

NOT FOR PUBLICATION

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

	)	CASE NO. SX-09-CR-412
	)	
PEOPLE OF THE VIRGIN ISLANDS,	)	MURDER IN THE FIRST DEGREE /
	)	PRINCIPAL
Plaintiff,	)	14 V.I.C. § 922(a)(1) & 11(a)
	)	ASSAULT / FIRST DEGREE
v.	)	(TWO COUNTS)
	)	14 V.I.C. § 295(1) & 11(a)
JOH WILLIAMS,	)	POSSESSION OF A FIREARM
	)	DURING THE COMMISSION OF A CRIME
Defendant.	)	OF VIOLENCE
	)	14 V.I.C. § 2253(a) & 11(a)
	)	RECKLESS ENDANGERMENT
	)	14 V.I.C. § 625(a) & 11(a)
	)	

MEMORANDUM OPINION

THIS MATTER is before the Court on Defendant Joh Williams' Renewed Motion for Judgment of Acquittal or in the Alternative a New Trial. The People filed a Response in Opposition. Defendant was tried jointly with co-defendants Jalani Williams and Khareem Hughes after being charged in the Amended Criminal Information with murder in the first degree, assault in the first degree, unauthorized possession of a firearm, and reckless endangerment. Following a jury trial, Defendant was found guilty on all charges except one count of first-degree assault. Defendant challenges his conviction on several grounds; 1) that the evidence is insufficient to establish beyond a reasonable doubt that Defendant willfully intended, with premeditation, deliberation and malice aforethought to commit murder; 2) that the conviction of Defendant Khareem Hughes for voluntary manslaughter negates Defendant's conviction for first degree murder; and 3) a new trial is warranted in this matter because the People engaged in prosecutorial misconduct and violated his constitutional right to due process. Accordingly, Defendant asserts that the Court must vacate the

jury's finding and enter a judgment of acquittal or in the alternative grant Defendant a new trial.

The Court will consider each claim below.

STANDARD

I. Motion for Judgment of Acquittal.

The Court "must enter a judgment of acquittal of any offense for which the evidence is insufficient to sustain a conviction."¹ Federal Rule of Criminal Procedure 29 allows courts to "reserve decision on the motion ... submit the case to the jury, and decide the motion either before the jury returns a verdict or after it returns a verdict of guilty or is discharged without having returned a verdict."² The Court evaluates the sufficiency of the evidence presented at trial in the light most favorable to the People.³ The Court is tasked with reviewing all issue of credibility under the province of the jury.⁴ However, the Court is not called upon to assess witness credibility or weigh evidence.⁵ Finally the Court must affirm a conviction if a rational trier of fact could have found the defendant guilty beyond a reasonable doubt and the convictions are supported by substantive evidence.⁶ Nevertheless, "this evidence does not need to be inconsistent with every conclusion save that of guilt in order to sustain the verdict."⁷

A. Based on the Evidence Adduced at Trial, A Rational Juror Could Find the Defendant Guilty Beyond A Reasonable Doubt of First Degree Murder.

The evidence presented at trial reveals that on August 2, 2009 the Defendant, Joh Williams was in an area next to Gertrude's Restaurant. Defendant was seen openly brandishing a weapon immediately before he and a co – defendant began shooting at the victim, Almanzo Williams. Even after the victim fell to the ground, the Defendant continued to fire at him repeatedly. The Defendant

¹ Fed.R.Crim.P. 29(a).

² Fed.R.Crim.P. 29(b).

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

⁴ *Id.*

⁵ *Gov't of the V.I. v. Joseph*, 770 F.2d 343, 348 (3d Cir. 1985).

⁶ *Bowry v. People of the Virgin Islands*, 52 V.I. 264, 268 (2009) (quoting *Latalladi v. People* 51 V.I. 137, 145 (2009)).

⁷ *Id.* (quotations omitted).

then fled the scene. Police found over forty shell casings at the scene of the shooting. Medical records established that the victim died two hours later due to multiple gunshots to the abdomen. Forensic testing was able to match some of the shell casing to the live round found on Joh William's co – defendant Jalani Williams. At the close of the People's case-in-chief, Defendant moved for judgment of acquittal, challenging, *inter alia*, the sufficiency of the evidence admitted to prove murder in the first degree. Defendant contends, the People erroneously based its case on the fact that the victim was shot multiple times, thus inferring an "assassination plot" that was not supported by the weight of evidence presented at trial. Essentially, Defendant claims that the People failed to present sufficient evidence related to the elements of premeditation and deliberation. But Defendant erroneously ties the People's alleged assassination plot theory with the premeditation and deliberation prong of the crime of first degree murder.

Under Virgin Islands law, "[m]urder is the unlawful killing of a human being with malice aforethought."⁸ A person commits the crime of murder in the first-degree when he commits "any . . . kind of willful, deliberate and premeditated killing"⁹ Premeditation requires "a prior design to commit murder, [but] no particular period of time is necessary for such premeditation."¹⁰ To premeditate a killing is to conceive the design or plan to kill.¹¹ However, the deliberation and planning that may go into premeditation does not have to involve any particular length of time.¹² Further, because premeditation is subjective, it can only be established by circumstantial evidence.¹³ To prove the Defendant guilty of murder in the first degree the People had to prove beyond a reasonable doubt that the Defendant unlawfully killed Almanzo Williams with malice aforethought, in a willful, deliberate, and premeditated fashion. Applying this standard here, the Court finds that,

⁸ V.I. Code Ann. tit. 14, § 921 (1996 & Supp. 2011).

⁹ *Id.* § 922(a)(1).

¹⁰ *Government of the Virgin Islands v. Martinez*, 780 F.2d 302, 305(3d. Cir. 1985).

¹¹ *Id.*

¹² *Brown v. People of the Virgin Islands*, S. Ct. Crim. No. 2008 – 0073, 2010 VI SUPREME LEXIS 62 * 2 (Mar. 24, 2010) (quoting 40 A Am. Jur. 2d. *Homicide* § 448 (Feb. 2010)).

¹³ *Id.* See also *Government v. Lake*, 5 V.I. 594, 605,606 (3d. Cir. 1966).

viewing the evidence in the light most favorable to the People, a jury could reasonably have found from the evidence and testimony presented that the Defendant Joh Williams committed first degree murder.

B. The Defendant's Conviction for First Degree Murder is Not Made Constitutionally Defective by Co-Defendant Khareem Hughes' Conviction for Voluntary Manslaughter.

Under Virgin Islands law, voluntary manslaughter is the unlawful killing of a human being without malice aforethought, upon a sudden quarrel or heat of passion.¹⁴ The jury found co-defendant Khareem Hughes guilty of voluntary manslaughter while the Defendant was found guilty of first degree murder. Defendant argues that the conviction of Hughes for the lesser – included offense of voluntary manslaughter, renders his conviction for first degree murder constitutionally defective. Defendant's rationale for this contention appears to hinge on the allegation that the People relied completely on the evidence presented against himself and co-defendant Jalani Williams to convict Khareem Hughes. Thus, Defendant contends all three convictions are irrevocably woven together since the jury evaluated the same evidence for all three Defendants. As such Defendant argues he was denied his constitutional right to due process because it was illogical and improper for a jury to have found the Defendants guilty of different degrees of the crime of murder. But a review of the record herein and prevailing case law does not support the Defendant's argument. First, at trial, the jury was informed of their responsibility to separately consider the evidence against each individual Defendant in this matter on each offense charged.¹⁵ Specifically, the jury instructions stated

[F]or each defendant and offense, you must decide whether the People have proven beyond a reasonable doubt that the particular defendant is guilty of the particular offense. Your decision on any one defendant or any one offense, whether guilty or

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

¹⁵ (Jur. Istr., ¶ 34) *Zafiro v. United States*, 506 U.S. 534, 541 (1993) (finding that potential prejudice to defendants tried jointly was mitigated by proper curative instructions to the jury) *See also Richardson v. Marsh*, 481 U.S. 200 (1987)).

not guilty, should not influence your decision on any of the other defendants or offenses. Each offense and each defendant should be considered separately.¹⁶

In this matter, there were multiple Defendants. And the jury's determination of the guilt or innocence of each Defendant is assumed to have been based solely on the evidence against that particular Defendant. Thus, the jury considered the evidence against the Defendant Joh Williams and each offense he was charged with, separate and apart from the evidence against co – defendant Khareem Hughes. Secondly, the Defendant erroneously rests his argument on case law that does not apply in this matter. Specifically, he points to *Government of the Virgin Islands v. Sampson*, in support of the contention that because premeditation and heat of passion are inapposite, Defendant's conviction for first degree murder and Khareem Hughes's conviction for voluntary manslaughter are improper.¹⁷ In *Sampson*, the defendant was charged with various crimes including first-degree murder.¹⁸ A jury found the defendant guilty.¹⁹ The defendant appealed.²⁰ He argued that the Government did not prove that he planned to kill his wife.²¹ The defendant contended that the evidence was only sufficient to show that he committed voluntary manslaughter.²² Thus his conviction for first degree murder was improper.²³ On appeal, the appellate division upheld the defendant's conviction of murder in the first degree.²⁴ In its decision, the court acknowledged that one person cannot act both in the heat of passion and in a premeditative cool and deliberate matter at the same time.²⁵ But the court found that given the sufficiency of the evidence presented the jury's finding that the defendant committed first degree murder was not improper.²⁶

¹⁶ (Jur. Istr. ¶ 34).

¹⁷ *Sampson*, 94 F. Supp. 2d 639 (2000).

¹⁸ *Id.*

¹⁹ *Id.* at 643.

²⁰ *Id.*

²¹ *Id.* at 645.

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.* at 645 – 46.

²⁶ *Id.*

Nevertheless, Defendant argues that *Sampson* supports his contention that because premeditation and heat of passion are inapposite, co-defendant, Hughes's conviction for voluntary manslaughter and his conviction for first degree murder are so inconsistent as to require a judgment of acquittal. But the Court cannot find that *Sampson* supports Defendant's argument. *Sampson* involved one defendant. Clearly, it would be illogical that he could act in the heat of passion and a premeditated and deliberate matter to commit the same murder. But in this matter, there were multiple Defendants. As noted earlier, the jury considered the evidence against the Defendant Joh Williams and each offense he was charged with, separate and apart from the evidence against Khareem Hughes. After doing so, a jury found that each Defendant's actions warranted a different conviction. This is not improper. *Gov't of the V.I. v. Martinez*, 620 F.3d 321, 332 (3d Cir. 2010)(“Hypothesizing about contradictory jury verdicts does not afford a basis for reversing a conviction on sufficiency-of-the-evidence review.”).²⁷

Further, jury's may be more lenient toward one defendant over another, which may lead to different or inconsistent verdicts. But an inconsistent verdict premised on jury leniency by itself is not enough to warrant a judgment of acquittal.²⁸ In *Dunn v. United States*, the Supreme Court held that inconsistent verdicts emanating from jury leniency may stand.²⁹ This is because a defendant is protected from jury irrationality by the review of the sufficiency of evidence undertaken by trial and appellate courts.³⁰ The law recognizes that issues of intent are rarely proven with direct evidence and must be inferred from the objective facts of the case.³¹ “Consistency in the verdict is not

²⁷ *United States v. Mussare*, 405 F.3d 161, 167 (3d Cir.2005)(“[T]here is no requirement that a jury's verdict be consistent.”) *See also Government of the Virgin Islands v. Rosa*, Civ. No. 040-1846, 399 F. 3d 283, 2005 U.S. App. LEXIS 3218 (3d. Cir. Feb. 2005)(remanded on different grounds)).

²⁸ *Government of the Virgin Islands v. Edwards*, No. 89-3509, 903 F.2d 267, 271 (3d. Cir. 1991)(citations and quotations omitted)).

²⁹ *Dunn v. United States*, 284 U.S. 390 (1932).

³⁰ *United States v. Powell*, 469 U.S. 57, 64 -67 (1984)(reaffirming *Dunn*)).

³¹ *Government v. Lake*, 5 V.I. 594, 605, 362 F.2d 770 (3d. Cir. 1966).

necessary. . . . [and] verdicts cannot be upset by speculation or inquiry into such matters.”³² Finally much like the defendant in *Sampson*, the Defendant in this matter was given the opportunity to present the defense that he did not act with premeditation or malice aforethought to the jury, through the Court’s instruction that voluntary manslaughter is a lesser included offense of murder.³³ Ultimately, the Court finds that even if the verdicts in this matter were inconsistent this is not a basis for setting aside Defendant’s conviction for first degree murder.

II. Motion for a New Trial

Under Superior Court Rule 135, the Court on motion of a defendant may grant a new trial to a defendant if required in the interest of justice.³⁴ The decision as to whether to grant a new trial is in the trial court’s sound discretion.”³⁵ Unlike a motion for judgment of acquittal, the Court does not review the evidence in the light most favorable to the People but instead for plain error.

The instant motion lists various reasons the Court should set aside the verdict in this matter and grant Defendant a new trial. As Defendant provides no support and points to no evidence for most of his arguments, the Court will address his contentions generally. First, Defendant’s alleges that the verdict in this matter was contrary to the weight of evidence. As discussed above, the Court finds that the People presented sufficient evidence such that a reasonable juror could find the Defendant committed first degree murder. Second, the Defendant argues that he was deprived of a fair trial and substantially prejudiced by the pre-trial and trial publicity and that the Court erred in letting a biased and prejudiced jury consider the case. A review of the record herein refutes this argument. The weight of the evidence supports a guilty verdict. Further, at no point during the trial did the Defendant allege that a member of the jury acted in such a manner that indicated prejudice

³² *Dunn v. United States*, 284 U.S. at 393. See also *United States v. Dotterweich*, 320 U.S. 277, 279, (1943)(holding that inconsistency is not a basis for reversal of verdicts that treat co-defendants in a joint trial)).

³³ See *Sampson*, 94 F. Supp. at 643.

³⁴ Super. Ct. R. 135.

³⁵ *Gov’t of the Virgin Islands v. Commissiong*, 706 F. Supp. 1172, 1184 (D. V.I. 1989) (internal citations omitted).

toward him. Nor has the Defendant introduced new evidence as to indicate jury prejudice or bias.³⁶ Next, Defendant argues that witnesses recanted their statements or gave conflicting testimony on the witness stand because they were bribed or threatened by the police. Defendant had the opportunity to proffer this theory to the jury. He did so. The jury did not find it to be a substantive contention. The Defendant also argues that the witness statement of witness A. Hughes could not have been written by her because on the stand she claimed she was illiterate. The weight of evidence adduced at trial does not substantiate this claim.

Finally, the Court turns to the contention that the Defendant rests most of his argument, his contention that a new trial is necessary due to prosecutorial misconduct. Specifically, Defendant alleges that the People improperly proffered a theory to the jury that the Defendants plotted to assassinate the victim. He argues that these comments were improper and denied him due process. A reviewing court employs "a harmless error analysis when deciding whether a new trial is warranted because of improper remarks made by the prosecutor during closing arguments."

³⁷ Under a "harmless error analysis" a court will review the record as a whole.³⁸ If an error violated a defendant's constitutional rights, the defendant is owed a new trial.³⁹ Improper conduct only becomes constitutional error when the impact of the misconduct is to distract the trier of fact and raise doubts about the fairness of the trial.⁴⁰ A new trial should not be granted unless the court believes that there is a "serious danger...that an innocent person has been convicted."⁴¹ In this matter, Defendant argues that the People presented no evidence at trial that he and his co-defendants plotted an assassination but made comments alleging such acts to the jury. He claims

³⁶ See *Government of the Virgin Islands v. Baron*, 48 V.I. 88, 2006 V.I. LEXIS 26 (Oct. 23, 2006).

³⁷ See *Maynard* 2009 U.S. DIST LEXIS 35132 * 29, See also *United States v. Gambone*, 314 F.3d 163, 177 (3d Cir. 2003)(citations omitted)).

³⁸ *United States v. Zehrbach*, 47 F. 3d 1252, 1265 (3d. Cir. 1995)(en banc)).

³⁹ *Zehrbach*, 47 F. 3d at 1265.

⁴⁰ *Maynard*, 2009 U.S. DIST LEXIS at * 22 (quoting *Marshall v. Hendricks*, 307 F.3d 36, 67 (3d. Cir. 2002) (citations omitted)).

⁴¹ *Stevens v. People of the Virgin Islands*, Sup. Ct. Crim. 2007 – 126, 2009 V.I. SUPREME LEXIS 29, 3(Sup. Ct. Sept. 2009)(quoting *United States v. Silveus*, 542 F.3d 993, 1004(3d. Cir. 2008) (citations omitted))).

that this denied him due process. Courts will review several factors to determine whether comments are prejudicial; 1) the scope of the comments within the context of the entire trial; 2) the effect of any curative instructions given; and 3) the strength of the evidence against the defendant.⁴² A review of the record herein compels the Court to the conclusion that a new trial is not warranted. The Defendant was charged with premeditated and deliberate killing. The People were entitled to advance a theory as to Defendant's motive. Just as the Defendant had the opportunity at trial to discredit the People's theory.⁴³ Further, the Court's instructions to the jury were curative, explicitly reminding jurors that

Arguments and statements by lawyers are not evidence. The lawyers are not witnesses. What they have said in their opening statements, closing arguments and at other times is not intended to help you interpret the evidence but is not evidence. If the facts as you remember them differ from the way the lawyers stated them, your memory controls.⁴⁴

It could be argued that these instructions did not directly reference specific comments by the prosecutor and thus did not cure possible harm suffered by the Defendant because of them. But a review of the record as a whole does not persuade the Court that a lack of a specific curative instructions compels the conclusion that a new trial is needed.⁴⁵ Further, as discussed above the weight of the evidence against the Defendant was very strong. Accordingly, the Court finds that the People's comments do not entitle the Defendant is not entitled to a new trial.

CONCLUSION

The Court finds that the evidence presented in this case does not weigh heavily against the verdict and was sufficient to sustain a finding of guilt for first degree murder. The jury's verdict is

⁴² *Maynard*, 2009 US DIST LEXIS at * 27 (quoting *U.S. v. Gambone*, 314 F.3d at *179).

⁴³ *See People of the Virgin Islands v. Delvin Delano Duggins*, Sup. Ct. Crim. No. 2010 – 0024, (finding that the prosecutor's alleged advancement of a theory that defendant was involved in a conspiracy did not vary fatally from the charges against the defendant for making false claims against the government).

⁴⁴ (Jur. Istr. ¶ 10)(*emphasis added*) *Zafiro v. United States*, 506 U.S. 534,541(1993)).

⁴⁵ *Maynard*, 2009 US DIST LEXIS at * 27(finding that a lack of specific curative jury instructions regarding a prosecutor's comments did not weigh in favor of granting a new trial because the record as a whole indicated that the evidence against the defendant was strong and general instructions to the jury were curative)(citations and quotations omitted)).

supported by the weight of the evidence. Moreover, Defendant's conviction of first degree murder is not rendered improper or constitutionally defective because of Hughes' conviction of the lesser – included offense of voluntary manslaughter. Accordingly, Defendant Joh Williams' Renewed Motion for Judgment of Acquittal or in the Alternative a New Trial will be denied. An order consistent with this opinion will follow.

DONE AND SO ORDERED this 15th day of May, 2012.



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

ATTEST:

VENETIA H. VELAZQUEZ, Esq.

Clerk of the Court

By: 

Court Clerk Supervisor

Dated: 5/16/12

	)	CASE NO. SX-09-CR-412
	)	
PEOPLE OF THE VIRGIN ISLANDS,	)	MURDER IN THE FIRST DEGREE /
	)	PRINCIPAL
Plaintiff,	)	14 V.I.C. § 922(a)(1) & 11(a)
	)	ASSAULT / FIRST DEGREE
v.	)	(TWO COUNTS)
	)	14 V.I.C. § 295(1) & 11(a)
JOH WILLIAMS,	)	POSSESSION OF A FIREARM
	)	DURING THE COMMISSION OF A
Defendant.	)	CRIME OF VIOLENCE
	)	14 V.I.C. § 2253(a) & 11(a)
	)	RECKLESS ENDANGERMENT
	)	14 V.I.C. § 625(a) & 11(a)
	)	

THIS MATTER came before the Court on Defendant, Joh Williams' Renewed Motion for Judgment of Acquittal or in the Alternative a New Trial. For reasons clarified in the Court's Memorandum Opinion of even date, it is hereby

DONE AND SO ORDERED this 15th day of May, 2012.

ATTEST:
VENETIA H. VELAZQUEZ, Esq.
Clerk of the Court
By: 
Court Clerk Supervisor
Dated: 5/16/12