

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

PEOPLE OF THE VIRGIN ISLANDS,

PLAINTIFF,

v.

CLIFTON A. FAHIE, JR.,

DEFENDANT.

SX-2011-CR-448

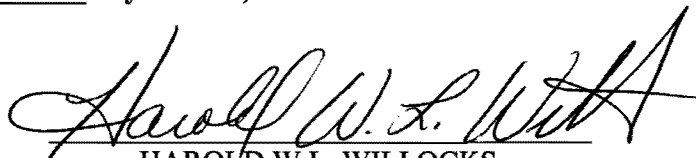
JURY TRIAL DEMANDED

ORDER

For the reasons stated in the accompanying Memorandum Opinion entered of even date, it is hereby

ORDERED that Defendant Clifton A. Fahie, Jr.'s Rule 29 Motion for Judgment of Acquittal, filed March 5, 2014, is **DENIED**.

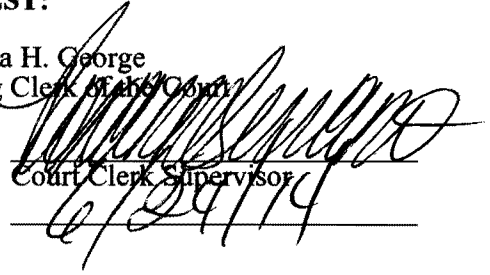
DONE and so **ORDERED** this 18 day of June, 2014.



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

ATTEST:

Estrella H. George
Acting Clerk of the Court

By: 

Court Clerk Supervisor

Dated: 6/24/14

NOT FOR PUBLICATION

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MEMORANDUM OPINION

BEFORE THE COURT is Defendant Clifton A. Fahie, Jr.'s Motion for Judgment of Acquittal, asking the Court to set aside the jury's verdict of guilty of the offense of carrying or using a dangerous weapon during the commission of a crime of violence and instead enter an acquittal because the jury found Fahie not guilty of the offense of assault in the third degree. The People of the Virgin Islands filed an Opposition to Fahie's Motion, to which Fahie later filed a Reply. For the reasons stated below, the Court must deny Fahie's Motion.

FACTUAL AND PROCEDURAL BACKGROUND

In an Information filed on July 11, 2011, the People of the Virgin Islands charged Clifton A. Fahie, Jr. with one count each of assault in the third degree, a violation of Section 297(2) of Title 14 of the Virgin Islands Code, carrying or using a dangerous weapon during the commission of a crime of violence, a violation of section 2251(a)(2)(B) of Title 14, and promoting dangerous prison contraband, a violation of section 665(2) of Title 14. The charges stemmed from an incident that occurred on June 21, 2011 between Fahie and Sylvester Hodge while both men were detained in the Golden Grove Adult Correctional Facility. Fahie was accused of assaulting Hodge with a knife, causing injuries to his chest and face. He plead not guilty to all charges and demanded a trial by jury.

Jury selection and trial began on February 24, 2014 with the jury being empaneled and sworn on that same day. The evidence before the jury showed the following. On the morning of June 21,

2011, Corrections Officer Marcel Scotland saw Fahie and Hodge fighting. Hodge had a stick and a knife. The men struggled. Fahie got the knife away from Hodge and then stabbed him. Scotland saw the men fighting, separated them, and then took Fahie back to his cell. He later retrieved the knife from Fahie, which was moved into evidence as People's Exhibit 18. Because Hodge was bleeding, he was taken initially to the nurse's office and then transported to the emergency room where he was treated for multiple stab wounds to his face, arm, and chest. Hodge's medical records were admitted into evidence as People's Exhibit 14. Photographs of Hodge's injuries was also admitted into evidence as People's Exhibits 4, 5, 8, 11A, and 13. According to his medical records, Hodge was discharged from the hospital two days later, on June 21, 2011.

Once the People rested, Fahie moved for judgment of acquittal, which the Court denied after hearing arguments from both parties. Fahie then testified in his own defense, admitting that he stabbed Hodge. However, according to Fahie, he only stabbed Hodge in self-defense because Hodge kept coming after him. Photographs of Fahie's forehead and arm were admitted into evidence as People's Exhibits 16 and 17 to show the injuries he sustained in the fight. Thomas Freeland and Reuben Rivera Moreno, who testified on Fahie's behalf, corroborated Fahie's account that Hodge had gone after him. However, neither of them saw Hodge with a knife. According to all three, Fahie attempted to retreat from the fight but once Hodge had backed into a corner, he fought back.

After Fahie rested, he renewed his motion for judgment of acquittal on all counts, which the Court again denied. Following closing argument and instructions from the Court, the jury began their deliberations. They found Fahie guilty of Count II, carrying or using a dangerous weapon during the commission of a crime of violence, but not guilty of Count I, third-degree assault, and Count III, promoting dangerous prison contraband.

On March 5, 2014, Fahie filed the Motion presently before the Court, requesting that the jury's verdict be set aside. The People responded in opposition by filing a "Reply [sic] to Rule 29 Motion for

Judgment of Acquittal” on March 18, 2014. Fahie then filed his “Reply to the People’s Opposition to Rule 29 Motion for Judgment of Acquittal” on March 24, 2014.

DISCUSSION

“When the Superior Court considers a motion for judgment of acquittal, it views the evidence in the light most favorable to the prosecution to determine whether any rational trier of fact could have found proof of guilt beyond a reasonable doubt based on the available evidence.” *Stevens v. People*, 52 V.I. 294, 305 (2009) (internal quotation marks and citations omitted)). The court must uphold the jury’s verdict ““if any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.”” *Codrington v. People*, 57 V.I. 176, 189 (2012) (quoting *Smith v. People*, 51 V.I. 396, 398 (2009)). “The reasonable doubt which will prevent conviction must be the jury’s doubt and not that of this Court.” *Smith*, 51 V.I. at 398 (internal quotation marks, citation, and brackets omitted). If there are conflicts in the testimony, such conflicts present “credibility issues for the jurors to resolve.” *Id.* Courts cannot “substitute [their] own credibility determinations for those of the jury.” *Id.* (internal quotation marks, ellipsis, and citation omitted).

In his Motion, Fahie “recognizes that courts have been hesitant to overturn inconsistent verdicts,” but then asserts that he is not attacking his conviction on that ground. (Def.’s R. 29 Mot. for Jgmt. of Acquittal at 4, filed Mar. 5, 2014 (hereinafter “Def.’s Mot.”).) Fahie claims instead that he is “challeng[ing] the verdict on the ground that the evidence is not sufficient to support a conviction where the jury made a specific finding of no unlawful conduct.” *Id.* at 3. Specifically, Fahie argues that because the jury found him not guilty of third-degree assault it “necessarily meant” that he acted in self-defense “when he stabbed Sylvester Hodge.” *Id.* at 3-4. Since the jury believed that Fahie acted in self-defense, he cannot be guilty of carrying or using a dangerous weapon during the commission of a crime of violence because the jury “already determined” that a crime of violence “did not occur because the Defendant’s conduct was lawful.” *Id.* at 4.

In opposition, the People argue in its Reply, which the Court construes as a response in opposition pursuant to Local Rule of Civil Procedure 7.1(a)¹, that “a complete review of the evidence . . . readily reveals that there was sufficient evidence to sustain” Fahie’s conviction.” (People’s Reply to R. 29 Mot. for Jgmt. of Acquittal at 3, filed Mar. 18, 2014 (hereinafter “People’s Opp’n”).) According to the People, Fahie only presents the facts in the light most favorable to him, rather than in the light most favorable to them as the law requires. When viewed in the correct light, the evidence “clearly supports the jury’s verdict.” *Id.* at 5.

In his Reply to the People’s Opposition, Fahie claims that because he was “specifically charged with [c]arrying or using a dangerous weapon during the commission of a crime of violence, to wit, an Assault Third,” the People had to prove that he committed that specific crime of violence to convict him. (Def’s Reply to People’s Opp’n to R. 29 Mot. for Jgmt. of Acquittal at 4, filed Mar. 24, 2014.) Because the jury acquitted him of third-degree assault, it means one of two things: either “(1) the People did not meet [their] burden of proof as to each element of the offense of Assault Third, or (2) although the People met [their] burden, the defense, nonetheless showed that the Defendant’s conduct was justified as self-defense.” *Id.*

Despite Fahie’s attempt to frame his argument as one going to the sufficiency of the evidence, it is clear that what he is really challenging is the inconsistency between the jury’s verdicts. The Supreme Court of the Virgin Islands recently explained that it “will not reverse” on the basis of inconsistent verdicts, “unless the record reveals that there was insufficient evidence to convict.” *Phillip v. People*, 58 V.I. 569, 596 n.31 (2013). *Phillip* makes clear that a court’s primary focus when reviewing a conviction is simply to determine whether the evidence was sufficient to prove the crime the defendant was convicted of beyond a reasonable doubt. If the jury returns an inconsistent verdict, “it does not matter why the . . . verdicts were inconsistent.” *Id.* See also *Faulkner v. People*, 57 V.I.

¹ Local Rule of Civil Procedure 7.1(a) applies in criminal proceedings through Local Rule of Criminal Procedure 1.2 and both rules apply in the Superior Court through Superior Court Rule 7.

327, 335 (2013) (“An inconsistent verdict is not a sufficient reason for setting a verdict aside, even in situations where the jury acquits a defendant of a predicate felony, but convicts on the compound felony.”). Instead, the only concern is the sufficiency of the evidence.

Here, the evidence was sufficient for a rational jury to find beyond a reasonable doubt that Fahie violated Section 2251(a)(2)(B) of Title 14 when he stabbed Hodge with a knife and caused serious injuries. Section 2251(a)(2) criminalizes the possession of a “dangerous knife . . . or any other dangerous or deadly weapon” by any person “with intent to use the same unlawfully against another.” Additionally, because the People charged Fahie with using a dangerous weapon “during the commission or attempted commission of a crime of violence,” 14 V.I.C. § 2251(a)(2)(B), the People had to show that Fahie either committed a crime or violence—which includes committing or attempting to commit “assault in the first degree, assault in the second degree, [and] assault in the third degree,” 23 V.I.C. § 451(e); 14 V.I.C. § 2253(d)(1)—or that he attempted to commit it.

Initially, the Court notes that the evidence was sufficient to show that Fahie stabbed Hodge because Fahie admitted in his testimony that he stabbed Hodge with a knife. Fahie does not dispute that the People proved that he used a dangerous weapon. Rather, he contends that the People failed to disprove that he was legally justified in stabbing Hodge. In other words, because the jury acquitted him of third-degree assault, the jury believed that he acted in self-defense when he stabbed Hodge. “[B]y its verdict of ‘not guilty,’” Fahie argues, “the jury must have found that the [People] did not meet its burden of proving beyond a reasonable doubt that [his] conduct was not justified.” (Def. Mot. at 4.) For this reason, he could not be found guilty because “his conduct ha[d] already been determined to be lawful.” *Id.*

Fahie is correct that he did claim self-defense at trial. The Court instructed the jury that use of force is justified when one reasonably believes that force is necessary to defend one’s self against the immediate use of unlawful force by another. But the Court also instructed the jury that the amount of

force used cannot be more than what is necessary to prevent harm and that before someone is justified in using force that could cause death or great bodily harm, the person must reasonably believe that that amount of force is necessary to prevent death or bodily harm. In other words, one can only use deadly force to protect one's self against deadly force. Fahie misunderstands this critical difference.

While the jury did acquit Fahie of third-degree assault, which could mean, as he contends, that they believed that he acted in self-defense, it could also mean that they were showing him mercy by convicting him only of one charge and then acquitting him of the others. As the Supreme Court of the Virgin Islands stated in *People v. Faulkner*,

inconsistent verdicts—even verdicts that acquit on a predicate offense while convicting on the compound offense—should not necessarily be interpreted as a windfall to the Government at the defendant's expense. It is equally possible that the jury, convinced of guilt, properly reached its conclusion on the compound offense, and then through mistake, compromise, or lenity, arrived at an inconsistent conclusion on the lesser offense.

57 V.I. 327, 334 (2012) (quoting *United States v. Powell*, 469 U.S. 57, 65 (1984)). For this reason, courts cannot speculate about the reasons for an inconsistent verdict. Instead, “the most that can be said is that the verdict shows that either in the acquittal or the conviction the jury did not speak their real conclusions; but that does not show that they were not convinced of the defendant's guilt.” *Id.* at 333 (quoting *Powell*, 469 U.S. at 64-65).

Here, the evidence showed that Hodge sustained multiple stab wounds and was hospitalized for two days. The force Fahie used to inflict this harm on Hodge could arguably be said to exceed whatever amount of force he may have needed to protect himself from Hodge's attack. That once Fahie got the knife away from Hodge, Fahie did not use it merely to defend himself. Instead, he became the aggressor. The number of stab wounds as well as the location of those wounds, specifically a stab to the chest area under Hodge's armpit which fractured his ribs, could show that the force Fahie used exceeded the amount necessary to prevent harm to himself. The jury could have rationally concluded from this evidence that Fahie had the intent to use the knife, which was a dangerous weapon,

unlawfully against Hodge based on the amount and type of force Fahie used and where he struck Hodge. *Cf. Powell v. People*, 59 V.I. 444, ____ (2013) (noting that in a sufficiency challenge where inconsistent verdicts were returned and the defendant alleged self-defense, courts should determine “whether the People presented sufficient evidence that a rational jury could conclude either (1) the right to self-defense never arose or (2) the right to self-defense arose but the defendant used more force than necessary to defend himself.” (internal quotation marks, citation, and ellipsis omitted)). In this case, Fahie did not cut Hodge on his arm or leg. Rather, he punctured Hodge’s chest and could have pierced his lungs or heart, which could have caused death.

Although convicting Fahie of carrying or using a dangerous weapon during the commission, or attempted commission, of a crime of violence is inconsistent with acquitting him of assault in the third-degree, the Court is constrained from considering that fact in deciding whether to grant Fahie’s motion. “Inconsistent verdicts by their very nature indicate that the jury has erred; however . . . courts should not infer innocence as a result of this error.” *Powell*, 59 V.I. at ____ (internal quotation marks, ellipsis, alterations and citation omitted). Instead, as explained above, the Court can only consider whether the evidence was sufficient to support the jury’s verdict. Fahie admitted to stabbing Hodge. Consider that fact as well as the location of the wound he inflicted and the injury Hodge sustained, a rational jury could have found him guilty of violating Section 2251(a)(2) of Title 14 of the Virgin Islands Code. Because the evidence is sufficient to support the jury’s verdict of guilty on this charge, the Court must uphold Fahie’s conviction. However, even though evidence was sufficient to support a conviction for violating Section 2251(a)(2)(B), the Court can only sentence Fahie under Section 2251(a)(2)(A), not Section 2251(a)(2)(B).

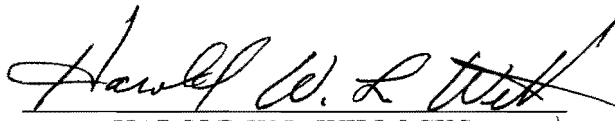
Section 2251(a)(2)(B) requires a finding that the defendant “has, possesses, bears, transports, or carries or has under his proximate control” a dangerous weapon “during the commission or attempted commission of a crime of violence.” When the jury acquits on the charged crime of violence,

here assault in the third degree, the sentencing enhancement is absent. Therefore, the Superior Court cannot impose sentence when the jury did not convict on the underlying charge. “[C]arrying or using a dangerous weapon during the commission or attempted commission of a crime of violence is not an element of the crime, but rather an element that the jury needed to find in order to warrant an enhanced sentence.” *Powell*, 59 V.I. at _____. Since the jury did not find third-degree assault here, Fahie can only be sentence under Section 2251(a)(2)(A). He may not be sentenced under Section 2251(a)(2)(B).

This has been the law of this jurisdiction for decades. *See, e.g., Gov’t of the V.I. v. Charles*, 590 F.2d 82, 85 (3d Cir. 1979) (“Having determined that Charles was not convicted in Count II of any crime of violence, his conviction in Count III under section 2251(a)(2) could only involve subsection (A) rather than subsection (B) which requires the commission of a crime of violence.” (internal quotation marks omitted)). It remains the law today. *See Powell*, 59 V.I. at _____ (affirming trial court’s sentence under Section 2251(a)(2)(A) when jury acquitted of crime of violence charges) (“*Powell* was properly sentenced pursuant to subsection (a)(2)(A) of section 2251 rather than subsection (a)(2)(B) of that statute.”). While Fahie’s conviction must be upheld because the evidence was sufficient, he cannot be sentenced under Section 2251(a)(2)(B), but rather under Section 2251(a)(2)(A) because the jury acquitted him of the underlying crime of violence.

CONCLUSION

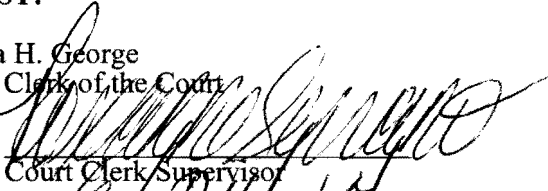
For the reasons stated above, Fahie’s motion for judgment of acquittal must be denied. An appropriate order follows.


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

ATTEST:

Estrella H. George
Acting Clerk of the Court

By:


Court Clerk Supervisor

Dated: _____

