge of the presence of the firearm, he must specifically intend to exercise that control. Thus, use of the conjunctive "and" in the phrase "knowledge and intent" unequivocally confirms that the two words are cumulative. To intend to exercise control over an object can logically only mean that the person must have the specific intent to exercise that control. Specific intent is a person's intent to accomplish the precise act in question. *Duggins*, 56 V.I. at 302 n.3 ("the intent to accomplish the precise criminal act that one is later charged with" (quoting BLACK'S LAW DICTIONARY 882 (9th ed. 2009)); *see People v. Clarke*, 55 V.I. 473, 479 (V.I. 2011) ("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." (quoting *United States v. Garth*, 188 F.3d 99, 113 (3d Cir.1999)). This Court reached a similar conclusion under section 2251(a)(2) of title 14 of the Virgin Islands Code when it interpreted the language "with intent to use the same

unlawfully against another." *Nanton v. People*, 52 V.I. 466, 479-83 (V.I. 2009). Therefore, in order to prove constructive possession of the firearm at issue, the People had to prove, by either direct or circumstantial evidence, both Ponce's knowledge of the presence of the firearm and that he acted "Purposely," i.e., that it was his conscious objective to exercise dominion and control over that firearm. *See Todman v. People*, 59 V.I. 675, 686 (V.I. 2013).[31]

¶154 Considering the above, the conviction for Unauthorized Possession of a Firearm, on a theory of constructive possession, as charged in count ten, will be affirmed if the People proved that, on September 24, 2011: (1) the person who acted was the defendant (element 1); (2) the object in question was, in fact, a firearm (element 2); (3) the defendant possessed the firearm (element 3); (4) the defendant had knowledge of the firearm (an element of constructive possession as well as element 4); (5) the defendant had the specific intent and the present ability to exercise dominion and control over the firearm (an element of constructive possession); and (6) the defendant was not lawfully authorized to possess the firearm or ammunition (element 5). 14 V.I.C. § 11(a); 14 V.I.C. § 2253(a).

¶155 Ponce emphasizes that the trousers were not identified as being his property and argues that there was no nexus between him and the firearm, the trousers, and the bullets therein, which were all found either in the bedroom he occupied at the time of the search or—as is the case of the handgun found outside—near the residence when the officers executed the search warrant. He also notes that the revolver was found in the neighboring yard and that there was no physical

[31] The Model Penal Code provides a useful definition for crimes with a *mens rea* element more stringent than that of knowingly. This level of *mens rea* is termed "purposely" and provides that a person acts purposely with respect to a material element of an offense when "it is his conscious object to engage in conduct of that nature" or to cause a specific result. If the *mens rea* is with regard to an attendant circumstance, he acts purposely when he acts and "is aware of the existence of such circumstances or he believes or hopes that they exist." MODEL PENAL CODE § 2.02(2)(a).

evidence indicating that he possessed the silver revolver that night or that the gun was thrown from a distance. As this Court has previously clarified, this Court must apply a highly deferential standard of review to the jury's verdict because we do not serve as usurpers of the role of the jury. We do not engage in second-guessing the evidence presented at trial, and we are not responsible for re-weighing the credibility of witnesses. *Thomas*, 60 V.I. at 191 (citing *Augustine v. People*, 55 V.I. 678, 684 (V.I. 2011)); *Connor*, 59 V.I. at 305 (collecting cases). Ponce's arguments, however, invite this Court to weigh the evidence, an undertaking this Court will not assume on appeal. Ponce had ample opportunity to test the People's evidence at trial and highlight the inconsistencies therein to the jury.

¶156 Virgin Islands police officers testified that, on September 24, 2011, they executed a search warrant on a residence located within a larger compound, at which Ponce housed animals. The officers knocked on the door and heard "running" sounds inside. According to Ponce's then girlfriend, Ponce "jumped out of bed" and "rushed" to an adjacent room before returning to the room in which the couple had been sleeping. When the officers entered the home, Ponce was standing naked in the bedroom. A pair of black pants were lying on the floor next to the bed. In the pockets of the pants were twelve live .38 caliber rounds of firearm ammunition. When the officers went to the back of the premises, they found a silver .38 caliber revolver, bearing an obliterated serial number, in plain view on the ground in a neighbor's yard. During her testimony, Bettina identified the revolver as the same gun she had seen Ponce holding and firing on the night of August 28, 2011.

¶157 Detective Stout testified that, in her role, she reviews and approves applications for firearms licenses and is also the custodian of records pertaining to firearms authorizations and that

her review of records from St. John, St. Thomas, Water Island, and St. Croix revealed that Ponce was not authorized to possess or carry a firearm on August 28, August 29, August 30, or September 24, 2011, and in fact, had never been authorized to possess a firearm in the Virgin Islands. Given the testimony of Bettina regarding the events of August 28 and 29, 2011, coupled with the testimony of Detective Stout and the other witnesses' testimony relating to the events at the time of the execution of the search warrant, I unhesitatingly conclude that a rational jury could have found sufficient evidence to convict Ponce of Unauthorized Possession of a Firearm on a theory of constructive possession.

5. Sufficiency of the Evidence: Counts Four and Seven—Possession of a Firearm During a Crime of Violence—14 V.I.C. § 2253(a)

¶158 Count four is the companion charge to counts one and two alleging Ponce's possession of a firearm while he committed the Third Degree Assaults upon Rosa and Bettina on August 28, 2011. Likewise, count seven is the companion charge to count six alleging Ponce murdered Rosa on August 29, 2011. Subsection 2253(a) of title 14 of the Virgin Islands Code provides for circumstances under which the sentence for committing Unauthorized Possession of a Firearm is enhanced.[32] While technically not a crime, the courts of the Virgin Islands refer to the application of the penalty enhancement in subsection 2253(a) as "Possession of a Firearm During a Crime of Violence." *E.g.*, *Woodrup*, 63 V.I. 696; *Percival*, 62 V.I. 477. Furthermore, any fact that increases the minimum or maximum of a sentence must be alleged in the information and proved to a jury beyond a reasonable doubt. *Almendarez-Torres v. United States*, 523 U.S. 224, 242-43 (1998)

[32] This Court has never thoroughly examined the interplay between the penalty enhancement provision and the charging clause. *See, e.g.*, *Merrifield*, 56 V.I. at 769; *Augustine*, 55 V.I. at 684.

(applying *McMillan v. Pennsylvania*, 477 U.S. 79, 86-90 (1986)).[33] As such, this penalty enhancement will be considered as an element of the crime for any sufficiency of the evidence analysis.

¶159 The text of this penalty enhancement is as follows:

> . . . 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 applicable 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.

14 V.I.C. § 2253(a). Under the following circumstances the sentence for Unauthorized Possession of a Firearm is increased: (1) a firearm is possessed during the commission of a crime of violence; (2) a firearm was possessed during the attempted commission of a crime of violence; (3) an imitation firearm was possessed during the commission of a crime of violence; (4) an imitation firearm was possessed during the attempted commission of a crime of violence; or (5) the defendant had, prior to the crime in question, been convicted of a felony in a state, territorial, or federal court of the United States. 14 V.I.C. § 2253(a). Generally, then, the "elements" of the "crime" of Possession of a Firearm During a Crime of Violence require proof beyond a reasonable doubt that: (1) the objects in question were, in fact, a "firearm" (attendant circumstance); (2) the person who acted was the defendant; (3) the defendant possessed the firearm (*actus reus*); (4) the

[33] *See also Jones v. United States*, 526 U.S. 227, 243 n.6 (1999); *Hurst v. Florida*, 136 S. Ct. 616, 621 (2016); *Alleyne v. United States*, 570 U.S. 99, 112-13 (2013) ("It is indisputable that a fact triggering a mandatory minimum alters the prescribed range of sentences to which a criminal defendant is exposed." (citations omitted)); *Ring v. Arizona*, 536 U.S. 584, 602 (2002); *Apprendi v. New Jersey*, 530 U.S. 466, 476 (2000); *Almendarez-Torres*, 523 U.S. at 240.

defendant had knowledge of the firearm (*mens rea*); (5) the defendant was not lawfully authorized to possess the firearm (attendant circumstance);[34] and (6) under one of the five aggravating circumstances (aggravating factor). 14 V.I.C. § 2253(a); 14 V.I.C. § 11(a); *see generally* 1 V.I.C. §§ 41-42.

¶160 Having already found sufficient evidence supporting the convictions for Third Degree Assault in counts one and two and First Degree Murder in count seven, the only issue remaining is whether it was proved that, on August 28, 2011, and August 29, 2011, one of the five aggravating circumstances was charged and proved by sufficient evidence. The evidence unquestionably established that Ponce had possessed a firearm during the commission of Third Degree Assault on August 28, 2011, and First Degree Murder on August 29, 2011. Accordingly, I would affirm the convictions.

6. Sufficiency of the Evidence: Counts Five, Nine, and Eleven—Unauthorized Possession of Ammunition—14 V.I.C. § 2256(a)

¶161 Ponce was charged with Unauthorized Possession of Ammunition on August 28, 2011; August 29, 2011; and September 24, 2011—counts five, nine, and eleven, respectively. The full

[34] As noted in footnote 30 above, the element of a lack of lawful authorization is included for purposes of this opinion. Under section 2253(a) of title 14, the phrase, "unless otherwise authorized by law," has been held to establish what makes the possession of a firearm a crime; such possession is a crime unless authorized by law. This interpretation is open to question. *See generally* 1 V.I.C. § 45(a)(2)-(3) (providing that "catchlines . . . immediately preceding the texts of the individual sections" and "any descriptive catchlines immediately preceding the texts of any subsections or paragraphs" do "not constitute part of the law"); *King*, 31 V.I. at 84; *cf. G. Toussaint*, 964 F. Supp. at 198, *overruled by*, 301 F. Supp. 2d 420, 460 (D.V.I. App. Div. 2004). For example, in *Ambrose*, 56 V.I. at 107 n.6 (citing *McKie*, 112 F.3d at 631), we expressly held the licensing exceptions in other sections to be affirmative defenses. Similarly, this Court noted in *Murrell*, 56 V.I. at 808-14, that section 488 of title 23 indicates a complete prohibition on the possession of firearms, which would indicate that the "unless otherwise authorized by law," language is an affirmative defense rather than an essential element. *Cf. Santiago*, 2017 WL 187152, at *6. For purposes of this opinion only, I include in the statement of elements the language, "unless otherwise authorized by law," and I expressly reserve further consideration of this point for a future case.

text of the current version of subsection (a) of 14 V.I.C. § 2256, which has remained unchanged since the time of the underlying offenses in this case, is as follows:

> (a) Any person who is not:
> (1) a licensed firearms or ammunition dealer; or
> (2) officer, agent or employee of the Virgin Islands or the United States, on duty and acting within the scope of his duties; or
> (3) holder of a valid firearms license for the same firearm gauge or caliber ammunition of the firearm indicated on such license; and
> (4) who possesses, sells, purchases, manufactures, advertises for sale, or uses any firearm ammunition
> is guilty subject to imprisonment for up to seven years or a fine not more than $10,000[, or] to both fine and imprison[ment].

14 V.I.C. § 2256(a).[35]

¶162 In contrast to section 2253(a), in 2001, section 2256 was amended to add a new subsection (a) and a new subsection (f). The case of *United States v. Daniel*, 518 F.3d 205, 208 (3d Cir. 2008), had declared section 2256(a) unconstitutional because there was no licensing scheme for ammunition.[36] This Court adopted this analysis in *Smith*, 51 V.I. at 402. In response to these rulings, the Legislature of the Virgin Islands acted to provide a definition of lack of authorization to possess ammunition in subsections 2256(a)(1)-(3). When a definition of a crime incorporates

[35] Prior to the amendment of this statute in 2010, by Act 7182 § 1, this Court repeatedly held that the People could not have demonstrated that defendants had committed this offense because the statute criminalized possession of ammunition "unless authorized by law," without providing any means or mechanism to obtain such authorization. *Petric v. People*, 61 V.I. 401, 414 (V.I. 2014); *Nicholas v. People*, 56 V.I. 718, 730 (V.I. 2012). However, at the time of Ponce's offense, 14 V.I.C. § 2256(a) had already been amended.

[36] Considering this Court's indication that section 488 of title 23 is a complete prohibition on the possession of a firearm in the absence of a firearms license, the unconstitutional nature of section 2256 of title 14 prior to its amendment is questionable. If the possession of a firearm was presumptively unlawful, thus entitling a police officer to ask of every person seen with or suspected of possessing a firearm whether they also possess a firearms license, then the possession of ammunition did not require any registry or license to make such possession unlawful. Simply, if the possession of a firearm was presumptively unlawful, so too was the possession of ammunition. If a person's possession of a firearm was presumptively unlawful and placed upon him the burden of producing his license, the possession of ammunition could never be lawful in the absence of a license to possess a firearm. The Legislature's amendment of this provision in 2010, however, leaves no question on this point.

an exception or proviso so as to make the exception or proviso essential to understanding what conduct is proscribed, the prosecution must prove the exception beyond a reasonable doubt. *United States v. Cook*, 84 U.S. 168, 173 (1872). Under the current version of section 2256, as adopted in 2010, the provisions in subsections (a)(1) through (a)(3) are the definition of what constitutes being unauthorized to possess ammunition and constitute an essential element to be proved beyond a reasonable doubt. The state of mind requirement, i.e., *mens rea*, applicable to the criminal acts defined in subsection 2256(a)(4) is also that of knowingly. *See Sonson*, 59 V.I. at 602.[37]

¶163 Unauthorized Possession of Ammunition requires proof beyond a reasonable doubt of: (1) the defendant; (2) the ammunition (attendant circumstance); (3) possession, sale, purchase, manufacture, or use of the ammunition by the defendant (*actus reus*); (4) knowledge of the ammunition by the defendant (*mens rea*); and (5) lack of lawful authorization for the defendant to possess the ammunition (attendant circumstance). 14 V.I.C. § 2256(a) ("Any person . . . ."); *Hiibel*, 542 U.S. at 191; *see generally* 1 V.I.C. § 41; BLACK'S LAW DICTIONARY 1324 (10th ed. 2014); COMPACT AM. DICTIONARY: A CONCISE DICTIONARY OF AM. ENGLISH 920 (1998). Therefore, for a conviction on counts nine and eleven, the People needed to prove that: (1) Ponce (the defendant); (2) unlawfully (attendant circumstance; and (3) knowingly (*mens rea*/intent); (4) "possesse[d] . . . or use[d] . . .[(*actus reus*/criminal conduct); (5)] any firearm ammunition" (attendant circumstance), in violation of subsections 2256(a) and 11(a) of title 14.

¶164 For the reasons explained above, there was sufficient evidence upon which the jury could have convicted Ponce of Unauthorized Possession of Ammunition. In addition to Bettina's

[37] *See also Duggins*, 56 V.I. at 301 (citing 14 V.I.C. § 14; *Rodriguez*, 423 F.2d at 12-14 & nn. 4-17); *Gov't of the V.I. v. Richards*, 44 V.I. 47, 49 (V.I. Super. Ct. 2001) (citing 14 V.I.C. § 14(5)).

extensive testimony regarding the events on both nights, which readily allowed for the inference of possession of firearms ammunition based on Ponce's actual discharge of a firearm on each night, the VIPD officers who responded to the murder scene discovered five impacts from firearms ammunition projectiles of varying calibers along the front wall of the Rosa's home and four such impacts on the front door, in addition to multiple ammunition casings for different calibers of ammunition.

¶165 Likewise, at the time of the execution of the search warrant, Ponce was found naked, having just been awoken from a nap by the police, in a two-room residence. The only pair of trousers found were men's, and inside them was the ammunition. Ponce's girlfriend testified that the two regularly spent time in the residence where Ponce was arrested and would commonly, though not necessarily frequently, sleep over night. Given these circumstances, there was sufficient evidence from which a jury could have found beyond a reasonable doubt that Ponce had possessed, either actually or constructively, firearms ammunition as charged in all three counts, and Ponce's argument on this issue is meritless.

7. Sufficiency of the Evidence: Count Twelve—Obliteration of a Firearm ID—23 V.I.C. § 481(a)

¶166 Count twelve charged Ponce with Obliteration of a Firearm ID, in violation of 23 V.I.C. § 481(a). Section 481 of title 23 provides as follows:

> (a) *No person shall* within the Virgin Islands *change, alter, remove, or obliterate the name of the maker, model, manufacturer's number, or other mark or identification on any pistol, machine gun, or sawed-off shotgun. Possession of any pistol, machine gun, or sawed-off shotgun upon which any such mark shall have been changed, altered, removed, or obliterated shall be prima facie evidence that the possessor has changed, altered, removed,*

> *or obliterated the same*[38] within the Virgin Islands: Provided, however, that nothing contained in this section shall apply to any

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[38] The portion of the language above that is both italicized and underscored is a legislative presumption. *See generally Alton v. Alton*, 207 F.2d 667, 621 (3d Cir. 1953) (Hastie, J., dissenting) ("The first challenged amendment to the Virgin Islands divorce statute[, providing that, 'if the plaintiff is within the district at the time of the filing of the compliant and has been continuously for six weeks immediately prior thereto, this shall be *prima facie* evidence of domicile,'] merely adds to preexisting law a provision that six weeks continuously presence in the Virgin Islands shall constitute *prima facie* proof of domicile there. At the outset it is to be emphasized that this is not a substitution of a requirement of six weeks' presence for the requirement of domicile. Domicile remains the jurisdictional fact to be proved. Evidence is admissible to prove or disprove the plaintiff's domicile in the Virgin Islands exactly as it was before the statute was amended. The amendment merely shifts the burden of going forward with evidence if the hearing develops a certain situation; namely, that on the issue of domicile there is proof of six weeks continuous presence and no other evidence. The normal course of introduction of other evidence is in no way impeded. The defendant may present his own witnesses or cross-examine the plaintiff's witnesses. The court may exercise its normal prerogative of interrogating witnesses where their testimony is unclear or otherwise unsatisfactory. If, despite this full opportunity for rebuttal of the statutory presumption there is no refutation, then, and only then, must the court conclude that plaintiff has established his domicile in the territory. This is the total effect of the statutory provision now under consideration." (quoting Act of 17th Legislative Assembly of the Virgin Islands, May 19, 1953, (Bill no. 55), § 1 (eff. May 29, 1953) (amending Law Concerning Actions to Declare Void or Dissolve the Marriage Contract, and for Other Purposes, Dec. 29, 1944 (Bill no. 14), § 9 (eff. Jan. 28, 1945)))); *see also Willis v. People*, 2019 WL 3291616, at *160-61 (V.I. 2019) (Swan, J., concurring, Appendix A) (setting forth the legislative history of section 106 of title 16). *Alton*, 207 F.2d 667, after being appealed to the U.S. Supreme Court, was dismissed as moot because, after a Connecticut court granted the parties a divorce, the issue of the validity of the Virgin Islands divorce decree was moot. *Alton v. Alton*, 347 U.S. 610, 611 (1954); *see also Granville-Smith v. Granville-Smith*, 349 U.S. 1, 4 (1955) ("This court had granted certiorari . . ., but intervening mootness aborted disposition on the merits." (citing *Alton v. Alton*, 121 F. Supp. 878 (D.V.I. 1953); *Alton*, 207 F.2d 667; *Alton v. Alton*, 347 U.S. 911 (1954); *Alton*, 347 U.S. 610)). Therefore, nothing in *Alton* was overturned as to the law governing *prima facie* evidence statutes creating legislative presumptions.

This portion of the transcript was not included in the joint appendix, and the prosecutors at the Virgin Islands Department of Justice are reminded that both parties to an appeal are obligated to prepare the joint appendix and ensure that all materials relevant to both the appellant's and appellee's arguments are included in the joint appendix. V.I. R. APP. P. 24(a) ("Appellant shall prepare and file an appendix to the briefs which shall contain **all materials** designated by **all parties** . . . ." (emphasis added)); *see Walters v. Parrott*, 58 V.I. 391, 407 (V.I. 2013) ("We are not provided in the appendices of either party with the trial court's order which Parrott allegedly refused to obey, nor are we provided with any order in which the trail court denied Walters's Motion for Contempt and Sanctions. Our rules clearly state that 'all assertions of fact in briefs shall be supported by a specific reference to the record.'" (quoting former V.I.S. Ct. R. 22(d), 22(a)(3, 5))). It was the People's obligation—upon learning a defendant will be challenging the sufficiency of any conviction—to include in the joint appendix (or supplemental appendix, if necessary) the jury instructions relating to any and all of the challenged convictions, especially instructions as to the elements to be proven and any "presumptions" that operate as evidence when considered by the jury. However, as a matter of internal operations, the Clerk of the Superior Court transmits to this Court the complete transcripts of the proceeding below. Those transcripts indicate that, first, the jury was never instructed on the presumption contained in subsection 481(a) of title 23 and, second, the jury was instructed as to the elements of Obliteration of a Firearm ID as follows:

> As to Count 12, on that same day, Mr. Edwin Ponce did within the Virgin Islands possess a firearm where the name of the maker, model, manufacturer's number and other marks of identification were altered or obliterated, to wit, a silver .38 Smith and Wesson caliber revolver, in violation of Title 23 V.I. Code Section 481(a). Possession of a Firearm with Altered or Obliterated Identifying Marks.

> officer or agent of the United States or the Government of the Virgin Islands engaged in experimental work.
>
> (b) Whoever, unless otherwise authorized by law, has, possesses, bears, transports or carries either, actually or constructively, openly or concealed, any firearm, as defined in section 451(d) of this title, loaded or unloaded, with altered or obliterated identification marks, in a public place, a residential area, a vehicle or any place where persons are gathered shall be imprisoned for not less than fifteen (15) years without parole.

23 V.I.C. § 481 (2018) (emphasis added).[39] "Whoever" means a person, which, as used in this provision of the Virgin Islands Code, means a human being. *Ubiles*, 66 V.I. at 592 (citing COMPACT AM. DICTIONARY, at 920; BLACK'S L. DICT., at 1324 (defining "person" as "A human being.—Also termed *natural person*." (emphasis in original))). Subsection 481(a) of title 23 also identifies varying modes, e.g., "change," "alter," "remove," or "obliterate," of committing the proscribed conduct, i.e. *actus reus*.

> Before you may find Defendant Edwin Ponce guilty of Possession of a Firearm with Altered or Obliterated Identifying Marks, you must find that the following elements existed.
>
> The defendant knew he possessed a firearm without the legal authority; and
>
> That the firearm was under his direct or proximate control; and
>
> That the name of the maker, model, manufacturer's number or other identifying marks on the firearm were obliterated or altered; and
>
> That this conduct took place in the vicinity of Old Friedensberg, Kingshill, in the Judicial District of St. Croix on or about September 24, 2011.

[39] Section 481 was added to title 23 of the Virgin Islands Code in 1968, Act to Amend Chapter 5, Title 23 of the Virgin Islands Code, relating to the control of firearms and ammunition, and for other purposes, No. 2279, § 1, Sess. L. 1968 p. 223 (1968). Subsection (b) was added in 2001, Act to Amend Titles 14 and 23 and Title 33, Section 3501a, Virgin Islands Code, to enact the Virgin Islands Gun Control Act of 2001, and for other related purposes, No. 6493, § 2, Sess. L. 2001, p. 396-97 (2001). *See* Legislative History Appendix, *post* at A-84—A-86. The italicized portions indicate the language directly under consideration in this opinion. As noted in *Ubiles*, 66 V.I. at 591 n.9 (collecting cases), this Court has consistently omitted as an element of any crime statutory language relating to the location of the crime within the Virgin Islands, and having considered the plain language, legislative history, and precedent of this court, I do so in regards to subsection 481(a) of title 14.

¶167 Subsection 481(a) makes it a crime to "change," "alter," "remove," or "obliterate"[40] the "ID Mark" on "any" "pistol," "machine gun," or "sawed-off shotgun." 14 V.I.C. § 481(a). Likewise, subsection 481(a) applies to any of the following marks used for identification of a specific firearm: (a) the name of the maker, (b) the model, (c) the manufacturer's number, or (d) other mark or identification. 14 V.I.C. § 481(a). Considering this statutory language, the elements of with Possession of a Firearm with an Obliterated ID are as follows: (1) the defendant; (2) knowingly (*mens rea*); (3) obliterated (*actus reus*); (4) one of the specified firearm ID marks.

¶168 Additionally, subsection 481(a) provides that a defendant's possession of a firearm with an obliterated ID Mark is *prima facie* evidence that the defendant obliterated the ID Mark. 14 V.I.C. § 481(a).[41] As noted in footnote 38 above, the jury was not instructed on the presumption provided for in subsection 481(a). Therefore, this Court will not consider that presumption in this sufficiency of the evidence analysis because the jury cannot possibly have considered a legal presumption enacted by the Legislature when they were never instructed on it. *E.g.*, *People v. Quinones*, 839 N.E.2d 583, 395-96 (Ill. Ct. App. 2005) ("[A]t the time of defendant's conviction, other courts of appeal had not held that section of the Code created an unconstitutional presumption. Additionally, unlike in the cited cases, in this case, though the trial court did not

[40] Officers and agents of the United States government and the Government of the Virgin Islands "engaged in experimental work" are excepted from the general prohibition on possessing firearms with obliterated or altered ID Marks. 14 V.I.C. § 481(a).

[41] *See generally Alton*, 207 F.2d at 670 ("The question is whether such a declaration [that six-weeks physical presence in the Territory is *prima facie* evidence of domicile] is a [presumption] within the legislative competence. The test to be applied is whether the fact or facts to be presumed are reasonably related or have some rational connection with the fact which creates the presumption." (citing *Mobile, J. & K.C.R. Co. v. Turnipseed*, 219 U.S. 35 (1910); *Seaboard Airline Ry. Co. v. Watson*, 287 U.S. 86 (1932); *Atlantic Coast Line R. Co. v. Ford*, 287 U.S. 502 (1933); *Hawkins v. Bleakly*, 243 U.S. 210 (1917); *Easterling Lumber Co. v. Pierce*, 235 U.S. 380 (1914); *Western & A. R.R. v. Henderson*, 279 U.S. 639 (1929); *Adler v. Board of Ed.*, 342 U.S. 485 (1952); *Morrison v. California*, 291 U.S. 82 (1934); *Hawes v. Georgia*, 258 U.S. 1 (1922); *Manley v. Georgia*, 279 U.S. 1 (1929); *Meeker & Co. v. Lehigh Valley R.R.*, 236 U.S. 412 (1915); *Oyama v. California*, 332 U.S. 633 (1948); *McFarland v. American Sugar Co.*, 241 U.S. 79 (1916); *Bandini Petroleum Co. v. Superior Ct.*, 284 U.S. 8 (1931); *Republic Aviation Corp. v. N.L.R.B.*, 324 U.S. 793 (1945))).

indicate that it relied on the presumption in convicting defendant, the fact that defendant 'knowingly or intentionally changed, altered, removed or obliterated the name of the maker, model, manufacturer's number or other mark of identification of the firearm' was established only by the state's evidence showing that defendant possessed a defaced firearm. Accordingly, I find that defendant's due process rights were violated by the application of [the presumption] and reverse his conviction of two counts of defacing a firearm."). It would be nothing more than speculation to believe the jury considered a statutory provision of which they were never informed, and I must consider whether the circumstantial evidence in the record provides a sufficient basis to make this factual inference. *See, e.g.*, *Phillip*, 58 V.I. at 586 n.20 ("[T]he Legislature has provided that 'the fact that a person was armed with a firearm, used or attempted to be used, and had no license to carry the same . . . shall be evidence of his intention to commit said crime of violence.' However, the People did not request an instruction on this principle of law; instead, the jury found that the People proved intent beyond a reasonable doubt based on the circumstantial evidence presented." (quoting 14 V.I.C § 2253(c))).[42]

¶169 The only evidence presented to the jury on this count were the facts that Ponce constructively possessed a defaced firearm at the time of the execution of the search warrant and had previously been seen in possession of a handgun of a similar description, but Bettina never had the opportunity to view the firearm such that she could have observed any identifying marks.

[42] *See generally Territory v. Lucero*, 46 P. 18, 20 (N.M. Terr. 1896) ("A presumption of law is a juridicial postulate that a particular predicate is universally assignable to a particular subject. But this is quite different from an inference of fact drawn from argument, more or less sound, according to the particular circumstances surrounding it." (citing *Hickory v. United States*, 160 U.S. 409 (1896); FRANCIS WHARTON, WHARTON'S CRIMINAL EVIDENCE § 707 (9th ed. 1884)); *Diaz v. State*, 740 A.2d 81, 90 (Md. Ct. App. 1999) ("'[T]he rule regarding possession of recently stolen goods does not create a 'presumption' but merely permits an inference of fact.' 'An illogical or improbable inference would . . . unfairly relieve the State of part of its burden of proving every element of a case beyond a reasonable doubt.'" (quoting *Horn v. Maryland*, 349 A.2d 372 (Md. Ct. App. 1975); and citing *Dinkins v. State*, 3623 A.2d 91 (Md. 1976); *Boswell v. State*, 249 A.2d 490, 496 (Md. Ct. App. 1968))).

Furthermore, no tools were found in Ponce's possession, either actually or constructively, at the time he was apprehended that could have been used to obliterate the marks. Nor was it shown that Ponce had had access to such tools at any prior point. No expert or lay testimony was offered to prove the destruction of the marks was recent. No witness testified to any admission by Ponce (or anyone acting in concert with him) that Ponce had, by any process, removed the marks in question.

¶170 The evidence, if believed, established that Bettina saw Ponce in possession of a silver firearm on August 28, 2011, and that, on September 24, 2011, the VIPD found Ponce in constructive possession of a silver revolver that had its Firearm ID obliterated. No person whose thought processes were grounded in life experience and reality as it exists could rationally have concluded that Ponce had removed the identifying mark based on the evidence presented; to conclude otherwise is nothing more than exasperating speculation. *See Blyden v. Gov't of the V.I.*, 64 V.I. 367, 376-77 (V.I. 2016) ("[A] conviction based on insufficient evidence presents an error of constitutional dimension that must be remedied." (citing *Jackson*, 443 U.S. at 316; *Percival*, 62 V.I. at 484)).[43] Therefore, Ponce's conviction for Obliteration of a Firearm ID should be vacated.

[43] *See, e.g.*, *Commonwealth v. Mason*, 397 A.2d 408, 411 (Pa. 1979) ("No evidence was introduced indicating that the crime of obliteration occurred. Nor was evidence presented establishing when or the circumstances in which appellee came into possession of the firearm. The prosecution presented no evidence that appellee had the technical capacity to effect the crime which he was charged. Indeed, the prosecution's expert witness testified that obliteration may have occurred over forty-five years ago. In these circumstances it is at least as reasonable to suppose that appellee . . . came upon and acquired the weapon in an already altered condition as it is to conclude appellee obliterated the serial numbers after he came into possession. [To allow conviction to stand upon such evidence,] would be to allow arbitrary and tenuous inferences to drawn without indicia of validity in logic or reason or experience."); *see Diaz*, 740 A.2d at 90 ("'An illogical or improbably inference would unfairly relieve the state of part of its burden of proving every element of a case beyond a reasonable doubt.'" (quoting *Horn*, 349 A.2d 372; *Dinkins*, 349 A.2d at 679; *Boswell*, 249 A.2d at 496)); *Quinones*, 839 N.E.2d at 395-96 ("[T]he fact that defendant 'knowingly or intentionally changed, altered, removed or obliterated the name of the maker, model, manufacturer's number or other mark of identification of the firearm' was established only by the [prosecution's] evidence showing that defendant possessed a defaced firearm. Accordingly, we find that defendant's due process rights were violated . . . and reverse his conviction of two counts of defacing a firearm."); *In re Christopher K.*, 110 Cal. Rptr. 2d 914, 917 (Cal. Ct. App. 2001) ("The court noted, 'It seems too clear to warrant extended discussion that possession does not prove obliteration with the strength required by the reasonable doubt standard.' . . . Even if the jury found defendant possessed the revolver, that fact

¶171 I am particularly concerned of the complete absence of any discussion of the presumption provided in subsection 481(a) of title 23 in the proceedings below, especially when considering it is literally the second clause of the subsection and directly follows the enacting clause, whose function was to set forth the elements of the crime. *See, e.g.*, *Chirac v. Chirac's Lessee*, 15 U.S. (2 Wheat.) 259, 272-73 (1817) ("The enactment of the law is positive, and in its terms perpetual. . . . But, to this enacting clause is attached a proviso that whenever any . . . ."). As noted above, if the jury is never instructed on a statutory presumption duly enacted by the Legislature, that presumption cannot figure into the jury's calculation of guilt and cannot be considered by any court in determining the sufficiency of the evidence. *Phillip*, 58 V.I. at 586 n.20; *see Waddington v. Sarusad*, 555 U.S. 179, 190-91 (2009) (jury must be properly instructed in order for the verdict to stand).

¶172 So, even though juries are limited to inferences rationally and reasonably drawn from the evidence before them, legislatures may engage in legislative fact finding and establish a statutory presumption on a view of the relation of the facts broader than what rational inferences a jury could make based solely on the evidence in the record (and without having been instructed of any legislatively enacted presumption). *Tot*, 319 U.S. at 468 (citing *Bailey v. Alabama*, 219 U.S. 219, 235 (1911)).[44] Therefore, I take this opportunity to remind both the trial judges and prosecutors

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standing alone is not sufficient to support a finding beyond a reasonable doubt that defendant obliterated the numbers." (quoting *People v. Wandick*, 278 Cal. Rptr. 274 (Cal. Ct. App. 1991))); *People v. Moore*, 261 N.W.2d 3, 5 (Mich. Ct. App. 1977) ("[H]as the prosecution presented sufficient evidence that one obliterated the identifying marks of a pistol by merely showing that he possessed such a weapon? The conclusion must be in the negative."); *see also Percival*, 62 V.I. at 484 ("[A] conviction entered on insufficient evidence is always plain error.").

[44] "[A] legislature has the broadest discretion in establishing these rules of *prima facie* evidence." *Alton*, 207 F.2d at 679 n.1 (Hastie, J., dissenting) (citing 4 JOHN HENRY WIGMORE, EVIDENCE § 1356 (3d ed. 1940)); *see also Yee Hem v. United States*, 268 U.S. 178, (1925) ("If the effect of the legislative act is to give to the facts from which the presumption is drawn an artificial value to some extent, it is no more than happens in respect of a great variety of

to be aware of presumptions in the Virgin Islands Code, *e.g.*, 23 V.I.C. § 481(a); 14 V.I.C. § 2253(c); 14 V.I.C. § 839(b); 14 V.I.C. § 835(b); 14 V.I.C. § 1263(c); 14 V.I.C. § 1181; 14 V.I.C. § 1173; 14 V.I.C. § 3004; 14 V.I.C. § 3007; 14 V.I.C. § 44(c); 14 V.I.C. § 3003. Both judges and prosecutors bear to obligation of ensuring public confidence in criminal trials, and the failure to instruct the jury on permissive statutory presumptions leaves open the possibility of the guilty going free and generally leaves open issues for declarations of mistrials and seeking to reverse verdicts. In contrast, an assiduous trial judge may preempt such arguments by thoroughly knowing the statutory presumptions that have been enacted by the Legislature.

D. Severance of Codefendant and Mistrial

¶173 Ponce argues that, since the trial court granted the People's severance motion with regard to a manifest necessity arising in the case of Rivera,[45] the court's sole recourse was to then declare

presumptions not resting upon statute."); *Alton*, 207 F.2d at 679-80 (collecting cases, *e.g.*, *Adler.*, 342 U.S. 485*; Luria v. United States*, 231 U.S. 9 (1913); *Casey v. United States*, 276 U.S. 413 (1928); *Koops v. Gregg*, 32 A.2d 653 (Conn. 1943); *People v. Kayne*, 282 N.W. 248 (Mich. 1938); *Griffin v. State*, 83 S.E. 540 (Ga. 1914)). Therefore, the factual predicate for a factual inference from circumstantial evidence is greater than the legislative findings of fact supporting a duly enacted legislative presumption. *See generally cf. Alton*, 207 F.2d at 678-79 (Hastie, J., dissenting) (In contrast to this standard for reasonable factual inferences, "the only requirement of the [Due Process Clause] in [establishing *prima facie* evidence standards creating an evidentiary presumption] . . . is that there must be 'some rational connection' between the proved fact and the presumed fact so that the inference of the existence of one from proof of the other is not 'so unreasonable as to be a purely arbitrary mandate.' . . . [T]he fact accorded the value of *prima facie* evidence [must] have such relationship to the matter in issue as to be admissible in evidence as relevant and material to that issue. This does not mean that the proved fact standing alone need be enough to go to the jury on the matter in issue, absent the statutory rule. It means merely that without the statute the proved fact would be a normal and proper item in the total body of evidence introduced and effective to establish the ultimate fact." (citing *Turnipseed*, 219 U.S. at 42-43)).

[45] Implicit in Ponce's argument is a challenge to the trial court's manifest necessity determination relating to the trial of Rivera, e.g., stating, "In this instance, the options available to the trial court were either (1) deny the people's motion to sever, or (2) declare a mistrial." (App. Br. 11.) Certainly the constitutional protection against double jeopardy includes a defendant's right to have only one criminal trial and to have that trial completed by the same tribunal before which the trial was commenced. *Anderson*, 988 A.2d at 281) ("The constitutional protection against double jeopardy includes the defendant's 'valued right to have his trial completed by a particular tribunal.'" (quoting *Arizona v. Washington*, 434 U.S. at 503)); *Oregon v. Kennedy*, 456 U.S. 667, 671-72 (1982) ("'[T]he Double Jeopardy Clause affords a criminal defendant a valued right to have his trial completed by a particular tribunal.'").

a mistrial in his case. Ponce bases his argument on the same reasoning advanced for his assertion that the severance was improper, i.e., since no mistrial was declared in his case, he was unlawfully required to proceed to trial with a jury that Rivera, through his counsel, had participated in selecting.[46] Specifically, Ponce takes issue with the fact that Rivera was allowed to challenge prospective jurors for cause and exercise his peremptory challenges. However, Ponce fails to point to any prejudice to him resulting from being tried by a jury that was also selected by a properly joined codefendant whose trial was subsequently severed due to the sudden and severe illness of the codefendant's counsel. Ponce has utterly failed to demonstrate how Rivera's participation in jury selection—at a time when properly joined—prejudiced the jury such that he was denied a trial by an impartial tribunal in violation of a criminal defendant's due process rights.[47]

"In a trial by jury, 'jeopardy attaches [to the defendant] once the jury has been selected and sworn.'" *State v. Buell*, 605 A.2d 539, 544 (Conn. 1992) (quoting *Illinois v. Somerville*, 410 U.S. 458, 467 (1973)). "[A second prosecution] increases the financial and emotional burden on the accused, prolongs the period in which he is stigmatized by an unresolved accusation of wrongdoing, and may even enhance the risk that an innocent defendant may be convicted. The danger of such unfairness to the defendant exists whenever a trial is aborted before it is completed. Consequently, as a general rule, the prosecution is entitled to one, and only one, opportunity to require an accused to stand trial." *Arizona v. Washington*, 434 U.S. at 503-05. "This right is not absolute, however, and may in some cases be subordinated to the public interest in affording the prosecutor one full and fair opportunity to present his evidence to an impartial jury." *Id.* at 505. "When a criminal defendant objects to the declaration of a mistrial . . . and the mistrial is declared for reasons amounting to manifest necessity, his right to have his trial completed by his chosen tribunal is no longer protected and the double jeopardy clause does not bar a second trial." *Van Sant*, 503 A.2d 557. While the trial court could have established a better factual record (for example, there was no question specifically asking Rivera's counsel if there was another attorney who could take over representation if an extended recess were given and the court did not recite any potential scheduling conflicts of the jurors), the present record provides an adequate factual basis supporting the trial court's determination of manifest necessity justifying the declaration of a mistrial and granting of the severance in the case of Rivera.

[46] I again disagree with the majority's view of the procedural history and the conduct of defense counsel at trial. Defense counsel very much opposed a finding of manifest necessity. So, while I agree with the majority that Ponce's counsel set up a situation by which Ponce could have it both ways, thus "whip-sawing" the trial court, such tactics do not amount to Ponce's waiver of his arguments on appeal.

[47] Indeed, Ponce abjectly fails to make even this much of an argument in substance. Only juror 30 was excused for cause because that juror knew Rivera's attorney, and Juror 12 was excused for cause because he was related to Rivera. Further, jurors 71 and 34 knew Rivera's attorney, but were not dismissed, as they could remain impartial. Finally, juror 11 knew the attorneys for both defendants, but was not excused. Ponce fails to even identify these jurors as potential sources of prejudice much less make any actual argument as to the prejudice he suffered.

¶174 "The trial by jury is justly dear to the [People of the United States, and this right] received an assent of the people so general, as to establish [it] as a fundamental guarantee of the rights and liberties of the people." *Parsons v. Bedford, Breedlove & Robeson*, 28 U.S. (3 Pet.) 433, 447 (1830).

> The guarantees of jury trial in the Federal and State constitutions reflect a profound judgment about the way in which law should be enforced and justice administered. A right to jury trial is granted to criminal defendants in order to prevent oppression by the Government. Those who wrote our constitutions knew from history and experience that it was necessary to protect against unfounded criminal charges brought to eliminate enemies and against judges too responsive to the voice of higher authority. The framers of the constitutions strove to create an independent judiciary but insisted upon further protection against arbitrary action. Providing an accused with the right to be tried by a jury of his peers gave him an inestimable safeguard against the corrupt or overzealous prosecutor and against the compliant, biased, or eccentric judge. If the defendant preferred the common-sense judgment of a jury to the more tutored but perhaps less sympathetic reaction of the single judge, he was to have it. Beyond this, the jury trial provision in the Federal and State Constitutions reflect a fundamental decision about the exercise of official power—a reluctance to entrust plenary powers over the life and liberty of the citizen to one judge or to a group of judges. Fear of unchecked power, so typical of our State and Federal Governments in other respects, found expression in the criminal law in this insistence upon community participation in the determination of guilt or innocence. The deep commitment of the Nation to the right of jury trial in serious criminal cases as a defense against arbitrary law enforcement qualifies for protection under the Due Process Clause of the Fourteenth Amendment . . . .

Duncan v. Louisiana, 391 U.S. 145, 155-56 (1968) (citing *Singer v. United Sates*, 380 U.S. 24, 31 (1965))). Certainly, "[a] criminal defendant is entitled to a determination of his or her guilt by an unbiased jury based solely upon evidence properly admitted against him or her in court." *Gov't of the V.I. v. Dowling*, 814 F.2d 134, 138 (3d Cir. 1987) (citing *Irvin v. Dowd*, 366 U.S. 717, 722-23 (1961); *Martin v. Warden, Huntingdon State Correctional Inst.*, 653 F.2d 799, 806 (3d Cir. 1981)).

As important as the impartiality of the jury is, though, it remains the law that "a defendant is not entitled to a jury of any particular group of individuals, but only to a jury that is fair and impartial." *Diaz v. State*, 740 A.2d 81, 85-86 (Md. Ct. App. 1999) (citing *State v. Cook*, 659 A.2d 1313, 132-22 (Md. 1995))).

¶175 Therefore, while I agree with Ponce that this issue is one of first impression for this Court, it has been addressed by courts of other jurisdictions. In fact, as early as 1827, the United States Supreme Court, in *United States v. Marchant*, 25 U.S. (12 Wheat.) 480, 481 (1827), in an opinion authored by Justice Story, addressed this very issue, albeit indirectly.[48] The issue in that case was presented in the following manner: "whether, then, prisoners, who are jointly indicted, can against their wishes, be tried separately, does not admit of a doubt. It remains to consider, whether they can insist upon a several trial. The sole ground upon which this claim can rest must be, if maintainable at all, that they have a right to select their jury out of the whole panel, and that as upon a joint trial, one may desire to retain a juror who is challenged by another, and, if challenged by one, he must be withdrawn as to all; this right of selection is virtually unimpaired." *Id.* However, the Court rejected this argument because "it does not appear . . . that this reasoning can, upon principles of common law, be supported." *Id.* The Court explained that

> [t]he right of peremptory challenge is not of itself a right to select, but a right to reject jurors. It excludes from the panel those whom the prisoner objects to, until he has exhausted his challenges, and leaves the residue to be drawn from his trial according to the established order or usage of the Court. The elementary writers nowhere assert a right of this nature in the prisoner, but uniformly put the allowance of the peremptory challenges upon distinct grounds. [T]he party may not be tried by persons against whom he has conceived a prejudice, or who, if he has unsuccessfully

[48] *See Wilson*, 28 F. Cas. at 716 ("This appears to be the only case in which the question raised before us has been distinctly proposed before any court of the United States, but there are others in which principals very strongly analogous have arisen and been settled.").

> challenged them for cause, may, on that account, conceive a prejudice against the prisoner. The right, therefore, of challenge, does not necessarily draw after it the right of selection, but merely of exclusion. It enables the prisoner to say who shall not try him; but not to say who shall be the particular jurors to try him. The law presumes that every juror sworn in the cause is indifferent and above legal exception: for otherwise, he may be challenged for cause. What jurors, in particular, shall try the cause, depends upon the order in which they are called; and the result is a mere incident following the challenges, and not the absolute selection of the prisoner, resulting from his power of challenge.

Id. at 482 (citing 4 WILLIAM BLACKSTONE, COMMENTARIES *353).[49]

¶176 Like in *Marchant*, this Court is faced with a complete absence of authority in support of Ponce's argument and a history and course of practice in the courts of the Virgin Islands—as well as the reasoning deducible from that practice—against Ponce's argument that his right to select a jury was impaired. *Id.* at 485 ("We have, therefore, in the present case, not merely the absence of any authority in favor of the matter of right, but the course of practice, and the general reasoning deducible from the prerogative of the crown against it; and, lastly, a direct authority, in times when the administration of criminal justice was unsuspected, on the very point. Such is the substance of the reasons which induce us to decide against the claim as a matter of right."). Additionally, Ponce's brief has not offered even a modicum, iota, or scintilla of legal authority in support of his

[49] *Cf. Wilson*, 28 F. Cas. at 701 ("Whatever doubt may have been entertained before . . ., it is now settled that separate trials on joint indictments are matters of discretion in the court, and not of right. The court will not interfere where the counsel for the United States agree to separate trials. If, in his opinion, public justice requires a joint trial, the court will not direct a several trial without cogent reasons. As a general rule, the public prosecutor has the right to elect, and the courts are very unwilling to control it." (citing *United States v. Marchant*, 25 U.S. (12 Wheat.) 480 (1827); *Withers v. Commonwealth*, 5 Serg. & Rawle 59, 60 (Pa. 1819))); *Marchant*, 25 U.S. (12 Wheat.) at 482-83 ("[W]here several persons are arraigned on the same indictment, and severally plead not guilty, it is in the election of the prosecutor, either to take out joint venires against them all, or several against each of them. This plainly supposes that it is in the election of the prosecutor whether there should be a joint or separate trial. If there had been any known right in the prisoner to control this election, it seems incredible that so accurate and learned an authority should not have stated it, when the occasion indispensably required him to take notice of a qualification so important to his text. His silence is, under such circumstances, very significant." (citing 2 WILLIAM HAWKINS, PLEAS OF THE CROWN ch. 41, § 8 (8th ed. 1824))).

arguments. "In our opinion, [the decision to sever the trials of jointly charged criminal defendants] is a matter of sound discretion, to be exercised by the [trial c]ourt with all due regard and tenderness to prisoners, according to the known humanity of our criminal jurisprudence," *id.*, and I agree that a court's grant of a codefendant's motion to sever does not mandate that the court must also grant the remaining codefendant's motion for a mistrial so that the defendant proceeding to trial can select a new jury.

¶177 Simply, under such a circumstance, there is no manifest necessity, and a declaration of a mistrial is not warranted, when, after participating in jury selection, a codefendant is precluded from being tried jointly and another codefendant must then proceed to be tried severally by that jointly selected jury. *See United States v. Phillips*, 874 F.2d 123, 130 (3d Cir. 1989) (rejecting appellant's argument that the codefendant who had pled guilty had "participated in the shaping of the jury," because until the codefendant reached an agreement with the government, "he had every right to participate in juror selection").[50] Other courts have addressed this issue in similar contexts and reached the same conclusion. For example, in *United States v. Amer*, the prosecution commenced against three codefendants. 824 F.2d 906, 907 (11th Cir. 1987). Subsequently, one codefendant pled guilty, and after the trial court granted a severance motion for another codefendant, the sole remaining defendant requested a mistrial. The trial court denied that motion, and that ruling was affirmed on appeal. The court of appeals explained that

> where there are codefendants at the time a jury is selected, unless there was reversible error in trying those defendants jointly, there is no error in allowing a total of ten peremptory challenges, even if one codefendant subsequently drops out of the case. A defendant is not entitled to a jury composed only of members of his

[50] *See also United States v. Rodriguez*, 2000 WL 639954, at *2 (2d Cir. 2000) (unpublished, for table disposition, *see* 213 F.3d 627) ("Joined defendants have substantially the same interests in exercising their peremptory challenges and thus, [the codefendants proceeding to trial] were in the same position with regard to peremptory challenges before and after their co-defendants pleaded guilty. The district court thus properly rejected their motion for a mistrial.").

> own choosing, if at the time of selection, he properly has a codefendant, regardless of whether the codefendant ends up being jointly tried.

Id. at 907-08.

¶178 In *People v. Maass*, the trial court granted a codefendant's motion to sever based on his need for a continuance. 981 P.2d 177 (Colo. Ct. App. 1998). The remaining codefendant moved for a mistrial, and the trial court denied his motion. *Id.* at 181. On appeal, it was argued that the remaining codefendant was entitled to select a jury without the involvement of any other defendant who had a theory of defense antagonistic to his. Going a step further than Ponce, the appellant in *Maass* claimed that his codefendant had used a peremptory challenge to dismiss a potential juror whom he had wanted on his jury. Again, the appellate court affirmed the trial judge's decision, concluding that "[i]f the jury was fairly selected in accordance with the applicable law, and if no facts are presented that show the jury as finally selected was other than representative and impartial to the remaining defendant, the trial may proceed to its conclusion." *Id*. at 182.

¶179 I fully agree with the collective reasoning of these courts and conclude that the severance of the codefendants in this case did not affect the legality or propriety of the *voir dire* process and the eventual empanelment of the jury. Ponce was not entitled to have a jury composed of only members of his choosing following the severance because, at the time of jury selection, he was properly joined with Rivera under Federal Rule of Criminal Procedure 8(b),[51] and Rivera rightfully participated in the jury selection process. Furthermore, Rivera was properly severed because the

[51] Former Superior Court Rule 7 made the Federal Rules of Criminal Procedure applicable in the Superior Court. However, effective December 1, 2017, the Virgin Islands Rules of Criminal Procedure became operative and were subsequently amended on December 19, 2017. S. Ct. Prom. Orders 2017-010 (Dec. 1 & 19, 2017). Because this Court applies the rules in effect at the time the Superior Court decided the issue under consideration, I apply former Superior Court Rule 7 and Federal Rule of Criminal Procedure 8(d). *See Toussaint*, 67 V.I. at 941 n.5 (explaining that the rule in effect at the time of entry of the order appealed from is the rule applied on appeal).

sudden and extreme illness of his counsel after the jury had been selected constituted a manifest necessity for the severance. Therefore, absent an affirmative showing of specific instances of bias, prejudice, or partiality in the jury that tried and convicted him, the grant of a mistrial in Ponce's case was neither mandated nor warranted. *Cf. Rivera v. People*, 64 V.I. 540, 566 (V.I. 2016) ("Significantly, Rivera, and his codefendant, failed to exhaust their peremptory challenges." (citation omitted)).

E. Late Disclosure of Evidence

¶180 Ponce argues that he was denied "a meaningful opportunity to present a complete defense" when the Superior Court admitted into evidence crime scene photographs, specifically identified as exhibits 58 through 69, which had not been produced in discovery until the morning of jury selection in violation of Federal Rule of Criminal Procedure 16(d).[52] Ponce also argues, although considerably more indistinctly, that the photographs were exculpatory, and that the People suppressed them in violation of the rule enunciated in *Brady v. Maryland*, 373 U.S. 83 (1963). I reject both arguments.[53]

[52] Former Superior Court Rule 7 made the Federal Rules of Criminal Procedure applicable in the Superior Court. However, effective December 1, 2017, the Virgin Islands Rules of Criminal Procedure became operative and were subsequently amended on December 19, 2017. S. Ct. Prom. Orders 2017-010 (Dec. 1 & 19, 2017). Because this Court applies the rules in effect at the time the Superior Court decided the issue under consideration, I apply former Superior Court Rule 7 and Federal Rule of Criminal Procedure 16(d). *Toussaint*, 67 V.I. at 941 n.5 (explaining that the rule in effect at the time of entry of the order appealed from is the rule applied on appeal).

[53] *See generally Strollo*, 83 N.E. at 582-83 ("That the trial was not faultless may be conceded; but perfection is not to be expected in a science that is but mildly characterized as inexact. Few criminal records reach this court that are not open to some criticism, and there are many that would be much improved by greater care and caution on the part of prosecuting officers in the trial of cases. We must take these records as we find them and dispose of the questions involved as best we can. Neither can we be expected to lay down fixed rules for the guidance of police officers in the discharge of their duties. All that we can do is to see that they keep within the pale of the law.").

1. Federal Rule of Criminal Procedure 16(d)

¶181 It is undisputed that, during the execution of the September 24, 2011 search warrant, VIPD officers and crime scene technicians took photographs of the crime scene relating to counts ten, eleven, and twelve of the fourth superseding information. Likewise, it is undeniable that these photographs, which, under Federal Rule of Criminal procedure 16(a)(1)(E), the People were obligated to provide Ponce, were not given to Ponce until the morning of jury selection, although the People had received Ponce's discovery request on February 24, 2012.

¶182 Nevertheless, the trial court has wide discretion when addressing a party's dilatory compliance with discovery obligations. *See* FED. R. CRIM. P. 16(d) (allowing the court to order compliance, grant a continuance, prohibit a party from introducing evidence that was not disclosed, or enter any other order found to be "just under the circumstances"). In *People v. Rodriguez*, this Court identified three factors that the Superior Court must balance in addressing a claim that the People have failed to comply with their discovery obligations under Rule 16(d):

> (1) The reasons the government delayed producing the requested materials, including whether or not the government acted in bad faith when it failed to comply with the discovery order; (2) the extent of prejudice to the defendant as a result of the government's delay; and (3) the feasibility of curing the prejudice with a continuance.

S. Ct. Crim. No. 2009-0028, 2010 WL 1576441, at *4 (V.I. Apr. 14, 2010) (unpublished). To support a finding of prejudice, the trial court must determine that the delay impacted the defendant's ability to prepare or present his case. *Id.* at *5. I also remain mindful of our cautioning in *Rodriguez*, that "[w]hether considered a sanction or a remedy, appellate courts considering such matters almost universally agree that a trial court must take the least severe action to address a discovery violation, especially where there is an absence of bad faith." *Id.*; *see United States v.*

Golyansky, 291 F.3d 1245, 1249 (10th Cir. 2002) ("It would be a rare case where, absent bad faith, a district court should exclude evidence rather than continue the proceedings." (citation omitted)).

¶183 During an in-chambers hearing, counsel for the People explained that the subject photographs had been separately stored and that the People had taken a longer time to retrieve them.[54] While I fully and wholeheartedly agree with the trial court's characterization of the People's conduct as sloppy—and I, myself, deem it to be glaringly so, exemplifying indolence in preparing a prosecution—given the absence of evidence that the People willfully ignored discovery obligations, I simply do not adduce bad faith in the People's failure to timely produce the subject photographs.

¶184 The second factor in the *Rodriguez* analysis is prejudice. Exasperatingly, however, Ponce's brief is devoid of any explanation of how he was prejudiced by the admission of the photographs; why the photographs were exculpatory; or at the very least, what the photographs depicted. At trial, the only photographs for which he could formulate a specific prejudice argument against their admission were those illustrating the location where the silver revolver was found, which he identified as exhibits 62, 63, 64, and 66. Ponce's argument was that, had he been given these photographs earlier, he could have proved that the gun was found in proximity of a neighbor's home and not his own. He explained that he could have taken measurements and his own photographs and/or secured testimony favorable to his defense. Just as he has failed to now do on appeal, he advanced no explanation whatsoever of how the admission of the other exhibits would have prejudiced his defense.

[54] Counsel for the People explained: "I admitted it to the Court the other day, that there was a second alpha number. Instead of having this particular case set up with the homicide alpha number, this set of photographs was set up with the alpha number for the gun and they set up a separate gun case involving this gun."

¶185 In *Cascen*, this Court recognized that "reversal is not warranted unless there is a 'likelihood that the verdict would have been different had the government complied with the discovery rules.'" 60 V.I. at 401 n.3 (quoting *Davis*, 397 F.3d at 178). I cannot conceive how Ponce's convictions on counts ten, eleven, and twelve would have had the contrary result had Ponce received the photographs in a more timely manner, especially because the People's witness unreservedly testified in detail that the gun was, indeed, found on a neighbor's premises. In fact, the officer who discovered the gun explained that he woke the neighbor to seek her permission to retrieve the gun because it was located within the inner limits of her fence. Moreover, Ponce's counsel cross-examined the officers on these issues. Therefore, I agree with the trial court's finding that the requisite prejudice warranting a mistrial is lacking.

¶186 Lastly, in response to Ponce's consternation over the photographs of the gun, the trial court suspended the trial for the remainder of that day and allowed Ponce the opportunity to visit the crime scene to secure evidence regarding the location in which the gun was found. Thus, as directed by *Rodriguez*, the Superior Court properly ascertained whether there was any bad faith on the part of the People; elicited the extent and nature of any prejudice as a result of the government's dilatory conduct; and, in an effort to cure the prejudice as it was articulated by Ponce, offered a continuance. Having examined and considered the proceedings in the trial court, I do not conclude that the most severe remedy of excluding the subject photographs was necessary in this case, and the Superior Court did not abuse its discretion in admitting them into evidence.

2. Asserted *Brady* Violations

¶187 Ponce's *Brady* argument is significantly less compelling. Under *Brady v. Maryland*, "the suppression by the prosecution of evidence favorable to an accused upon request violates due

process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." 373 U.S. at 87. However, "[t]o prevail on a *Brady* claim, the defendant must show that the evidence was (1) suppressed, (2) favorable, and (3) material to the defense." *People v. Ward*, 55 V.I. 829, 842 (V.I. 2011) (quoting *Bowry v. People*, 52 V.I. 264, 274 (V.I. 2009)).

¶188 Ponce argues that the tardy photographs were exculpatory and could have potentially led to the discovery of additional exculpatory evidence. Notwithstanding Ponce's abject failure to explain why the photographs should be characterized as favorable under *Brady*, I conclude that *Brady* is not remotely implicated here. As this Court has repeatedly held, a *Brady* violation only occurs if exculpatory information is not disclosed until *after* trial. *George*, 59 V.I. at 378 (citing *United States v. Agurs*, 427 U.S. 97, 103 (1976)); *Ward*, 55 V.I. at 848. Congruently, "[e]vidence turned over during trial is not considered suppressed for *Brady* purposes." *Williams v. People*, 59 V.I. 1024, 1040 (V.I. 2013) (citing *United States v. Henderson*, 250 Fed. Appx. 34, 39 (5th Cir. 2007); *United States v. Williams*, 132 F.3d 1055, 1060 (5th Cir. 1998)). As it is undisputed that the photographs in question were disclosed during trial, the first prong of *Brady* has not been met, and Ponce cannot establish that there was a *Brady* violation. Therefore, the trial court did not abuse its discretion in denying Ponce's motion.

III. CONCLUSION

¶189 Because there was sufficient evidence from which a jury could have found Ponce's guilt beyond a reasonable doubt as to all counts, except count twelve (Obliteration of a Firearm ID in violation of 23 V.I.C. § 481(a)), I would affirm those convictions. However, because proof of possession of a firearm that has had its identifying marks removed, without more, does not support

the inference that the possessor affirmatively obliterated the marks, Ponce's conviction for Obliteration of a Firearm ID should be reversed. Additionally, because the trial of Ponce by a jury selected with the participation of a properly joined codefendant who was not also tried by that same jury did not infringe upon any right of Ponce's and he has failed to identify any conceivable prejudice from this course of action, I find the trial court did not abuse its discretion when, because of illness and medical considerations of the codefendant's counsel, it severed Rivera and proceeded to try Ponce. Finally, the timing of the disclosure of photographic evidence was not shown to have had any adverse impact on Ponce's trial preparation and defense strategy. Therefore, except as to the majority's conclusion that there was sufficient evidence to support Ponce's conviction for Obliteration of a Firearm ID, I agree that none of Ponce's arguments support reversing the trial court's judgment and commitment.

Dated this 1st day of April, 2020.

BY THE COURT:

/s/ Ive Arlington Swan
IVE ARLINGTON SWAN
Associate Justice

ATTEST:
VERONICA J. HANDY, ESQ.
Clerk of the Court

Appendix A: Legislative History of the Virgin Islands Weapons Control Statutes of Titles 14 and 23 of the Virgin Islands Code.

On November 14, 1908, the governor of the then Danish West Indies sanctioned an ordinance for the former Municipality of St. Croix regulating firearms and ammunition. No copy of this ordinance could be found. However, in 1938, section 3 of this ordinance was amended by deleting the following paragraph:

> Exempt from paying the tax are 23 firearms on every estate of 150 acres of land or upwards, likewise 3 firearms on every Central Factory in the Country Districts, irrespective as to whether the firearms belong to the Owner, the Renter, the Administrator or the Manager of the property or the Central Factory.

Ordinance to Amend Ordinance Concerning the Control of Firearms and Ammunition in St. Croix, July 29, 1938.

Then, prior to the adoption of the 1921 Code, the Colonial Council passed an ordinance regulating firearms and ammunition, the provisions of which read as follows:

> Section 1.
>
> For the importation into St. Thomas or St. John of firearms and of ammunition, including air-guns and other deadly weapons, a license form the Government is required. License from the government is also required for the exchanging of ownership of such specified articles.
>
> Merchants who deal in ammunition shall, however, be entitled to sell the same, without special license, to such persons as may legally have in their possession the required license from the Government.
>
> Section 2.
>
> Every one, who, at the time this order is placed in force, is the lawful owner of firearms, is required within fifteen days thereafter, to inform the nearest Policemaster of his ownership thereof.
>
> Section 3.
>
> Every lawful owner of firearms is bound to pay for such weapon Francs 10 to the Colonial Treasury.
>
> This rule, however, is not applicable to the Military Forces of the United States, or to the Police so far as firearms for official purposes are concerned, or to merchants who deal in firearms insofar as concerns the weapons they have on hand for business purposes.
>
> The Government may grant exemption from the payment of taxes for firearms which are exclusively used for decorative purposes or which are owned by shooting clubs which have placed

> themselves under Government control and also to estate owners or other persons at the discretion of the Government.
>
> Taxes for the calendar year are to be paid to the nearest Policemaster where license is issued.
>
> If the tax is not paid within one month after date of approval of this Ordinance, the police shall seize and confiscate for the benefit of the Colonial Treasury the weapon or weapons concerned.
>
> Section 4.
>
> Every weapon upon which a tax is paid, and every weapon which under paragraph 3 is exempted from the tax, is to be provided by the Police with a stamp and number, and the Police master concerned shall also deliver to the person paying the tax, a license bearing the name of the taxpayer, the date of the year when the tax is paid, and the number of the weapon for which the license is issued.
>
> These licenses are required to be renewed annually upon the payment of the required tax.
>
> The Police, the Quarter Officers, and the members of the Military Forces of the United States are entitled to demand that any person found in the possession of firearms, shall show that he is entitled to such possession according to the provision of this Ordinance.
>
> If the person concerned cannot prove his right on the spot, his weapon shall be taken from him, and if his right is not established within 14 days thereafter, it will be confiscated by the Police for the benefit of the Colonial Treasury.
>
> Section 5.
>
> The burden of proof that a weapon does not belong to the person in whose possession it is found, rests on the one making the statement, in so far as responsibility is concerned under this ordinance.
>
> Section 6.
>
> Persons under the age of 18 years are not allowed to make use of firearms without special permission from the Government.
>
> Section 7.
>
> Violations of the provisions of this Ordinance shall be punished with fines of from 20 to 200 francs, in so far as they do not deserve higher punishment in accordance with existing Law or Ordinance.
>
> Fines assessed under this ordinance accrue to the Colonial Treasury.
>
> Suits concerning imposition of such fines are to be dealt with as public police suits.
>
> To which all concerned have to conform.

Ordinance Concerning the Control of Firearms and Ammunition, June 9, 1917 (emphasis added).

Sections 2251 and 2253 of title 14 of the Virgin Islands Code have their origins in "Title IV- Criminal Law" of the 1921 Codes. Specifically, these sections originated in sections 3 and 4 of "Chapter Twelve. Miscellaneous Offenses." These sections and the sections prescribing punishment read as follows:

> Section 3.—If any person shall carry concealed on or about his person, any pistol, dirk, dagger, sling shot, black jack, sword, sword cane, cudgel, spear or knuckles, made of any metal or any hard substance, razor, bowie knife, or any other knife, manufactured or sold for purposes of offense or defense, or any other dangerous or deadly weapon, he shall be punished by a fine of not exceeding fifty dollars, or by imprisonment not exceeding sixty days or both such fine and imprisonment.
>
> Section 4.—The preceding section shall not apply to a peace officer, judge, sheriff, deputy sheriff, or bailiff, of any court, persons engaged in the guarding of prisoners while so employed, policeman; nor to the safekeeping or carrying of arms by the proprietors, lessees, administrators, overseers, or watchmen of an estate while on or within the same or while going to or returning from the same, as well as while within their private houses or buildings under their care or guardianship; nor to persons engaged in the military or naval service of the United States, nor to persons carrying the United States mail, nor to persons charged with the custody of municipal property or fund nor to watchmen or keepers, carrying a written authorization from the superior officer having the supervision of such property or funds; neither shall it apply to the carrying of ordinary folding pocket knives, having blades less than three inches in length; neither shall it apply to the instrument known as a bill or cutlass, when the same is being used or carried bone fide, by the owner or possess thereof, as a necessary incident to his occupation. Provided That the authorization given by this act to owners, lessees, administrators, overseers or watchmen of agricultural properties, in order to be valid, must be confirmed at the request of the parties concerned, by the Director of Police, and Provided that the Director of Police may authorize in his dis[cre]tion any other person to carry firearms.
>
> Section 5.—In addition to the punishment authorized by section six of this chapter, the judgment of conviction against the offender shall also be declared a forfei[t]ure of the firearm, instrument or weapon seized, in favor of the People.
>
> Section 6.—Whenever any official is granted, by law, power to issue regulations and regulations are issued in pursuance thereof, any violation thereof shall constitute[ ] an offense and shall be made punishable [by a] fine not exceeding five dollars.

Title IV, Chapter Twelve, Sections 3-4, 1921 Code for Municipality of St. Thomas and St. John. The 1921 Code also provided that the provisions of the 1921 Code were to be construed in

accordance with the "fair construction" of their terms in order to effectuate the object of the provision and promote justice. Title IV, Chapter One, Section 1, 1921 Code for Municipality of St. Thomas and St. John.[1]

Between 1921 and 1957, the legislative history of gun control laws in the Virgin Islands is difficult to obtain. Some of the acts passed by the Municipal Councils and the Legislative Assembly are on microfilm at the Virgin Islands archives division of the public library. For example, Sections 451-458 of Title 23 of the present Virgin Islands Code were first adopted by the Municipal Ordinance of the Council for St. Thomas and St. John on December 18, 1953 (Bill No. 291), a year for which there is no copy of the session laws available online. Because these sections were substantially revised when incorporated into the 1957 Virgin Islands Code, this portion of legislative history is not included.

In 1957, the foregoing provisions were parsed out and elaborated upon when incorporated into the 1957 Code.

14 V.I.C. § 2251

Section 2251 of the 1957 Code, entitled "Carrying or using dangerous weapons," provided:

> Whoever—
> (1) Attempts to use against another an imitation pistol;
> (2) Carries or possesses any instrument or weapon of the kind commonly known as a blackjack, slingshot, billy, sandclub, sandbag, metal knuckles, bludgeon; or
> (3) With intent to use the same unlawfully against another carries or possess a dagger, dirk, dangerous knife, razor, stiletto, imitation pistol, machine gun, sawed-off shot-gun or any other dangerous or deadly weapon—
> Shall be fined not more than $200 or imprisoned not more than 1 year; or if he has previously been convicted of a felony, shall be imprisoned not more than 5 years.

The revision notes to section 2251 indicate that it "is derived from" section 3 of chapter 12 of the 1921 codes. However, it is also noted that it was "entirely rewritten to follow New York Penal Law section 1897(2)." The provision of section 3 of Chapter 12 of the 1921 codes addressing pistols and other firearms that are concealable were transferred to section 2252.

Section 2251 was amended and rewritten in 1974 to read as follows:

> § 2251. Carrying or using dangerous weapon
> (a) Whoever—
> (1) Has, possesses, bears, transports, carries or has under his proximate control any instrument or weapon of the kind

[1] This provision was placed in "Chapter One. General Provisions" in "Title IV. Criminal Law" of the 1921 code and read as follows, "Section 1.—All provisions and sections of this Code are to be construed according to the fair construction of their terms, with a view to effect its object and to promote justice."

commonly known as a blackjack, billy, sandclub, metal knuckles, bludgeon, switchblade knife or gravity knife; or

(2) With the intent to use the same unlawfully against another, has, possesses, bears, transports, carries or has under his proximate control, a dagger, dirk, dangerous knife, razor, stiletto, or any other dangerous or deadly weapon shall—

(A) Be fined not more than $1,000 or imprisoned not more than two (2) years, or both; or

(B) If he has previously been convicted of a felony, or has, possesses, bears, transports, carries or has under his proximate control, any such weapon during the commission or attempted commission of a crime of violence (as defined in section 2253(d)(1) hereof) shall be fined not more than $2,000 or imprisoned not more than five (5) years, or both, which penalty shall be in addition to the penalty provided for the commission of, or attempt to commit, the crime of violence.

(b) For purposes of subsection (a) of this section, the term "switchblade knife" means any knife which has a blade which opens automatically by hand pressure applied to a button, spring, or other device in the handle of the knife; and the term "gravity knife" means any knife which has a blade which is released from the handle or sheath thereof by the force of gravity or the application of centrifugal force which, when released, is locked in place by means of a button, spring, lever or other device.

Act to amend Title 14, Chapter 113, and Title 23, Chapter 5, Virgin Islands Code, pertaining to the definition of certain weapons and the penalties for possession of said weapons, No. 3566, § 1, Sess. L. 1974, p. 98-99 (1974); *Gov't of the V.I. v. Smith*, 558 F.2d 692 (3d Cir. 1977); *Gov't of the V.I. v. Charles*, 590 F.2d 82 (3d Cir. 1978); *Gov't of the V.I. v. Edwards*, No. 84-3159, 1984 U.S. App. LEXIS 26804 (3d Cir. Dec. 14, 1984); *Gov't of the V.I. v. Grant*, 19 V.I. 440 (V.I. Terr. Ct. 1983) (based on a 1982 crime); *Gov't of the V.I. v. Grant*, 775 F.2d 508 (3d Cir. 1985) (based on a 1982 crime); *Gov't of the V.I. v. Douglas*, 812 F.2d 822 (3d Cir. 1987) (based on a 1985 crime).

In 1986, section 2251 was amended as follows:

§ 2251. Carrying or using dangerous weapon

(a) Whoever—

(1) Has, possesses, bears, transports, carries or has under his proximate control any instrument or weapon of the kind commonly known as a blackjack, billy, sandclub, metal

knuckles, bludgeon, switchblade knife or gravity knife; **or electric weapon or device**[2] or

(2) With the intent to use the same unlawfully against another, has, possesses, bears, transports, carries or has under his proximate control, a dagger, dirk, dangerous knife, razor, stiletto, or any other dangerous or deadly weapon shall—

(A) Be fined not more than $1,000 or imprisoned not more than two (2) years, or both; or

(B) If he has previously been convicted of a felony, or has, possesses, bears, transports, carries or has under his proximate control, any such weapon during the commission or attempted commission of a crime of violence (as defined in section 2253(d)(1) hereof) shall be fined not more than $2,000 or imprisoned not more than five (5) years, or both, which penalty shall be in addition to the penalty provided for the commission of, or attempt to commit, the crime of violence.

(b) For purposes of subsection (a) of this section, the term "switchblade knife" means any knife which has a blade which opens automatically by hand pressure applied to a button, spring, or other device in the handle of the knife; and the term "gravity knife" means any knife which has a blade which is released from the handle or sheath thereof by the force of gravity or the application of centrifugal force which, when released, is locked in place by means of a button, spring, lever or other device**; and the term "electric weapon or device' means any device which, through the application or use of electric current, including battery operated devices, is designed, redesigned, used, or intended to be used for offensive or defensive purposes, the destruction of life, or the infliction of injury**.

(c) Notwithstanding the provisions of this section, nothing contained herein shall prohibit the use of electric weapons or devices by peace officers in the conduct of their lawful duties.

Act to alter the category for license fees for gunsmiths and dealers in firearms and ammunition; to prohibit the use or possession of electric weapons or devices; and for other purposes related thereto, No. 3566, § 2, Sess. L. 1986, p. 209-10 (1986) (emphasis added); *Gov't of the V.I. v. Williams*, 23 V.I. 125 (D.V.I. 1987); *Gov't of the V.I. v. Commissiong*, 706 F. Supp. 1172 (D.V.I. 1989) (based on a 1989 crime); *Rabess v. Gov't of the V.I.*, 868 F. Supp. 777 (D.V.I. App. Div. 1994), *United*

[2] Commencing at this point, and continuing on throughout the remainder of this appendix, additions to the text are shown in boldface, and deletions are shown in strikethrough.

States v. Bruney, 30 V.I. 360 (D.V.I. 1994) (based on a 1993 crime); *Gov't of the V.I. v. Robinson*, 29 F.3d 878, 886 (3d Cir. 1994); *Gov't of the V.I. v. Walters*, 33 V.I. 77, 80 (V.I. Super. Ct. 1996); *United States v. Lake*, 150 F.3d 269 (3d Cir. 1998); *Gov't of the V.I. v. Sampson*, 94 F. Supp. 2d 639, 642 n.2 (D.V.I. App. Div. 2000) (based on a 1995 crime).

Section 2251 was again amended in 2001 to read as follows:

§ 2251. Carrying or using dangerous weapon

(a) Whoever—

(1) Has, possesses, bears, transports, carries or has under his proximate control any instrument or weapon of the kind commonly known as a blackjack, billy, sandclub, metal knuckles, bludgeon, switchblade knife or gravity knife; or electric weapon or device or

(2) With the intent to use the same unlawfully against another, has, possesses, bears, transports, carries or has under his proximate control, a dagger, dirk, dangerous knife, razor, stiletto, or any other dangerous or deadly weapon shall—

(A) Be fined not more than $1,000 or imprisoned not more than two (2) years, or both **$5,000 and imprisoned not more than five (5) years**; or

(B) If he has previously been convicted of a felony, or has, possesses, bears, transports, carries or has under his proximate control, any such weapon during the commission or attempted commission of a crime of violence (as defined in section 2253(d)(1) hereof) shall be fined not more than $2,000 or imprisoned not more than five (5) years, or both, which penalty shall be in addition to the penalty provided for the commission of, or attempt to commit, the crime of violence **$10,000 and imprisoned not more than fifteen (15) years**.

(b) For purposes of subsection (a) of this section, the term "switchblade knife" means any knife which has a blade which opens automatically by hand pressure applied to a button, spring, or other device in the handle of the knife; and the term "gravity knife" means any knife which has a blade which is released from the handle or sheath thereof by the force of gravity or the application of centrifugal force which, when released, is locked in place by means of a button, spring, lever or other device; and the term "electric weapon or device' means any device which, through the application or use of electric current, including battery operated devices, is designed, redesigned, used, or

> intended to be used for offensive or defensive purposes, the destruction of life, or the infliction of injury.
>
> (c) Notwithstanding the provisions of this section, nothing contained herein shall prohibit the use of electric weapons or devices by peace officers in the conduct of their lawful duties.

Act to amend Titles 14 and 23 and Title 33, Section 3501a, Virgin Islands Code, to enact the Virgin Islands Gun Control Act of 2001, and for other related purposes, No. 6493, § 1, Sess. L. 2001, p. 394 (2001) (emphasis added); *Gov't of the V.I. v. Gonzalves*, 47 V.I. 149 (V.I. Super. Ct. 2005) (based on a 2004 crime); *Nanton v. People*, 52 V.I. 466 (V.I. 2009) (based on a 2005 crime); *S.T. v. People*, 51 V.I. 420 (V.I. 2009) (based on a 2007 crime); *Phipps v. People*, 54 V.I. 543 (V.I. 2011) (based on a 2009 crime); *People v. Thompson*, 57 V.I. 342 (V.I. 2012) (based on a 2011 crime); *Ward v. People*, 58 V.I. 277 (V.I. 2013) (based on a 2011 crime); *Connor v. People*, 59 V.I. 286 (V.I. 2013) (based on a 2011 crime); *Christopher v. People*, 57 V.I. 500 (V.I. 2012) (based on a 2009 crime); *Prince v. People*, 57 V.I. 399 (V.I. 2012) (based on a 2009 crime); *Powell v. People*, 59 V.I. 444 (V.I. 2013) (based on a 2010 crime), *People v. Yarwood*, 58 V.I. 61 (V.I. Super. CT. 2013) (based on a 2011 crime); *People v. Roberts*, SX-13-CR-061, 2014 WL 12508175 (V.I. Super. Ct. Feb. 14, 2014); *Alexander v. People*, 60 V.I. 486 (V.I. 2014) (based on a 2009 crime); *People v. Colon*, 60 V.I. 149 (V.I. Super. Ct. 2014) (based on a 2013 crime); *Estick v. People*, 62 V.I. 604 (V.I. 2015) (based on a 2009 crime).

14 V.I.C. § 2252

Section 2252 of the 1957 Code, "Carrying concealed firearms," provided the following:

> Whoever has or carries concealed upon his person any pistol, revolver or other firearm without a written license therefor, shall be fined not more than $500 or imprisoned not more than 1 year, or both; or if he shall have been convicted for a felony, shall be imprisoned not more than 5 years.

As with section 2251, the revision notes for section 2252 indicate that its origin is based in section 3 of chapter 12 of the 1921 codes but was entirely rewritten to follow New York Penal Law section 1897(5).

In 1968, this section was repealed in its entirety along with sections 2253 and 2254. Act to amend Chapter 5, Title 23 of the Virgin Islands Code, relating to the control of firearms and ammunition, and for other Purposes, No. 2279, § 2, Sess. L. 1968, p. 224 (1968). In its place, a new section 2252 was enacted and read as follows:

> Whoever violates the provision of section 298(8) or of section 2251 of this title, shall, in addition to the punishment therein prescribed also have the pistol, weapon, instrument or other implement which he possessed or used confiscated to the Government of the Virgin Islands.

Act to amend Chapter 5, Title 23 of the Virgin Islands Code, relating to the control of firearms and ammunition, and for other purposes, No. 2279, § 3, Sess. L. 1968, p. 224 (1968).

This section was again amended in 1974 to read as follows

> § 2252. Confiscation of illegally held weapons
>
> Whoever violates the provisions of sections 298, 2251 or 2253 of this title, or any other provision of law prohibiting the possession, bearing, transporting, carrying or effective control of a firearm or other weapon shall, in addition the punishment therein prescribed, also have said firearm or other weapon confiscated to the Government of the Virgin Islands.

Act to amend Title 14, Chapter 113, and Title 23, Chapter 5, Virgin Islands Code, pertaining to the definition of certain weapons and the penalties for possession of said weapons, No. 3566, § 2, Sess. L. 1974, p. 99 (1974).

In 1984, section 2252 was amended to read as follows:

> § 2252. Confiscation of illegally held weapons
>
> Whoever violates the provisions of sections 298, 2251 or 2253 of this title, or any other provision of law prohibiting the possession, bearing, transporting, carrying or effective control of a firearm**, ammunition** or other weapon shall, in addition the punishment therein prescribed, also have said firearm**, ammunition** or other weapon confiscated to the Government of the Virgin Islands.

Act to prohibit possession or sale of armor-piercing or exploding ammunition, No. 4943, § 1, Sess. L. 1984, p. 144 (1984).

14 V.I.C. § 2253

Section 2253 of the 1957 Code provided the "Exceptions" to the forgoing provisions of the 1957 Code.

> The provisions of sections 2251 and 2252 of this title shall not apply to—
>
> (1) Marshals, police officers or other duly authorized peace officers;
> (2) Members of the armed services of the United States when on duty;
> (3) Military or civil organizations when parading or to the members thereof when at, going to or coming from their usual place of assembly; or
> (4) Person employed in fulfilling defense contracts with the United States Government or agencies therefor where such possession or sue of such weapons is necessary under the provision of such contracts.

This section was derived from section 4 of chapter 12 of the 1921 codes but was rewritten to follow New York Penal Law sections 1897(13) and (15) when incorporated in the 1957 code. This section was repealed in 1968. Act to amend Chapter 5, Title 23 of the Virgin Islands Code, relating to the control of firearms and ammunition, and for other purposes, No. 2279, § 2, Sess. L. 1968, p. 224 (1968).

A new section 2253 was enacted in 1972 and read as follows:

> § 2253. Use of weapon in commission of a crime
>
> Whoever possesses, transports, carries or has under his proximate control any dangerous or deadly weapon during the commission or attempted commission of a crime of violence (as defined in section 451(e) of Title 23, Virgin Islands Code) shall be incarcerated for a term of imprisonment of not less than 18 months. Imposition or execution of this minimum period of incarceration shall not be suspended, nor shall probation be granted; neither shall parole or any other form of release be granted for this minimum period of incarceration.

Act to provide mandatory minimum penalties in certain crimes under the law of the Virgin Islands, No. 3321, § 4, Sess. L. 1972, p. 469 (1972).

In 1974, section 2253 was amended and rewritten by section 3 of Act No. 3566 to read as follows:

> § 2253. Carrying of firearms; openly or concealed; evidence of intent to commit crime of violence; definitions
>
> (a) Whoever, unless otherwise authorized by law, has, possesses, bears, transports or carries either openly or concealed on or about his person, or under his control in any vehicle of any description 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 fined not more than $1,000 or imprisoned not more than 2 years, or both, except that if such person shall have been convicted of a felony, 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 not more than $2,000 or imprisoned not more than 5 years, or both. The foregoing applicable penalties provided for violation of this section shall be in addition to the penalty provided for the commission of, or attempt to commit, the crime of violence.
>
> (b) Whoever, unless otherwise authorized by law, has, possesses, bears, transports or carries either openly or concealed on or about his person, or under his control in any vehicle of any description any machine gun or sawed-off shotgun, as defined in subsection (d)(2) and (3) hereof, loaded or unloaded, may be arrested without a warrant, and shall be fined not more than $2,000 or imprisoned not more than 3 years, or both, except that if such person shall have been convicted of a felony, or if such machine gun or sawed-off shotgun or an imitation thereof was

> held, possessed, borne, transported by or under the proximate control of such person during the commission or attempted commission of a crime of violence, as herein defined, then such person shall be fined not more than $5,000 imprisoned not more than 10 years, or both. The foregoing applicable penalties provided for violation of this section shall be in addition to the penalty provided for the commission of, or attempt to commit, the crime of violence.
>
> (c) In the trial of a person for committing or attempting to commit a crime of violence, as herein defined, the fact that he was armed with a firearm, used or attempted to be used, and had no license to carry the same, as required in Title 23, chapter 5 of the Code, shall be evidence of his intention to commit said crime of violence.
>
> (d) As used in this chapter—
>
> (1) "Crime of violence" shall have the same definition as that contained in Title 23, section 451(e) of this Code.
>
> (2) "Machine gun" means any firearm, as defined in Title 23, section 451(d) of this Code, which shoot automatically or semi-automatically more than 12 shots without reloading.
>
> (3) "Sawed-off shotgun" means any firearm, as defined in Title 23, section 451(d) of this Code, designed to fire through a smooth bore either a number of ball shot or a single projectile, the barrel of which is less than 20 inches in length.

Act to amend Title 14, Chapter 113, and Title 23, Chapter 5, Virgin Islands Code, pertaining to the definition of certain weapons and the penalties for possession of said weapons, No. 3566, § 3, Sess. L. 1974, p. 99-100 (1974); *Gov't of the V.I. v. King*, 31 V.I. 78, n.8 (V.I. Super. Ct. 1995) (noting that section 477 of title 23 was enacted in 1968 and was repealed in 1974 and replaced with section 2253 of title 14); *Gov't of the V.I. v. Castillo*, 550 F.2d 850 (3d Cir. 1977); *Gov't of the V.I. v. Civil*, 591 F.2d 255 (3d Cir. 1979); *Gov't of the V.I. v. Carino*, 631 F.2d 226 (3d Cir. 1980); *Gov't of the V.I. v. O'Bryan*, 17 V.I. 504 (D.V.I. 1980); *Gov't of the V.I. v. Dowling*, 633 F.2d 660 (3d Cir. 1980) (based on a 1979 crime); *Gov't of the V.I. v. Albert*, 18 V.I. 21 (D.V.I. 1980); *Gov't of the V.I. v. Bedford*, 671 F.2d 758 (3d Cir. 1982) (based on a 1980 crime); *Gov't of the V.I. v. Sealey*, 18 V.I. 425 (D.V.I. 1981); *Gov't of the V.I. v. Brown*, 685 F.2d 834 (3d Cir. 1982) (based on a 1980 crime); *Gov't of the V.I. v. Petersen*, 684 F.2d 247 3d Cir. 1982) (based on a 1980 crime); *Gov't of the V.I. v. Rosado*, 699 F.2d 121 (3d Cir. 1983) (based on a 1981 crime); *Gov't of the V.I. v. Francis*, 98 F.R.D. 626 (3d Cir. 1983) (based on a 1981 crime); *Gov't of the V.I. v. Kaller*, Crim. No. 543/1982, 1983 WL 952726 (V.I. Super. Ct. July 6, 1983) (based on a 1982 crime); *Gov't of the V.I. v. Soto*, 718 F.2d 72 (3d Cir. 1983); *Gov't of the V.I. v. Elliott*, 20 V.I. 44 (V.I. Super. Ct. 1983) (based on a 1983 crime) (2253 was not amended until June 1983); *Gov't of the V.I. v. Ramos*, 730 F.2d 96 (3d Cir. 1984) (based on a February 1983 crime); *Gov't of the V.I. v. Williams*, 739 F.2d 936 (3d Cir. 1984).

In 1983, section 2253 was amended to read as follows:

§ 2253. Carrying of firearms; openly or concealed; evidence of intent to commit crime of violence; definitions

(a) Whoever, unless otherwise authorized by law, has, possesses, bears, transports or carries either openly or concealed on or about his person, or under his control in any vehicle of any description 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 six months nor more than three years and shall be fined not more than $5,000, except that if such person shall have been convicted of a felony in any such 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 sentenced to imprisonment of not less than five years nor more than ten years and shall be fined not more than $10,000. The foregoing applicable penalties provided for in violation of this section shall be in addition to the penalty provided for the commission of, of attempt to commit, the crime of violence.

(b) Whoever, unless otherwise authorized by law, has, possesses, bears, transports or carries either openly or concealed on or about his person, or under his control in any vehicle of any description any machine gun or sawed-off shotgun, as defined in subsection (d)(2) and (3) hereof, loaded or unloaded, may be arrested without a warrant, and shall be sentenced to imprisonment of not less than two years nor more than five years and shall be fined not more than $7,000 except that if such a person shall have been convicted of a felony in any state, territory or federal court of the United States, or if such machine gun or sawed-off shotgun or an imitation thereof was held, possessed, borne, transported by or under the proximate control of such person during the commission or attempted commission of a crime of violence, as herein defined, then such person shall be sentenced to imprisonment of not less than five years nor more than fifteen years and shall be fined not more than $12,00. The foregoing applicable penalties provided for violation of this section shall be in addition to the penalty provided for the commission of, or attempt to commit, the crime of violence.

(c) In the trial of a person for committing or attempting to commit a crime of violence, as herein defined, the fact that he was armed

> with a firearm, used or attempted to be used, and had no license to carry the same, as required in Title 23, chapter 5 of the Code, shall be evidence of his intention to commit said crime of violence.
>
> (d) As used in this chapter—
>
> (1) "Crime of violence" shall have the same definition as that contained in Title 23, section 451(e) of this Code.
>
> (2) "Machine gun" means any firearm, as defined in Title 23, section 451(d) of this Code, which shoot automatically or semi-automatically more than 12 shots without reloading.
>
> (3) "Sawed-off shotgun" means any firearm, as defined in Title 23, section 451(d) of this Code, designed to fire through a smooth bore either a number of ball shot or a single projectile, the barrel of which is less than 20 inches in length.

Act to increase the penalties for illegal possession of firearms and to establish and increase mandatory minimum sentences therefor, No. 4825, §§ 1-2, Sess. L. 1983, p. 79-80 (1983) (emphasis added); *Gov't of the V.I. v. Waggoner*, Crim. No. 82-154, 1984 WL 1075144 (D.V.I. App. Div. Mar. 26, 1984); Based on a 1985 crime, *Gov't of the V.I. v. Petersen*, Crim. No. 156/1985, 1985 WL 1264049 (V.I. Super. Ct. July 16, 1985) (based on a 1985 crime); *Gov't of the V.I. v. Lima*, 774 F.2d 1245 (3d Cir. 1985) (based on a 1983 crime).

In 1987, section 2253 was amended to read as follows:

> § 2253. Carrying of firearms; openly or concealed; evidence of intent to commit crime of violence; definitions
>
> (a) Whoever, unless otherwise authorized by law, has, possesses, bears, transports or carries either openly or concealed on or about his person, or under his control in any vehicle of any description 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 six months nor more than three years and shall be fined not more than $5,000, except that if such person shall have been convicted of a felony in any such 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 **felony or** crime of violence, as defined in subsection (d) hereof, then such person shall be sentenced to imprisonment of not less than five years nor more than ten years and shall be fined not more than $10,000. The foregoing applicable penalties provided for in violation of this section shall be in addition to the penalty provided for the

commission of, of attempt to commit, the **felony or** crime of violence.

(b) Whoever, unless otherwise authorized by law, has, possesses, bears, transports or carries either openly or concealed on or about his person, or under his control in any vehicle of any description any machine gun or sawed-off shotgun, as defined in subsection (d)(2) and (3) hereof, loaded or unloaded, may be arrested without a warrant, and shall be sentenced to imprisonment of not less than two years nor more than five years and shall be fined not more than $7,000 except that if such a person shall have been convicted of a felony in any state, territory or federal court of the United States, or if such machine gun or sawed-off shotgun or an imitation thereof was held, possessed, borne, transported by or under the proximate control of such person during the commission or attempted commission of a crime of violence, as herein defined, then such person shall be sentenced to imprisonment of not less than five years nor more than fifteen years and shall be fined not more than $12,00. The foregoing applicable penalties provided for violation of this section shall be in addition to the penalty provided for the commission of, or attempt to commit, the crime of violence.

(c) In the trial of a person for committing or attempting to commit a crime of violence, as herein defined, the fact that he was armed with a firearm, used or attempted to be used, and had no license to carry the same, as required in Title 23, chapter 5 of the Code, shall be evidence of his intention to commit said crime of violence.

(d) As used in this chapter—

(1) "Crime of violence" shall have the same definition as that contained in Title 23, section 451(e) of this Code.

(2) "Machine gun" means any firearm, as defined in Title 23, section 451(d) of this Code, which shoot automatically or semi-automatically more than 12 shots without reloading.

(3) "Sawed-off shotgun" means any firearm, as defined in Title 23, section 451(d) of this Code, designed to fire through a smooth bore either a number of ball shot or a single projectile, the barrel of which is less than 20 inches in length.

Act to amend Title 14, Section 2253(a), VIC, to include the commission or attempted commission of a felony therein; to expand the definition of a crime of violence; to make the willful harming or interference with or killing of dogs or horses used by peace officers a criminal offense, No. 5284, §§ 1, Sess. L. 1987, p. 139 (1987) (emphasis added); *Gov't of the V.I. v. Williams*, 23 V.I. 125 (D.V.I. 1987); *Gov't of the V.I. v. Commissiong*, 698 F. Supp. 604 (D.V.I. 1988) (based on a 1988 crime); *Gov't of the V.I. v. Frett*, 684 F. Supp. 1324 (D.V.I. 1988); *Gov't of the V.I. v.*

Commissiong, 706 F. Supp. 1172 (D.V.I. 1989) (based on a 1989 crime); *United States v. Blyden*, 740 F. Supp. 376 (D.V.I. 1990); *Gov't of the V.I. v. Knight*, 26 V.I. 280 (D.V.I. 1991) (based on a 1990 crime); *Gov't of the V.I. v. Etienne*, 810 F. Supp. 659 (D.V.I. 1992) (based on a 1991 crime); *United States v. Xavier*, 2 F.3d 1281 (3d Cir. 1993) (based on a 1992 crime); *Soldiew v. Gov't of the V.I.*, 30 V.I. 112 (D.V.I. 1994) (based on a 1991 crime); *United States v. Bruney*, 30 V.I. 360 (D.V.I. 1994) (based on a 1993 crime); *United States v. Jones*, 994 F.2d 1051 (3d Cir. 1993) (based on a 1992 crime); *Gov't of the V.I. v. Colbourne*, 31 V.I. 22 (V.I. Super. Ct. 1994) (based on a 1992 crime); *Smalls v. Gov't of the V.I.*, 950 F. Supp. 698 (D.V.I. App. Div. 1996) (based on a 1994 crime); *Toussaint v. Gov't of the V.I.*, 36 V.I. 185 (D.V.I. App. Div. 1997) (based on a 1993 crime); *Gov't of the V.I. v. King*, 31 V.I. 78 (V.I. Super. Ct. 1995) (based on a 1994 crime), *Gov't of the V.I. v. Smalls*, 32 V.I. 175 (V.I. Super. Ct. 1995) (based on a 1994 crime); *United States v. McKie*, 112 F.3d 626 (3d Cir. 1997) (based on a 1995 crime); *United States v. Lopez*, 271 F.3d 472 (3d Cir. 2001); *Gov't of the V.I. v. Walters*, 33 V.I. 77, 80 (V.I. Super. Ct. 1996); *Georges v. Gov't of the V.I.*, 119 F. Supp. 2d 514 (D.V.I. App. Div. 2000) (based on a 1994 crime); *Gov't of the V.I. v. Sampson*, 94 F. Supp. 2d 639, 642 n.2 (D.V.I. App. Div. 2000) (based on a 1995 crime); *Francis v. Gov't of the V.I.*, 40 V.I. 150 (D.V.I. App. Div. 1998); *Carillo v. United States*, 995 F. Supp. 587 (D.V.I. 1998) (based on a 1989 crime); *Richardson v. Gov't of the V.I.*, 55 V.I. 1193, 1216 (D.V.I. App. Div. 2011) (based on a 1994 crime); *Gov't of the V.I. v. Richardson*, 513 Fed. Appx. 199 (3d Cir. 2013) (based on a 1994 crime); *Gov't of the V.I. v. Greenidge*, 41 V.I. 200 (D.V.I. App. Div. 1998) (based on a 1996 crime); *Gov't of the V.I. v. Bowen*, 39 V.I. 47 (V.I. Super. Ct. 1998); *Gov't of the V.I. v. Brewer*, 46 V.I. 3 (V.I. Super. Ct. 2001) (based on a 1995 crime).

In 1996, Section 2253 was amended to read as follows:

> § 2253. Carrying of firearms; openly or concealed; evidence of intent to commit crime of violence; definitions
>
> (a) Whoever, unless otherwise authorized by law, has, possesses, bears, transports or carries either**, actually or constructively,** openly or concealed on or about his person, or under his control in any vehicle of any description 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 six months nor more than three years and shall be fined not more than $5,000, except that if such person shall have been convicted of a felony in any such 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 felony or crime of violence, as defined in subsection (d) hereof, then such person shall be sentenced to imprisonment of not less than five years nor more than ten years and shall be fined not more than $10,000. The foregoing applicable penalties provided for in violation of this section shall be in addition to the penalty provided for the commission of, of attempt to commit, the felony or crime of violence.

(b) Whoever, unless otherwise authorized by law, has, possesses, bears, transports or carries either**, actually or constructively,** openly or concealed on or about his person, or under his control in any vehicle of any description any machine gun or sawed-off shotgun, as defined in subsection (d)(2) and (3) hereof, loaded or unloaded, may be arrested without a warrant, and shall be sentenced to imprisonment of not less than two years nor more than five years and shall be fined not more than $7,000 except that if such a person shall have been convicted of a felony in any state, territory or federal court of the United States, or if such machine gun or sawed-off shotgun or an imitation thereof was held, possessed, borne, transported by or under the proximate control of such person during the commission or attempted commission of a crime of violence, as herein defined, then such person shall be sentenced to imprisonment of not less than five years nor more than fifteen years and shall be fined not more than $12,000. The foregoing applicable penalties provided for violation of this section shall be in addition to the penalty provided for the commission of, or attempt to commit, the crime of violence.

(c) In the trial of a person for committing or attempting to commit a crime of violence, as herein defined, the fact that he was armed with a firearm, used or attempted to be used, and had no license to carry the same, as required in Title 23, chapter 5 of the Code, shall be evidence of his intention to commit said crime of violence.

(d) As used in this chapter—

(1) "Crime of violence" shall have the same definition as that contained in Title 23, section 451(e) of this Code.

(2) "Machine gun" means any firearm, as defined in Title 23, section 451(d) of this Code, which shoot automatically or semi-automatically more than 12 shots without reloading.

(3) "Sawed-off shotgun" means any firearm, as defined in Title 23, section 451(d) of this Code, designed to fire through a smooth bore either a number of ball shot or a single projectile, the barrel of which is less than 20 inches in length.

(4) **The term "possession" as used in this section means both actual and constructive possession.**

(5) **"Constructive possession" means having the power and the intention at any given time to exercise dominion or actual control over the firearm either directly or through another person.**

Act to amend Title 23, Section 470, Virgin Islands Code, to remove the twenty-four hour reporting period and to place the burden of proof of compliance upon the firearm possessor; to amend Title 23, Section 475, Virgin Islands Code, to provide for the delivery of firearms surrendered under the provisions of Title 23, Chapter 5, Virgin Islands Code, at any police station in the U.S. Virgin Islands; to amend Title 23, Chapter 5, Virgin Islands Code, by adding a new Section 489 to be entitled "Registration of firearms upon purchase from dealer; registration of firearms transferred from non-dealer"; and to amend Title 14, Section 2253, Virgin Islands Code, to include constructive possession, No. 6123, §§ 4-6, 9, Sess. L. 1996, p. 121-22 (1996) (emphasis added); *United States v. Betancourt*, 116 F.3d 74 (3d Cir. 1997); *United States v. Ubiles*, 224 F.3d 213 (3d Cir. 2000) (based on a 1998 crime); *Gov't of the V.I. v. Lewis*, 620 F.3d 359 (3d Cir. 2010) (based on a 1998 crime); *United States v. Lopez*, 271 F.3d 472 (3d Cir. 2001) (based on a 1999 crime); *United States v. Martinez*, 69 Fed. Appx. 513 (2003) (based on a 1999 crime); *Gov't of the V.I. v. Richardson*, 51 V.I. 449 (D.V.I. App. Div. 2009) (based on a 1999 crime); *Olinsky v. Gov't of the V.I.*, No. 2001-0110, 2004 WL 727363 (D.V.I. App. Div. Mar. 26, 2004) (based on a 2000 crime).

In 2000, section 2253 was amended to read as follows:

> § 2253. Carrying of firearms; openly or concealed; evidence of intent to commit crime of violence; definitions
>
> (a) 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 six months nor more than three **five** years and shall be fined not more than $5,000, except that if such person shall have been convicted of a felony in any such 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 felony or crime of violence, as defined in subsection (d) hereof, then such person shall be sentenced to imprisonment of not less than five years nor more than ten years and shall be fined not more than $10,000. The foregoing applicable penalties provided for in violation of this section shall be in addition to the penalty provided for the commission of, of attempt to commit, the felony or crime of violence.
>
> (b) Whoever, unless otherwise authorized by law, has, possesses, bears, transports or carries either, actually or constructively, openly or concealed any machine gun or sawed-off shotgun, as defined in subsection (d)(2) and (3) hereof, loaded or unloaded, may be arrested without a warrant, and shall be sentenced to imprisonment of not less than two years nor more than five **seven** years and shall be fined not more than $7,000 except that if such a person shall have been convicted of a felony in any

> state, territory or federal court of the United States, or if such machine gun or sawed-off shotgun or an imitation thereof was held, possessed, borne, transported by or under the proximate control of such person during the commission or attempted commission of a crime of violence, as herein defined, then such person shall be sentenced to imprisonment of not less than five years nor more than fifteen years and shall be fined not more than $12,000. The foregoing applicable penalties provided for violation of this section shall be in addition to the penalty provided for the commission of, or attempt to commit, the crime of violence.
>
> (c) In the trial of a person for committing or attempting to commit a crime of violence, as herein defined, the fact that he was armed with a firearm, used or attempted to be used, and had no license to carry the same, as required in Title 23, chapter 5 of the Code, shall be evidence of his intention to commit said crime of violence.
>
> (d) As used in this chapter—
>
> (1) "Crime of violence" shall have the same definition as that contained in Title 23, section 451(e) of this Code.
>
> (2) "Machine gun" means any firearm, as defined in Title 23, section 451(d) of this Code, which shoot automatically more than 12 shots without reloading.
>
> (3) "Sawed-off shotgun" means any firearm, as defined in Title 23, section 451(d) of this Code, designed to fire through a smooth bore either a number of ball shot or a single projectile, the barrel of which is less than 20 inches in length.
>
> (4) The term "possession" as used in this section means both actual and constructive possession.
>
> (5) "Constructive possession" means having the power and the intention at any given time to exercise dominion or actual control over the firearm either directly or through another person.

Act to amend Title 23, Section 1862, Virgin Islands Code, to increase the mandatory minimum penalties for armed robbery from 3 years to 7 years and to increase the maximum penalties for the possession of an unlicensed firearm, No. 6356, § 1, Sess. L. 2000, p. 106 (2000) (emphasis added); *United States v. Thomas*, 74 Fed. Appx. 189 (3d Cir. 2003) (based on a 2001 crime); *Gov't of the V.I. v. Ali*, 45 V.I. 164 (V.I. Super. Ct. 2003) (based on a 2001 crime); *Gov't of the V.I. v. Olinsky*, 119 Fed. Appx. 405 (3d Cir. 2005) (based on a 2001 crime); *Gumbs v. People*, D.C. Crim. App. No. 2003-14, 2010 WL 2851585 (D.V.I. App. Div. July 19, 2010) (based on a 2001 crime).

In 2001 section 2253 was amended to read as follows:

> § 2253. Carrying of firearms; openly or concealed; evidence of intent to commit crime of violence; definitions

(a) 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 six months nor more than five years and shall be fined not more than $5,000 **$15,000**, except that if such person shall have been convicted of a felony in any such 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 felony or crime of violence, as defined in subsection (d) hereof, then such person shall be sentenced to imprisonment of not less than five years nor more than ten years and shall be fined not more than $10,000 **shall be fined $25,000 and imprisoned not less than fifteen (15) years nor more than twenty (20) years**. The foregoing applicable penalties provided for in violation of this section shall be in addition to the penalty provided for the commission of, of attempt to commit, the felony or crime of violence.

(b) Whoever, unless otherwise authorized by law, has, possesses, bears, transports or carries either, actually or constructively, openly or concealed any machine gun or sawed-off shotgun, as defined in subsection (d)(2) and (3) hereof, loaded or unloaded, may be arrested without a warrant, and shall be sentenced to imprisonment of not less than two years nor more than seven years and shall be fined not more than $7,000 **$25,000** except that if such a person shall have been convicted of a felony in any state, territory or federal court of the United States, or if such machine gun or sawed-off shotgun or an imitation thereof was held, possessed, borne, transported by or under the proximate control of such person during the commission or attempted commission of a crime of violence, as herein defined, then such person shall be sentenced to imprisonment of not less than five years nor more than fifteen years and shall be fined not more than $12,000 **shall be fined $50,000 and imprisoned not less than fifteen (15) years nor more than twenty (20) years**. The foregoing applicable penalties provided for violation of this section shall be in addition to the penalty provided for the commission of, or attempt to commit, the crime of violence.

(c) In the trial of a person for committing or attempting to commit a crime of violence, as herein defined, the fact that he was armed with a firearm, used or attempted to be used, and had no license to carry the same, as required in Title 23, chapter 5 of the Code,

> shall be evidence of his intention to commit said crime of violence.
>
> (d) As used in this chapter—
>
> (1) "Crime of violence" shall have the same definition as that contained in Title 23, section 451(e) of this Code.
>
> (2) "Machine gun" means any firearm, as defined in Title 23, section 451(d) of this Code, which shoot automatically more than 12 shots without reloading.
>
> (3) "Sawed-off shotgun" means any firearm, as defined in Title 23, section 451(d) of this Code, designed to fire through a smooth bore either a number of ball shot or a single projectile, the barrel of which is less than 20 inches in length.
>
> (4) The term "possession" as used in this section means both actual and constructive possession.
>
> (5) "Constructive possession" means having the power and the intention at any given time to exercise dominion or actual control over the firearm either directly or through another person.

Act to amend titles 14 and 23 and title 33, section 3501 a, Virgin Islands Code, to enact the Virgin Islands Gun Control Act of 2001, and for other related purposes, No. 6493, § 1, Sess. L. 2001, p. 394-95 (2001) (emphasis added); *Gov't of the V.I. v. Ashby*, 45 V.I. 54 (V.I. Super Ct. 2002) (based on a 2002 crime); *United States v. McIntosh*, 289 F. Supp. 2d 672 (D.V.I. 2003) (based on a 2002 crime); *Gov't of the V.I. v. Isaac*, 45 V.I. 334 (V.I. Super. Ct. 2004) (based on a 2002 crime); *United States v. McIntosh*, 229 F. Supp. 2d 431 (D.V.I. 2002) (based on a 2002 crime); *United States v. Sobratti*, 70 Fed. Appx. 73 (3d Cir. 2003) (based on a 2003 crime*); Gov't of the V.I. v. Fahie*, 419 F.3d 249 (3d Cir. 2005) (based on a 2001 crime); *Gov't of the V.I. v. Isaac*, Crim. A. 2004-91, 2005 WL 1353380 (D.V.I. App. Div. Apr. 26, 2005) (based on a 2002 crime); *Toussaint v. Gov't of the V.I.*, 45 V.I. 455 (D.V.I. App. Div. 2004); *Hunt v. Gov't of the V.I.*, 46 V.I. 534 (D.V.I. App. Div. 2005); *Alcindor v. Gov't of the V.I.*, D.C. Crim. App. No. 2004/84, 2006 WL 3526753, (D.V.I. App. Div. Nov. 28, 2006) (unpublished) (based on a 2002 crime); *People v. Nibbs*, 48 V.I. 19 (V.I. Super. Ct. 2006) (based on a 2005 crime); *Thomas v. Gov't of the V.I.*, 49 V.I. 569, (D.V.I. App. Div. 2007) (based on a 2002 crime); *Turbe v. Gov't of the V.I.*, 49 V.I. 730, (D.V.I. App. Div. 2008) (based on a 2002 crime); *Monsanto v. Gov't of the V.I.*, 52 V.I. 528, 531 (D.V.I. App. Div. 2009) (based on a 2002 crime); *Gov't of the V.I. v. Henry*, 232 Fed. Appx. 170 (3d Cir. 2007) (based on a 2003 crime); *Gov't of the V.I. v. Turbe*, 304 Fed. Appx. 76 (3d Cir. 2008) (based on a 2003 crime); *Smith v. Gov't of the V.I.*, 50 V.I. 411, (D.V.I. App. Div. 2008) (based on a 2003 crime); *People v. Samuel*, 46 V.I. 177 (V.I. Super. Ct. 2005) (based on a 2004 crime); *Virgin Islands v. Belardo*, 385 Fed. Appx. 149 (3d Cir. June 30, 2010) (unpublished) (based on a 2004 crime); *Belardo v. People*, 51 V.I. 799 (D.V.I. App. Div. 2009) (based on a 2004 crime); *People v. Hendrickson*, 48 V.I. 186 (V.I. Super. Ct. 2007); *United States v. Blake* (*Karen Blake*), Crim. No. 2006-0030, 2009 WL 1124957 (D.V.I. Apr. 24, 2009) (based on a 2005 crime); *United States v. Blake* (*Zacheaus Blake*), Crim. No. 2006-0030, 2009 WL 1152273 (D.V.I. Apr. 29, 2009) (based on a 2005 crime); *Gov't of the V.I. v. Gumbs*, 426 Fed. Appx. 90, 93 (3d Cir. 2011) (based on a 2005 conviction).

Section 2253 was amended in 2005 as part of the Omnibus Justice Act of 2005 and read as follows:

> § 2253. Carrying of firearms; openly or concealed; evidence of intent to commit crime of violence; definitions
>
> (a) 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 six months **one year** nor more than five years and shall be fined **not less than $5,000 nor more than** $15,000, except that if such person shall have been convicted of a felony in any such 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 felony or 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 applicable penalties provided for in violation of this section shall be in addition to the penalty provided for the commission of, of attempt to commit, the felony or crime of violence.
>
> (b) Whoever, unless otherwise authorized by law, has, possesses, bears, transports or carries either, actually or constructively, openly or concealed any machine gun or sawed-off shotgun, as defined in subsection (d)(2) and (3) hereof, loaded or unloaded, may be arrested without a warrant, and shall be sentenced to imprisonment of not less than two years nor more than seven years and shall be fined $25,000 except that if such a person shall have been convicted of a felony in any state, territory or federal court of the United States, or if such machine gun or sawed-off shotgun or an imitation thereof was held, possessed, borne, transported by or under the proximate control of such person during the commission or attempted commission of a crime of violence, as herein defined, then such person shall be fined $50,000 and imprisoned not less than fifteen (15) years nor more than twenty (20) years. The foregoing applicable penalties provided for violation of this section shall be in addition to the penalty provided for the commission of, or attempt to commit, the crime of violence.
>
> (c) In the trial of a person for committing or attempting to commit a crime of violence, as herein defined, the fact that he was armed with a firearm, used or attempted to be used, and had no license

> to carry the same, as required in Title 23, chapter 5 of the Code, shall be evidence of his intention to commit said crime of violence.
>
> (d) As used in this chapter—
>
> (1) "Crime of violence" shall have the same definition as that contained in Title 23, section 451(e) of this Code.
>
> (2) "Machine gun" means any firearm, as defined in Title 23, section 451(d) of this Code, which shoot automatically more than 12 shots without reloading.
>
> (3) "Sawed-off shotgun" means any firearm, as defined in Title 23, section 451(d) of this Code, designed to fire through a smooth bore either a number of ball shot or a single projectile, the barrel of which is less than 20 inches in length.
>
> (4) The term "possession" as used in this section means both actual and constructive possession.
>
> (5) "Constructive possession" means having the power and the intention at any given time to exercise dominion or actual control over the firearm either directly or through another person.

The omnibus justice act of 2005, No. 6730, § 26, Sess. L. 2005, p. 106 (2005) (emphasis added); *Williams v. Gov't of the V.I.*, 54 V.I. 88 (D.V.I. App. Div. 2011) (based on a July 22, 2005 crime); *United States v. Bell*, Crim. No. 2008-0003, 2008 WL 1984069 (D.V.I. May 5, 2008) (based on a 2007 crime); *United States v. Lewis*, Crim. No. 2008-21, 2008 WL 2625633 (D.V.I. July 3, 2008) (based on a 2008 crime); *United States v. Walters*, Crim. No. 2008-31, 2008 WL 2740398 (D.V.I. July 15, 2008) (based on a 2008 crime); *United States v. Tyson*, Crim. No. 2008-49, 2009 WL 81394, (D.V.I. Jan. 8, 2009) (based on a 2008 crime); *United States v. Tyson*, Crim. No. 2008-49, 2009 WL 89990, (D.V.I. Jan. 13, 2009) (based on a 2008 crime); *S.T. v. People*, 51 V.I. 420 (V.I. 2009) (based on a 2007 crime); *Gov't of the V.I. v. Turbe*, 304 Fed. Appx. 76 (3d Cir. 2008) (based on a 2003 crime); *People v. Austrie*, Crim. No. ST-08-CR-370, 2009 WL 8391642 (V.I. Super. Ct. Sept. 21, 2009) (based on a 2008 crime); *United States v. Nadal*, 354 Fed. Appx. 729 (3d Cir. 2009) (based on a 2008 crime); *Gov't of the V.I. v. Smith*, 363 Fed. Appx. 177, (3d Cir. 2010) (based on a 2003 crime); *People v. James*, 54 V.I. 45 (V.I. Super. Ct. 2010) (based on a 2007 crime); *People v. Frett*, 55 V.I. 297 (V.I. Super. Ct. 2011) (based on a 2008 crime); *United States v. Tyson*, 653 F.3d 192 (3d Cir. 2011) (based on crimes occurring in 2007 and 2008); *People v. Clarke*, 55 V.I. 473 (V.I. 2011) (based on a 2008 crime); *Nicholas v. People*, 56 V.I. 718 (V.I. 2012) (based on a 2005 crime); *Audain v. Gov't of the V.I.*, D.C. Crim. App. 2006-0046, 2014 WL 69027 (D.V.I. App. Div. 2014) (based on a 2005 crime); *People v. Matthew*, 49 V.I. 285 (V.I. Super. Ct. 2008) (based on a 2007 crime); *United States v. Tyson*, 52 V.I. 724 (D.V.I. 2009) (based on a 2008 crime); *People v. Lima*, No. ST-08-CR-F437, 2011 WL 833619 (V.I. Super. Ct. Mar. 3, 2011) (based on a 2008 crime); *United States v. Hodge*, Crim. No. 09-24, 2009 WL 2170052 (D.V.I. July 20, 2009) (based on a 2009 crime).

In 2009, section 2253 was amended to read as follows:

§ 2253. Carrying of firearms; openly or concealed; evidence of intent to commit crime of violence; definitions

(a) 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, except that if such person shall have been convicted of a felony in any such 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 felony or 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 applicable penalties provided for in violation of this section shall be in addition to the penalty provided for the commission of, of attempt to commit, the felony or crime of violence.

(b) Whoever, unless otherwise authorized by law, has, possesses, bears, transports or carries either, actually or constructively, openly or concealed any machine gun or sawed-off shotgun, as defined in subsection (d)(2) and (3) hereof, loaded or unloaded, may be arrested without a warrant, and shall be sentenced to imprisonment of not less than two years nor more than seven years and shall be fined $25,000 except that if such a person shall have been convicted of a felony in any state, territory or federal court of the United States, or if such machine gun or sawed-off shotgun or an imitation thereof was held, possessed, borne, transported by or under the proximate control of such person during the commission or attempted commission of a crime of violence, as herein defined, then such person shall be fined $50,000 and imprisoned not less than fifteen (15) years nor more than twenty (20) years. The foregoing applicable penalties provided for violation of this section shall be in addition to the penalty provided for the commission of, or attempt to commit, the crime of violence.

(c) In the trial of a person for committing or attempting to commit a crime of violence, as herein defined, the fact that he was armed with a firearm, used or attempted to be used, and had no license to carry the same, as required in Title 23, chapter 5 of the Code, shall be evidence of his intention to commit said crime of violence.

(d) As used in this chapter—

(1) "Crime of violence" shall have the same definition as that contained in Title 23, section 451(e) of this Code.
(2) "Machine gun" means any firearm, as defined in Title 23, section 451(d) of this Code, which shoot automatically more than 12 shots without reloading.
(3) "Sawed-off shotgun" means any firearm, as defined in Title 23, section 451(d) of this Code, designed to fire through a smooth bore either a number of ball shot or a single projectile, the barrel of which is less than 20 inches in length.
(4) The term "possession" as used in this section means both actual and constructive possession.
(5) "Constructive possession" means having the power and the intention at any given time to exercise dominion or actual control over the firearm either directly or through another person.
(6) **"Assault weapon" means any firearm as defined in title 23, chapter 5, section 451(d) of this Code which will, with a single pull of the trigger, discharge ammunition until the trigger, or other activating released is released or until the ammunition is expended.**
(7) **"Automatic weapon" means any firearm, as defined in title 23, chapter 5, section 451(d) of this Code which has the capacity to fire one shot with each pull of the trigger without manually reloading.**
(8) **"Semi-Automatic weapon" means any firearm, as defined in title 23, chapter 5, section 451(d) of this Code which has the capacity to fire one shot with each pull of the trigger without manually reloading.**
(9) **"Conversion kit" means any part or combination of parts designed and intended for use in converting any firearm into an automatic weapon and any combination of parts from which an automatic weapon can be assembled if the parts are in the possession or under the control of a person.**

(e) **Whoever, unless otherwise authorized by law, has possesses, bears, transport [sic] or carries, either openly or concealed, on or about his person, or under his control in any vehicle of any description any firearm as defined in title 23 chapter 5, section 451(d) of this code, or any weapon that can be converted into an automatic weapon as defined in title 23, chapter 5, section 451(h) and a conversion kit, loaded or unloaded, may be arrested without warrant, and shall be sentenced to imprisonment of not less than 10 years nor**

> **more than 20 years and shall be fined not more than $25,000, except that if such person has been convicted of a felony in any state, territorial or federal court of the United States, or if the automatic weapon or an imitation thereof was held, possessed, borne, transported 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)(1), then such person shall be subject to have the crime committed reclassified and a prison sentence imposed as follows:**
>
> (1) **In the case of commission of a felony in the first degree, a life sentence;**
>
> (2) **In the case of commission [sic] a felony of the second degree, to felony of a first degree and a minimum sentence of 20 years; and**
>
> (3) **In the case of commission of a felony of the third degree, to a felony of the second degree a minimum of 10 years.**
>
> (f) **Whoever, unless authorized by law, has possesses, bears, transports or carries, either openly or concealed, on or about his person, or under his control in any vehicle, of any description, any assault weapon as defined in subsection (d), or any weapon that can be converted along with the conversion kit, loaded or unloaded within one hundred feet of the real property comprising a public or private elementary, junior, secondary or vocational school or a public or private college, junior college, or university or a playground or a housing facility owned by a public housing authority or within one hundred feet of a public or private youth center or private youth center or public swimming pool or public beach, is subject to twice the maximum punishment prescribed in subsections (a) and (b) of this section and section 2256(a) and (b) of this chapter.**

An Act amending title 14 Virgin Islands Code, Chapter 113, and Title 23 Virgin Islands Code, Chapter 5 to prohibit the unlawful possession of automatic weapons, No. 7091, §§ 1-2, Sess. L. 2009, p. 157-58 (2009); *People v. Phillip*, 53 V.I. 25 (V.I. Super. Ct. 2010) (based on a 2008 crime); *United States v. Mike*, 655 F.3d 167 (3d Cir. 2011) (based on a 2008 crime); *Smith v. People*, 55 V.I. 957 (V.I. 2011) (based on a April 23, 2009 crime); *People v. Matthew*, 55 V.I. 380 (V.I. Super. Ct. 2011) (based on a 2009 crime); *Hightree v. People*, 55 V.I. 947 (2011) (based on a November 24, 2009 crime); *Augustine v. People*, 55 V.I. 678 (V.I. 2011) (based on a 2008 crime); *Merrifield v. People*, 56 V.I. 769 (V.I. 2012) (based on a 2008 crime); *United States v. Graham*, 418 Fed. Appx. 158 (3d Cir. 2011) (based on a 2009 crime); *United States v. Fox*, Crim. No. 10-cr-48, 2011 WL 841315 (D.V.I. Mar. 8, 2011) (based on a 2010 crime); *United States v. Bell*, Crim. No. 10-cr-50, 2011 WL 2679120 (D.V.I. June 30, 2011) (based on a 2010 crime); *People v. Morton*, 55 V.I. 428 (V.I. Super. Ct. 2011); *United States v. Berrios*, 676 F.3d 118 (3d Cir. 2012)

(based on a 2004 crime); *Charles v. People*, 57 V.I. 769 (D.V.I. App. Div. 2012) (based on a 2005 crime) (based on a 2010 crime); *Williams v. People*, 56 V.I. 821, n.5 (V.I. 2012) (based on a 2008 crime); *Ambrose v. People*, 56 V.I. 99 (V.I. 2012) (based on a 2008 crime); *Alfred v. People*, 56 V.I. 286 (V.I. 2012) (based on a 2010 crime); *Fontaine v. People*, 56 V.I. 660 (V.I. 2012) (based on a August 14, 2009 crime); *People v. Murrell*, 56 V.I. 796 (V.I. 2012) (based on a 2010 crime); *People v. Faulkner*, 57 V.I. 327 (V.I. 2012) (based on a 2011 crime); *People v. Thompson*, 57 V.I. 342 (V.I. 2012) (based on a 2011 crime); *United States v. Xavier*, 483 Fed. Appx. 754, 757 (3d Cir. 2012) (based on a 2008 crime); *Billu v. People*, 57 V.I. 455 (V.I. 2012) (based on a 2009 crime); United States v. Fontaine, 697 F.3d 221, 226 (3d Cir. 2012) (based on a 2009 crime); *United States v. Gerard*, 507 Fed. Appx. 218 (3d Cir. 2012) (based on a 2009 crime); *People v. Simmonds*, 56 V.I. 84 (V.I. Super. Ct. 2012) (based on a 2009 crime); *People v. Morton*, 57 V.I. 72, 81 (V.I. Super. Ct. 2012) (based on a 2009 crime); *People v. Ambrose*, ST-09-CR-418, 2013 WL 5461150 (V.I. Super. Ct. Sept. 20, 2013) (based on a 2009 crime); *James v. People*, 59 V.I. 866 (V.I. 2013) (based on a 2009 crime); *People v. Browne*, Case No. SX-10-CR-059, 2013 WL 2996442 (V.I. Super. Ct. June 7, 2013) (based on a 2009 crime); *Tyson v. People*, 59 V.I. 391 (V.I. 2013) (based on a 2010 crime); *Thomas v. People*, 60 V.I. 183 (V.I. 2013) (based on a 2009 crime);*James v. People*, 60 V.I. 311 (V.I. 2013) (based on a 2009 crime); *Cascen v. People*, 60 V.I. 392 (V.I. 2014) (based on a 2008 crime); *United States v. Lewis*, 50 V.I. 995 (D.V.I. 2008); *United States v. Xavier*, 2008-018, 2013 WL 3993027 (D.V.I. Aug. 2, 2013) (based on a 2008 crime); *People v. Estick*, SX-09-CR-376, 2013 WL 4521682 (V.I. Super. Ct. Aug. 14, 2013) (based on a 2009 crime); *Tyson v. People*, 59 V.I. 539 (V.I. 2013) (based on a 2010 crime); *Todman v. People*, 59 V.I. 675 (V.I. 2013) (based on a 2009 crime); *Morton v. People*, 59 V.I. 660 (V.I. 2013) (based on a 2009 crime); *Fontaine v. People*, 59 V.I. 640 (V.I. 2013) (based on a 2009 crime); *United States v. Garvey*, Crim. No. 2010-009, 2013 WL 2986771 (D.V.I. June 13, 2013) (based on a 2009 crime); *People v. Faucher*, SX-10-CR-60, 2013 WL 3977777, at *7 (V.I. Super. Ct. July 31, 2013) (based on a 2010 crime); *Joseph v. People*, 60 V.I. 338 (V.I. 2013) (based on a 2011 crime); *Percival v. People*, 62 V.I. 477 (V.I. 2015) (based on a 2011 crime); *Estick v. People*, 62 V.I. 604 (V.I. 2015) (based on a 2009 crime); *People v. Magras*, 54 V.I. 3, (V.I. Super. Ct. 2010) (based on a 2009 crime); *United States v. Bell*, 418 Fed. Appx. 115 (3d Cir. 2011) (based on a 2008 crime); *United States v. Turnbull*, Crim. No. 10-cr-38, 2011 WL 578831 (D.V.I. Feb. 9, 2011) (based on a 2010 crime); *United States v. Nelson*, 483 Fed. Appx. 677, 679 (3d Cir. 2012) (based on a 2010 crime); *United States v. Lima*, Crim. No. 2012-010, 2012 WL 4371830 (D.V.I. Sept. 25, 2012) (based on a 2012 crime); *United States v. Elmes*, Crim. No. 2012-005, 2012 WL 4854771 (D.V.I. Oct. 12, 2012) (based on a 2012 crime); *People v. Ambrose*, SX-09-CR-418, 2013 WL 5461150, (V.I. Super. Ct. Sept. 20, 2013) (based on a 2009 crime); *Phillip v. People*, 58 V.I. 569 (V.I. 2013) (based on a 2010 crime); *Simmonds v. People*, 59 V.I. 480 (V.I. 2013) (based on a 2010 crime); *People v. Yarwood*, 58 V.I. 61 (V.I. Super. CT. 2013) (based on a 2011 crime); *People v. Lewis*, Crim. No. ST-12-CR-544, 2013 WL 3185912 (V.I. Super. Ct. June 18, 2013) (based on a 2012 crime); *People v. Potter*, Crim. No. ST-11-CR-474, 2013 WL 3818501 (V.I. Super. Ct. July 18, 2013) (based on a 2011 crime); *People v. Faucher*, Case No. SX-10-CR-60, 2013 WL 4522023 (V.I. Super. Ct. Aug. 19, 2013) (based on a 2010 crime); *United States v. Harper*, Crim. No. 2011-004, 2014 WL 3708071, (D.V.I. July 25, 2014) (based on a 2010 crime); *Canton v. People*, 61 V.I. 511 (V.I. 2014) (based on a 2009 crime); *People v. Isaac*, ST-10-CR-614, 2011 WL 4703076 (V.I. Super. Ct. Mar. 8, 2011) (based on a 2010 crime); *Woodrup v. People*, 63 V.I. 696 (V.I. 2015) (based on a 2010 crime); *Gov't of the V.I. v. Audain*, 596 Fed.

Appx. 97 (3d Cir. 2014) (based on a 2005 crime); *People v. Turnbull*, 61 V.I. 46 (V.I. Super. Ct. 2014) (based on a 2011 crime); *People v. Turnbull*, Case No. SX-11-CR-832, 2014 WL 3974537 (V.I. Super. Ct. June 23, 2014) (based on a 2011 crime); *United States v. Wrensford*, Crim. No. 2013-0003, 2014 WL 7928389 (D.V.I. Feb. 26, 2014) (based on a 2013 crime); *United States v. Louis*, 596 Fed. Appx. 167 (3d Cir. 2015) (based on a 2011 crime); *United States v. Wrensford*, Crim. No. 2013-0003, 2014 WL 3907021 (D.V.I. Aug. 11, 2014) (based on a 2012 crime);*United States v. Wrensford*, Crim. No. 2013-0003, 2014 WL 3715036 (D.V.I. July 28, 2014) (based on a 2012 crime); *United States v. Wrensford*, Crim. No. 2013-0003, 2014 WL 4552091 (D.V.I. Sept. 15, 2014) (based on a 2012 crime); *United States v. Carino*, 596 Fed. Appx. 88 (3d Cir. 2014) (based on a 2009 crime); *United States v. Bailey*, Crim. No. 2014-054, 2015 WL 327198 (D.V.I. Jan. 23, 2015) (based on a 2014 crime); *People v. Heath*, 63 V.I. 80 (V.I. Super. Ct. 2015) (based on a 2014 crime); *Pickering v. People*, __ V.I. __, 2016 WL 748900 (V.I. Feb. 25, 2016) (based on a 2011 crime); *Fahie v. People*, 62 V.I. 625, 632 (V.I. 2015) (based on a 2011 crime); *Heywood v. People*, S. Ct. Crim. No. 2013-0100, 2015 WL 9304608 (V.I. Dec. 21, 2015) (based on a 2012 crime); *Woodrup v. Gov't of the V.I.*, ST-16-MC-47, 2016 WL 4578952 (V.I. Super. Ct. Aug. 26, 2016) (based on a 2012 crime); *Velazquez v. People*, S. Ct. Crim. No. 2015-0080, 2016 WL 4442558 (V.I. Aug. 22, 2016) (based on a 2012 crime); *People v. Charles*, ST-13-CR-194, 2014 WL 797857 (V.I. Super. Ct. Feb. 26, 2014) (based on a 2013 crime).

In 2013, section 2253 was amended to read as follows:

> § 2253. Carrying of firearms; openly or concealed; evidence of intent to commit crime of violence; definitions
>
> (a) 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, except that if such person shall have been convicted of a felony in any such 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 felony or 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 applicable penalties provided for in violation of this section shall be in addition to the penalty provided for the commission of, of attempt to commit, the felony or crime of violence.
>
> (b) Whoever, unless otherwise authorized by law, has, possesses, bears, transports or carries either, actually or constructively, openly or concealed any machine gun or sawed-off shotgun, as defined in subsection (d)(2) and (3) hereof, loaded or unloaded, may be arrested without a warrant, and shall be sentenced to

imprisonment of not less than two years nor more than seven years and shall be fined $25,000 except that if such a person shall have been convicted of a felony in any state, territory or federal court of the United States, or if such machine gun or sawed-off shotgun or an imitation thereof was held, possessed, borne, transported by or under the proximate control of such person during the commission or attempted commission of a crime of violence, as herein defined, then such person shall be fined $50,000 and imprisoned not less than fifteen (15) years nor more than twenty (20) years. The foregoing applicable penalties provided for violation of this section shall be in addition to the penalty provided for the commission of, or attempt to commit, the crime of violence.

(c) In the trial of a person for committing or attempting to commit a crime of violence, as herein defined, the fact that he was armed with a firearm, used or attempted to be used, and had no license to carry the same, as required in Title 23, chapter 5 of the Code, shall be evidence of his intention to commit said crime of violence.

(d) As used in this chapter—

(1) "Crime of violence" shall have the same definition as that contained in Title 23, section 451(e) of this Code.

(2) "Machine gun" means any firearm, as defined in Title 23, section 451(d) of this Code, which shoot automatically more than 12 shots without reloading.

(3) "Sawed-off shotgun" means any firearm, as defined in Title 23, section 451(d) of this Code, designed to fire through a smooth bore either a number of ball shot or a single projectile, the barrel of which is less than 20 inches in length.

(4) The term "possession" as used in this section means both actual and constructive possession.

(5) "Constructive possession" means having the power and the intention at any given time to exercise dominion or actual control over the firearm either directly or through another person.

(6) "Assault weapon" means any firearm as defined in title 23, chapter 5, section 451(d) of this Code which will, with a single pull of the trigger, discharge ammunition until the trigger, or other activating released is released or until the ammunition is expended.

(7) "Automatic weapon" means any firearm, as defined in title 23, chapter 5, section 451(d) of this Code which has the capacity to fire one shot with each pull of the trigger without manually reloading.

(8) "Semi-Automatic weapon" means any firearm, as defined in title 23, chapter 5, section 451(d) of this Code which has the capacity to fire one shot with each pull of the trigger without manually reloading.

(9) "Conversion kit" means any part or combination of parts designed and intended for use in converting any firearm into an automatic weapon and any combination of parts from which an automatic weapon can be assembled if the parts are in the possession or under the control of a person.

(e) Whoever, unless otherwise authorized by law, has possesses, bears, transport [sic] or carries, either openly or concealed, on or about his person, or under his control in any vehicle of any description any firearm as defined in title 23 chapter 5, section 451(d) of this code, or any weapon that can be converted into an automatic weapon as defined in title 23, chapter 5, section 451(h) and a conversion kit, loaded or unloaded, may be arrested without warrant, and shall be sentenced to imprisonment of not less than 10 years nor more than 20 years and shall be fined not more than $25,000, except that if such person has been convicted of a felony in any state, territorial or federal court of the United States, or if the automatic weapon or an imitation thereof was held, possessed, borne, transported 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)(1), then such person shall be subject to have the crime committed reclassified and a prison sentence imposed as follows:

(1) In the case of commission of a felony in the first degree, a life sentence;

(2) In the case of commission [sic] a felony of the second degree, to felony of a first degree and a minimum sentence of 20 years; and

(3) In the case of commission a felony of the third degree, to a felony of the second degree a minimum of 10 years.

(f) Whoever, unless authorized by law, has possesses, bears, transports or carries, either openly or concealed, on or about his person, or under his control in any vehicle, of any description, **any firearm as defined in title 23, section 451(d) of this code and** any assault weapon as defined in subsection (d), or any weapon that can be converted along with the conversion kit, loaded or unloaded within one hundred thousand feet of the real property comprising a public or private elementary, junior, secondary or vocational school or a public or private college, junior college, or university or a playground or a housing facility

> owned by a public housing authority or within one hundred feet of a public or private youth center**, school bus stop** or private youth center[3] **public or private senior citizen center** or public swimming pool or public beach, is subject to twice the maximum punishment prescribed in subsections (a) and (b) of this section and section 2256(a) and (b) of this chapter.

An Act to expand the perimeter within which it is a violation to carry an unlicensed firearm from 100 feet to 1,000 feet and for other purposes, No. 7520, § 1, Sess. L. 2013, p. 122 (2013) (emphasis added); *United States v. Abdallah*, Crim. No. 2014-010, 2015 WL 327388 (D.V.I. Jan. 26, 2015) (based on a 2013 crime); *United States v. Murrell*, 633 Fed. Appx. 574 (3d Cir. 2016); *United States v. Wrensford*, Crim. No. 2013-0003, 2015 WL 77440336 (D.V.I. Nov. 30, 2015) (based on a 2012 crime); *People v. Prentice*, Case No. SX-14-CR-274, 2016 WL 1254421 (V.I. Super. Ct. Feb. 23, 2016); *United States v. Wesselhoft*, Crim. No. 2015-0036, 2016 WL 3212483 (D.V.I. Mar. 4, 2016) (based on a 2015 crime); *People v. Looby*, ST-16-CR-141, 2016 WL 4443695 (V.I. Super. Ct. 2016) (based on a 2016 crime); *People v. Hodge*, ST-16-CR-30, 2016 WL 4501610 (V.I. Super. Ct. 2016) (based on a 2016 crime); *People v. Schulterbrandt*, Case No. ST-16-CR-F34, 2016 WL 4485708 (V.I. Super. Ct. Aug. 22, 2016) (based on a 2016 crime); *People v. George*, Case No. ST-16-CR-85, 2016 WL 4681164 (V.I. Super. Ct. Sept. 6, 2016) (based on a 2016 crime); *People v. Cannergeiter*, Case No. SX-15-CR-400, 2016 WL 5468374 (V.I. Super. Ct. Sept. 29, 2016) (based on a 2015 crime); *United States v. Carino*, Crim. No. 2016-0008, 2016 WL 6023099 (D.V.I. Oct. 13, 2016) (based on a 2015 crime); *United States v. Nisbett*, Crim. No. 2016-11, 2017 WL 125015 (D.V.I. Jan. 11, 2017); *United States v. Santiago*, Crim. No. 2016-17, 2017 WL 187152 (D.V.I. Jan. 16, 2017) (based on a 2016 crime).

14 V.I.C. § 2254

Section 2254 of the 1957 Code, "Licensing of concealable firearms," provided as follows:

> The Commissioner of Public Safety may license any person to carry or possess a pistol revolver.

This provision was also based on section 4 of chapter 12 of the 1921 codes, the remainder of which was the basis for section 2253. This section was repealed in 1968. Act to amend Chapter 5, Title 23 of the Virgin Islands Code, relating to the control of firearms and ammunition, and for other purposes, No. 2279, § 2, Sess. L. 1968, p. 224 (1968).

In 1974, Act No. 3566 "amended" section 2254 to read as follows:

> § 2254. Minimum sentence; no probation or parole
>
> A person convicted pursuant to subsections (a) or (b) of section 2253 hereof of having, possessing, bearing, transporting or carrying or having under his proximate control of a firearm, or imitation thereof, during the commission or attempted commission of a crime of violence, as defined in section 2253(d)(1), or convicted

[3] Act 7520 indicates that the phrase "or private youth center, church or place of worship" should be struck. However, the language "church or place of worship" does not exist in the section.

> pursuant to section 2251 hereof of having, possessing, bearing, transporting, carrying or having under his proximate control a deadly or dangerous weapon as therein described, during the commission or attempted commission of a crime of violence, shall be incarcerated for a term of imprisonment of not less than one-half of the maximum sentence specified in the particular section. Imposition or execution of this minimum period of incarceration shall not be suspended, nor shall probation be granted; neither shall parole or any other form of release be granted for this minimum period of incarceration.

Act to amend Title 14, Chapter 113, and Title 23, Chapter 5, Virgin Islands Code, pertaining to the definition of certain weapons and the penalties for possession of said weapons, No. 3566, § 4, Sess. L. 1974, p. 101 (1974); *Gov't of the V.I. v. Carino*, 631 F.2d 226 (3d Cir. 1980).

In 1983, section 2254 was repealed and a new section 2254 was enacted in its place, which read as follows:

> § 2254. Minimum sentence; no probation or parole
> (a) A person convicted pursuant to section 2251 of this chapter of having, possessing, bearing, transporting, carrying or having under his proximate control a deadly or dangerous weapon as therein described during the commission or attempted commission of a crime of violence shall be incarcerated for a term of imprisonment of not less than one-half of the maximum sentence specified in that section.
> (b) Notwithstanding any provision of law, with respect to a person convicted pursuant to section 2251 of this chapter of having, possessing, bearing, transporting, carrying or having under his proximate control a deadly or dangerous weapon as therein described, curing the commission or attempted commission of a crime of violence, and with respect to a person convicted pursuant to subsection (a) or (b) of section 2253 of this chapter, adjudication of gilt or imposition of sentence shall not be suspended, deferred, or withheld, nor shall such person be eligible for probation, parole, or any other form of release prior to serving the mandatory minimum term of imprisonment prescribed by subsection (a) of this section or subsection (a) or (b) of section 2253, as the case may be.

Act to increase the penalties for illegal possession of firearms and to establish and increase mandatory minimum sentences therefor, No. 4825, § 3, Sess. L. 1983, p. 80-81 (1983); *Gov't of the V.I. v. Grant*, 775 F.2d 508 (3d Cir. 1985) (based on a 1982 crime).

In 1996, Section 2254 was amended to read as follows:

> § 2254. Minimum sentence; no probation or parole
> (c) A person convicted pursuant to section 2251 of this chapter of having, possessing, bearing, transporting, carrying or having

> under his proximate control a deadly or dangerous weapon as therein described during the commission or attempted commission of a crime of violence shall be incarcerated for a term of imprisonment of not less than one-half of the maximum sentence specified in that section.
>
> (d) Notwithstanding any provision of law, with respect to a person convicted pursuant to section 2251 of this chapter of having, possessing, bearing, transporting, carrying or having under his proximate control a deadly or dangerous weapon as therein described, curing the commission or attempted commission of a crime of violence, and with respect to a person convicted pursuant to subsection (a) or (b) of section 2253 of this chapter, **of having, possessing, bearing, transporting, carrying, or having under his proximate control, a firearm, machine gun or sawed-off shot gun as therein referred to, during the commission or attempted commission of a crime of violence,** adjudication of gilt or imposition of sentence shall not be suspended, deferred, or withheld, nor shall such person be eligible for probation, parole, or any other form of release prior to serving the mandatory minimum term of imprisonment prescribed by subsection (a) of this section or subsection (a) or (b) of section 2253, as the case may be.

Act to amend Title 23, Section 470, Virgin Islands Code, to remove the twenty-four hour reporting period and to place the burden of proof of compliance upon the firearm possessor; to amend Title 23, Section 475, Virgin Islands Code, to provide for the delivery of firearms surrendered under the provisions of Title 23, Chapter 5, Virgin Islands Code, at any police station in the U.S. Virgin Islands; to amend Title 23, Chapter 5, Virgin Islands Code, by adding a new Section 489 to be entitled "Registration of firearms upon purchase from dealer; registration of firearms transferred from non-dealer"; and to amend Title 14, Section 2253, Virgin Islands Code, to include constructive possession, No. 6123, § 7, Sess. L. 1996, p. 122 (1996) (emphasis added); *People v. Hendrickson*, 48 V.I. 186 (V.I. Super. Ct. 2007); *Phipps v. People*, 54 V.I. 543 (V.I. 2011) (based on a 2009 crime); *People v. Rouse*, ST-12-CR-F281, 2016 WL 297663 (V.I. Super. Ct. Jan. 22, 2016) (based on a 2015 crime).

14 V.I.C. § 2255

Section 2255 of the 1957 Code, "Confiscation of illegally held weapons," provided as follows:

> Whoever violates the provisions of sections 2251 and 2252 of this title, shall, in addition to the punishments therein prescribed, also have the pistol, weapon or other implement which he possessed or carried illegally, confiscated by the Government of the Virgin Islands.

This was based on section 5 of chapter 12 of the 1921 codes but was rewritten to conform with the changes made in the other sections.

In 1968, section 2255 was redesignated as section 2252. Act to amend Chapter 5, Title 23 of the Virgin Islands Code, relating to the control of firearms and ammunition, and for other purposes, No. 2279, § 3, Sess. L. 1968, p. 224 (1968).

In addition to sections 2251-2255 in Title 14, the 1957 code incorporated the licensing regime, some provisions of which provided criminal penalties, for firearms in Chapter 5 of Title 23, "Control of Firearms and Ammunition." This chapter included sections 451-458, which had their origin in the December 18, 1953 municipal ordinance.

14 V.I.C. § 2256

Section 2256 was added in 1984 and read as follows:

> § 2256. Possession and sale of ammunition
> (a) Any person who possesses, sells, purchases, manufactures, advertises for sale, or uses armor-piercing or exploding ammunition for use in handguns shall be guilty of a felony and shall be fined not more than $1,000 or imprisoned not more than two years or both; provided , however, that peace officers who possess or purchase armor-piercing or exploding ammunition for use in their employment or in the exercise of their duties as defined by law shall not be subject to the prohibition of this subsection.
> (b) For purposes of this section "armor-piercing" shall mean a penetration resistance equal to or greater than that of 18 layers of aramid, and "exploding" shall mean that which is designed to enter an object and explode without regard to whether it strikes another object.

Act to prohibit possession or sale of armor-piercing or exploding ammunition, No. 4943, § 2, Sess. L. 1984, p. 144 (1984).

This section was amended in 2001 to read as follows:

> § 2256. Possession and sale of ammunition
> **(a) Any person, who unless authorized by law, possesses, sells, purchases, manufactures, advertises for sale, or uses any firearm ammunition shall be guilty of a felony and shall be fined not less than $10,000 and imprisoned not less than seven years.**
> **(b) Any person who, unless authorized by law possesses, sells, purchases, manufactures, advertises for sale, or uses armor piercing or exploding ammunition for the use in a firearm shall be guilty of a felony and shall be fined not less than $10,000 and imprisoned not less than ten years.**
> **(c) As used in this section—**

(1) "Firearm" means any firearm as defined in title 23, section 451(d) of this Code.

(2) "Firearm ammunition" means any self-contained cartridge or shotgun shell, by whatever name known, which is designed to be used or adaptable for use in a firearm.

(3) For purposes of this section, the following are excluded from the definitions contained herein:

(A) Any device or ammunition exclusively designed for use with a device used exclusively for signaling or safety and required or recommended by the United States Coast Guard; and

(B) Any device or ammunition designed exclusively for use with a stud or rivet driver or other similar industrial ammunition.

(d) For purposes of this section "armor-piercing" shall mean a penetration resistance equal to or greater than that of 18 layers of aramid, and "exploding" shall mean that which is designed to enter an object and explode without regard to whether it strikes another object.

(e) The provisions of this section regarding acquisition and possession of firearm ammunition and armor-piercing or exploding ammunition do not apply to law enforcement officials for use in their employment or in the exercise of their duties as defined by law.

(f) An information based upon a violation of this section need not negate any exemption herein contained. The defendant shall have the burden of proving such an exemption.

Act to amend titles 14 and 23 and title 33, section 3501 a, Virgin Islands Code, to enact the Virgin Islands Gun Control Act of 2001, and for other related purposes, No. 6493, § 1, Sess. L. 2001, p. 395-96 (2001) (emphasis added); *Hunt v. Gov't of the V.I.*, 46 V.I. 534 (D.V.I. App. Div. 2005) (based on a 2003 crime); *Thomas v. Gov't of the V.I.*, 49 V.I. 569, (D.V.I. App. Div. 2007) (based on a 2002 crime); *Turbe v. Gov't of the V.I.*, 49 V.I. 730, (D.V.I. App. Div. 2008) (based on a 2002 crime); *Gov't of the V.I. v. Turbe*, 304 Fed. Appx. (3d Cir. 2008) (based on a 2003 crime); *Smith v. Gov't of the V.I.*, 50 V.I. 411, (D.V.I. App. Div. 2008) (based on a 2003 crime); *Gov't of the V.I. v. Turbe*, 304 Fed. Appx. 76 (3d Cir. 2008) (based on a 2003 crime).

In 2005, section 2256 was amended to read as follows:

§ 2256. Possession and sale of ammunition

(a) Any person, who unless authorized by law, possesses, sells, purchases, manufactures, advertises for sale, or uses any firearm ammunition shall be guilty of a felony and shall be fined not less than $10,000 and imprisoned not less than seven years **be sentenced to imprisonment for not less than one year nor**

more than five years and shall be fined not less than $5,000, or shall be both fined and imprisoned.

(b) Any person who, unless authorized by law possesses, sells, purchases, manufactures, advertises for sale, or uses armor piercing or exploding ammunition for the use in a firearm shall be guilty of a felony and shall be fined not less than $10,000 **$15,000** and imprisoned not less than ten **fifteen** years.

(c) As used in this section—

(1) "Firearm" means any firearm as defined in title 23, section 451(d) of this Code.

(2) "Firearm ammunition" means any self-contained cartridge or shotgun shell, by whatever name known, which is designed to be used or adaptable for use in a firearm.

(3) For purposes of this section, the following are excluded from the definitions contained herein:

(A) Any device or ammunition exclusively designed for use with a device used exclusively for signaling or safety and required or recommended by the United States Coast Guard; and

(B) Any device or ammunition designed exclusively for use with a stud or rivet driver or other similar industrial ammunition.

(d) For purposes of this section "armor-piercing" shall mean a penetration resistance equal to or greater than that of 18 layers of aramid, and "exploding" shall mean that which is designed to enter an object and explode without regard to whether it strikes another object.

(e) The provisions of this section regarding acquisition and possession of firearm ammunition and armor-piercing or exploding ammunition do not apply to law enforcement officials for use in their employment or in the exercise of their duties as defined by law.

(f) An information based upon a violation of this section need not negate any exemption herein contained. The defendant shall have the burden of proving such an exemption.

The omnibus justice act of 2005, No. 6730, § 27, Sess. L. 2005, p. 106 (2005) (emphasis added); *United States v. Daniel*, 518 F.3d 205 (3d Cir. 2008) (based on a 2005 crime); *People v. Nibbs*, 48 V.I. 19 (V.I. Super. Ct. 2006) (based on a 2005 crime); *Audain v. Gov't of the V.I.*, D.C. Crim. App. 2006-0046, 2014 WL 69027 (D.V.I. App. Div. 2014) (based on a 2005 crime); *United States v. Dowe*, Crim. No. 2007/56, 2008 WL 5632257 (D.V.I. Feb. 29, 2008) (based on a 2007 crime); *United States v. Walters*, 50 V.I. 453 (D.V.I. 2008) (based on a 2008 crime); *Smith v. People*, 51 V.I. 396 (V.I. 2009) (based on a 2006 crime); *Mulley v. People*, 51 V.I. 404 (V.I. 2009) (based on a 2006 crime); *Stevens v. People*, 52 V.I. 294 (V.I. 2009) (based on a 2006 crime); *Blyden v.*

People, 53 V.I. 637 (V.I. 2010) (based on a September 24, 2005 crime); *Charles v. People*, 57 V.I. 769 (D.V.I. App. Div. 2012) (based on a 2005 crime); *Brown v. People*, 55 V.I. 496 (V.I. 2011) (based on a September 21, 2004 crime); *Petric v. People*, 61 V.I. 401 (V.I. 2014) (based on a 2006 crime); *People v. Magras*, 54 V.I. 3, (V.I. Super. Ct. 2010) (based on a 2009 crime); *Gov't of the V.I. v. Smith*, 363 Fed. Appx. 177, (3d Cir. 2010).

Section 2256 was amended in 2009 to read as follows:

§ 2256. Possession and sale of ammunition

(a) Any person, who unless authorized by law, possesses, sells, purchases, manufactures, advertises for sale, or uses any firearm ammunition shall be guilty of a felony and shall be sentenced to imprisonment for not less than one year nor more than five years and shall be fined not less than $5,000 **three years nor more than seven years and shall be fined not less than $10,000**, or shall be both fined and imprisoned.

(b) Any person who, unless authorized by law possesses, sells, purchases, manufactures, advertises for sale, or uses armor piercing or exploding ammunition for the use in a firearm shall be guilty of a felony and shall be fined not less than $15,000 and imprisoned not less than fifteen years.

(c) As used in this section—

(1) "Firearm" means any firearm as defined in title 23, section 451(d) of this Code.

(2) "Firearm ammunition" means any self-contained cartridge or shotgun shell, by whatever name known, which is designed to be used or adaptable for use in a firearm.

(3) For purposes of this section, the following are excluded from the definitions contained herein:

(A) Any device or ammunition exclusively designed for use with a device used exclusively for signaling or safety and required or recommended by the United States Coast Guard; and

(B) Any device or ammunition designed exclusively for use with a stud or rivet driver or other similar industrial ammunition.

(d) For purposes of this section "armor-piercing" shall mean a penetration resistance equal to or greater than that of 18 layers of aramid, and "exploding" shall mean that which is designed to enter an object and explode without regard to whether it strikes another object.

(e) The provisions of this section regarding acquisition and possession of firearm ammunition and armor-piercing or exploding ammunition do not apply to law enforcement officials

for use in their employment or in the exercise of their duties as defined by law.

(f) An information based upon a violation of this section need not negate any exemption herein contained. The defendant shall have the burden of proving such an exemption.

An Act amending title 14 Virgin Islands Code, Chapter 113, and Title 23 Virgin Islands Code, Chapter 5 to prohibit the unlawful possession of automatic weapons, No. 7091, § 3, Sess. L. 2009, p. 158 (2009) (emphasis added).

In 2010 section 2256 was again amended to read as follows:

(a) **Any person who is not:**
  (1) **A licensed firearms or ammunition dealer; or**
  (2) **Officer, agent or employee of the Virgin Islands or the United States, on duty and acting within the scope of his duties; or**
  (3) **Holder of a valid firearms license for the same firearm gauge or caliber ammunition of the firearm indicated on such license, and**
  (4) **Who possesses, sells, purchases, manufactures, advertises for sale, or uses any firearm ammunition**

  Is guilty subject to imprisonment for up to seven years or a fine not more than $10,000 to both fine and imprisoned [sic].

(b) Any person who, unless authorized by law possesses, sells, purchases, manufactures, advertises for sale, or uses armor piercing or exploding ammunition for the use in a firearm shall be guilty of a felony and shall be fined not less than $15,000 and imprisoned not less than fifteen years.

(c) As used in this section—
  (1) "Firearm" means any firearm as defined in title 23, section 451(d) of this Code.
  (2) "Firearm ammunition" means any self-contained cartridge or shotgun shell, by whatever name known, which is designed to be used or adaptable for use in a firearm.
  (3) For purposes of this section, the following are excluded from the definitions contained herein:
    i. Any device or ammunition exclusively designed for use with a device used exclusively for signaling or safety and required or recommended by the United States Coast Guard; and
    ii. Any device or ammunition designed exclusively for use with a stud or rivet driver or other similar industrial ammunition.

(d) For purposes of this section "armor-piercing" shall mean a penetration resistance equal to or greater than that of 18 layers

> of aramid, and "exploding" shall mean that which is designed to enter an object and explode without regard to whether it strikes another object.
>
> (e) The provisions of this section regarding acquisition and possession of firearm ammunition and armor-piercing or exploding ammunition do not apply to law enforcement officials for use in their employment or in the exercise of their duties as defined by law.
>
> (f) An information based upon a violation of this section need not negate any exemption herein contained. The defendant shall have the burden of proving such an exemption.

An Act amending title 14 V.I.C., Chapter 113, and 23 V.I.C., Chapter 5, relating to the lawful possession of firearms ammunition and requirements for licensed dealers of firearms and ammunition, No. 7182, § 1, Sess. L. 2010, p. 114 (2010) (emphasis added); *Velazquez v. People*, S. Ct. Crim. No. 2015-0080, 2016 WL 4442558 (V.I. Aug. 22, 2016) (based on a 2012 crime); *United States v. Abdallah*, Crim. No. 2014-010, 2015 WL 327388 (D.V.I. Jan. 26, 2015) (based on a 2013 crime); *United States v. Wesselhoft*, Crim. No. 2015-0036, 2016 WL 3212483 (D.V.I. Mar. 4, 2016) (based on a 2015 crime); *People v. Cannergeiter*, Case No. SX-15-CR-400, 2016 WL 5468374 (V.I. Super. Ct. Sept. 29, 2016) (based on a 2015 crime); *United States v. Nisbett*, Crim. No. 2016-11, 2017 WL 125015 (D.V.I. Jan. 11, 2017) (based on a 2016 crime).

14 V.I.C. § 2257

Section 2257 was enacted in 2001 as part of the Virgin Islands Gun Control Act of 2001 and read as follows:

> § 2257. Collection and Deposit of Fines
>
> Moneys received for violations of section 2251, 2253 and 2256 of this chapter shall be deposited in the "Police Crime Fighting and Equipment Fund" as established under title 33, section 3051 a of this Code.

Act to amend Titles 14 and 23 and Title 33, Section 3501a, Virgin Islands Code, to enact the Virgin Islands Gun Control Act of 2001, and for other related purposes, No. 6493, § 1, Sess. L. 2001, p. 396 (2001).

14 V.I.C. § 2258

Section 2258 was added in 2013 and read as follows:

> § 2258 Proscription on possession of body armor by persons convicted of a violent felony
>
> (a) As used in this section:
>
> (1) "Body armor" means any bullet-resistant material intended to provide ballistic and trauma protection for the person wearing the body armor.
>
> (2) "Crime of violence" means:

(A) a felony offense that has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or

(B) any other offense that is a felony and that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.

(3) "Employer" means any individual other than a person accused of violating this section who is employed by the accused's business and oversees the accused's activity. If the person accused has no supervisor, any other employee of the business may provide certification as an employer.

(b) It shall be unlawful for any person who has been convicted of a crime of violence, as defined in this section, under the laws of the United States, the Virgin Islands or any other state, territory, government or county, to purchase, own, or possess body armor.

(c) Any person who has been convicted of a crime of violence, as defined in this section, under the laws of the United States, the Virgin Islands or any other state, territory, government or county who purchases, owns, or possesses body armor is guilty of a felony punishable by imprisonment for not more than 3 years.

Act No. 7518, § 1, Sess. L. 2013, p. 119-20 (2013).

23 V.I.C. § 451

Section 451 of the 1957 Code, "Licensing of Firearms," provided:

(a) With the exception of merchants who deal in ammunition, every person, 18 years of age or over, desirous of purchasing, owning, or possessing firearms, except pistols and revolvers, may do so; provided that within 48 hours after he becomes a lawful owner or possessor he shall register it with the Commissioner of Public Safety, giving make, caliber, and serial number of the article in question, and secure a license therefor.

(b) With the exception of merchants who deal in ammunition, any person desirous of purchasing, owning, or possessing a pistol or revolver, shall make application for license therefor to the Commissioner of Public Safety upon a form to be provided for that purpose. This form shall provide for declaration by the applicant of his purpose of having ownership or possession of said pistol or revolver and shall be endorsed by two resident citizens of good repute.

(c) Licenses may be issued by the Commissioner of Public Safety in his discretion upon payment of an initial registration fee of $3 for each rifle or shotgun, and $5 for each pistol, revolver, or automatic weapon.

> (d) Non-residents upon entering the Virgin Islands shall register firearms owned and/or possessed by them upon arrival and shall pay the registration fee as required in subsection (c) of this section.
> (e) After the initial registration, every firearm, pistol, revolver, or automatic weapon shall be re-registered not later than January 15 of each calendar year without fee.
> (f) The Commissioner of Public Safety may investigate any applicant before issuing him a license.

Section 451 had its origin in section 1 of the December 18, 1953 municipal ordinance, and provisions of section 1 relating to possession of firearms by felons and the ownership, possession, or transportation of certain other firearms were transferred to sections 452 and 453 of title 23.

Subsection (a) of section 451 was amended in 1960 to read as follows:

> (a) Every person who has reached the age of 18 years may purchase, own, or possess firearms including compressed air or carbon dioxide pistols or rifles; provided, that within 48 hours after he becomes the lawful owner or possessor he shall register it with the Commissioner of Public Safety, giving the make, caliber, and serial number of the article in question, and secure a license therefor; provided, further, that the foregoing restrictions do not apply to BB pistols and BB guns where only one stroke of the lever cocks such pistols or guns; provided, further that the foregoing restrictions shall not apply to spear fishing guns and equipment and provided, further, that the limitations herein do not apply to merchants who deal in ammunition; provided, further, that this subdivision does not apply to pistols and revolvers which are treated in subdivision (b) following.

Act to amend Title 23 of the Virgin Islands Code, relating to firearms, No. 621, § 1, Sess. L. 1960, p. 142 (1960). In 1968, section 451 and the other provisions of title 23 relating to control of firearms and ammunition (all of chapter 5 of title 23) were amended; and it is with this amendment that section 451 took its current form wherein the definitions were enumerated.

Section 451, "Definitions," as adopted in 1968, provided as follows:

> As used in this chapter, unless the context clearly requires otherwise—
> (a) "Ammunition" means any bullet, cartridge, projectile, buckshot, or any load placed or which may be placed in a firearm to be discharged.
> (b) "Commissioner" means the Commissioner of Public Safety of the Virgin Islands.
> (c) "Department" means the Department of Public Safety of the Virgin Islands.
> (d) "Firearm" means any device by whatever name known, capable of discharging ammunition by means of gas generated from an

explosive composition, including any air gas or spring gun or any 'BB' pistols or 'BB' guns that have been adapted or modified to discharge projectiles as a firearm.

(e) "Crime of violence" means any of the following crimes, or an attempt to commit any of the same, namely: Murder in any degree, voluntary manslaughter, rape, arson, mayhem, kidnapping, assault in the first degree, assault with or by means of a deadly of dangerous weapon, assault to do great bodily harm, robbery, burglary, housebreaking, breaking and entering and larceny.

(f) "Dealer in firearms and/or ammunition" means any person engaged in the business of selling firearms and/or ammunition for a profit or gain.

(g) "Gunsmith" means any person who engages in the business of repairing, altering, clearing, polishing, engraving, blueing or performing any mechanical operation on any firearm on an individual order basis.

Act to amend Chapter 5, Title 23 of the Virgin Islands Code, relating to the control of firearms and ammunition, and for other purposes, No. 2279, § 1, Sess. L. 1968, p. 209 (1968).

This section was amended in 1972, to read as follows:

As used in this chapter, unless the context clearly requires otherwise—

(a) "Ammunition" means any bullet, cartridge, projectile, buckshot, or any load placed or which may be placed in a firearm to be discharged.

(b) "Commissioner" means the Commissioner of Public Safety of the Virgin Islands.

(c) "Department" means the Department of Public Safety of the Virgin Islands.

(d) "Firearm" means any device by whatever name known, capable of discharging ammunition by means of gas generated from an explosive composition, including any air gas or spring gun or any 'BB' pistols or 'BB' guns that have been adapted or modified to discharge projectiles as a firearm.

(e) "Crime of violence" means any of the following crimes, or an attempt to commit any of the same, namely: Murder in any degree, voluntary manslaughter, rape, arson, mayhem, kidnapping, assault in the first degree, assault with or by means of a deadly of dangerous weapon, assault to do great bodily harm, robbery, burglary, housebreaking, breaking and entering and larceny.

(f) "Dealer in firearms and/or ammunition" means any person engaged in the business of selling firearms and/or ammunition for a profit or gain.

> (g) "Gunsmith" means any person who engages in the business of repairing, altering, clearing, polishing, engraving, blueing or performing any mechanical operation on any firearm on an individual order basis.
> (h) **"Machine gun" means any firearm which shoots automatically or semi-automatically more than 12 shots without reloading.**
> (i) **"Shotgun" means any shotgun with a barrel less than 20 inches in length.**

Act to amend Title 23, Chapter 5, Virgin Islands Code, pertaining to machine guns, No. 3303, § 1, Sess. L. 1972, p. 439 (1972).

In 1974, subsections (h) and (i) were repealed and the remaining subsections redesignated so that the section read as follows:

> As used in this chapter, unless the context clearly requires otherwise—
> (a) "Ammunition" means any bullet, cartridge, projectile, buckshot, or any load placed or which may be placed in a firearm to be discharged.
> (b) "Commissioner" means the **Police** Commissioner of Public Safety[4] of the Virgin Islands.
> (c) "Department' means the Department of Public Safety **U.S. Virgin Islands Police Department (V.I.P.D.)**[5] of the Virgin Islands.
> (d) "Firearm" means any device by whatever name known, capable of discharging ammunition by means of gas generated from an explosive composition, including any air gas or spring gun or any 'BB' pistols or 'BB' guns that have been adapted or modified to discharge projectiles as a firearm.
> (e) "Crime of violence" means any of the following crimes, or an attempt to commit any of the same, namely: Murder in any degree, voluntary manslaughter, rape, arson, mayhem, kidnapping, assault in the first degree, assault with or by means of a deadly of dangerous weapon, assault to do great bodily harm, robbery, burglary, housebreaking, breaking and entering and larceny.

[4] Act to change the name of the Department of Public Safety to "U.S. Virgin Islands Police Department (V.I.P.D.)"; to make appropriations for expenditures connected with such change and for a criminal justice conference; and for related purposes, No. 4964, § 1, Sess. L. 1984, p. 177 (1984).

[5] Act to change the name of the Department of Public Safety to "U.S. Virgin Islands Police Department (V.I.P.D.)"; to make appropriations for expenditures connected with such change and for a criminal justice conference; and for related purposes, No. 4964, § 1, Sess. L. 1984, p. 177 (1984).

(f) "Dealer in firearms and/or ammunition" means any person engaged in the business of selling firearms and/or ammunition for a profit or gain.
(g) "Gunsmith" means any person who engages in the business of repairing, altering, clearing, polishing, engraving, blueing or performing any mechanical operation on any firearm on an individual order basis.

Act to amend Title 14, Chapter 113, and Title 23, Chapter 5, Virgin Islands Code, pertaining to the definition of certain weapons and the penalties for possession of said weapons, No. 3566, § 5, Sess. L. 1974, p. 101 (1974). The definitions of "machine gun" and "sawed-off shotgun" were included in Section 2253(d)(2) of title 14. *Gov't of the V.I. v. Albert*, 18 V.I. 21 (D.V.I. 1980); *Gov't of the V.I. v. Williams*, 739 F.2d 936 (3d Cir. 1984) (based on a 1983 crime); *Gov't of the V.I. v. Waggoner*, Crim. No. 82-154, 1984 WL 1075144 (D.V.I. App. Div. Mar. 26, 1984); *Gov't of the V.I. v. Douglas*, 812 F.2d 822 (D.V.I. App. Div. 1987) (based on a 1985 crime); *Gov't of the V.I. v. Douglas*, 812 F.2d 822 (3d Cir. 1987) (based on a 1985 crime); *Gov't of the V.I. v. Williams*, 23 V.I. 125 (D.V.I. 1987); *Gov't of the V.I. v. Frett*, 684 F. Supp. 1324 (D.V.I. 1988); *United States v. Blyden*, 740 F. Supp. 376 (D.V.I. 1990).

In 2001, subsection (e) was amended

As used in this chapter, unless the context clearly requires otherwise—
(a) "Ammunition" means any bullet, cartridge, projectile, buckshot, or any load placed or which may be placed in a firearm to be discharged.
(b) "Commissioner" means the Police Commissioner of the Virgin Islands.
(c) "Department" means the U.S. Virgin Islands Police Department (V.I.P.D.) of the Virgin Islands.
(d) "Firearm' means any device by whatever name known, capable of discharging ammunition by means of gas generated from an explosive composition, including any air gas or spring gun or any 'BB' pistols or 'BB' guns that have been adapted or modified to discharge projectiles as a firearm.
(e) "Crime of violence" means any of the following crimes, or an attempt to commit any of the same, namely: Murder in any degree, voluntary manslaughter, rape, arson, **discharging or aiming firearms,** mayhem, kidnapping, assault in the first degree, assault with or by means of a deadly of dangerous weapon, assault to do great bodily harm, robbery, burglary, housebreaking, breaking and entering and larceny.
(f) "Dealer in firearms and/or ammunition" means any person engaged in the business of selling firearms and/or ammunition for a profit or gain.
(g) "Gunsmith" means any person who engages in the business of repairing, altering, clearing, polishing, engraving, blueing or

> performing any mechanical operation on any firearm on an individual order basis.

Act to amend Titles 14 and 23 and Title 33, section 3501a, Virgin Islands Code, to enact the Virgin Islands Gun Control Act of 2001, and for other related purposes, No. 6493, § 2, Sess. L. 2001, p. 396 (2001); *Smith v. Gov't of the V.I.*, 50 V.I. 411, (D.V.I. App. Div. 2008) (based on a 2003 crime); *Gov't of the V.I. v. Gonzalves*, 47 V.I. 149 (V.I. Super. Ct. 2005) (based on a 2004 crime); *Virgin Islands v. Belardo*, 385 Fed. Appx. 149 (3d Cir. June 30, 2010) (unpublished) (based on a 2004 crime); *Audain v. Gov't of the V.I.*, D.C. Crim. App. 2006-0046, 2014 WL 69027 (D.V.I. App. Div. 2014) (based on a 2005 crime); *Charles v. People*, 57 V.I. 769 (D.V.I. App. Div. 2012) (based on a 2005 crime); *People v. Hendrickson*, 48 V.I. 186; *United States v. Tyson*, 653 F.3d 192 (3d Cir. 2011) (based on crimes occurring in 2007 and 2008); *People v. Matthew*, 49 V.I. 285 (V.I. Super. Ct. 2008) (based on a 2007 crime); *S.T. v. People*, 51 V.I. 420 (V.I. 2009) (based on a 2007 crime); *Gov't of the V.I. v. Smith*, 363 Fed. Appx. 177, (3d Cir. 2010); *United States v. Mike*, 655 F.3d 167 (3d Cir. 2011) (based on an April 10, 2009 crime); *Fontaine v. People*, 56 V.I. 660 (V.I. 2012) (based on a August 14, 2009 crime); *People v. Morton*, 57 V.I. 72, 81 (V.I. Super. Ct. 2012) (based on a 2009 crime); *United States v. Carino*, 596 Fed. Appx. 88 (3d Cir. 2014) (based on a 2009 crime); *Billu v. People*, 57 V.I. 455 (V.I. 201) (based on a 2009 crime).

23 V.I.C. § 452

Section 452 of the 1957 Code, "Ownership or possession of firearms by persons convicted for felony," provided that "[n]o person convicted of a felony shall own, possess, or be eligible to register any rifle, shotgun, pistol, revolver or automatic weapon." This provision was based on section 1 of the December 18, 1953 ordinance.

After the 1968 amendment, section 452, "Applicability of chapter," read as follows:

> No person shall have, possess, bear, transport or carry a firearm within the Virgin Islands, or engage in the business of dealer in firearms and/or ammunition or the business of gunsmith, except in compliance with the provisions of this chapter.

Act to amend Chapter 5, Title 23 of the Virgin Islands Code, relating to the control of firearms and ammunition, and for other purposes, No. 2279, § 1, Sess. L. 1968, p. 210 (1968); *Gov't of the V.I. v. King*, 31 V.I. 78 (V.I. Super. Ct. 1995) (based on a 1994 crime); *Hightree v. People*, 55 V.I. 947 (2011), (based on a November 24, 2009 crime).

23 V.I.C. § 453

Section 453 of the 1957 Code, "Weapons used by the armed forces" provided that

> [n]o person shall own, possess or transport such weapons as tommy guns, sub-machine guns, sawed-off shotguns, or similar weapons used by the armed forces, unless such weapons have been made inoperative by the police force.

This provision was based on section 1 of the December 18, 1953 ordinance.

Following the 1968 amendment, this section, "Persons who may lawfully carry firearms," read as follows:

> (a) The following person, in the discharge of their official duties, and in accordance with and subject to the conditions and restrictions imposed by the laws and regulations applicable to their conduct, may lawfully have, possess, bear, transport and carry firearms in the Virgin Islands:
>
> (1) Members of the Armed Forces of the United States or of the organized reserves.
>
> (2) Officers and employees of the United States duly authorized by Federal law to carry firearms.
>
> (3) Persons employed in fulfilling defense contracts with the United States Government or agencies thereof where possession or use of firearms is necessary under the provisions of such contracts.
>
> (4) Members of the police force of the Virgin Islands, marshals, or other duly authorized peace officers.
>
> (5) Penitentiary and jail wardens and guards.
>
> (b) The persons authorized by subsection (a) of this section lawfully to have, possess, bear, transport and carry firearms shall obtain such weapons and ammunition therefor only through duly authorized officers or head of their respective service or departments.

Act to amend Chapter 5, Title 23 of the Virgin Islands Code, relating to the control of firearms and ammunition, and for other purposes, No. 2279, § 1, Sess. L. 1968, p. 210-11 (1968).

In 1986, peace officers wishing to carry a firearm were required to comply with section 453(b). Act to provide that collection officers and agents of the bureau of internal revenue and the department of finance be included in the definition of a peace officer, No. 5217, § 2, Sess. L. 1986, p. 332 (1986); *United States v. McKie*, 112 F.3d 626 (3d Cir. 1997) (based on a 1995 crime); *Francis v. Gov't of the V.I.*, 40 V.I. 150 (D.V.I. App. Div. 1998); *United States v. McIntosh*, 289 F. Supp. 2d 672 (D.V.I. 2003) (based on a 2002 crime); *Toussaint v. Gov't of the V.I.*, 45 V.I. 455 (D.V.I. App. Div. 2004); *Gov't of the V.I. v. Isaac*, 45 V.I. 334 (V.I. Super. Ct. 2004) (based on a 2002 crime); *Hunt v. Gov't of the V.I.*, 46 V.I. 534 (D.V.I. App. Div. 2005); *United States v. Tyson*, 653 F.3d 192 (3d Cir. 2011) (based on crimes occurring in 2007 and 2008); *Hightree v. People*, 55 V.I. 947 (2011) (based on a November 24, 2009 crime).

23 V.I.C. § 454

Section 454 of the 1957 Code, "Exemption from payment of registration fee," provided as follows:

> All firearms that are licensed and in possession of their lawful owners upon the effective date of this Code, shall be exempt from payment of the initial registration fee provided in this chapter; provided there is no transfer of ownership. Permanent exemption of

> firearms who collect same for historical or decorative purposes. This section shall not be deemed to cancel unpaid license fees.

This provision was based on section 2 of the December 18, 1953 ordinance.

Section 454, "Persons who may be licensed to carry firearms," was rewritten with the 1968 amendment to read as follows:

> A firearm may be lawfully had, possessed, borne, transported or carried in the Virgin Islands by the following persons, provided a license for such purpose has been issued by the Commissioner in accordance with the provisions of this chapter:
>
> (1) An officer or employee of the Government of the Virgin Islands in cases where such license, in the judgment of the Commissioner, should be issued to such officer or employee by reason of the duties of his position;
>
> (2) An agent, messenger or other employee of a common carrier, bank or business firm, whose duties require him to protect money, valuables or other property in the discharge of his duties; and provided, That the employer of such person shall have justified to the satisfaction of the Commissioner the need for the issuance of the license;
>
> (3) A person having a bona fide residence or place of business within the Virgin Islands, who established to the satisfaction of the Commissioner that he has good reason to fear death or great injury to his person or property, or who establishes any other proper reason for carrying a firearm, and the circumstances of the case, established by affidavit of the applicant and of at least two credible persons, demonstrate the need for such license;
>
> (4) A person licensed to and actively engaged in the business of manufacturing, repairing or dealing in firearms in the Virgin Islands, or the agents or representatives of any such person, having necessity to handle or use firearms in the usual or ordinary course of business;
>
> (5) With respect to a rifle or a shotgun a person possessing a valid and current Virgin Islands hunting license.

Act to amend Chapter 5, Title 23 of the Virgin Islands Code, relating to the control of firearms and ammunition, and for other purposes, No. 2279, § 1, Sess. L. 1968, p. 211 (1968); *Francis v. Gov't of the V.I.*, 40 V.I. 150 (D.V.I. App. Div. 1998) (addressing a 1995 conviction); *United States v. McIntosh*, 289 F. Supp. 2d 672 (D.V.I. 2003); *Toussaint v. Gov't of the V.I.*, 45 V.I. 455 (D.V.I. App. Div. 2004); *Gov't of the V.I. v. Isaac*, 45 V.I. 334 (V.I. Super. Ct. 2004) (based on a 2002 crime); *Audain v. Gov't of the V.I.*, D.C. Crim. App. 2006-0046, 2014 WL 69027 (D.V.I. App. Div. 2014) (based on a 2005 crime); *People v. Samuel*, Nos. SX-09-CR-557, SC-09-CR-556, 2010 WL 7746081 (V.I. Super. Ct. Nov. 12, 2010) (unpublished) (based on a 2009 crime); *People v. James*, 54 V.I. 45 (V.I. Super. Ct. 2010); *United States v. Tyson*, 653 F.3d 192 (3d Cir. 2011) (based on crimes occurring in 2007 and 2008); *Hightree v. People*, 55 V.I. 947 (2011) (based on a November 24, 2009 crime); *Nicholas v. People*, 56 V.I. 718 (V.I. 2012) (based on a 2005 crime);

Simmonds v. People, 59 V.I. 480 (V.I. 2013) (based on a 2010 crime); *People v. Murrell*, 56 V.I. 796 (V.I. 2012) (based on a 2010 crime).

23 V.I.C. § 455

Section 455 of the 1957 Code, "Transfer of firearms," provided that

> [i]mmediately upon transfer of ownership by sale, gift, or otherwise, the new owner shall register said firearms as provided in this chapter. In the case of pistols or revolvers the prospective purchaser shall apply to the Commission of Public Safety for a license in accordance with the provisions of section 451 of this title, provided, that the transferer [sic] shall notify the police force that he has disposed of said firearm registered under his name.

This provision was based on section 3 of the December 18, 1953 ordinance.

In 1968, section 455, "Application for license; form, oath; fee," was amended to read as follows:

> (a) Every application for a license to have and possess a firearm shall be made under oath and on forms which the Commissioner shall prepare for such purpose. For the purposes of the enforcement of the provisions of this chapter, the applicant shall furnish all information as may be required of him by the Commissioner.
> (b) The initial fee for a license under section 454 of this chapter shall be $5.00. The annual renewal fee shall be $2.00.

Act to amend Chapter 5, Title 23 of the Virgin Islands Code, relating to the control of firearms and ammunition, and for other purposes, No. 2279, § 1, Sess. L. 1968, p. 212 (1968).

In 1981, section 455 was amended to read as follows:

> (a) Every application for a license to have and possess a firearm shall be made under oath and on forms which the Commissioner shall prepare for such purpose. For the purposes of the enforcement of the provisions of this chapter, the applicant shall furnish all information as may be required of him by the Commissioner.
> (b) The initial fee for a license under section 454 of this chapter shall be $**1**5.00. The annual renewal fee shall be $2**9**.00.

Act to lengthen the term of a firearm license from one to three years, to increase firearm license renewal fees, to require annual inspection of firearms, and to provide for an amnesty period for the licensing of currently unlicensed firearms, No. 4637, § 1, Sess. L. 1981, p. 240 (1981).

In 1983, section 455 was amended as follows:

> (a) Every application for a license to have and possess a firearm shall be made under oath and on forms which the Commissioner shall prepare for such purpose. For the purposes of the

> enforcement of the provisions of this chapter, the applicant shall furnish all information as may be required of him by the Commissioner.
> (b) The initial fee for a license under section 454 of this chapter shall be $15.00. The annual renewal fee shall be $9.00.
> **(c) Upon renewal of a license to have and possess a firearm, the receipt from the Department of Public Safety for the renewal fee will serve as a temporary license until the official license can be provided to the licensee by the Commissioner.**
> **(d) The Commissioner shall ensure that the renewal license is presented to the licensee within forty-five days of receipt of payment for the renewal fee.**
> **(e) Notwithstanding the provisions of this section, no person shall be charged with possession of an unlicensed firearm if the subject weapon had been previously licensed and said license has expired not more than ninety (90) days prior to arrest; Provided, however, That this subsection shall not apply to persons who possess, bear, transport, carry or have under their control in any vehicle, any firearm during the commission or attempted commission of a crime of violence, as defined in subsection (d) of section 2253, Title 14, Virgin Islands Code.**

act to increase the penalties for illegal possession of firearms and to establish and increase mandatory minimum sentences therefor, No. 4825, § 5, Sess. L. 1983, p. 81-82 (1983).

In 1996, section 455 was amended to read as follows:

> (a) Every application for a license to have and possess a firearm shall be made under oath and on forms which the Commissioner shall prepare for such purpose. For the purposes of the enforcement of the provisions of this chapter, the applicant shall furnish all information as may be required of him by the Commissioner.
> (b) The initial fee for a license under section 454 of this chapter shall be $15**50**.00. The annual renewal fee shall be $9**100**.00.
> (c) Upon renewal of a license to have and possess a firearm, the receipt from the Department of Public Safety **U.S. Virgin Islands Police Department (V.I.P.D.)**[6] for the renewal fee will serve as a temporary license until the official license can be provided to the licensee by the Commissioner.

[6] Act to change the name of the Department of Public Safety to "U.S. Virgin Islands Police Department (V.I.P.D.)"; to make appropriations for expenditures connected with such change and for a criminal justice conference; and for related purposes, No. 4964, § 1, Sess. L. 1984, p. 177 (1984).

(d) The Commissioner shall ensure that the renewal license is presented to the licensee within forty-five days of receipt of payment for the renewal fee.
(e) Notwithstanding the provisions of this section, no person shall be charged with possession of an unlicensed firearm if the subject weapon had been previously licensed and said license has expired not more than ninety (90) days prior to arrest; Provided, however, That this subsection shall not apply to persons who possess, bear, transport, carry or have under their control in any vehicle, any firearm during the commission or attempted commission of a crime of violence, as defined in subsection (d) of section 2253, Title 14, Virgin Islands Code.

Act to provide for a youth transitional employment program, No. 6099, § 2, Sess. L. 1996, p. 32 (1996).

In 2003, section 455 was amended to read as follows:

(a) Every application for a license to have and possess a firearm shall be made under oath and on forms which the Commissioner shall prepare for such purpose. For the purposes of the enforcement of the provisions of this chapter, the applicant shall furnish all information as may be required of him by the Commissioner.
(b) The initial fee for a license under section 454 of this chapter shall be $50**75**.00. The annual renewal fee shall be $100**150**.00.
(c) Upon renewal of a license to have and possess a firearm, the receipt from the U.S. Virgin Islands Police Department (V.I.P.D.) for the renewal fee will serve as a temporary license until the official license can be provided to the licensee by the Commissioner.
(d) The Commissioner shall ensure that the renewal license is presented to the licensee within forty-five days of receipt of payment for the renewal fee.
(e) Notwithstanding the provisions of this section, no person shall be charged with possession of an unlicensed firearm if the subject weapon had been previously licensed and said license has expired not more than ninety (90) days prior to arrest; Provided, however, That this subsection shall not apply to persons who possess, bear, transport, carry or have under their control in any vehicle, any firearm during the commission or attempted commission of a crime of violence, as defined in subsection (d) of section 2253, Title 14, Virgin Islands Code.

Act to amend 9 V.I.C. §43 to increase the license fees for banking institutions; to amend 3 V.I.C. §562 relating to the pay period for Government employees; to amend 33 V.I.C. to establish a vehicle tire tax and personal use tax; to amend 27 V.I.C. §302(b) to authorize an increase in certain business licensing fees; to amend 12 V.I.C. §910(d) to reduce time limits for processing CZM

permits; to amend 20 V.I.C. §466 and 544 to increase fines for moving violations; to amend Act No. 6391, section 3(c) to extend the term for the Tax Study Commission; to establish mandatory direct depositing for Government employees; and for other purposes, No. 6585, § 21, Sess. L. 2003, p. 32 (2003); *United States v. Tyson*, 653 F.3d 192 (3d Cir. 2011) (based on crimes occurring in 2007 and 2008); *Hightree v. People*, 55 V.I. 947 (2011) (based on a November 24, 2009 crime).

23 V.I.C. § 456

Section 456 of the 1957 Code, "Identification card; fingerprints," stated as follows:

> Upon registration of firearms as provided in this chapter, the Commissioner of Public Safety shall issue an identification card bearing the owner's name, photograph, identification particulars concerning rifles and shotguns and, in the case of pistols and revolvers, fingerprints of the owner in question.

This provision was based on section 4 of the December 18, 1953 ordinance.

The 1968 amendments to section 456, "Qualifications of applicant," provided the following:

> (a) The Commissioner shall not issue a license for firearms under section 454 of this chapter until all the circumstances and facts set forth in the application have been investigated, and the records of the Department and other available records have been examined, and unless such investigation establishes to the satisfaction of the Commission:
>
> (1) The truth of such circumstances and facts;
> (2) That the applicant is a resident of the Virgin Islands, including with respect to shotguns or rifles a minor not under 16 years of age, or a nonresident who holds a current and valid license to hunt in the Virgin Islands;
> (3) That the applicant is a person of good moral character;
> (4) That the applicant's fingerprints have been duly taken and/or checked with the records of the Department or other appropriate sources; and
> (5) That no proper reason exists to deny such application.

Act to amend Chapter 5, Title 23 of the Virgin Islands Code, relating to the control of firearms and ammunition, and for other purposes, No. 2279, § 1, Sess. L. 1968, p. 212 (1968).

In 1969, section 456 was amended as follows:

> (a) The Commissioner shall not issue a license for firearms under section 454 of this chapter until all the circumstances and facts set forth in the application have been investigated, and the records of the Department and other available records have been examined, and unless such investigation establishes to the satisfaction of the Commission:
>
> (1) The truth of such circumstances and facts;

(2) That the applicant is a resident of the Virgin Islands, including with respect to shotguns or rifles a minor not under 16 years of age, or a nonresident who holds a current and valid license to hunt in the Virgin Islands**., or an alien bonded under applicable Federal and Virgin Islands statutes for employment with a person, firm, corporation or other business entity duly licensed in the Virgin Islands to carry on the business of providing security, guard, patrol and private detective services; Provided, however, That in the case of any such bonded alien the license shall be issued to the business entity by which he is employed.**

(3) That the applicant is a person of good moral character;

(4) That the applicant's fingerprints have been duly taken and/or checked with the records of the Department or other appropriate sources; and

(5) That no proper reason exists to deny such application.

Act to amend the Provisions of Section 456 of Title 23 of the Virgin Islands Code relating to the qualifications of applicants for licenses for firearms, No. 2593, § 1, Sess. L. 1969, p. 400 (1969); *Francis v. Gov't of the V.I.*, 40 V.I. 150 (D.V.I. App. Div. 1998); *People v. James*, 54 V.I. 45 (V.I. Super. Ct. 2010); *United States v. Tyson*, 653 F.3d 192 (3d Cir. 2011) (based on crimes occurring in 2007 and 2008).

23 V.I.C. § 456a

Section 456a was added in 2005 as part of the Omnibus Justice Act of 2005 and read as follows:

§ 456a. Persons ineligible to possess or carry firearms or ammunition;

(a) The following persons are ineligible for a license to possess or carry a firearm or ammunition as provided in this chapter:

(1) A person who has been convicted in any court for a crime punishable by imprisonment for a term exceeding one year;

(2) A person who is a fugitive from justice;

(3) A person who is an unlawful user of or addicted to any controlled substance as defined in title 19, section 593(6) of the Virgin Islands Code;

(4) A person who has been adjudicated as a mental defective or who has been committed to a mental institution:

(A) For the purpose of this section the phrase "committed to a mental institution" includes commitment to a mental institution involuntarily,

but does not include a person held in a mental institution for observation.

(B) For purpose of this section, the phrase "mental institution" includes mental health facilities, mental hospitals, sanitariums, psychiatric facilities and other facilities that provide diagnoses by licensed professional for mental retardation or mental illness, including a psychiatric ward in a public or private hospital.

(5) A person who, being an alien, is illegally or unlawfully in the United States;

(6) A person who has been discharged from the United States Armed Forces under dishonorable conditions;

(7) A person who, having been a citizen of the United States, has renounced his citizenship;

(8) A person who is subject to a court order that—

(A) Was issued after a hearing of which the person received actual notice, and at which the person had an opportunity to participate;

(B) Restrains the person from harassing, staling, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and

(C) –

(i) Includes a finding that the person represents a credible threat to the physical safety of such intimate partner or child; or

(ii) By its terms explicitly prohibits use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury; or

(9) A person who has been convicted in any court of a misdemeanor crime of domestic violence.

The omnibus justice act of 2005, No. 6730, § 29, Sess. L. 2005, p. 106-08 (2005); *Gov't of the V.I. v. Turbe*, 304 Fed. Appx. 76 (3d Cir. 2008) (based on a 2003 crime).

23 V.I.C. § 457

Section 457 of the 1957 Code, "Report by firearm dealers; compliance," provided that

(a) All licensed dealers in firearms shall report all sales thereof to the Commissioner of Public Safety within twenty-four hours after each such sale is effected.

> (b) Licensed dealers in firearms and ammunition shall be required to comply with the provisions of this chapter dealing with ownership, possession, registration, and transfer of title of firearms only in the case of such weapons owned or possessed by them for their personal use, and not for commercial purposes.

This provision was based on section 5 of the December 18, 1953 ordinance.

As amended in 1968, section 457, "Contents of license," provided as follows:

> A license issued pursuant to the provisions of section 454 of this chapter shall provide for the following:
> (1) That the same is not transferable and shall be carried by the licensee at all times when in possession of the firearm for which it was issued;
> (2) The term thereof, which shall not exceed one year;
> (3) Places where, times when, and circumstances under which the firearm may be carried;
> (4) Description of the firearm authorized to be carried, showing the serial number, if any;
> (5) Ground for issuance;
> (6) Ground for revocation;
> (7) A dealer's coupon which shall be removed and retained by any person who sells or otherwise provides the licensee with any firearm contemplated in such license.

Act to amend Chapter 5, Title 23 of the Virgin Islands Code, relating to the control of firearms and ammunition, and for other purposes, No. 2279, § 1, Sess. L. 1968, p. 212 (1968).

Section 457 was again amended in 1981 and read as follows:

> A license issued pursuant to the provisions of section 454 of this chapter shall provide for the following:
> (1) That the same is not transferable and shall be carried by the licensee at all times when in possession of the firearm for which it was issued;
> (2) The term thereof, which shall not exceed one **three** year**s**;
> (3) Places where, times when, and circumstances under which the firearm may be carried;
> (4) Description of the firearm authorized to be carried, showing the serial number, if any;
> (5) Ground for issuance;
> (6) Ground for revocation;
> (7) **Provision that the owner of the firearm shall present the firearm annually on the anniversary of the date of licensing**

> **for inspection by the Department of Public Safety** U.S. Virgin Islands Police Department (V.I.P.D.).[7]
>
> (8) A dealer's coupon which shall be removed and retained by any person who sells or otherwise provides the licensee with any firearm contemplated in such license.

Act to lengthen the term of a firearm license from one to three years, to increase firearm license renewal fees, to require annual inspection of firearms, and to provide for an amensty period for the licensing of currently unlicensed firearms, No. 4637, §§ 2-3, Sess. L. 1981, p. 240 (1981); *Hightree v. People*, 55 V.I. 947 (2011) (based on a November 24, 2009 crime); *Simmonds v. People*, 59 V.I. 480 (V.I. 2013) (based on a 2010 crime).

23 V.I.C. § 458

Section 458 of the 1957 Code, "Penalties," provided that

> [e]xcept as otherwise provided in sections 2252 and 2255 of Title 14, whoever violates any provisions of this chapter shall be fined not more than $100. The firearm in question shall be confiscated by the police force to be returned to the owner only after the same is properly registered as required, and then only at the discretion of the Commissioner of Public Safety.

This provision was based on section 6 of the December 18, 1953 ordinance but was rewritten to conform to the changes made in the sections 2251-2254 of title 14.

As amended in 1968, section 458, "Grounds for refusing to issue license," provided as follows:

> The Commissioner shall not issue a license to have and possess a firearm to any person convicted in or outside the Virgin Islands of any crime of violence; or any of violation of a narcotic or "harmful drug' law; no to any person who is mentally incompetent, or a habitual drunkard or a narcotic or drug addict; nor to any person convicted for a violation of the provisions of this chapter; nor to any person who for justifiable reasons is deemed to be an improper person by the Commissioner.

Act to amend Chapter 5, Title 23 of the Virgin Islands Code, relating to the control of firearms and ammunition, and for other purposes, No. 2279, § 1, Sess. L. 1968, p. 213 (1968).

Section 458 was amended in 1984 to read as follows:

> (a) The Commissioner shall not issue a license to have and possess a firearm to any person convicted in or outside the Virgin Islands of any crime of violence; or any of violation of a narcotic or "harmful drug" law; no to any person who is mentally incompetent, or a

[7] Act To Change the Name of the Department of Public Safety to "U.S. Virgin Islands Police Department (V.I.P.D.)"; To Make Appropriations for Expenditures Connected With Such Change and for a Criminal Justice Conference; and for Related Purposes, No. 4964, § 1, Sess. L. 1984, p. 177 (1984).

habitual drunkard or a narcotic or drug addict; nor to any person convicted for a violation of the provisions of this chapter; nor to any person who for justifiable reasons is deemed to be an improper person by the Commissioner.

(b) **The Commissioner shall not issue a license to have and possess a firearm to persons employed by private security guard or investigative agencies, as defined in subsection (g) of section 1303 of this title, unless and until such persons (i) have successfully completed the psychological and drug and alcohol abuse tests authorized to be administered by the Department of Health pursuant to the provisions of section 418a of chapter 23 of Title 3, Virgin Islands Code, and (ii) have successfully completed a comprehensive course in the proper handling and use of firearms, including a comprehensive examination at the conclusion thereof, which, in the opinion of the commissioner, is comparable in scope to that administered to appointees of the Police Division of the Department of Public Safety** U.S. Virgin Islands Police Department (V.I.P.D.)[8] **pursuant to the authority of section 258, Title 3, Virgin Islands Code; Provided, however, That once such person have complied with requirements under this subsection, he or she will be deemed to have complied with these requirements for all future applications for licenses to have and possess firearms, or for renewals of such licenses.**

Act to authorize and direct the department of health to administer psychological and drug and alcohol abuse tests to employees of private security guards and investigative agencies and to prohibit the issuance of licenses to have and possess firearms to employees of private security guards and investigative agencies who have not passed certain tests, No. 4958, § 2, Sess. L. 1984, p. 171-72 (1984); *United States v. Tyson*, 653 F.3d 192 (3d Cir. 2011) (based on crimes occurring in 2007 and 2008); *Nicholas v. People*, 56 V.I. 718 (V.I. 2012) (based on a 2005 crime).

23 V.I.C. § 459

Section 459 provided as follows when enacted in 1968.

(a) Whenever, following the issuance of a firearms license hereunder, it shall appear to the satisfaction of the Commissioner
  (1) That such license was issued based on false report of facts, or on concealment of facts on the part of the applicant; or
  (2) That the licensee was not in fact entitled to such license pursuant to the provisions of this chapter; or

[8] Act to change the name of the department of Public Safety to "U.S. Virgin Islands Police Department (V.I.P.D.)"; to make appropriations for expenditures connected with such change and for a criminal justice conference; and for related purposes, No. 4964, § 1, Sess. L. 1984, p. 177 (1984).

> (3) That the licensee commits any act in violation of the terms of the license, or of any provisions of this chapter warranting the cancellation of the license
>
> -- the said Commissioner may after due notice and hearing cancel the license so issued; Provided, however, That pending such hearing the licensee shall surrender to said Commissioner or the peace officer representing him the firearm acquired and possessed by virtue of said license.

Act to amend Chapter 5, Title 23 of the Virgin Islands Code, relating to the control of firearms and ammunition, and for other purposes, No. 2279, § 1, Sess. L. 1968, p. 213 (1968).[9]

23 V.I.C. § 460

As originally enacted, "Reciprocal recognition of out-of-state licenses," provided as follows:

> Unless otherwise prohibited by any state or federal law, a license to possess or to carry firearms, issued by any competent authority of any state or territory of the United States and in accordance with the same or similar requirements as set forth in the preceding sections pertaining to the applicant's eligibility, and the establishment of his reputation through fingerprints, shall be recognized as valid within the Virgin Islands and shall allow the holder thereof to exercise all of the privileges in connection therewith, while said licensee is a visitor or transient resident herein.

Act to amend Chapter 5, Title 23 of the Virgin Islands Code, relating to the control of firearms and ammunition, and for other purposes, No. 2279, § 1, Sess. L. 1968, p. 213 (1968); *United States v. McKie*, 112 F.3d 626 (3d Cir. 1997) (based on a 1995 crime); *United States v. McIntosh*, 289 F. Supp. 2d 672 (D.V.I. 2003) (based on a 2002 crime); *Toussaint v. Gov't of the V.I.*, 45 V.I. 455 (D.V.I. App. Div. 2004); *Gov't of the V.I. v. Isaac*, 45 V.I. 334 (V.I. Super. Ct. 2004) (based on a 2002 crime); *Nicholas v. People*, 56 V.I. 718 (V.I. 2012) (based on a 2005 crime).

23 V.I.C. § 461

In 1968, section 461, "License to sell firearms and/or ammunition; gunsmiths; report of transactions; private transfer sales to minors or aliens," provided as follows:

> (a) No person may engage in the business of dealer in firearms and/or ammunition or as a gunsmith without holding a license

[9] In 1994, Chapter 5 of Title 23 was amended such that the Commissioner of Licensing and Consumer Affairs was substituted wherever the words Commissioner of Finance appeared. Act to further amend Act No. 5803 to authorize payment to prior year obligations of the Police Department from existing appropriations for other purposes, No. 5966, § 11, Sess. L. 1994, p. 36 (1994).

therefor issued by the Commissioner of Finance upon favorable report of the **Police** Commissioner of Public Safety[10].

(b) Each transaction referring to the importation, or to the sale of firearms and ammunition between dealers, shall be reported to the Commissioner on forms which he shall provide, and the name, domicile, place of business, and the number of the license of the vendor and vendee, as well as the quantities and descriptions of the firearms or ammunition which are the subject of each transaction, shall be set forth therein, as required by the Commissioner.

(c) Any person, not otherwise engaged in the business of a dealer in firearms and/or ammunition, may transfer a firearm to another by sale, gift, exchange or otherwise only upon prior reporting to the Commissioner shall thereupon determine the eligibility of the proposed transferee for a license to possess firearms, and shall make such further determination as may be necessary in the circumstances.

(d) No person licensed or otherwise, may sell or furnish firearms or ammunition to a minor, except that a shotgun or rifle of such type or caliber as the Commissioner may prescribe or ammunition therefor, may be sold or furnished by a licensed dealer to a minor who displays a hunting or sporting license issued him in accordance with the laws of the Virgin Islands, and who further displays the written consent of his parent, guardian, or other responsible person acting in their absence and interest, in which such sale or delivery has been authorized.

Act to amend Chapter 5, Title 23 of the Virgin Islands Code, relating to the control of firearms and ammunition, and for other purposes, No. 2279, § 1, Sess. L. 1968, p. 214 (1968).

23 V.I.C. § 462

When adopted in 1968, section 462, "Application for dealer's or gunsmith's license; form and content; term; fee; renewals," read as follows:

(a) Any person wishing to obtain a license to engage in the business of dealer in firearms and/or ammunition or the business of gunsmith, or both, shall file with the Commissioner of Finance a sworn application in the manner provided by the said Commissioner of Finance in consultation with the **Police**

[10] Act to change the name of the Department of Public Safety to "U.S. Virgin Islands Police Department (V.I.P.D.)"; to make appropriations for expenditures connected with such change and for a criminal justice conference; and for related purposes, No. 4964, § 1, Sess. L. 1984, p. 177 (1984).

> Commissioner of Public Safety[11] which application shall contain all the information necessary so that the license may be issued in accordance with the provisions of this chapter. Such application shall be transmitted to the **Police** Commissioner of Public Safety and no license shall be issued under this section without the latter Commissioner first making an investigation of all the statements set forth in the application for the purpose of determining any prior conviction of the applicant, and only when such an investigation establishes that the statements of the applicant are true, and that the applicant has not been convicted of any crime of violence and the Commissioner so certifies, recommending that the license be issued. Where the applicant is a corporation or partnership, no license shall be issued if any officer of the corporation, or partner of the partnership, has been convicted of any crime of violence.
>
> (b) Licenses hereunder shall be issued for a term of one year, expiring in any event on the 15th day of January succeeding the date of issuance.
>
> (c) The annual fee for a license as a dealer in firearms and/or ammunition shall be $50**100**, for a license as a gunsmith, $50**100**, and for a license as both, $75**150**.

Act to amend Chapter 5, Title 23 of the Virgin Islands Code, relating to the control of firearms and ammunition, and for other purposes, No. 2279, § 1, Sess. L. 1968, p. 214-15 (1968).[12] On November 7, 1983, the increases in fees reflected above were enacted. The omnibus authorization act of 1984, No. 4877, § 310, Sess. L. 1983, p. 242 (1983).

23 V.I.C. § 463

As enacted in 1968, section 463, "Qualifications of dealer or gunsmith," read as follows:

> No license to engage in the business of gunsmith or of dealer in firearms and/or ammunition shall be issued to a person not over 21 years of age, and not a resident of the Virgin Islands and a citizen of the United States.
>
> When the applicant is a corporation, it shall be organized under the laws of the Virgin Islands, and if a partnership, all partners shall be residents of the Virgin Islands and citizens of the United States.

[11] Act to change the name of the Department of Public Safety to "U.S. Virgin Islands Police Department (V.I.P.D.)"; to make appropriations for expenditures connected with such change and for a criminal justice conference; and for related purposes, No. 4964, § 1, Sess. L. 1984, p. 177 (1984).

[12] In 1994, Chapter 5 of Title 23 was amended such that the Commissioner of Licensing and Consumer Affairs was substituted wherever the words Commissioner of Finance appeared. Act to further amend Act No. 5803 to authorize payment to prior year obligations of the Police Department from existing appropriations for other purposes, No. 5966, § 11, Sess. L. 1994, p. 36 (1994).

Act to amend Chapter 5, Title 23 of the Virgin Islands Code, relating to the control of firearms and ammunition, and for other purposes, No. 2279, § 1, Sess. L. 1968, p. 215 (1968).

23 V.I.C. § 464

Section 464, "Corporation or partnership application for license," provide as follows:

> Where the applicant is a corporation or a partnership, the application shall be signed and sworn to by the president, the secretary and the treasurer of the corporation or by all the managing partners of the partnership; and it shall set forth the name of the corporation or of the partnership, place and date of the incorporation or organization thereof, and the principal place of business. The requirements of subparagraphs (3) and (4) of section 456 of this chapter shall be applied to the president, the secretary, and the treasurer of the corporation and, in the proper case, to all partners of the partnership. A license issued under the provisions of this section shall be valid only for the business establishments named and described in the license. Said license may not be transferred to any other business establishment or to any other person and shall be automatically cancelled upon the dissolution of the corporation or partnership, or the replacement of any of the officers of the corporation signing the application, or upon the admission of any new partner in the case of a partnership, even though such license may be renewed as soon as the provisions of subparagraphs (3) and (4) of section 456 of this chapter in connection with the new officer or the new partner are complied with. In these cases the Commissioner may issue a provisional issue for a term not more than thirty days while the renewal is being processed.

Act to amend Chapter 5, Title 23 of the Virgin Islands Code, relating to the control of firearms and ammunition, and for other purposes, No. 2279, § 1, Sess. L. 1968, p. 215-16 (1968).

23 V.I.C. § 465

The 1968 version of section 465, "Conditions for dealers' operations; records of transactions," read as follows:

> Any person, to whom a license has been issued under section 461 of this chapter may engage in the business of gunsmith or of dealer in firearms and/or ammunition under the following conditions.
> (1) The business shall be operated only on the premises specified in the license.
> (2) The license, or a copy thereof, certified by the authority issuing the same, shall be posted in the establishment so that it may be easily read.

(3) Under no circumstance shall a weapon or shall ammunition be sold unless the vendor is personally acquainted with the buyer or the latter clearly establishes his identity.
(4) A record in triplicate shall be kept of each firearm sold and of each sale of ammunition, on books devoted to this purpose which shall be printed in the manner prescribed by the Commissioner and the record of each sale shall be personally signed by the buyer and by the person making the sale, each in the presence of the other; and such record shall set forth the day and hour of the sale, caliber, manufacture, model and factory number of the weapon, caliber mark, and quantity of ammunition, the name, birthplace, address and occupation and the buyer. Said record shall also contain a thumb-print of the buyer and shall also set forth whether the buyer is personally known to the vendor, and in case he should not be the manner in which the buyer established his identity. The vendor shall transmit a copy of such record by registered mail, within 24 hours following the sale, to the Commissioner; he shall send the duplicate within 48 hours following the sale to the Attorney General and shall keep the triplicate for six years.
(5) A licensee, if limited to the business of a gunsmith, shall not be required to forward reports of the work performed under said license, but shall maintain at his place of business an accurate and legible accounting of the nature and type of the jobs or work performed, together with a name and address of the customers, a description of the firearm, including the serial number which accounting shall be available as required by the Commissioner.

Act to amend Chapter 5, Title 23 of the Virgin Islands Code, relating to the control of firearms and ammunition, and for other purposes, No. 2279, § 1, Sess. L. 1968, p. 216-17 (1968).

In 2010, section 465 was amended to read as follows:

Any person, to whom a license has been issued under section 461 of this chapter may engage in the business of gunsmith or of dealer in firearms and/or ammunition under the following conditions.
(1) The business shall be operated only on the premises specified in the license.
(2) The license, or a copy thereof, certified by the authority issuing the same, shall be posted in the establishment so that it may be easily read.
(3) Under no circumstance shall a weapon or shall ammunition be sold unless the vendor is personally acquainted with the buyer or the latter clearly establishes his identity.
(4) A record in triplicate shall be kept of each firearm sold and of each sale of ammunition, on books devoted to this purpose which shall be printed in the manner prescribed by the

> Commissioner and the record of each sale shall be personally signed by the buyer and by the person making the sale, each in the presence of the other; and such record shall set forth the day and hour of the sale, caliber, manufacture, model and factory number of the weapon, caliber mark, and quantity of ammunition, the name, birthplace, address and occupation and the buyer. Said record shall also contain a thumb-print of the buyer and shall also set forth whether the buyer is personally known to the vendor, and in case he should not be the manner in which the buyer established his identity. The vendor shall transmit a copy of such record by registered mail, within 24 hours following the sale, to the Commissioner; he shall send the duplicate within 48 hours following the sale to the Attorney General and shall keep the triplicate for six years.
>
> (5) A licensee, if limited to the business of a gunsmith, shall not be required to forward reports of the work performed under said license, but shall maintain at his place of business an accurate and legible accounting of the nature and type of the jobs or work performed, together with a name and address of the customers, a description of the firearm, including the serial number which accounting shall be available as required by the Commissioner.
>
> (6) **The licensee may not place or cause to be placed any firearm or ammunition in any window display visible from any street or sidewalk.**
>
> (7) **The licensee shall keep all firearms in a securely locked place except when being shown to a customer or being repaired or lawfully transported.**
>
> (8) **The licensee may not knowingly employ anyone in the licensees' business or establishment through which the licensee operates the business pursuant to this chapter, if such person would not be eligible to register a firearm.**

An Act amending Title 14 V.I.C., Chapter 113, and 23 V.I.C., Chapter 5, relating to the lawful possession of firearms ammunition and requirements for licensed dealers of firearms and ammunition, No. 7182, § 2, Sess. L. 2010, p. 114 (2010) (emphasis added).

23 V.I.C. § 466

Section 466, "Sales of weapons and ammunition without licenses prohibited; sales slips," provided as follows when enacted in 1968.

> No dealer in firearms or ammunition shall deliver a firearm to a purchaser without the latter's handing over to him a license to have and possess a firearm, duly issued in accordance with the provisions of this chapter, and unless said license contains an authorization for the purchase of such firearm, and said dealer shall not sell to such purchaser any other weapon than the one described

> in said license. The dealer in firearms and ammunition shall separate from such license and keep the dealer's coupon, and shall return the license to the purchaser. No weapon shall be sold to the holder of a license and keep the dealer's coupon, and shall return the license from which the coupon has been removed, and in no case shall a pistol, revolver, or the firearm be delivered to the purchaser thereof until after forty-eight (48) hours have elapsed from the time he applies for the purchase and the same shall be delivered to him unloaded and securely wrapped.
>
> No dealer in firearms or ammunition shall sell any quantity of ammunition to any person failing to present a firearm license.

Act to amend Chapter 5, Title 23 of the Virgin Islands Code, relating to the control of firearms and ammunition, and for other purposes, No. 2279, § 1, Sess. L. 1968, p. 217 (1968).

In 2010, section 466 was amended to read as follows:

> (a) No dealer in firearms or ammunition shall deliver a firearm to a purchaser without the latter's handing over to him a license to have and possess a firearm, duly issued in accordance with the provisions of this chapter, and unless said license contains an authorization for the purchase of such firearm, and said dealer shall not sell to such purchaser any other weapon than the one described in said license. The dealer in firearms and ammunition shall separate from such license and keep the dealer's coupon, and shall return the license to the purchaser. No weapon shall be sold to the holder of a license and keep the dealer's coupon, and shall return the license from which the coupon has been removed, and in no case shall a pistol, revolver, or the firearm be delivered to the purchaser thereof until after forty-eight (48) hours have elapsed from the time he applies for the purchase and the same shall be delivered to him unloaded and securely wrapped.
>
> (b) No dealer in firearms or ammunition shall sell any quantity of ammunition to any person failing to present a firearm license.
>
> **(c) Except in the case of the sale or transfer to another dealer or peace officer, as defined in 5 V.I.C., 3561, no licensed dealer may transfer or sell ammunition unless:**
>
> **(1) Transfer is made in person; and**
>
> **(2) The ammunition to be purchased or transferred is of the same caliber or gauge of the firearm described in the firearms license or registration certificate.**

An Act amending Title 14 V.I.C., Chapter 113, and 23 V.I.C., Chapter 5, relating to the lawful possession of firearms ammunition and requirements for licensed dealers of firearms and ammunition, No. 7182, § 3, Sess. L. 2010, p. 115 (2010) (emphasis added).

23 V.I.C. § 467

"Selling firearms without a license," was addressed in section 467 when enacted in 1968 and provided as follows:

> Whoever, without being licensed in accordance with the provision of this chapter, sells, has in his possession with the intent to sell, exposes for sale, or advertises for sale, any firearm or ammunition, or without being so licensed engages in the business of a gunsmith, shall be punished for a first offense by a fine of not more than $100 or by imprisonment of not more than one year or both, and for a second or subsequent offense by a fine of not more than $1,000 or by imprisonment of not more than 2 years, or both.

Act to amend Chapter 5, Title 23 of the Virgin Islands Code, relating to the control of firearms and ammunition, and for other purposes, No. 2279, § 1, Sess. L. 1968, p. 217 (1968); *Gov't of the V.I. v. Petersen*, Crim. No. 156/1985, 1985 WL 1264049 (V.I. Super. Ct. July 16, 1985) (based on a 1985 crime).

In 1994, section 467, "Selling firearms **or ammunition** without a license," was amended to read as follows:

> Whoever, without being licensed in accordance with the provision of this chapter, sells, has in his possession with the intent to sell, exposes for sale, or advertises for sale, any firearm or ammunition, or without being so licensed engages in the business of a gunsmith, shall **be fined a minimum of $5,000 or not more than five (5) years imprisonment or both; and a maximum of not more than $10,000 or ten (10) years imprisonment or both**.

Act to set minimum and maximum penalty for importing and selling guns and ammunition without a license, No. 5971, §§ 1-2, Sess. L. 1994, p. 53 (1994) (emphasis added).

In 1994, section 467 was again amended as follows:

> Whoever, without being licensed in accordance with the provision of this chapter, sells, has in his possession with the intent to sell, exposes for sale, or advertises for sale, any firearm or ammunition, or without being so licensed engages in the business of a gunsmith, shall be fined a minimum of $5,000 or not more than five (5) years imprisonment or both; and a maximum of not more than $10,000 or ten (10) years imprisonment or both.

The reckless endangerment act, No. 6026, § 3, Sess. L. 1994, p. 218 (1994) (emphasis added).

23 V.I.C. § 468

Section 468, "Cancellation of license," provided as follows:

> Whenever, following the issuance of a license to engage in the business of dealer in firearms and/or ammunition or the business of a gunsmith, it shall appear to the satisfaction of the Commissioner of Finance:

> **(1)** That such license was issued based on a false report of facts, or on concealment of facts on the part of the applicant; or
> **(2)** That the licensee was not in fact entitled to such license pursuant to the provisions of this chapter; or
> **(3)** That the licensee commits any act in violation of the terms of the license, or of any provisions of this chapter warranting the cancellation of the license
>
> --the said Commissioner of Finance, after due notice and hearing may cancel the license so issued.

Act to amend Chapter 5, Title 23 of the Virgin Islands Code, relating to the control of firearms and ammunition, and for other purposes, No. 2279, § 1, Sess. L. 1968, p. 218 (1968).[13]

23 V.I.C. § 469

Section 469, "Report by carrier, warehouseman or depositary; delivery to consignee," provided as follows:

> Every water, air or overland carrier, an every warehouseman in the Virgin Islands shall as soon as possible notify such fact and the name and address of the consignee to the Commissioner and shall not deliver said merchandise to such consignee until he is authorized to do so by the Commissioner. Failure to discharge any duty herein imposed shall be punishable by a fine of not more than two thousand (2,000) dollars, or by imprisonment in jail for not more than one (1) year, or both.

Act to amend Chapter 5, Title 23 of the Virgin Islands Code, relating to the control of firearms and ammunition, and for other purposes, No. 2279, § 1, Sess. L. 1968, p. 218 (1968).

23 V.I.C. § 470

Section 470, "Report of firearms purchased outside or brought into the Virgin Islands; fees, penalty," was added to title 23 of the Code in 1968, making it a crime to fail to report a firearm. This section provided as follows:

> (a) Any person other than a licensed dealer, who purchases or otherwise obtains any firearm or ammunition from any source outside the Virgin Islands shall report such fact in writing or in person to the Commissioner within 24 hours after receipt of the firearm or ammunition, furnishing a complete description of the firearms or ammunition purchased or otherwise obtained. He shall also furnish his own name, address, date of birth and occupation.

[13] In 1994, Chapter 5 of Title 23 was amended such that the Commissioner of Licensing and Consumer Affairs was substituted wherever the words Commissioner of Finance appeared. Act to further amend Act No. 5803 to authorize payment to prior year obligations of the Police Department from existing appropriations for other purposes, No. 5966, § 11, Sess. L. 1994, p. 36 (1994).

(b) Any person upon entering the Virgin Islands bringing with him any firearm or ammunition shall report in writing or in person to the Commissioner within 24 hours of his arrival, furnishing a complete description of the firearm or ammunition brought into the Virgin Islands. He shall also furnish his own name, address, date of birth and occupation.

(c) In the even the person reporting under subsections (a) or (b), above, is qualified for a license to carry firearms in the Virgin Islands, the Commissioner shall issue the same, upon payment of the proper fee, and the firearm shall be registered in the Weapons Register provided for in section 469 of this chapter. If the person is not qualified for a license then the Commissioner shall retain the firearms or ammunition for disposition in accordance with the provisions of section 475 of this chapter, but no prosecution shall life against the person for unlawful possession of the firearm or ammunition.

(d) Any person who fails to comply with this section shall be punished as provided in section 484 of this chapter.

Act to amend Chapter 5, Title 23 of the Virgin Islands Code, relating to the control of firearms and ammunition, and for other purposes, No. 2279, § 1, Sess. L. 1968, p. 218-19 (1968).

In 1973, section 470 was amended to read as follows:

(a) Any person other than a licensed dealer, who purchases or otherwise obtains any firearms or ammunition from any source within or outside of the Virgin Islands shall report such fact in writing or in person to the Commissioner within 24 hours after receipt of the firearm or ammunition, furnishing a complete description of the firearm or ammunition purchased or otherwise obtained. He shall also furnish his own name, address, date of birth and occupation.

(b) Any person upon entering the Virgin Islands bringing with him any firearm or ammunition shall report in writing or in person to the Commissioner within 24 hours of his arrival, furnishing a complete description of the firearm or ammunition brought into the Virgin Islands. He shall also furnish his own name, address, date of birth and occupation.

(c) In the even the person reporting under subsections (a) or (b), above, is qualified for a license to carry firearms in the Virgin Islands, the Commissioner shall issue the same, upon payment of the proper fee, and the firearm shall be registered in the Weapons Register provided for in section 469 of this chapter. If the person is not qualified for a license then the Commissioner shall retain the firearms or ammunition for disposition in accordance with the provisions of section 475 of this chapter,

but no prosecution shall life against the person for unlawful possession of the firearm or ammunition.

(d) Any person who fails to comply with this section shall be punished as provided in section 484 of this chapter.

Act to amend Title 23, Virgin Islands Code, Subsections 470(a), and 477(a), pertaining to firearms, No. 3473, § 1, Sess. L. 1973, p. 240 (1973); *Gov't of the V.I. v. King*, 31 V.I. 78 (V.I. Super. Ct. 1995) (based on a 1994 crime); *Smalls v. Gov't of the V.I.*, 950 F. Supp. 698 (D.V.I. App. Div. 1996) (based on a 1994 crime); *Toussaint v. Gov't of the V.I.*, 36 V.I. 185 (D.V.I. App. Div. 1997) (based on a 1993 crime); *United States v. McKie*, 112 F.3d 626 (3d Cir. 1997) (based on a 1995 crime); *Francis v. Gov't of the V.I.*, 40 V.I. 150 (D.V.I. App. Div. 1998) (addressing a 1995 conviction).

In 1996, section 470 was amended to read as follows:

(a) Any person other than a licensed dealer, who purchases or otherwise obtains any firearms or ammunition from any source within or outside of the Virgin Islands shall report such fact in writing or in person to the Commissioner within 24 hours **immediately** after receipt of the firearm or ammunition, furnishing a complete description of the firearm or ammunition purchased or otherwise obtained. He shall also furnish his own name, address, date of birth and occupation.

(b) Any person upon entering the Virgin Islands bringing with him any firearm or ammunition shall report in writing or in person to the Commissioner within 24 hours **immediately** of his arrival, furnishing a complete description of the firearm or ammunition brought into the Virgin Islands. He shall also furnish his own name, address, date of birth and occupation.

(c) In the even the person reporting under subsections (a) or (b), above, is qualified for a license to carry firearms in the Virgin Islands, the Commissioner shall issue the same, upon payment of the proper fee, and the firearm shall be registered in the Weapons Register provided for in section 469 of this chapter. If the person is not qualified for a license then the Commissioner shall retain the firearms or ammunition for disposition in accordance with the provisions of section 475 of this chapter, but no prosecution shall life against the person for unlawful possession of the firearm or ammunition.

(d) Any person who fails to comply with this section shall be punished as provided in section 484 of this chapter.

Act to amend Title 23, Section 470, Virgin Islands Code, to remove the twenty-four hour reporting period and to place the burden of proof of compliance upon the firearm possessor; to amend Title 23, Section 475, Virgin Islands Code, to provide for the delivery of firearms surrendered under the provisions of Title 23, Chapter 5, Virgin Islands Code, at any police station in the U.S. Virgin Islands; to amend Title 23, Chapter 5, Virgin Islands Code, by adding a new Section 489 to be entitled "Registration of firearms upon purchase from dealer; registration of firearms transferred

from non-dealer"; and to amend Title 14, Section 2253, Virgin Islands Code, to include constructive possession, No. 6123, §§ 1-2, Sess. L. 1996, p. 120-21 (1996) (emphasis added); *United States v. Ubiles*, 224 F.3d 213 (3d Cir. 2000) (based on a 1998 crime); *Gov't of the V.I. v. Brewer*, 46 V.I. 3 (V.I. Super. Ct. 2001) (based on a 1995 crime); *Gov't of the V.I. v. Turbe*, 304 Fed. Appx. (3d Cir. 2008) (based on a 2003 crime); *Toussaint v. Gov't of the V.I.*, 45 V.I. 455 (D.V.I. App. Div. 2004); *United States v. Tyson*, 653 F.3d 192 (3d Cir. 2011) (based on crimes occurring in 2007 and 2008); *United States v. Mike*, 655 F.3d 167 (3d Cir. 2011) (based on a April 10, 2009 crime); *Lopez v. People*, 60 V.I. 534 (V.I. 2014) (based on a 2012 crime); *Sonson v. People*, 59 V.I. 590 (V.I. 2013) (based on a 2009 crime); *People v. Turnbull*, Case No. SX-11-CR-832, 2014 WL 3974537 (V.I. Super. Ct. June 23, 2014) (based on a 2011 crime); *Velazquez v. People*, S. Ct. Crim. No. 2015-0080, 2016 WL 4442558 (V.I. Aug. 22, 2016) (based on a 2012 crime).

23 V.I.C. § 471

Section 471, "Report of loss of firearm," provided as follows when enacted in 1968.

> Every person possessing or having under his control a firearm, and who loses the same or finds that it has disappeared, shall report the same to the Commissioner within 10 days, following his discovery of such loss or disappearance, and in the event of his failing to do such person shall be fined not more than $100.

Act to amend Chapter 5, Title 23 of the Virgin Islands Code, relating to the control of firearms and ammunition, and for other purposes, No. 2279, § 1, Sess. L. 1968, p. 218-19 (1968).

23 V.I.C. § 472

Section 472, "Appeals," provided as follows:

> Any applicant aggrieved by the denial of his application for a license hereunder or any person whose license has been revoked, shall be entitled to judicial review thereof by filing an appeal with the Municipal **Territorial[**[14]**]** Court of the Virgin Islands within 15 days after the date of the action complained of. Upon such appeal the determinations of the Commissioner as to questions of fact shall be deemed final in the absence of conclusive showing to the Court of fraud or misinterpretation. An appeal hereunder shall not operate to stay the action of the Commissioner. A judgment sustaining a refusal to grant a license shall not bar after one (1) year, a new application; no shall a judgment in favor of the petitioner prevent

[14] Act to amend Title 4, Virgin Islands Code, pertaining to a change in the name of the court of local jurisdiction from "Municipal Court of the Virgin Islands" to "Territorial Court of the Virgin Islands", to enlarge the jurisdiction of the court, to provide for the selection, qualifications, compensation, tenure, retirement and removal of judges, to provide for trial by a jury of six members and to establish a commission on judicial disabilities, No. 3876, § 5, Sess. L. 1976, p. 197 (1976).

> the Commissioner from thereafter revoking or refusing to renew such license for any proper cause which thereafter occur.

Act to amend Chapter 5, Title 23 of the Virgin Islands Code, relating to the control of firearms and ammunition, and for other purposes, No. 2279, § 1, Sess. L. 1968, p. 219 (1968).

23 V.I.C. § 473

> (a) The commissioner shall establish a Firearms Register within the Department and maintain the same in a systematic and orderly manner, so that the names of the persons licensed as dealers in firearms, gunsmiths or to carry firearms in the Virgin Islands as well as the essential details concerning the firearms registered, may be easily found.
> (b) Every firearm authorized to be licensed under section 454 which is duly licensed after this chapter takes effect, shall be registered in the Firearms Register provided for in the preceding subsection. If such firearm does not bear a serial number, or if the same is illegible, a nongovernmental licensee shall have his full name engraved on the butt or the stock of the weapon, and shall so set for in his declaration. The Commissioner shall deliver to the declarant a record of such registration.
> (c) The firearms authorized to be had, possessed, or carried under paragraphs (4) and (5) of subsection (a) of section 453 and under subparagraph (1) of section 454 of this chapter, shall also be registered in the Firearms Register above provided for.

Act to amend Chapter 5, Title 23 of the Virgin Islands Code, relating to the control of firearms and ammunition, and for other purposes, No. 2279, § 1, Sess. L. 1968, p. 219-20 (1968).

23 V.I.C. § 474

Section 474, "Death of licensee," provided as follows:

> Upon the death of a person leaving in his estate a firearm it shall be the duty of his administrator, executor or any other person legally authorized to represent the estate to report to the Commissioner the brand, caliber and serial number if any, of the firearm in question. Upon such report, or upon information otherwise verified, the Commissioner shall make the necessary provisions for the custody of said firearm by any interested party or by its deposit with the Department, pending the settlement of the estate. If the firearm is assigned to an heir or distribute who is eligible to obtain a license for a firearm, and such license is issued, said firearm shall be delivered to such heir or distribute. If the heir or distribute is not eligible for a firearms license, then the firearm shall be disposed of as part of the estate through public or private sale as the District Court of the Virgin Islands may direct; provided

> that the firearm may be acquired only by a duly licensed dealer, a person eligible for a license to possess or carry firearms in the Virgin Islands, or a nonresident of the Virgin Islands in compliance with the laws of the buyer's state.

Act to amend Chapter 5, Title 23 of the Virgin Islands Code, relating to the control of firearms and ammunition, and for other purposes, No. 2279, § 1, Sess. L. 1968, p. 220 (1968).

23 V.I.C. § 475

Section 475, "Deposit of firearms in Department of Public Safety **U.S. Virgin Islands Police Department (V.I.P.D.)**,[15] disposition," provided as follows when enacted in 1968.

> (a) All firearms surrendered, seized or confiscated under the provisions of this chapter, shall be disposed of as provided in this section.
> (b) Any firearm unlawfully borne, possessed, transported or carried, is hereby declared a public nuisance and when any such weapon or instrument is seized by the police the same shall be delivered to the Commissioner. In the cases where criminal actions are filed, the judgment convicting the defendant shall, in addition to the penalties herein prescribed, carry with it the forfeiture in favor of the Government of the Virgin Islands of the firearm seized, and it shall be the duty of the court or judge to deliver the firearm so forfeited to the Commissioner who shall direct the disposition thereof.
> (c) Those firearms which are in good condition may be preserved by the Commissioner for governmental uses.
> (d) The Commissioner shall, whenever he may deem it advisable, and at least once a year, destroy and render completely unserviceable the firearms delivered to him under the provisions of this section, except when a certification is presented to him from a court, or the United States Attorney or the Attorney General to the effect that the preservation thereof, or of any of them, is necessary or indispensable for the ends of justice, and except when the Commissioner himself directs that they, or any of them, be retained in any police or detective laboratory to the end that they may be examined, compared, identified, or be the object of any other experiment tending to discover or prevent a crime.
> (e) Before disposing of a firearm, as provided in this section, the Commissioner shall direct that the class, make, number and caliber of such firearms be carefully recorded and filed.

[15] Act to change the Name of the Department of Public Safety to "U.S. Virgin Islands Police Department (V.I.P.D.)"; to make appropriations for expenditures connected with such change and for a criminal justice conference; and for related purposes, No. 4964, § 1, Sess. L. 1984, p. 177 (1984).

Act to amend Chapter 5, Title 23 of the Virgin Islands Code, relating to the control of firearms and ammunition, and for other purposes, No. 2279, § 1, Sess. L. 1968, p. 220-21 (1968).[16]

23 V.I.C. § 476

Section 476, "Collections of antique firearms, certificates of uselessness," provided as follows when first adopted.

> No provision hereof shall prevent that private collections of antique firearms, which may not be used as weapons, be preserved and maintained and that their owners possess them as ornaments or as matters of curiosity, nor the collections of firearms kept as relics, but for the preservation of any weapon of those included in this section the prior inspection thereof and approval therefor by the Commissioner shall be necessary and he shall render such firearm useless, so that the same may not be used as such. The Commissioner shall issue a certificate of uselessness of all the weapons possessed under the provisions of this section, and the possession of any firearm not included in said certificate shall be subject to all the provisions hereof.

Act to amend Chapter 5, Title 23 of the Virgin Islands Code, relating to the control of firearms and ammunition, and for other purposes, No. 2279, § 1, Sess. L. 1968, p. 221 (1968).

23 V.I.C. § 477

The 1968 act also enacted section 477, "Carrying of firearms, openly or concealed; evidence of intent to commit a crime of violence," which read as follows:

> (a) Whoever, unless otherwise authorized by law, has, possesses, bears, transports or carries either openly or concealed on or about his person, or under his control in any vehicle of any description any firearm, loaded or unloaded, except in his dwelling house or place of business or on other land possessed by him, may be arrested without a warrant, and shall be fined not more than $500 or imprisoned not more than 1 year, or both, except that if such person shall have been convicted of a felony, or if such firearm 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, then such person shall be fined not more than $1,000 or imprisoned not more than 5 years, or both. The foregoing applicable penalties provided for violation of this section shall

[16] In 1994, Chapter 5 of Title 23 was amended such that the Commissioner of Licensing and Consumer Affairs was substituted wherever the words Commissioner of Finance appeared. Act to further amend Act No. 5803 to authorize payment to prior year obligations of the Police Department from existing appropriations for other purposes, No. 5966, § 11, Sess. L. 1994, p. 36 (1994).

be in addition to the penalty provided for the commission of, or attempt to commit, the crime of violence.

(b) In the trial of a person for committing or attempting to commit a crime of violence, the fact that he was armed with a firearm, used or attempted to be used, and had no license to carry the same, shall be evidence of his intention to commit said crime of violence.

Act to amend Chapter 5, Title 23 of the Virgin Islands Code, relating to the control of firearms and ammunition, and for other purposes, No. 2279, § 1, Sess. L. 1968, p. 222 (1968).

On September 1, 1972, section 477 was amended to read as follows:

(a) Whoever, unless otherwise authorized by law, has, possesses, bears, transports or carries either openly or concealed on or about his person, or under his control in any vehicle of any description any firearm, loaded or unloaded, except in his dwelling house or place of business or on other land possessed by him, may be arrested without a warrant, and shall be fined not more than $500 or imprisoned not more than 1 year, or both, except that if such person shall have been convicted of a felony, or if such firearm 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, then such person shall be fined not more than $1,000 or imprisoned not more than 5 years, or both. The foregoing applicable penalties provided for violation of this section shall be in addition to the penalty provided for the commission of, or attempt to commit, the crime of violence.

(b) **Whoever, unless otherwise authorized by law, has, possesses, bears, transports or carries either openly or concealed on or about his person, or under his control in any vehicle of any description any machine gun, or shotgun, loaded or unloaded, may be arrested without a warrant, and shall be fined not more than $2,000 or imprisoned not more than 3 years, or both, except that if such person shall have been convicted of a felony, or if such machine gun or shotgun 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, then such person shall be fined not more than $5,000 or imprisoned not more than 10 years, or both. The foregoing applicable penalties provided for violation of this section shall be in addition to the penalty provided for the commission of, or attempt to commit, the crime of violence.**

(c) In the trial of a person for committing or attempting to commit a crime of violence, the fact that he was armed with a firearm,

used or attempted to be used, and had no license to carry the same, shall be evidence of his intention to commit said crime of violence.

Act to amend Title 23, Chapter 5, Virgin Islands Code, pertaining to machine guns, No. 3303, § 2, Sess. L. 1972, p. 439 (1972).

On October 25, 1972, section 477 was amended to read as follows:

(a) Whoever, unless otherwise authorized by law, has, possesses, bears, transports or carries either openly or concealed on or about his person, or under his control in any vehicle of any description any firearm, loaded or unloaded, except in his dwelling house or place of business or on other land possessed by him, may be arrested without a warrant, and shall be fined not more than $500 or imprisoned not more than 1 year, or both, except that if such person shall have been convicted of a felony, or if such firearm 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, then such person shall be fined not more than $1,000 or imprisoned not more than 5 years, or both. The foregoing applicable penalties provided for violation of this section shall be in addition to the penalty provided for the commission of, or attempt to commit, the crime of violence.

(b) Whoever, unless otherwise authorized by law, has, possesses, bears, transports or carries either openly or concealed on or about his person, or under his control in any vehicle of any description any machine gun, or shotgun, loaded or unloaded, may be arrested without a warrant, and shall be fined not more than $2,000 or imprisoned not more than 3 years, or both, except that if such person shall have been convicted of a felony, or if such machine gun or shotgun 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, then such person shall be fined not more than $5,000 or imprisoned not more than 10 years, or both. The foregoing applicable penalties provided for violation of this section shall be in addition to the penalty provided for the commission of, or attempt to commit, the crime of violence.

(c) In the trial of a person for committing or attempting to commit a crime of violence, the fact that he was armed with a firearm, used or attempted to be used, and had no license to carry the same, shall be evidence of his intention to commit said crime of violence.

(d) A person convicted pursuant to subsections (a) or (b) hereof of having, possessing, bearing, transporting or carrying or

> **having under his proximate control a firearm or imitation thereof during the commission or attempted commission of a crime of violence shall be incarcerated for a term of imprisonment of not less than one-half of the maximum sentence specified in the subsection. Imposition or execution of this minimum period of incarceration shall not be suspended, nor shall probation be granted; neither shall parole or any other form of release be granted for this minimum period of incarceration.**

Act to provide mandatory minimum penalties in certain crimes under the law of the Virgin Islands, No. 3321, § 3, Sess. L. 1972, p. 469 (1972) (emphasis added).

In 1973, this section was amended to read as follows:

> **(a) Whoever, unless authorized by law, has, possesses, bears, transports or carries either openly or concealed on or about his person, or under his control in any vehicle of any description any firearm, loaded or unloaded, may be arrested without a warrant, and shall be fined not more than $500 or imprisoned not more than 1 year, or both, except that if such person shall have been convicted of a felony, 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, then such person shall be fined not more than $1,000 or imprisoned not more than 5 years, or both. The foregoing applicable penalties provided for the violation of this section shall be in addition to the penalty provided for the commission of, or attempt to commit, the crime of violence. A person may be arrested for violation of this section without a warrant.**
>
> (b) Whoever, unless otherwise authorized by law, has, possesses, bears, transports or carries either openly or concealed on or about his person, or under his control in any vehicle of any description any machine gun, or shotgun, loaded or unloaded, may be arrested without a warrant, and shall be fined not more than $2,000 or imprisoned not more than 3 years, or both, except that if such person shall have been convicted of a felony, or if such machine gun or shotgun 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, then such person shall be fined not more than $5,000 or imprisoned not more than 10 years, or both. The foregoing applicable penalties provided for violation of this section shall be in addition to the penalty provided for the commission of, or attempt to commit, the crime of violence.

> (c) In the trial of a person for committing or attempting to commit a crime of violence, the fact that he was armed with a firearm, used or attempted to be used, and had no license to carry the same, shall be evidence of his intention to commit said crime of violence.
> (d) A person convicted pursuant to subsections (a) or (b) hereof of having, possessing, bearing, transporting or carrying or having under his proximate control a firearm or imitation thereof during the commission or attempted commission of a crime of violence shall be incarcerated for a term of imprisonment of not less than one-half of the maximum sentence specified in the subsection. Imposition or execution of this minimum period of incarceration shall not be suspended, nor shall probation be granted; neither shall parole or any other form of release be granted for this minimum period of incarceration.

Act to amend Title 23, Virgin Islands Code, Subsections 470(a), and 477(a), pertaining to firearms, No. 3473, § 2, Sess. L. 1973, p. 240 (1973).

In 1974, section 477 was repealed in its entirety and incorporated into section 2253(a) of title 14.[17] Act to amend Title 14, Chapter 113, and Title 23, Chapter 5, Virgin Islands Code, pertaining to the definition of certain weapons and the penalties for possession of said weapons, No. 3566, § 5, Sess. L. 1974, p. 101 (1974); *Gov't of the V.I. v. King*, 31 V.I. 78, n.8 (V.I. Super. Ct. 1995) (noting that 477 was enacted in 1968 and was repealed in 1974 and replaced with section 2253 of title 14); *Gov't of the V.I. v. Downey*, 12 V.I. 39 (D.V.I. 1975).

23 V.I.C. § 478[18]

Section 478, "Report of treatment of wounded persons," provided as follows:

> Any physician, physician aide, or nurse treating a case of bullet wound, powder burn or any other wound arising from or caused by the discharge of a gun, revolver, pistol, or other firearm, and whenever such cases are treated in a hospital, clinic, sanitarium or other similar institution, the manager, superintendent, or other

[17] Act 3473 specified that the sections following were to be redesignated to reflect this deletion as indicated in the Act to amend Titles 14 and 23 and Title 33, Section 3501 a, Virgin Islands Code, to enact the Virgin Islands Gun Control Act of 2001, and for other related purposes, No. 6493, § 2, Sess. L. 2001, p. 396 (2001). In that Act, however, it appears the section numbers were not actually redesignated. For example, section 2(b) of that act directs that "Section 479, subsection (d)" be amended. However, under the sections with their redesignated numbers, pre-1974 section 479 became section 478 and pre-1974 section 480 should have become section 479, but it is pre-1974 section 479 that has subsections, not post-1974 section 479; *see cf.* 1 V.I.C. 45(a) (2) ("The following matter does not constitute part of the law . . . the descriptive headings or catchlines, other than the section numbers . . . .").

[18] For the reasons explained in footnote 17, this section has not been redesignated as section 477.

> person in charge shall report such case at once to the police authorities.

Act to amend Chapter 5, Title 23 of the Virgin Islands Code, relating to the control of firearms and ammunition, and for other purposes, No. 2279, § 1, Sess. L. 1968, p. 222 (1968).

23 V.I.C. § 479[19]

Section 479, "Discharging or aiming firearms," provided as follows:

> Any person who, otherwise than in self-defense or in the discharge of official duty:
> (a) Willfully discharges any pistol, revolver, or other firearm, or who throws any deadly missile in a public place or any other place where there is any person who may be injured, thereby, although no injury to any person ensues; or
> (b) Intentionally although without malice aims a revolver, pistol or other firearm toward any person; or
> (c) Discharges, without injury to any person, firearms while intentionally although without malice aiming toward any person; or
> (d) Causes physical injury to any person by the discharge of a firearm while aiming intentionally, although without malice, at any person, shall be guilty of a misdemeanor.

Act to amend Chapter 5, Title 23 of the Virgin Islands Code, relating to the control of firearms and ammunition, and for other purposes, No. 2279, § 1, Sess. L. 1968, p. 222-23 (1968).

In 2001, section 479 was amended to read as follows:

Section 479, "Discharging or aiming firearms," provided as follows:

> Any person who, otherwise than in self-defense or in the discharge of official duty:
> (e) Willfully discharges any pistol, revolver, or other firearm, or who throws any deadly missile in a public place or any other place where there is any person who may be injured, thereby, although no injury to any person ensues; or
> (f) Intentionally although without malice aims a revolver, pistol or other firearm toward any person; or
> (g) Discharges, without injury to any person, firearms while intentionally although without malice aiming toward any person; or
> (h) Causes physical injury to any person by the discharge of a firearm while aiming intentionally, although without malice, at any person, shall be guilty of a misdemeanor **felony**.

[19] For the reasons explained in footnote 17, this section has not been redesignated as section 478.

Act to amend Titles 14 and 23 and Title 33, Section 3501 a, Virgin Islands Code, to enact the Virgin Islands Gun Control Act of 2001, and for other related purposes, No. 6493, § 2, Sess. L. 2001, p. 396 (2001) (emphasis added).

23 V.I.C. § 480[20]

Section 480, "False information forbidden in sale of weapons," when enacted provided as follows:

> No person shall, in purchasing a firearm or in applying for any license or in making any report hereunder give or offer false or misleading information or offer false evidence of his identity.

Act to amend Chapter 5, Title 23 of the Virgin Islands Code, relating to the control of firearms and ammunition, and for other purposes, No. 2279, § 1, Sess. L. 1968, p. 223 (1968).

23 V.I.C. § 481[21]

When enacted in 1968, section 481, "Alteration of identifying marks of weapons prohibited," provided as follows:

> No person shall within the Virgin Islands change, alter, remove, or obliterate the name of the maker, model, manufacturer's number, or other mark or identification on any pistol, machine gun, or sawed-off shotgun. Possession of any pistol, machine gun, or sawed-off shotgun upon which any such mark shall have been changed, altered, removed, or obliterated shall be prima facie evidence that the possessor has changed, altered, removed, or obliterated the same within the Virgin Islands: Provided, however, That nothing contained in this section shall apply to any officer or agent of the United States or the Government of the Virgin Islands engaged in experimental work.

Act to amend Chapter 5, Title 23 of the Virgin Islands Code, relating to the control of firearms and ammunition, and for other purposes, No. 2279, § 1, Sess. L. 1968, p. 223 (1968).

In 2001, section 481 was amended to read as follows:

> (a) No person shall within the Virgin Islands change, alter, remove, or obliterate the name of the maker, model, manufacturer's number, or other mark or identification on any pistol, machine gun, or sawed-off shotgun. Possession of any pistol, machine gun, or sawed-off shotgun upon which any such mark shall have been changed, altered, removed, or obliterated shall be prima facie evidence that the possessor has changed, altered, removed, or obliterated the same within the Virgin Islands: Provided,

[20] For the reasons explained in footnote 17, this section has not been redesignated as section 479.

[21] For the reasons explained in footnote 17, this section has not been redesignated as section 480.

> however, That nothing contained in this section shall apply to any officer or agent of the United States or the Government of the Virgin Islands engaged in experimental work.
>
> **(b) Whoever, unless otherwise authorized by law, has, possesses, bears, transports or carriers either, actually or constructively, openly or concealed, any firearm, as defined in section 451(d) of this title, loaded or unloaded, with altered or obliterated identification marks, in a public place, a residential area, a vehicle or any place where person are gathered shall be imprisoned for not less than fifteen (15) years without parole.**

Act to amend Titles 14 and 23 and Title 33, Section 3501a, Virgin Islands Code, to enact the Virgin Islands Gun Control Act of 2001, and for other related purposes, No. 6493, § 2, Sess. L. 2001, p. 396-97 (2001); *People v. Nibbs*, 48 V.I. 19 (V.I. Super. Ct. 2006) (based on a 2005 crime); *People v. Schulterbrandt*, Case No. ST-16-CR-F34, 2016 WL 4485708 (V.I. Super. Ct. Aug. 22, 2016) (based on a 2016 crime).

23 V.I.C. § 482[22]

Section 482, "Illegal use of license; penalty," provided as follows:

> Whoever knowingly allows the use of his license, issued under this chapter or any prior law of the Virgin Islands, by another person for the purpose of obtaining or transporting firearms shall be punished as provided in section 484 of this chapter.

Act to amend Chapter 5, Title 23 of the Virgin Islands Code, relating to the control of firearms and ammunition, and for other purposes, No. 2279, § 1, Sess. L. 1968, p. 223 (1968).

23 V.I.C. § 483[23]

Section 483, "Deposit of fees into General Fund," provided as follows:

> All fees collected for licenses under this chapter shall be transmitted to the Commissioner of Finance and deposited by him in the General Fund of the Treasury of the Virgin Islands.

Act to amend Chapter 5, Title 23 of the Virgin Islands Code, relating to the control of firearms and ammunition, and for other purposes, No. 2279, § 1, Sess. L. 1968, p. 223 (1968).[24]

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[22] For the reasons explained in footnote 17, this section has not been redesignated as section 481.

[23] For the reasons explained in footnote 17, this section has not been redesignated as section 482.

[24] In 1994, Chapter 5 of Title 23 was amended such that the Commissioner of Licensing and Consumer Affairs was substituted wherever the words Commissioner of Finance appeared. Act to further amend Act No. 5803 to authorize payment to prior year obligations of the Police Department from existing appropriations for other purposes, No. 5966, § 11, Sess. L. 1994, p. 36 (1994).

23 V.I.C. § 484[25]

Section 484, "General penalty section," provided as follows when enacted in 1968.

> Any person who violates the provisions of this chapter shall, except when otherwise specifically provided herein, be fined not more than $100 or imprisoned not more than six months or both; provided that if the violation occurs after such person has been convicted in the Virgin Islands of a violation of this chapter, or of a crime of violence, either in the Virgin Islands or in another jurisdiction, such person shall be fined not more than $500 or imprisoned not more than two years or both.

Act to amend Chapter 5, Title 23 of the Virgin Islands Code, relating to the control of firearms and ammunition, and for other purposes, No. 2279, § 1, Sess. L. 1968, p. 223-24 (1968).

In 2001, section 484 was amended to read as follows:

> Any person who violates the provisions of this chapter shall, except when otherwise specifically provided herein, be fined not more than $100 **$5,000** or imprisoned not more than six months **three years** or both; provided that if the violation occurs after such person has been convicted in the Virgin Islands of a violation of this chapter, or of a crime of violence, either in the Virgin Islands or in another jurisdiction, such person shall be fined not more than $500 **$10,000** or imprisoned not more than two ten years or both.

Act to amend titles 14 and 23 and title 33, section 3501 a, Virgin Islands Code, to enact the Virgin Islands Gun Control Act of 2001, and for other related purposes, No. 6493, § 2, Sess. L. 2001, p. 397 (2001) (emphasis added).

23 V.I.C. § 485[26]

Section 485, "Regulations," provided the following:

> The Commissioner may issue, modify and amend, from time to time, such rules and regulations, not inconsistent with this chapter or the provisions of other law, which he may deem necessary or appropriate to carry out the purpose of this chapter, which rules and regulations, upon approval by the Governor, shall have the force and effect of law.

Act to amend Chapter 5, Title 23 of the Virgin Islands Code, relating to the control of firearms and ammunition, and for other purposes, No. 2279, § 1, Sess. L. 1968, p. 224 (1968).

Section 485 was amended as follows in 1969:

[25] For the reasons explained in footnote 17, this section has not been redesignated as section 483.

[26] For the reasons explained in footnote 17, this section has not been redesignated as section 484.

> The **Police** Commissioner of Public Safety[27] shall issue rules and regulations, not inconsistent with the provisions of law, pertaining to the use and control of firearms used by employees of security, guard, patrol and private detective services. Such rules and regulations, upon approval by the Governor and the Legislature, shall have the force and effect of law. Upon such approval, the Commissioner shall cause such rules and regulations to be published and he shall provide each duly licensed security, guard, patrol and private detective service with copies thereof.

Act to amend the provisions of Section 456 of Title 23 of the Virgin Islands Code relating to the qualifications of applicants for licenses for firearms, No. 2953, § 2, Sess. L. 1969, p. 401 (1969).

23 V.I.C. § 486[28]

Section 486, "Police power reserved," provided as follows.

> Nothing contained in this chapter shall be deemed to limit the exercise of the police power of the Government of the Virgin Islands for the protection of the existence of the government, life, the public security, health, morals and the beneficial use of property.

Act to amend Chapter 5, Title 23 of the Virgin Islands Code, relating to the control of firearms and ammunition, and for other purposes, No. 2279, § 1, Sess. L. 1968, p. 224 (1968).

23 V.I.C. § 487

Section 487 was added in 1975 and read as follows:

> § 487. Seizure and forfeiture
> (a) The following items of property shall be subject to seizure and forfeiture, and, upon forfeiture, no property right shall exist in them:
> (1) Any firearm being worn, borne, or transported by any person not authorized pursuant to section 454 of this title, and, therefore, in violation of section 484.
> (2) All ammunition or other parts of or appurtenances to any such firearm worn, carried, or transported by such person or found in the immediate vicinity of such firearm.
> (b) Any property subject to seizure under subsection (a) hereof may be seized by any duly authorized officer, as an incident to an arrest or search and seizure. Any such officer seizing

[27] Act to change the name of the Department of Public Safety to "U.S. Virgin Islands Police Department (V.I.P.D.)"; to make appropriations for expenditures connected with such change and for a criminal justice conference; and for related purposes, No. 4964, § 1, Sess. L. 1984, p. 177 (1984) (emphasis added).

[28] For the reasons explained in footnote 17, this section has not been redesignated as section 485.

such property under this section shall either place the property under seal or remove the same to a location designated by the **Police** Commissioner of Public Safety.[29] Such officer shall, at the time of the seizure or as soon as possible thereafter, execute and deliver to the possessor a signed and dated receipt for the item seized.

(c) Upon the seizure of property pursuant to this section, the Attorney General shall be notified thereof by the Department of Public Safety **U.S. Virgin Islands Police Department (V.I.P.D.),**[30] which Department shall also furnish the name and address of the owner thereof, if known. The Attorney General shall notify the owner by certified mail to the seizure, if the registered owner is not the person from whom the item was seized, and the Attorney General's determination of whether the owner knew or should have known that the property was worn, borne, transported or used without lawful authority under section 454 of this title.

(1) If the Attorney General determines that the owner neither knew nor should have known of the unauthorized use or intended unauthorized use of the property, he shall surrender the property upon request to the owner unless he determines that the property is needed as evidence in a pending criminal case, in which event he shall return the property upon the final conclusion of the case or cases in which the property is needed as evidence.

(2) If the Attorney General determines that the property should be forfeited to the Government, he shall petition the Municipal **Territorial**[31] Court in the name of the Government of the Virgin Islands against the property as designated by make, model, year and serial number or other identifying

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[29] Act to change the name of the Department of Public Safety to "U.S. Virgin Islands Police Department (V.I.P.D.)"; To Make Appropriations for Expenditures Connected With Such Change and for a Criminal Justice Conference; and for Related Purposes, No. 4964, § 1, Sess. L. 1984, p. 177 (1984).

[30] Act To Change the Name of the Department of Public Safety to "U.S. Virgin Islands Police Department (V.I.P.D.)"; to make appropriations for expenditures connected with such change and for a criminal justice conference; and for related purposes, No. 4964, § 1, Sess. L. 1984, p. 177 (1984).

[31] Act to amend Title 4, Virgin Islands Code, pertaining to a change in the name of the court of local jurisdiction from "Municipal Court of the Virgin Islands" to "Territorial Court of the Virgin Islands", to enlarge the jurisdiction of the court, to provide for the selection, qualifications, compensation, tenure, retirement and removal of judges, to provide for trial by a jury of six members and to establish a commission on judicial disabilities, No. 3876, § 5, Sess. L. 1976, p. 197 (1976).

characteristic. The petition shall allege the seizure and set forth in general terms the causes or grounds of forfeiture. It shall also pray that the property be condemned as forfeited to the Government and disposed of according to law.

(3) If the owner or owners of the property are unknown or cannot be found, notice of the seizure and intended forfeiture proceedings shall be made by publication in one or more newspapers published in the District in which the action is brought. The notice shall state the substance and object of the original petition and give notice of the intended forfeiture proceedings.

(4) Within 30 days after service of the notice of seizure and intended forfeiture proceedings or within 30 days after the date of publication, the owner of the property seized may file an answer under oath to the petition.

(5) The court shall retain custody of the seized property pending prosecution of the person accused of violating section 454 hereof and in case such person be found guilty, the property shall remain in the custody of the court until the hearing on the forfeiture is held. The hearing shall be scheduled no more than 30 days after conviction of the defendant, and reasonable notice shall be given to those parties filing an answer to the petition.

(6) If no timely answer is filed, the Court shall hear evidence upon the unauthorized use of the property and shall upon satisfactory proof thereof, order the property forfeited to the Government of the Virgin Islands.

(7) At the scheduled hearing, any owner who filed a timely answer may show by competent evidence that the property was not in fact used in violation of section 454 hereof or that he neither knew nor should have known that the property was being, or was to be so used. Upon determination that the property was not so used, the Court shall order that the property be released to the owner.

(8) If after a full hearing the Court decides that the property was used in violation of section 454 or that the owner knew or should have known that the property was being, or was to be so used, the Court shall order that the property be forfeited to the Government of the Virgin Islands.

(d) Whenever property is forfeited under this section, it shall be turned over to the **Police** Commissioner of Public Safety for immediate destruction in the manner he deems appropriate.
(e) Before disposing of a firearm, as provided in this chapter, the Commissioner shall direct that the class, make, number and caliber of such firearm, as well as the time of receipt of such firearm by the Commissioner and the date of destruction, if any, of same, shall be carefully recorded and filed.

Act to amend Title 23, Chapter 5, Virgin Islands Code, pertaining to the seizure and forfeiture of firearms and ammunition, No. 3655, § 1, Sess. L. 1974, p. 282 (1975).

23 V.I.C. § 488

§ 488. Limited search
(a) Any law enforcement officer who, in the light of his observations, information and experience, has a reasonable belief that (i) a person may be wearing, carrying, or transporting a firearm in violation of section 454 of this title, (ii) by virtue of his possession of a firearm, such person is or may be presently dangerous to the officer or to others, (iii) it is impracticable, under the circumstances, to obtain a search warrant; and (iv) it is necessary for the officer's protection or the protection of others to take swift measures to discover whether such a person is, in fact, wearing, carrying, or transporting a firearm, such officer may:
    (1) Approach the person and identify himself as a law enforcement officer;
    (2) Request the person's name and address, and, if the person is in a vehicle, his license to operate the vehicle, and the vehicle's registration; and
    (3) Ask such questions and request such explanations as may be reasonably calculated to determine whether the person is, in fact, unlawfully wearing, carrying, or transporting a firearm in violation of section 454 hereof; and
    (4) If the person does not give an explanation which dispels the reasonable belief which he had, he may conduct a search of the person, limited to patting or frisking of the person's clothing in search of a firearm. The police officer in acting under this section shall do so with due regard to all circumstances of the occasion, including but not limited to the age, appearance, physical condition, manner and sex of the person approached.

> (b) In the event that the officer discovers the person to be wearing, carrying, or transporting a firearm, he may demand that the person produce evidence that he is entitled to so wear, carry, or transport the firearm pursuant to section 454 hereof. If the person is unable to produce such evidence, the officer may then seize the firearm and arrest the person.
> (c) Nothing in this section shall be construed to limit the right of any police officer to make any other type of search, seizure, and arrest which may be permitted by law.
>
> Any police officer sued in a civil action for conducting a search or seizure pursuant to this section which is alleged to be unreasonable and unlawful shall, upon his request, be defended in said action and any appeals therefrom, by the Attorney General.
>
> Every police officer who conducts a search or seizure pursuant to this section shall, within twenty-four hours after such search or seizure, file a written report with the Department of Public Safety **U.S. Virgin Islands Police Department (V.I.P.D.)**[32] describing the circumstances surrounding the search or seizure and the reasons therefor on a form prescribed by the **Police** Commissioner of Public Safety.[33] Such report shall include the name of the person searched.

Act to amend Title 23, Chapter 5, Virgin Islands Code, pertaining to the seizure and forfeiture of firearms and ammunition, No. 3655, § 1, Sess. L. 1974, p. 284-85 (1975); *Gov't of the V.I. v. Kaller*, Crim. No. 543/1982, 1983 WL 952726 (V.I. Super. Ct. July 6, 1983) (based on a 1982 crime); *Gov't of the V.I. v. Suarez*, Crim. No. 123/83, 1983 WL 952748 (V.I. Super. Ct. July 6, 1983) (based on a1983 crime); *Gov't of the V.I. v. Williams*, 739 F.2d 936 (3d Cir. 1984) (based on a 1983 crime); *Gov't of the V.I. v. Commissiong*, 698 F. Supp. 604 (D.V.I. 1988) (based on a 1988 crime); *United States v. Jones*, 994 F.2d 1051 (3d Cir. 1993) (based on a 1992 crime); *Soldiew v. Gov't of the V.I.*, 30 V.I. 112 (D.V.I. 1994) (based on a 1991 crime); *Gov't of the V.I. v. Bowen*, 39 V.I. 47 (V.I. Super. Ct. 1998); *Olinsky v. Gov't of the V.I.*, No. 2001-0110, 2004 WL 727363 (D.V.I. App. Div. Mar. 26, 2004) (based on a 2000 crime); *United States v. Ubiles*, 224 F.3d 213 (3d Cir. 2000) (based on a 1998 crime); *United States v. Thomas*, 74 Fed. Appx. 189 (3d Cir. 2003) (based on a 2001 crime); Gov't of the V.I. v. Ali, 45 V.I. 164 (V.I. Super. Ct. 2003) (based on a 2001 crime); *Gov't of the V.I. v. Ashby*, 45 V.I. 54 (V.I. Super Ct. 2002) (based on a 2002 crime); *United States v. Sobratti*, 70 Fed. Appx. 73 (3d Cir. 2003) (based on a 2003 crime); *United States v. McIntosh*, 289 F. Supp. 2d 672 (D.V.I. 2003) (based on a 2002 crime); *Gov't of the V.I. v. Olinsky*, 119 Fed. Appx. 405 (3d Cir. 2005) (based on a 2001 crime); *Meyers v. Gov't*

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[32] Act to change the name of the Department of Public Safety to "U.S. Virgin Islands Police Department (V.I.P.D.)"; to make appropriations for expenditures connected with such change and for a criminal justice conference; and for related purposes, No. 4964, § 1, Sess. L. 1984, p. 177 (1984).

[33] Act to change the name of the Department of Public Safety to "U.S. Virgin Islands Police Department (V.I.P.D.)"; to make appropriations for expenditures connected with such change and for a criminal justice conference; and for related purposes, No. 4964, § 1, Sess. L. 1984, p. 177 (1984).

of the V.I., 48 V.I. 461 (V.I. Super. Ct. 2006) (based on a 2003 crime); *People v. Samuel*, 46 V.I. 177 (V.I. Super. Ct. 2005) (based on a 2004 crime); *People v. Nibbs*, 48 V.I. 19 (V.I. Super. Ct. 2006) (based on a 2005 crime); *Gov't of the V.I. v. Turbe*, 304 Fed. Appx. 76 (3d Cir. 2008) (based on a 2003 crime); *United States v. Walters*, 50 V.I. 453 (D.V.I. 2008) (based on a 2000 crime); *United States v. Nadal*, 354 Fed. Appx. 729 (3d Cir. 2009) (based on a 2008 crime); *Virgin Islands v. Samuel*, Nos. SX-09-CR-557, SC-09-CR-556, 2010 WL 7746081 (V.I. Super. Ct. Nov. 12, 2010) (unpublished) (based on a 2009 crime); *United States v. Graham*, 418 Fed. Appx. 158 (3d Cir. 2011) (based on a 2009 crime); *People v. Matthew*, 55 V.I. 380 (V.I. Super. Ct. 2011) (based on a 2009 crime); *United States v. Bell*, Crim. No. 10-cr-50, 2011 WL 2679120 (D.V.I. June 30, 2011) (based on a 2010 crime); *People v. Magras*, 54 V.I. 3, (V.I. Super. Ct. 2010) (based on a 2009 crime); *People v. Phillip*, 53 V.I. 25 (V.I. Super. Ct. 2010) (based on a 2009 crime); *People v. Penn*, 53 V.I. 315 (V.I. Super. Ct. 2010); *People v. Ambrose*, ST-09-CR-418, 2013 WL 5461150 (V.I. Super. Ct. Sept. 20, 2013) (based on a 2010 crime); *United States v. Turnbull*, Crim. No. 10-cr-38, 2011 WL 578831 (D.V.I. Feb. 9, 2011) (based on a 2010 crime); *United States v. Fox*, Crim. No. 10-cr-48, 2011 WL 841315 (D.V.I. Mar. 8, 2011) (based on a 2010 crime); *People v. Isaac*, ST-10-CR-614, 2011 WL 4703076 (V.I. Super. Ct. Mar. 8, 2011) (based on a 2010 crime); *People v. Fredericks*, 54 V.I. 161 (V.I. Super. Ct. 2011) (based on a 2010 crime); *United States v. Lewis*, 672 F.3d 232 (3d Cir. 2012) (based on a 2010 crime); *People v. Murrell*, 56 V.I. 796 (V.I. 2012) (based on a 2010 crime); *United States v. Lima*, Crim. No. 2012-010, 2012 WL 4371830 (D.V.I. Sept. 25, 2012) (based on a 2012 crime); *United States v. Elmes*, Crim. No. 2012-005, 2012 WL 4854771 (D.V.I. Oct. 12, 2012) (based on a 2012 crime); *People v. Lewis*, Crim. No. ST-12-CR-544, 2013 WL 3185912 (V.I. Super. Ct. June 18, 2013) (based on a 2012 crime); *People v. Turnbull*, Case No. SX-11-CR-832, 2014 WL 3974537 (V.I. Super. Ct. June 23, 2014) (based on a 2011 crime); *United States v. Wrensford*, Crim. No. 2013-0003, 2014 WL 3907021 (D.V.I. Aug. 11, 2014) (based on a 2012 crime); *United States v. Abdallah*, Crim. No. 2014-010, 2015 WL 327388 (D.V.I. Jan. 26, 2015) (based on a 2013 crime); *People v. Charles*, ST-13-CR-194, 2014 WL 797857 (V.I. Super. Ct. Feb. 26, 2014) (based on a 2013 crime); *United States v. Bailey*, Crim. No. 2014-054, 2015 WL 327198 (D.V.I. Jan. 23, 2015) (based on a 2014 crime); *People v. Heath*, 63 V.I. 80 (V.I. Super. Ct. 2015) (based on a 2014 crime); *People v. Prentice*, Case No. SX-14-CR-274, 2016 WL 1254421 (V.I. Super. Ct. Feb. 23, 2016) (based on a 2014 crime); *United States v. Wesselhoft*, Crim. No. 2015-0036, 2016 WL 3212483 (D.V.I. Mar. 4, 2016) (based on a 2015 crime); *People v. Looby*, ST-16-CR-141, 2016 WL 4443695 (V.I. Super. Ct. 2016) (based on a 2016 crime); *People v. Hodge*, ST-16-CR-30, 2016 WL 4501610 (V.I. Super. Ct. 2016) (based on a 2016 crime); *People v. Schulterbrandt*, Case No. ST-16-CR-F34, 2016 WL 4485708 (V.I. Super. Ct. Aug. 22, 2016) (based on a 2016 crime); *People v. Cannergeiter*, Case No. SX-15-CR-400, 2016 WL 5468374 (V.I. Super. Ct. Sept. 29, 2016) (based on a 2015 crime); *United States v. Nisbett*, Crim. No. 2016-11, 2017 WL 125015 (D.V.I. Jan. 11, 2017) (based on a 2016 crime); *United States v. Santiago*, Crim. No. 2016-17, 2017 WL 187152 (D.V.I. Jan. 16, 2017) (based on a 2016 crime).

23 V.I.C. § 489

Section 489 was enacted in 1996 and read as follows:

> Section 489. Registration of firearms upon purchase from dealer; registration of firearms transferred from non-dealer

(a) At the time that any firearms is purchased from a licensed firearms dealer; the dealer and the purchaser shall complete such registration documents as required by the Commissioner of Police before the firearm may be removed from the premises. The firearms dealer shall forward said documents to the Firearms Division of the Police Department by the end of the next business day.

(b) Any person other than a firearms dealer wishing to transfer a firearm to another person shall effect the transfer at the Firearms Division of the Virgin Islands Police Department or at the place of business of a licensed firearms dealer within the Virgin Islands. Both individuals involved in the transfer must present the appropriate firearm licenses to the Firearms Division or the firearms dealer before such transfer may be effected. A record of transfer, as provided by the Virgin Islands Police Department, shall be completed at the time of transfer, and no transfer of a firearm shall be valid absent the completion of registration and transfer documents as required by this section. The firearms dealer shall forward said documents to the Firearms Division of the Police Department by the end of the next business day.

(c) The completion of registration and transfer documents as required by this section shall constitute compliance with the requirements of Section 470, subsection (a) of this chapter.

Act to amend Title 23, Section 470, Virgin Islands Code, to remove the twenty-four hour reporting period and to place the burden of proof of compliance upon the firearm possessor; to amend Title 23, Section 475, Virgin Islands Code, to provide for the delivery of firearms surrendered under the provisions of Title 23, Chapter 5, Virgin Islands Code, at any police station in the U.S. Virgin Islands; to amend Title 23, Chapter 5, Virgin Islands Code, by adding a new Section 489 to be entitled "Registration of firearms upon purchase from dealer; registration of firearms transferred from non-dealer"; and to amend Title 14, Section 2253, Virgin Islands Code, to include constructive possession, No. 6123, § 3, Sess. L. 1996, p. 121 (1996).

23 V.I.C. § 489a

Section 489a was enacted in 2002 and read as follows:

§ 489a Safe storage of firearms; penalties

(a) Every person who owns, possesses, purchases, or acquires a firearm, as that word is defined at Section 451(d) of this chapter, shall be responsible for the safe storage of the firearm.

(b) Any person who owns, possesses, purchases, or acquires a firearm, as that word is defined in section 451(d) of this chapter, whose failure to lock or safely store the firearm directly results in a person not licensed to own or possess the firearm to gain access thereto, and said unlicensed person

injures or kills himself or another person with said firearm, may be, upon conviction, punished by a fine not to exceed $2,500, imprisonment not to exceed two years, or both, and be subject to forfeiture of his license and firearm. This section shall not be construed as precluding the charge or conviction of any other appropriate violation of law.

(c) For purposes of this section, ¨safe storage¨ means the storage o f a firearm in a locked manner so as to prevent discharge or the storage of a firearm in a safe location that is inaccessible to all except the licensed owner of the firearm. For purposes of this section a firearm is locked when the device installed on it or incorporated into its design is activated or set to prevent the firearm from being discharged.

Act No. 6510, § 1, Sess. L. 2002, p. 297 (2002).