

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

PEOPLE OF THE VIRGIN ISLANDS,	)	CASE NO.: SX-10-CR-60
	)	
Plaintiff,	)	
	)	
v.	)	MURDER IN THE FIRST DEGREE;
	)	RECKLESS ENDANGERMENT IN THE
	)	FIRST DEGREE/ PRINCIPAL;
	)	ASSAULT IN THE FIRST DEGREE/
	)	PRINCIPAL; POSSESSION OF A
	)	FIREARM DURING THE COMMISSION
	)	OF A CRIME OF
	)	VIOLENCE/PRINCIPAL
HILLMAN FAUCHER,	)	
	)	
Defendant.	)	
	)	
	)	
	)	

MEMORANDUM OPINION

BEFORE THE COURT is Defendant Faucher's Motion for Reconsideration of Denial of Motion for Judgment of Acquittal, filed August 15, 2013. In the Amended Consolidated Information, Defendant Faucher was charged with Murder in the First Degree, in violation of sections 922(a)(2) of title 14 of the Virgin Islands Code, for assaulting Halik Milligan and Karim Woodley with a deadly weapon, which was used in a shootout that ultimately caused the death of Shamir James. Faucher was also charged with aiding and abetting and Reckless Endangerment, in violation of sections 625(a) and 11(a) of Title 14 of the Virgin Islands Code for allegedly firing several shots at Halik Milligan and Karim Woodley in a public place, namely Chris' Hideaway. Faucher was also charged with two counts of aiding and abetting and Assault in the First Degree, in violation of section 295(1) and 11(a) of Title 14 of the Virgin

Islands Code, for allegedly assaulting Milligan and Woodley with multiple rounds from a .40 caliber weapon and an AK-47 assault weapon with the intent to kill them. Defendant Faucher was also charged with Possession of a Firearm During the Commission of a Crime of Violence, in violation of section 2253(a) and 11(a) of Title 14 of the Virgin Islands Code, for possessing a .40 caliber firearm, which was used in the assaults of Halik Milligan and Karim Woodley. On August 1, 2013, the Court denied Faucher's Motion for Judgment of Acquittal on all of these charges. The Court, however, did not evaluate the Virgin Islands' Supreme Court decision, *Tyson v. People of the Virgin Islands*, S. Ct. Crim. No. 2011-0055, 2013 WL 3817333 (V.I. July 18, 2013). Defendant requests that the Court review its Order taking this precedent into account.

STANDARD FOR MOTION TO RECONSIDER

"A party may file a motion asking the Court to reconsider its order or decision." LRCi 7.3¹. "[A] motion to reconsider shall be based on (1) intervening change in controlling law, (2) availability of new evidence, or (3) the need to correct clear error or prevent manifest injustice." *Nicholas v. Wyndham Int'l, Inc.*, 2002 U.S. Dist. LEXIS 27111 at *1 (D.V.I. 2002); LRCi 7.3. A motion for reconsideration must be filed within fourteen (14) days of the date of entry of the contested order. LRCi 7.3. There is no requirement that reasons be stated for the denial of a motion for reconsideration. *Briddle v. Scott*, 63 F.3d 364, 381 (5th Cir. 1995).

The granting of a motion to reconsider is "an extraordinary remedy and should be used sparingly." *Templet v. HydroChem Inc.*, 367 F.3d 473, 479 (5th Cir. 2004) (citing *Clancy v. Employers Health Ins. Co.*, 101 F. Supp.2d 463, 465 (E.D.La. 2000, citing Charles A. Wright, Arthur R. Miller and Mary K. Kane, *Federal Practice & Procedure* § 2810.1, at 124 (2d ed.

¹ LRCi 7.3 applies to civil proceedings in the Superior Court pursuant to Super. Ct. R. 7.

1995)). The purpose of such motions is to allow a [court] to correct its own errors, sparing parties and appellate courts the burden of unnecessary proceedings. *Charles v. Daley*, 799 F.2d 343, 348 (7th Cir. 1986); *see United States v. Dieter*, 429 U.S. 6, 8 (1976). The moving party has a heavy burden to establish an error sufficiently serious to merit amendment. The moving party must demonstrate that the court failed to consider controlling decisions or factual matters that were put before it on the underlying motion and which, had they been considered, might reasonably have led to a different result. *Ansoumana v. Gristede's Operating Corp.*, 255 F.Supp.2d 197, 198 (S.D.N.Y. 2003); *see also Shrader v. CSX Transp., Inc.*, 70 F.3d 255, 257 (2d Cir. 1995) (holding that standards for granting motion for reconsideration are strict, and reconsideration will generally be denied unless moving party can point to controlling decisions or data that court overlooked, which might reasonably be expected to alter conclusion reached by court).

Motions for reconsideration should not be used as “a vehicle for registering disagreement with the court’s initial decision, for rearguing matters already addressed by the court, or for raising arguments that could have been raised before but were not.” *Bostic v. AT&T*, 312 F. Supp.2d 731, 733 (D.V.I. 2004) (*citing Slater v. KFC Corp.*, 621 F.2d 932, 939 (8th Cir. 1980); *see also Fein v. Peltier*, 36 V.I. 197, 198 (D.V.I. 1997) (“Motions for reconsideration should not be used as a vehicle for rehashing and expanding upon arguments previously presented or merely as an opportunity for getting in one last shot at an issue that has been decided.”); *FDIC v. World Univ. Inc.*, 978 F.3d 10, 16 (1st Cir. 1992) (motions for reconsideration “are aimed at reconsideration, not initial consideration.”))

FACTUAL HISTORY²

The following are the facts on the record presented at trial: On the evening of January 5, 2010, Shantelle Simmons picked up “Skittles”³ and “Tech” in a ballpark in Sion Farm and drove them to Chris’ Hideaway, a bar located in Christiansted. (Tr., Vol. II, pp. 21-22). While the car was parked outside the bar, Simmons heard her backseat passengers say, “That is him.” (*Id.* Vol. II, p. 49). Ms. Simmons testified that she did not know who they were discussing and could not make out the faces of the people on the porch. (*Id.* at p. 50). After a few minutes, Skittles or Tech told Simmons, “Let’s go.” *Id.* Ms. Simmons testified that she drove her car around to the other side of the convenience store in a dark section, as she was told to do. (*Id.* at 51). At that point, the men in her backseat began to disguise themselves and adorned a black t-shirt over their heads and black handkerchiefs around their faces. (*Id.* at 54). Her passengers exited her vehicle and “within minutes, moments later,” she heard gunshots. (*Id.* at 55). Simmons, however, did not see any weapons and could not tell which direction Skittles and Tech went after exiting the vehicle, but continued to hear gunshots coming from the other side of Chris’ Hideaway. (*Id.* at 55-56). Simmons testified that she saw Tech fall and heard a clang like something metal had fallen on the ground. (*Id.* at 57-58). She noticed that Skittles was firmly grasping a small black object in his hand when he picked Tech up off of the ground. (*Id.* at 57). After Tech fell, Skittles lifted him and put him in the front passenger’s seat of Simmons’ vehicle. (*Id.* at 59). Skittles also was shot and suffered a gunshot wound to the chest; however, Simmons saw nothing in his hands when he put Tech into the car. (*Id.* at 60).

² For a more detailed factual history, see the Court’s Memorandum Opinion and Order Denying Faucher’s Judgment of Acquittal, entered August 1, 2013.

³ Simmons does not know the given names of “Skittles” and “Tech” but only their nicknames. (Tr. Vol. II, pp. 60-61). “Skittles” was later identified as Hillman Faucher by his mother and a concerned citizen according to the testimony of Vanessa Richardson, former security officer at Juan F. Luis Hospital. (Tr., Vol. III, p. 59. Richardson testified that “Tech” was later identified as Shamir James. (*Id.*)

Shamir James ("Tech") died at the hospital. Dr. Francisco Landron performed an autopsy on his body on January 13, 2010 and determined that his cause of death was homicide, gunshot wound to the head. (*Id.* at Vol. VI, pp. 65-67). Dr. Landron determined that this wound was a long range shot (taken from more than two feet away) as there was no gunpowder or black soot around the wound's entrance to indicate a wound from close range. (*Id.* p. 66).

Karim Woodley was also present at the shooting. He received immunity from the People in exchange for his testimony, although he could have faced charges for unauthorized use of a firearm, and had a prior gun violation. (Tr., Vol. III, p. 87, 90). Woodley stated that he was sitting at Chris' Hideaway on January 6, 2010 with Halik Milligan when a black SUV pulled up, stayed, and pulled off. (*Id.* at pp. 91-92). Woodley saw two individuals with weapons open fire. They fired two shots in his direction, which caused him to return fire with his .40 caliber semi-automatic pistol, emptying his clip, approximately 11-13 shots. (*Id.* at p. 93, 104-105). Woodley saw one of the men fall down. (*Id.* at 94). Shortly thereafter, the other individual went behind the building, came back and picked the fallen man up. (*Id.*) Woodley identified one of the men as holding a handgun, whereas the other had a long rifle (*Id.* at pp. 97, 100). Upon cross-examination Woodley testified that his view to the end of the building where the men were shooting at him was a little obscured by darkness. (*Id.* at p. 104).

Several officers investigated the scene of the shooting. They testified that bullet strikes to the concrete and shell casings alongside the abandoned building and from the left side of Chris' Hideaway heading toward the abandoned building and more casings in the roadway. (Tr. Transcript Vol. III at p. 16, 20; 108, 124). A swab of blood was taken in this area which matched Shamir James' DNA. (*Id.* Vol. VI, p. 134). They also testified that the casings and

scene had likely been contaminated by other vehicles and passersby. (Tr. Transcript Vol. III at p. 40, 41; Vol. IV: 126-27; 131). Although they thoroughly canvassed the area for weapons, they did not find any. (*Id.* at 45).

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

ANALYSIS

a. Count Eight: Felony Murder

As stated previously, Defendant is charged with aiding and abetting a felony murder, which occurred when Shamir James died while participating in an assault in the first and third degree on Halik Milligan and Karim Woodley. In a recent decision, *Tyson v. People of the Virgin Islands*, S. Ct. Crim. No. 2011-0055, 2013 WL 3817333 (V.I. July 18, 2013), the Supreme Court stated that only the agency theory of felony murder applies in the Virgin Islands. Under this theory, only "those killings committed by the felon or his or her agent or accomplice" fall within the purview of felony murder. *Tyson*, 2013 WL 3817333 at *6 (citing *State v. Sophophone*, 19 P.3d 70, 74 (Kan. 2001)). Thus, if a decedent was killed by an act of

someone other than the defendant or his or her agent or accomplice, s/he cannot be charged with felony murder in the Virgin Islands.⁴

In *Tyson*, the Supreme Court reversed Tyson's conviction for felony murder of L.P.C., who was an innocent bystander killed by an errant bullet fired by someone other than Tyson when the shooting erupted. The evidence showed that Tyson's gun could not have fired the bullet that killed L.P.C.

In this case, there is reasonable doubt that the bullet that killed James was not fired by Faucher. An autopsy of James was performed by Francisco Landron on January 13, 2010. (Tr. Vol. VI p. 65). Dr. Landron determined that James suffered two gunshot wound to the body. *Id.* at 66. Dr. Landron opined that James died from a gunshot wound to the head on his cheek adjacent to the right side of his mouth. (Tr. Vol. VI, p. 67). The bullet entered through James' right cheek and exited through the left side of his neck. (Tr. Vol. VI pp. 67-68). Landron determined that the bullet came from the right side, from the front of the body to the back, right to left and slightly down. (Tr. Vol. VI, p. 68). On cross examination Landron admitted that he could not discern which way the decedent was facing and was unable to conclude if the shooter shot James from above or below. (Tr. Vol. VI pp. 70-71).

Numerous shell casings were found on the scene. Keisha Benjamin, a police officer dispatched to Chris' Hideaway after several shots were heard, found shell casings along the side of the abandoned building by the Riverdale warehouse. (Tr. Vol. III pp. 8, 14). A swab of blood was taken near this warehouse which was later determined to be a match to James' DNA. (Tr. Vol. VI p. 134). As the bullet which killed James was never identified, that bullet cannot

⁴ Under the proximate cause theory, a defendant can be held liable for "any death proximately resulting from [his] unlawful activity," even if the final act resulting in the killing was not the act of his or her agent.

be connected to any specific firearm, specifically no firearm used by Hillman Faucher. Under this new *Tyson* precedent, the Court will grant Faucher's judgment of acquittal on the felony murder charges.

b. Other Charges

The Court will not disturb its decision, however on the Reckless Endangerment, First Degree Assault and Possession of a Firearm during the Commission of a Crime of Violence, which the *Tyson* decision did not impact.

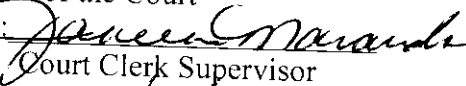
CONCLUSION

Based on the above analysis, a reasonable jury can find Hillman Faucher guilty of Count Nine (Reckless Endangerment), Counts Ten and Eleven (First Degree Assault) and Count Twelve (Possession of a Firearm During the Commission of a Crime of Violence). Faucher, however, must be acquitted of Count Eight (Felony Murder).

DONE AND SO ORDERED this 19th day of August, 2013.


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

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

By: 
Court Clerk Supervisor

Dated: 8/20/13