

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

**PEOPLE OF THE VIRGIN ISLANDS,
Plaintiff,**

SX-09-CR-648

**v.
JULIAN ST. ROSE
Defendant.**

MEMORANDUM OPINION

THIS MATTER is before the Court on Defendant's Motion for Judgment of Acquittal or New Trial, filed on March 29, 2012. The People filed an Opposition to Defendant's Motion on April 12, 2012. For the reasons enumerated below the Defendants motion will be denied.

I. Procedural History

The People of the Virgin Islands charged Julian St. Rose (hereinafter Defendant) in a five (5) Count Information¹. On August 29, 2011, the trial commenced. On August 30, 2011, at the end of the People's case in chief, the Defendant moved for a judgment of acquittal on all counts. The Court denied the Defendant's motion with the exception of Count One and Count Five, which the court took under advisement². On August 31, 2011, the jury returned a verdict, finding the Defendant guilty on Count Two, Involuntary Manslaughter in violation of 20 V.I.C § 492 and 14 V.I.C § 924(2), and Count Three, Driving Under the Influence of an Intoxicating Liquor in violation of 20 V.I.C § 493(a)(1).

The Defendant filed a Motion for Acquittal and or New Trial for the guilty verdict on Count Two, Involuntary Manslaughter and Count Three, Driving Under the Influence of an Intoxicating Liquor. The Defendant argues in his motion that there was insufficient evidence at trial to support a conviction of Involuntary Manslaughter and Driving Under the Influence of an Intoxicating liquor.

¹ The Defendant was charged with Count One, Negligent Driving in violation of 20 V.I.C § 504, Count Two, Involuntary Manslaughter in violation of 20 V.I.C § 492 and 14 V.I.C § 924(2), Count Three, Driving Under the Influence of an Intoxicating Liquor in violation of 20 V.I.C § 493(a)(1), Count Four, Driving with a Blood Alcohol Content of .08 Percent or More in violation of 20 V.I.C § 493(a)(2), and Count Five, Reckless Driving in violation of 20 V.I.C § 492.

² Since the jury returned a verdict of not guilty on Counts One and Five, the Court need not further consider of the initial motion for judgment of acquittal taken under advisement.

II. Standard Of Review For A Motion For Judgment Of Acquittal

Under Federal Rules of Criminal Procedure Rule 29, the Court, on the Defendants Motion for Judgment of Acquittal must enter a judgment of acquittal of any offense for which the evidence is insufficient to sustain a conviction³. If the jury has previously returned a verdict of guilty, the court at its own discretion may set aside the verdict and enter a judgment of acquittal. *Id.* When deciding a Fed. R. Crim. P. Rule 29(c) motion for judgment of acquittal for insufficiency of evidence, a court “must view the evidence in the light most favorable to the verdict, and must presume the jury has properly carried out its functions of evaluating credibility of witnesses, finding the facts, and drawing justifiable inferences.” *U.S. v. Bazar*, 2002 WL 31640578 at *2 (D.V.I. 2002).

Under *U.S. v. Bazar*, “[a] verdict will be overruled only if no reasonable juror could accept the evidence as sufficient to support the conclusion of the defendant’s guilt beyond a reasonable doubt.” 2002 WL 31640578, *2 (D.V.I. 2002). . This standard of review encourages the court to refrain from “weighing the evidence or determining the credibility of witnesses. *People of the Virgin Islands v. Morton*, 2012 WL 3204668 at *3, (V.I. Super. 2012) (citing *Smith v. People of the Virgin Islands*, V.I. 396, 401 (S.Ct. V.I. 2009)). By refraining from weighing the evidence or determining the credibility of the witnesses, the court is able to find insufficiency when there is a clear error or failure on the part of the prosecution. (citation omitted).

a. Count II: Involuntary Manslaughter

Count Two, of the Amended Information charges Involuntary Manslaughter in violation of 20 V.I.C §492 and 14 V.I.C. §924(2). Under Title 14 V.I.C. §924(2) involuntary manslaughter is:

“involuntary manslaughter is the unlawful killing of a human being without malice aforethought. in the commission of an unlawful act, not amounting to a

^{3 3} Made applicable to the Superior Court by virtue of Rule 7 of the Rules Governing the Territorial Court of the Virgin Islands, which provides:

The practice and procedure in the Territorial Court shall be governed by the Rules of the Territorial Court and, to the extent not inconsistent therewith, by the Rules of the District Court, the Federal Rules of Civil Procedure, the Federal Rules of Criminal Procedure and the Federal Rules of Evidence.

felony; or in the culpable omission of some legal duty; or in the commission of a lawful act which might produce death, in an unlawful manner, or without due caution and circumspection.”

Under 20 V.I.C § 492,

“it shall be unlawful for any person to operate a motor vehicle in a reckless manner over and along the public highways of this Territory. For the purpose of this section to ‘operate in a reckless manner’ means the operation of a vehicle upon the public highways of this Territory in such a manner as to indicate either a willful or wanton disregard for the safety of person or property.

To sustain a conviction under Title 20 V.I.C. §492 and Title 20 V.I.C. §924(2), the prosecution must prove both the defendant unlawfully killed a human being without malice aforethought but also the defendant cause the killing by the defendant committing an unlawful act not amounting to a felony. *Government of the Virgin Islands v. Saldana*, 412 F. Supp. 83 (D.V.I. 1976) (requiring a showing by the Government proving the defendants committed the additional non-felony unlawful act). Here, the People allege that the unlawful act not amounting to a felony was reckless driving.

The Defendant now argues that the evidence presented does not sufficiently prove beyond a reasonable doubt the Defendant’s reckless driving was the cause of the accident. Specifically, it is the Defendants contention that condition of the car and whether the victim was wearing a seatbelt contributed to the death. In support of this position, the Defendant relies on the testimony of Officer Heyliger, a seven-year veteran of the Virgin Islands Police Department assigned to the traffic division.⁴ Officer Heyliger received training and certification in accident investigation at the University of North Florida Institute Of Police Technology.⁵ Officer Heyliger testified that the victim’s vehicle was not registered to drive in the Virgin Islands, possibly not road worthy, and none of its passengers was wearing seatbelts.⁶ The Defendant also cites the testimony of Dr. Landron, a forensic pathologist who testified that if the passenger compartment is intact and the passengers were wearing safety restraints the likelihood of survival increases.⁷

However, this Court finds that the testimony and photos introduced by the People proves by direct and circumstantial evidence that the Defendant violated Virgin Island law in operating

⁴ Trial Tr. Vol. 1, 89:7, Aug. 29, 2011.

⁵ Trial Tr. Vol. 1, 89:5-23, Aug. 29, 2011.

⁶ Trial Tr. Vol. 1, 140:15, 160:4-8 Aug. 29, 2011.

⁷ Trial Tr. Vol. 2, 21:16-9, Aug. 30, 2011.

his vehicle in a reckless manner.⁸ In the photos introduced at trial, it is clear that the Defendant's car had come to rest in the lane where the victim's car was located. An examination of People's Exhibit 1, which depicts the scene of the accident, shows that the Defendant caused substantial damage to the *other* vehicle. An examination of the photos further shows the point of impact on the right passenger side and the Defendant vehicle is at rest in the middle of the road halfway into the victims driving lane. Applying 20 V.I.C § 492, driving in a manner that causes the vehicle to exit its designated lane and collide into a vehicle traveling in its proper lane is a "willful or wanton disregard for the safety of person or property."

Further, the alleged and unconfirmed condition of the car does not mitigate the Defendants reckless driving. The law in the Virgin Islands only requires a sufficient showing that a person operates "a vehicle upon the public highways of this Territory in such a manner as to indicate either a willful or wanton disregard for the safety of person or property." 20 V.I.C § 492. The statute does not require the court to consider the actions of other parties involved.

Accordingly, the Court finds sufficient direct and circumstantial evidence, from which a reasonable jury could have found that the People proved beyond a reasonable doubt the defendant was guilty of involuntary manslaughter.

b. Count III: Driving Under the Influence of an Intoxicating Liquor in Violation of 20 §493(a)(1).

Count Three of the Amended Information charges the Defendant with Driving Under the Influence of an Intoxicating Liquor in violation of Title 20 § 493(a)(1). Under § 493(a)(1),

[I]t is unlawful for any person who is under the influence of an intoxicating liquor to drive, operate or be in actual physical control of any motor vehicle.

Driving under the influence of and intoxicating substance "does not require a specific alcohol content...and consumption no matter how minute violates §493(a)(1)." *Gov't of Virgin Islands v. Steven*, 962 F. Supp. 682, 685 (D.V.I. 1997) (quoting *Gov't of the Virgin Islands v. Zachary*, 24 V.I. 244, 246-47 (V.I. Super. 1989)).

⁸ People's Exhibit 1-4, Photos of the accident scene, August 29, 2011.

In his motion, the Defendant argues there was not sufficient evidence to prove beyond a reasonable doubt that the Defendant was intoxicated. However, the People were not required to prove beyond a reasonable doubt the intoxication of the Defendant but merely had to prove beyond a reasonable doubt the Defendant was under the influence of intoxicating liquor, "no matter how minute." *Id.*

At trial, the People submitted evidence through the testimony of Police Officer Heyliger that the Defendant made a statement to him on the night of the incident where he said he consumed two drinks.⁹ Officer Heyliger also testified that when he arrived on the scene and began to interview the Defendant he "staggered slightly."¹⁰ His eyes were red and watery and it had a strong odor of alcohol like beverage coming from his person.¹¹ Officer Heyliger also testified that he performed the three standard field sobriety test on him in which he failed all portions.¹²

The Defendant also argues that the testimony of Officer Heyliger is not sufficient because he is not an expert. In *Stevens*, the Court determined that police officers experience and training is sufficient to have the ability to conclude a driver was impaired. 962 F. Supp. 682, 686 (D.V.I. 1997). At the trial, Officer Heyliger testified that he is a seven-year veteran of the Virgin Islands Police Department.¹³ At the Virgin Islands Police Department, Officer Heyliger works in the traffic division as a certified accident reconstructionist.¹⁴ Officer Heyliger has received training and certification in accident investigation at the University of North Florida Institute Of Police Technology.¹⁵ In addition, Officer Heyliger is certified to conduct the three standardized field sobriety test and detection of possible intoxication of persons through observation.¹⁶ Officer Heyliger has proved that he possess the enough training and experience that his testimony is sufficient to sustain the jury's verdict of guilt. When viewed in light most favorable to the jury's finding of guilt, this Court finds that the evidence presented by the People was sufficient to support a finding of guilt.

⁹ Trial Tr. Vol. 1, 118:5, Aug. 29, 2011.

¹⁰ Trial Tr. Vol. 1, 117:4, Aug. 29, 2011.

¹¹ Trial Tr. Vol. 1, 117:4-6, Aug. 29, 2011.

¹² Trial Tr. Vol. 1, 117:11-3, Aug. 29, 2011.

¹³ Trial Tr. Vol. 1, 89:7, Aug. 29, 2011.

¹⁴ Trial Tr. Vol. 1, 89:5-7, Aug. 29, 2011.

¹⁵ Trial Tr. Vol. 1, 89:21-3, Aug. 29, 2011.

¹⁶ Trial Tr. Vol. 1, 89:14-90:6, Aug. 29, 2011.

III. Motion For A New Trial

Federal Rules of Criminal Procedure Rule 33(a) states "upon the defendant's motion, the court may vacate any judgment and grant a new trial if the interest of justice so requires." In reviewing a motion for a new trial, the court's role is to weigh the evidence rather than examine its sufficiency, and in doing so may weigh the credibility of witnesses. *Virgin Islands v. Commissioning*, 706 F. Supp. 1172, 1989 U.S. Dist. LEXIS 1475, (D.V.I.1989). Granting a new trial, though within the courts discretion, should only be given when a real danger of convicting and innocent person exists. *Morton*, 2012 WL 3204668 at *4, (V.I. Super. 2012) (*Stevens v. People of the Virgin Islands*, 52 V.I. 294, 306 (S. Ct. V.I. 2009); *See also, Government of the Virgin Islands v. Derricks*, 810, F.2d 50, 55 (3d Cir. 1987)). This Court must now make the following determinations: 1) whether the evidence was sufficient to sustain the jury verdict of guilty 2) whether the weight of the evidence presented at trial supports a finding of guilt.

The Defendant employs the same insufficiency of evidence argument as the basis of the Fed. R. Crim. P. Rule 33 Motion for New Trial. In weighing the evidence presented by the parties including both direct and circumstantial the Court does not find a basis to grant the Motion for New Trial. During trial, the People submitted to the jury evidence of the Defendant intoxication through the testimony of Officer Heyliger who observed the Defendant's behavior and physical appearance following the accident as having alcohol on his breath, red eyes, and staggering slightly. Officer Heyliger also testified of the Defendants failure of all portions of the field sobriety test.

To prove that the Defendant caused the accident, the People relied on photos of the scene and the testimony of Officers Heyliger and Alexander Joseph. First, photos taken at the scene of the accident show the Defendants car in the victim's lane and the point of impact in the victims driving lane. Pls. Ex. 1. Next, Officer Heyliger, testified that based on his observations, the Defendant's vehicle crossed its path of travel westbound and collided with the victims vehicle in the eastbound lane.¹⁷ Finally, Officer Alexander Joseph testified as to the cause of the accident. Officer Joseph is a 12-year veteran of the Virgin Islands Police Department. In the Department,

¹⁷ Trial Tr. Vol. 1, 100:8-10, Aug. 29, 2011.

Officer Joseph is a traffic crash investigator where his primary responsibility is to investigate how cars crash and who caused the crash. Officer Joseph has received over 100 hours of training at the Institute of Police Technology and Management in Jacksonville, Florida.¹⁸ During his tenure with the police department, Officer Joseph has investigated over 100 crash scenes. According to testimony, when Officer Joseph arrived on the scene, he observed the Defendants vehicle was not in its lane of travel.¹⁹ Officer Joseph then observed the accident debris as was able to determine that the point of impact was in the eastbound lane, lane the victim white Bronco was located.

The Court finds that in weighing the evidence presented at trial there is no basis to grant the Defendants Motion for a new trial. Weighing the credibility of Officer Heyliger, a testifying witness, also does not weigh against the verdict of guilty entered by the jury. The *Stevens* court emphasized that a motion for new trial should not be granted unless "there is a serious danger that an innocent person has been convicted," weighing the evidence presented in this matter the Court does not feel this danger exists because the weight of the evidence supports the guilty verdict. *Stevens v. People of the Virgin Islands*, 52 V.I. 294, 306 (S. Ct. 2009).

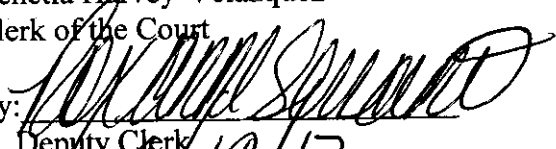
IV. CONCLUSION

For the foregoing reasons, the Defendant's Motion for Acquittal and in the alternative Motion for New Trial is denied as a matter of law. The Court will issue an order consistent with the Memorandum Opinion

DONE and so ORDERED this 11 day of June 2013.

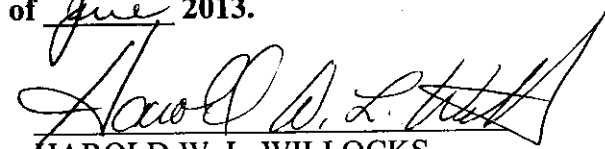
ATTEST:

Venetia Harvey-Velazquez
Clerk of the Court

By: 

Deputy Clerk

Dated: 6/12/13


HAROLD W. L. WILLOCKS
Judge of the Superior Court

¹⁸ Trial Tr. Vol. 2, 45:1-25, Aug. 30, 2011.

¹⁹ Trial Tr. Vol. 2, 50:19, Aug. 29, 2011.

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

PEOPLE OF THE VIRGIN ISLANDS,

Plaintiff,

SX-09-CR-648

v.

JUILAN ST. ROSE

Defendant.

ORDER

THIS MATTER came before the Court on Defendant's Motion for Relief under Rules 29 and 33, filed on March 29, 2012. The People filed an Opposition on April, 12, 2012. The Court having been advised on the premises, it is hereby:

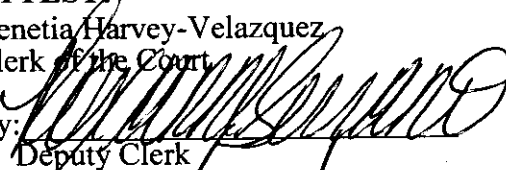
Ordered that Defendant's Motion for Relief Under Rule 29 is DENIED. It is further:

Ordered that Defendant's Motion for Relief Under Rule 33 is DENIED.

DONE and so **ORDERED** this 11th day of June, 2013.

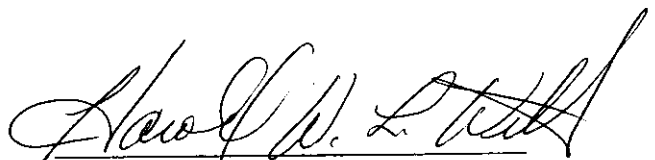
ATTEST:

Venetia Harvey-Velazquez
Clerk of the Court

By: 

Deputy Clerk

Dated: 6/12/13



**HAROLD W. L. WILLOCKS
Judge of the Superior Court**