

**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 Judgment of Acquittal/ New Trial (sic), filed May 29, 2012. The People filed a response to this motion on August 8, 2012. A hearing was held on this matter on October 10, 2012. For the following reasons, Defendant's Motion will be DENIED.

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.

Trial was held in this matter from May 1, 2012 through May 4, 2012 and May 7, 2012 through May 11, 2012. The trial resulted in a hung jury and a mistrial was declared on May 12, 2012. Defendant Faucher had moved for a Judgment of Acquittal on May 9, 2012 at the close of all the evidence, which the Court denied. Defendant Faucher then filed a renewed Rule 29 motion on May 29, 2012. Faucher argues that the People failed to introduce evidence from which a reasonable jury could have found beyond a reasonable doubt that he aided or abetted any other person in the commission or attempted commission of a crime. Faucher urges that a judgment of acquittal be granted.

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

the scene of the crime and from the search of [Jesus] Browne's home." Without knowing exactly what testimony and what evidence the People are referring to, the Court does not find the People's Response to be very helpful.

FACTUAL HISTORY

The following are the facts on the record presented at trial: On the evening of January 5, 2010, Shantelle Simmons picked up "Skittles"¹ 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). Simmons herself made the decision to go to Chris' Hideaway and such was never suggested by "Skittles" or "Tech." (*Id.* at pp. 73, 85, 125, 127). Furthermore, no one guided them to the bar that night. *Id.*

When Ms. Simmons arrived at Chris' Hideaway, a silver vehicle parked next to her car but closer to the bar. The driver of the silver vehicle, Lloyd Henry, went inside of Chris' Hideaway and stayed in the bar for approximately five (5) minutes. *Id.* Vol. II at p. 49; Vol. 6 at p. 32 (Henry's testimony)). While Henry was inside the bar, Simmons heard her backseat passengers say, "That is him." (*Id.* Vol. II, p. 49). Ms. Simmons testified that she did not know who they were discussing and could not make out the faces of the people on the porch. (*Id.* at p. 50). After Henry returned to the car, Skittles or Tech told Simmons, "Let's go." *Id.* Ms. Simmons testified that she drove her car around to the other side of the convenience store in a dark section, as she was told to do. (*Id.* at 51). She stated that the silver car pulled up next to her. (*Id.* at 52). At that point, the men in her backseat began to disguise themselves and

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

adorned a black t-shirt over their heads and black handkerchiefs around their faces. (*Id.* at 54). Her passengers exited her vehicle and “within minutes, moments later,” she heard gunshots. (*Id.* at 55) Simmons, however, did not see any weapons and could not tell which direction Skittles and Tech went after exiting the vehicle, but continued to hear gunshots coming for the other side of Chris’ Hideaway. (*Id.* at 55-56). Simmons testified that the silver car did not move when the gunshots started. (*Id.* at 57). Simmons testified that she saw Tech fall and heard a clang like something metal had fallen on the ground. (*Id.* at 57-58). She noticed that Skittles was firmly grasping a small black object in his hand when he picked Tech up off of the ground. (*Id.* at 57). After Tech fell, Skittles lifted him and put him in the front passenger’s seat of Simmons’ vehicle. (*Id.* at 59). Skittles also was shot and suffered a gunshot wound to the chest; however, Simmons saw nothing in his hands when he put Tech into the car. (*Id.* at 60). When they arrived at the hospital, the silver car was right behind them and Jesus Browne took Tech out of the car and carried him into the hospital. (*Id.* at 61).

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

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

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

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

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

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

George Felix, the supervisor of the Forensics Unit, explained to the jury the swabbing of blood stains that was done from different vehicles and Simmons' Ford Explorer. He stated

that blood swabs were taken from the Ford Explorer's steering wheel, glove compartment, roof, rare seat floor area, and front seat cushion. (*Id.*, Vol. V, pp. 17-21). On cross-examination, Felix admitted that he did not know how the blood splatters originated. (*Id.* at 28).

On January 30, 2010, police 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).

STANDARD

I. Standard of Review for Judgment of Acquittal

A judgment of acquittal must be entered for any offense for which the evidence is insufficient to sustain a conviction.² The rule allows courts to "reserve decision on the motion ... submit the case to the jury, and decide the motion either before the jury returns a verdict or after it returns a verdict of guilty or is discharged without having returned a verdict."³ Under the standard for a judgment of acquittal, the sufficiency of the evidence presented at trial is reviewed in the light most favorable to the People.⁴ Courts are tasked with reviewing all issues

² Fed.R.Crim.P.29(a).

³ *Id.*

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

of credibility under the province of the jury.⁵ However, a court is not called upon to assess witness credibility or weigh evidence.⁶ A conviction will be affirmed if a rational trier of fact could have found the defendant guilty beyond a reasonable doubt and the convictions are supported by substantive evidence.⁷ Nevertheless, “this evidence does not need to be inconsistent with every conclusion save that of guilt in order to sustain the verdict.”⁸ A trial court has the duty to grant a judgment of acquittal when the evidence is so sparse that the fact finder could only speculate as to the defendant’s guilt.⁹

II. Analysis

a. Count 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. Section 922(a)(2) of Title 14 of the Virgin Islands Code, the felony murder statute, provides:

(a) All murder which –

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

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

“Whoever –

(1) with intent to commit murder, assaults another

(2) ...

⁵ *Id.*

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

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

⁸ *Id.* (quotation omitted).

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

(3) With intent to commit rape, sodomy, mayhem, robbery or larceny, assaults another
is guilty of assault in the first degree.

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

“Whoever, under circumstances not amounting to an assault in the first or second degree –

- (1) Assaults another person with intent to commit a felony;
- (2) Assaults another with a deadly weapon;
- (3) Assaults another with premeditated design and by use of means calculated to inflict great bodily harm;
- (4) Assaults another and inflicts serious bodily injury upon the person assaulted
- (5) ...
Shall be fined not less than \$500 and not more than \$3,000 or imprisoned not more than 5 years or both.

14 V.I.C. § 297

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

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

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

Here, there is evidence that Faucher was a primary actor in an assault upon Milligan and Woodley that ended in the death of James. Faucher and James had travelled to Chris' Hideaway as backseat passengers in Shantelle Simmons' vehicle. (Tr. Vol. II at p. 49). They recognized someone at the bar and said, "That is him!" *Id.* They then instructed their driver, "Let's Go!" and directed her to park around the corner on the other side of the convenience store. (*Id.* at 51-52). Simmons testified that her passengers started to disguise themselves by putting black t-shirts over their heads and black handkerchiefs around their faces. (*Id.* at 54). Within moments after "Skittles" and "Tech" exited the vehicle, Simmons heard gunshots. (*Id.* at p. 55).

Meanwhile Karim Woodley, a patron at Chris' Hideaway, stated that he saw two individuals, one with a rifle and one dressed in black, open fire in his direction when he was sitting on the bar's porch with Halik Milligan. (Tr. Vol. III at 93). The approaching men fired shots in Woodley's direction and Woodley returned fire with his .40 caliber semi automatic pistol. (*Id.*) He saw them retreat and noticed that one of the men fell down. The man who went behind the building then came back, picked his partner up, and brought him to safety. (*Id.* at 94). Woodley admitted that his view was slightly obstructed by the darkness and that he could not identify the gunmen. (*Id.* at 104)

Shortly after the gunshots broke out, Simmons saw "Skittles" pick "Tech" up from the ground. She noticed Skittles was holding a small black object firmly in his hand. (Tr. Vol. II, p.57) When Tech hit the ground, Simmons heard a metal clang, like something had fallen on the ground. (*Id.* at 58). Tech was mortally wounded and Skittles had a gunshot wound to the

chest. (*Id.* at 60). Simmons rushed the pair to the hospital, where Tech succumbed to his injuries. Simmons never noticed any other weapons on the men or when she cleaned her car. She also did not find any black t-shirts or bandana. Simmons testified about the shootout that “rapid bullets [were] constantly going.”

Officers later identified casings on the scene to come from .40 caliber handguns and assault rifles. (Tr. Vol. III 180; Tr. Vol. IV, p. 44-45). They admitted, however, that the scene may have been contaminated by vehicles or other customers. (Tr. Vol. IV, p. 126, 132). Furthermore, blood evidence was collected from Chris’ Hideaway that matched Faucher and James.

Based on the above, a reasonable juror could find that Faucher and James were perpetrating an assault on Woodley and Milligan. There is evidence that Faucher and James disguised themselves in the car before approaching the bar. The donning of masks to hide one’s face is a suspicious action often meant to conceal the identity of the perpetrator and frighten the victims of a crime. *Torres v. Ricci*, Civ. Action No. 08-4046, 2010 WL 99268 (D.N.J. Jan. 6, 2010); *Dowling v. Gov’t of Virgin Islands*, No. Civ. 206/2001, 2002 WL 1446968 (Terr. Ct. May 14, 2002). Woodley noticed the individuals were dressed in dark clothing, as also described by Simmons. Furthermore, Woodley saw the two men come from the area where Simmons parked her vehicle. A reasonable juror furthermore could have surmised that the small black object which Faucher was grasping was a gun and that he was using it to fire shots at Woodley and Milligan, as Woodley testified.

As a result of the assault, Shamir James passed away. Dr. Landron testified that he died from a gunshot wound to the head. (Tr. Vol. IV, p. 67). Thus, a reasonable juror could find Faucher guilty of First Degree Felony Murder.

b. Count Nine: Reckless Endangerment

In Count Nine, Faucher is charged with Reckless Endangerment. Specifically, the Amended Consolidated Information alleges that Faucher “recklessly engaged in conduct in a public place (Chris’ Hideaway) which created a grave risk of death to another person, to wit: by firing several shots at Halik Milligan and [Karim Woodley] in the vicinity of Chris’ Hideaway, where patrons gathered for enjoyment.” Faucher’s act is alleged to have violated sections 625(a) and 11(a) of Title 14 of the Virgin Islands Code.

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

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

Here, a reasonable juror can find that Defendant Faucher intended to assault the men on the porch of the bar and fired shots in their direction in this public place. As stated previously, Faucher and James noticed someone they recognized, stated, “That’s him!” and directed Simmons to drive to a more secluded spot while they disguised themselves inside the vehicle. They got out of the car, got weapons, and began an assault by shooting their firearms in the direction of the bar. The police collected many shell casings and photographs of bullet strikes to prove that the perpetrators were, with reckless abandon, threatening the lives of others. Forensic analysis later established that there was a match between the shell casings found that evening and the .40 caliber firearm found at Jesus Browne’s apartment on January 30, 2010. Viewing this evidence in the light most favorable to the prosecution, a jury could find that on January 6, 2010, Faucher had possessed the gun found in Browne’s apartment and had fired

shots in the vicinity of Chris' Hideaway. *See, e.g., People v. Morton*, ST-11-CR-194, 2012 WL 3204668 (V.I. Super. Aug. 7, 2012).

c. Counts Ten and Eleven: First Degree Assault

In Counts Ten and Eleven, Faucher is charged with assaulting Halik Milligan and Karim Woodley with the intent to murder them by shooting them with an assault weapon and a .40 caliber weapon, while aided and abetted by Shamir James, in violation of sections 295(1) and 11(a) of title 14.

Section 295(1) provides:

Whoever –

- (1) With intent to commit murder, assaults another;
 - (2) With intent to kill, administers or causes to be administered to another, any poison or other noxious or destructive substance or liquid, and death does not result;
 - (3) With intent to commit rape, sodomy, mayhem, robbery or larceny, assaults another;
- Shall be imprisoned not more than 15 years. . .

There is sufficient evidence for a reasonable juror to find that Hillman Faucher committed first degree assault. Simmons testified that she heard Faucher or James say, "That is him" and then they directed her, saying "Let's Go!", to park around the corner on the other side of the convenience store. (Tr. Vol. II, pp. 49, 51-52). "Within minutes, moments later" after Faucher and James stepped out of her car wearing masks she heard gunshots erupt. (*Id.* at 54-55). Woodley testified that he saw two gunmen come from the area Simmons vehicle was parked and these men opened fire on Woodley and Milligan with a rifle. Woodley returned fire. (Tr. Vol. III, p. 93, 100). In the aftermath, Faucher and James were both injured. Simmons saw that Faucher was firmly grasping a small black object in his hands when he was approaching her vehicle carrying the injured James; however, she could not verify that it was a

gun. (Tr. Vol. II, p. 57). The police collected several items of physical evidence from Chris' Hideaway's parking lot to corroborate these testimonies, including shell casings, blood samples that matched Faucher and James, photographs of bullet strikes close to where Milligan and Woodley were standing, and a black t-shirt.¹⁰ Based on all of the above, a jury could find that Faucher had the intent to murder Woodley and Milligan as he identified his targets, masked himself, acquired deadly weapons, and shot at the two men.

d. Count Twelve: Possession of a Firearm During the Commission of a Crime of Violence

Faucher is charged with possession of a firearm during the commission of a crime of violence for allegedly possessing a .40 caliber firearm, which was utilized during the attempted murder in the first degree, assault in the first degree and assault in the third degree of Halik Milligan and Karim Woodley in violation of sections 2253(a) and 11(a) of title 14 of the Virgin Islands Code.

Section 2253(a) provides:

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

¹⁰ Although it was not proven *per se*, the black t-shirt that was found may have been part of Faucher and James' disguise.

There is ample evidence for a jury to find that Faucher possessed such a firearm during the commission of an assault or felony murder. Simmons testified that she heard “rapid bullets constantly going” within two or three minutes after Faucher and James left her car in disguise. (Tr. Vol. II, p. 89). Woodley testified he saw that the gunmen who approached him had a rifle and possibly a handgun. (Tr. Vol. III, pp. 97, 100). Furthermore, Simmons testified that she saw Faucher firmly grasping a small black object in his hand when he came back to her car with an injured James. (Tr., Vol. II at 57). Shell casings of a .40 caliber handgun were found at Chris’ Hideaway and these could be linked to the gun later discovered in Jesus Browne’s apartment on January 30, 2010.¹¹ (Tr. Vol. II, p. 61.) Lastly, Karen Stout, Supervisor of the Virgin Islands Police Department Firearms Division, testified that she performed a search to determine if Faucher was licensed to carry a firearm on January 6, 2010; however, her search turned up negative. (Tr. Vol. VI, p. 93). The Court admitted certificates of absence of entry of firearm registers regarding Faucher under seal. (*Id.*) From all of the above, a jury can find Faucher guilty of Count Twelve.

e. Shontelle Simmons’ Testimony

Defendant states that much of the weight of the evidence against Faucher rests on the testimony of Shontelle Simmons, who could not even identify Faucher in Court as “Skittles,” the nickname of the person in her vehicle during the shootout. Faucher questions whether it would be prudent for a jury to convict him on the testimony of one witness whose interests may have been adverse to his as she could have been charged as

¹¹ Jesus Browne brought James into the hospital. A jury can infer that he received the gun at that time.

an accomplice but was given immunity. Faucher says that there was nothing to substantiate Simmons' testimony and relies on *Government of the V.I. v. Jimmy Davis*, 561 F.2d 159 (3d Cir. 2009) for the proposition that an eyewitness account of an incident in which a prior antagonistic relationship with the defendant exists "diminish[es] the substantial character of [her] testimony." (Def. Mot. for Judgment of Acquittal, p. 7).

First, as explained, *supra*, in this Memorandum Opinion, there is sufficient evidence to sustain each charge against Hillman Faucher, more than just the testimony of Shantelle Simmons. The People presented testimony from Shantelle Simmons and Karim Woodley who testified that there was a shootout, that Faucher and James disguised themselves before exiting Simmons vehicle, that moments after they exited, gunfire was heard, that the gunmen coming from the direction where Simmons' vehicle was parked fired shots at Chris' Hideaway and Woodley and Milligan, that they retreated and Faucher picked up James and brought him back to Simmons' vehicle, when Simmons noticed a small black object in Faucher's hand. James was then rushed to the hospital. Vanessa Richardson, a former security officer at Juan F. Luis Hospital, testified that Faucher came into the hospital bent over and holding his stomach, staggering through the triage area with a hole to the chest area of his shirt. (Tr. Vol. III, p. 56). Richardson stated that Faucher's mother and a concerned citizen helped identify Faucher. (*Id.* at 59). When the police conducted their investigation, they collected shell casings, clothing and blood projectiles from Chris' Hideaway. Faucher's DNA matched a blood sample taken from the left rear wheel of a white truck in Chris' Hideaway's parking lot. (Vol. VI, pp. 131-33). Simmons' testimony is certainly important but it is

not the only testimony that a jury can use to find guilt. Corroborating testimony was presented at trial. From all of this, a jury can weigh Simmons testimony accordingly.

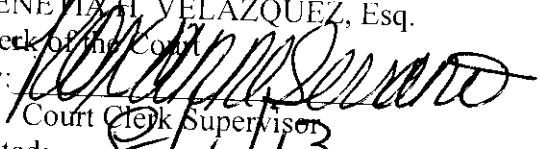
III. Conclusion

Based on the above analysis, a reasonable jury can find Hillman Faucher guilty. Therefore, Defendant's Motion for Judgment of Acquittal will be denied.

DONE AND SO ORDERED this 31st day of July 2013.


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

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

By: 
Court Clerk Supervisor

Dated: 8/1/13