

For Publication

IN THE SUPREME COURT OF THE VIRGIN ISLANDS

JULIAN VIERA, JR.,	)	S. Ct. Crim. No. 2016-0014
Appellant/Defendant	)	Re: Super. Ct. Crim. No. 350/2013 (STX)
	)	
v.	)	
	)	
PEOPLE OF THE VIRGIN ISLANDS,	)	
Appellee/Plaintiff.	)	
_____	)	

On Appeal from the Superior Court of the Virgin Islands
Division of St. Croix
Superior Court Judge: Hon. Harold W. L. Willocks

Considered: November 15, 2016
Filed: June 17, 2019

Cite as: 2019 VI 22

BEFORE: **RHYS S. HODGE**, Chief Justice; **MARIA M. CABRET**, Associate Justice; and **IVE ARLINGTON SWAN**, Associate Justice.

APPEARANCES:

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OPINION OF THE COURT

SWAN, Associate Justice.

¶ 1 Appellant, Julian Viera, Jr. (“Viera”), appeals the Superior Court’s June 7, 2016 judgment and commitment, which adjudicated him guilty of, among other criminal offenses, voluntary

manslaughter in the death of Ronald Coulon (“Coulon”). For the reasons elucidated below, we affirm his convictions.

I. FACTS AND PROCEDURAL HISTORY

¶ 2 On August 3, 2013, a shooting incident occurred at Times Square Restaurant and Bar (“Times Square”) on St. Croix, United States Virgin Islands that resulted in the death of Coulon and first degree assaults upon Jose Ramon De La Cruz (“De La Cruz”) and Almelindo Cuevas (“Cuevas”), in which they sustained gunshot injuries. In connection to this incident, the People of the Virgin Islands charged Viera in an amended information with the following charges: count one: first degree murder in violation of 14 V.I.C. § 922 (a)(1); count two: assault in the first degree upon De La Cruz in violation of 14 V.I.C. § 295(1); count three: assault in the first degree upon Cuevas in violation of 14 V.I.C. § 295(1); count four: unauthorized possession of a firearm during the commission of a crime of violence in violation of 14 V.I.C. § 2253(a); count five: unauthorized possession of a firearm in violation of 14 V.I.C. § 2253(a); count six: possession of ammunition in violation of 14 V.I.C. § 2256(a); count seven: failure to report firearms obtained outside or brought into the Virgin Islands; and count eight: reckless endangerment in the first degree in violation of 14 V.I.C. § 625(a).

¶ 3 The court empaneled the jury and trial commenced in the Superior Court on October 20, 2014. The witnesses included De La Cruz, Edidania Ortiz (“Ortiz”), Cuevas, Melanie Narisingh (“Narisingh”) and forensic personnel and personnel employed by or otherwise associated with the Virgin Islands Police Department (“VIPD”) including Linda Pascal (“Pascal”), Dr. Francisco Landron (“Dr. Landron”), Robert Kressley (“Detective Kressley”), Terrence Aaron (“Officer

Aaron”)¹, Emanuel Morales (“Officer Morales”), Karen Stout (“Stout”), and Reynold DeSouza (“DeSouza”).

¶ 4 The People’s chief witness, De La Cruz, the owner of Times Square, testified that on August 3, 2013 at approximately 6:00 a.m., he, Ortiz, his wife and co-owner of the business, and Cuevas were at Times Square, which was officially closed. Inside Times Square, De La Cruz and Ortiz were cleaning the premises, and Viera was finishing his drink. Before Viera could finish his drink and exit Times Square, he became embroiled in an altercation with another patron, Coulon. De La Cruz testified that he told Viera and Coulon that he did not want any problems inside his business; therefore, he escorted Viera during his departure from Times Square. De La Cruz recollected that when he stood between Viera and Coulon to prevent them from continuing their altercation, Viera left the scene and immediately proceeded to his vehicle. De La Cruz further testified that he saw Viera return from his vehicle, simultaneously discharging a fusillade of gunshots at Coulon. De La Cruz was shot four times before he returned gunfire at Viera.

¶ 5 Ortiz, who was preparing the food for the next day and cleaning up with De La Cruz at Times Square in the early morning of August 3, 2013, testified that Coulon arrived at Times Square before Viera and that the two men subsequently became involved in a spirited verbal altercation. Although she was standing approximately seven feet from the hubbub, Ortiz was unable to testify to the substance of the disagreement between Coulon and Viera. She recounted however that De La Cruz separated the men and escorted Viera, who had regained a calm composure, outside the establishment. She testified that she thought Coulon, who she only knew as a patron of Times Square, would stay inside the bar after De La Cruz separated Viera and him but that Coulon went

¹ During trial, some of the witnesses referred to Ronald Coulon as “Sacal.” (J.A. 185, 218-19.)

outside after De La Cruz escorted Viera outside. Ortiz further testified that she also followed closely behind her husband as he escorted Viera outside and observed Cuevas returning to the bar with a gunshot wound to his leg, but that she was not a witness to any shootings and was not a witness to anything that occurred outside Times Square. On cross examination, Ortiz testified that Javier, an individual with some connection to Coulon, was also outside and that there was a lady with Coulon but that she was unsure to where the woman had disappeared during the altercation. Sometime later, Ortiz assisted the VIPD to identify Viera from a photograph as the person who De La Cruz escorted from the bar.

¶ 6 Times Square’s DJ, Cuevas, was also at the bar on August 3, 2013. Cuevas testified that he provided music until approximately 4:00 a.m. Cuevas observed “two people that were arguing, but then [he] didn’t see them again.” (J.A. 240.) Cuevas testified that he did not hear what prompted the argument nor could he identify any person involved in the verbal altercation, because he was busy packing his equipment and preparing to leave. He recollected, however, that only De La Cruz attempted to calm down the men to prevent them from continuing their bellicosity. Cuevas testified that he exited the bar and heard an argument. He further testified that he was walking when he heard numerous gunshots, approximately twelve, after which he fell to the floor and could not move. On cross examination Cuevas testified that he did not recall giving VIPD Detective Frankie Ortiz a statement that the men were arguing over a woman. After refreshing his recollection from a past statement, Cuevas admitted that he vaguely remembered that Viera “had rastafarian style hair] but [he] didn’t remember if he had a hat.” (J.A. 254.) He further stated that he remembered giving a statement earlier that he did not see the perpetrator well, but that he had observed that the perpetrator was wearing a red hat, a red shirt, and a black pants. On further

cross-examination, Cuevas testified that when he exited the bar he saw Coulon with a Heineken beer bottle.

¶ 7 Pascal, a VIPD crime scene technician, also provided evidence at trial. She testified that on August 3, 2018, she was the crime scene technician for the Times Square incident, and it was her responsibility “to protect the integrity of the crime scene by photographing, inspecting, analyzing, collecting and preserving the evidence.” (J.A. 272.) She further testified that she collected as evidence projectiles, cartridge casings, bullet fragments and a hat. Pascal also testified that she was also the crime scene technician who protected the secondary scene of the crime located across from the John F. Kennedy Housing Projects (“JFK”). Additionally, she testified that she examined De La Cruz’s gray Ford 150 pickup truck, in which she found a black weapon and two magazines. Pascal’s investigation also uncovered a bullet hole in the vehicle’s passenger door.

¶ 8 Pascal also testified that she contacted Viera on August 3, 2013 and took photographs of him. She described his face as having injuries, including a deep laceration on top his left eye with a scratched and swollen cheek. Pascal also observed that Viera’s right arm had several scratches and a deep laceration on his elbow and scratches and lacerations on his chest and abdomen. Pascal noted that she examined a Honda vehicle that crashed into a fence line and a tree on the roadside close to JFK. She further testified that the Honda was involved in the shooting incident at Times Square and that the following day she retrieved evidence from the Honda which was at the Virgin Islands police lot, which is utilized for impounding vehicles at Patrick Sweeney Golden Grove Police Station in Frederiksted. Pascal stated that she found a black Glock firearm bearing a serial number and equipped with a loaded magazine in it. She also retrieved a second extended magazine with .40 caliber SNW ammunition and three casings from the Honda vehicle.

¶ 9 On cross examination Viera’s counsel attempted to discredit Pascal’s testimony by propounding questions about the VIPD’s failure to protect the crime scene, while contending that the evidence showed that people had contaminated the crime scene by entering and traversing around in it. Viera attempted to further discredit Pascal by expounding on her failure to collect broken green glass from a bottle that was on or around the hat in one of her photographs because she did not think collecting the broken green bottle was important evidence; nor did she send the hat for DNA laboratory testing to determine its true owner.² Pascal testified that she did not know if there were any glass fragments inside the hat and that she did not examine the hat for glass fragments.

¶ 10 The People also presented evidence from Dr. Landron, the territorial medical examiner for the U.S. Virgin Islands. As the designated expert in the field of forensic pathology at the trial, Dr. Landron testified that on August 7, 2013 he conducted a post mortem examination on Coulon. He testified that Coulon’s blood alcohol level measured 1.1%, which proved that he was intoxicated. The same chemical examination of Coulon also revealed that there was marijuana or THC metabolites in his body. Additionally, Dr. Landron’s physical examination of Coulon disclosed that he sustained three gunshot wounds to the arm, chest, and thigh. From his examination of the entrance wounds, Dr. Landron concluded that the shots were “long range shots,” which were likely produced at a distance of more than two feet and that the cause of death was the gunshot wound to the chest. (J.A. 365.)

¶ 11 Kressley, a detective in the Forensic Unit at the VIPD, testified that while he was conducting the booking process for Viera he observed that he had a bandage on his head and arm.

² Pascal testified that the green glass appears to be fragments from a broken beer bottle but was unable to confirm the specific type of beer bottle.

Detective Kressley also testified that he asked Viera to remove the bandages so he could photograph him for booking.

¶ 12 Aaron, a patrol officer with the VIPD for approximately 18 years, testified that he was on duty at approximately 6:00 a.m. that day when he overheard a patron at Thomas Bakery saying that shots were fired near Times Square. Officer Aaron testified he indicated to the patron that he would inspect the area. Aaron recounted that as he exited the bakery in the direction of Times Square, he saw a very slim individual with braided hair operating a “blue or purplish-colored vehicle [which was] traveling at a high rate of speed” heading out of Christiansted town. (J.A. 411; 415-16.) On his way to the vicinity of Times Square, Officer Aaron first saw De La Cruz, who he described as having a laceration to the left side of his face. Officer Aaron also testified that he saw Cuevas, who had a red spot, similar to a gunshot wound, on the back of his pants. Beside De La Cruz and Cuevas, Officer Aaron testified that he did not observe anyone else at the scene who was injured.

¶ 13 Officer Aaron testified that while he assisted the other officers to protect the crime scene, he was informed that an automobile accident had occurred at JFK. Officer Aaron testified that he went to the scene of the reported accident and recognized that the vehicle that was in the accident was the same vehicle that passed him at a high rate of speed heading out of Christiansted town. On cross examination Aaron admitted that Cuevas told him that the incident at Times Square involved an attempted robbery where he saw someone trying to take money from someone else. On redirect examination Aaron specified that Cuevas attempted to report the incident to him but the fact that Cuevas spoke very little English created a language barrier that made his expression not very clear and difficult to comprehend.

¶ 14 Officer Morales also testified for the People. He stated that on August 3, 2013, he was assigned to the forensic division, and he was dispatched to the scene of the auto collision associated with the homicide that took place at Times Square. He testified that he inspected, photographed, and measured the crime scene and collected evidence from the crashed vehicle.

¶ 15 Stout, a VIPD supervisor for the firearms division and record keeper for all firearms registered in the Virgin Islands, testified that she performed a record examination for a firearm permit for Viera in August 2013, and, that as of August 3, 2013, Viera was not licensed in the Virgin Islands District of St. Croix, nor the districts of St. Thomas and St. John and Water Island, to possess or carry a firearm or ammunition. Stout also testified that Viera is not a registered firearms dealer in the Virgin Islands.

¶ 16 DeSouza, a firearm and tool mark examiner, testified that he was employed with the VIPD in August 2013 and involved in examining evidence in the shooting incident at Times Square that resulted in the death of Coulon. He stated that his primary responsibility was to test fire the firearms and to examine cartridge cases and bullets that were collected from the scene of the crime. DeSouza testified that he examined two firearms: a Taurus .9-millimeter Luger and a Glock Model 23 .40 SNW firearm. He testified that both firearms were tested and were both operable. DeSouza also identified .40 caliber SNW fired cartridge cases, which he concluded were fired from the Glock Model 23 .40 caliber firearm. DeSouza also identified cartridges that were associated with the Taurus 9-millimeter Luger. The People rested after the testimony of DeSouza.

¶ 17 At the end of the People's case, Viera made a Rule 29 motion to dismiss all the counts charged in the amended information. The People opposed Viera's Rule 29 motion in its entirety, arguing that based on the evidence presented a reasonable jury could find Viera guilty. Except for count one, the Superior Court denied Viera's motion on all counts, while allowing the parties to

brief the issue of premeditation which is an element of first degree murder charged in count one of the amended information.

¶ 18 Viera then presented his defense. He first called Darwin Williams, Jr. (“Williams”), who testified that at around 4:00 a.m. on August 3, 2013, he and a friend were having drinks at Times Square when he saw Viera enter the bar and then a woman who was in the bar approached him. According to Williams, Viera got into an altercation inside the bar and, because he was afraid the matter would escalate, he recommended to his friend Viera that they both leave the bar. Williams testified that while he was outside Times Square, he saw three men exit Times Square and approached Viera. Williams further testified that one of the male individuals struck Viera on his head with a bottle and a fight between the men ensued. William recounted that the three men viciously beat Viera, as he struggled to defend himself. Williams also testified that during the fight between Viera and the men, De La Cruz came running out of the bar with a firearm in his hand and fired a shot. To avoid getting shot, Williams testified that he began running through a pathway that was near him, at which time he heard a fusillade of gunshots.

¶ 19 Viera then took the stand and offered evidence that conflicted with De La Cruz’s trial testimony. Viera testified that he went to Times Square to have a drink when an altercation developed between him and Coulon concerning a female in the bar. Viera further testified that after the bedlam inside Times Square ended, he departed unescorted. Viera further testified that while he was outside Coulon struck him on the head with a bottle, and after Viera fell to the ground, he was kicked and punched in his face and all over his body by three or four men. Viera also testified that while he was on the ground he heard shots discharged. Consequently, he unholstered his gun and fired several shots because, at that juncture, he feared for his life. He testified that he continued to fire shots while fleeing the scene in his vehicle. During his escape, Viera’s car

collided with a tree. Nevertheless, Viera testified that he had no recollection of the vehicular accident, because he was unconscious following the collision.

¶ 20 At the end of his case, Viera renewed his motion for judgment of acquittal on all charges in the amended information pursuant to Rule 29 of the Federal Rules of Criminal Procedure.³ The Superior Court denied the motion but reduced the first degree murder charge in count one to second degree murder with a lesser included offense of voluntary manslaughter, upon finding that there was insufficient evidence to support the charge of first degree murder.

¶ 21 On October 29, 2014, the case was submitted to the jury, and the jury returned guilty verdicts on the charges of voluntary manslaughter, assault in the first degree, unlawful possession of a firearm during the commission of a crime of violence, unauthorized possession of ammunition, failure to report firearms obtained outside or brought into the Virgin Islands and reckless endangerment in the first degree. On October 2, 2015, Viera filed a motion for judgment of acquittal or alternatively a new trial, which the Superior Court denied in a November 17, 2015 order. Viera perfected a timely appeal on March 22, 2016, one week after the March 15, 2016 sentencing hearing took place and prior to the entry of the judgment and commitment on June 7, 2016. See former V.I.S. CT. R. (5)(b)(1) (providing that in a criminal case, “[a] notice of appeal filed after the announcement of a decision, sentence, or order -- but before judgement of the entry or order – is treated as filed on the date of and after the entry of judgment”); V.I. R. APP. P. (5)(b)(1) (same).

³ At the time of Viera’s trial, Rule 29 of the Federal Rules of Criminal Procedure was incorporated through former Superior Court Rule 7. This Court adopted the Virgin Islands Rules of Criminal Procedure after the trial concluded in this matter. *In re Adoption of V.I.R. of Crim. Proc.*, Promulgation No. 2017 010, 2017 WL 7361204 (V.I. Dec. 19, 2017). Rule 29 was therefore applicable to this case. See *Mills-Williams v. Mapp*, 67 V.I. 574, 584-85, nn. 4-5 (V.I. 2017).

II. JURISDICTION

¶ 22 “The Supreme Court [has] jurisdiction over all appeals arising from final judgments, final decrees or final orders of the Superior Court, or as otherwise provided by law.” 4 V.I.C. § 32(a). The Superior Court's June 7, 2016 judgment and commitment constitutes a final judgment; therefore, this Court possesses jurisdiction over this appeal. *See Potter v. People*, 56 V.I. 779, 787 (V.I. 2012) (noting that in a criminal case, a written judgment containing the adjudication of guilt and the resulting sentence is a final judgment for purposes of 4 V.I.C. § 32(a)).

III. STANDARD OF REVIEW

¶ 23 On appeal, Viera argues that there was insufficient evidence presented at trial for a rational jury to find him guilty on these charges beyond a reasonable doubt. We exercise plenary review over sufficiency of the evidence claims, and we interpret the evidence in the light most favorable to the People. *Simmonds v. People*, 59 V.I. 480, 485-86 (V.I. 2013); *see also Latalladi v. People*, 51 V.I. 137, 145 (V.I. 2009). Additionally, a challenge to the Superior Court's denial of a motion for a new trial is reviewed for an abuse of discretion. *Stevens v. People*, 52 V.I. 294, 304 (V.I. 2009).

IV. DISCUSSION

A. Sufficiency of the Evidence

¶ 24 Specifically, Viera argues on appeal that there was insufficient evidence to convict him of count one: voluntary manslaughter; count two: assault in the first degree; count four: unauthorized possession of a firearm during the commission of a crime of violence; count six: possession of ammunition; and count eight: reckless endangerment in the first degree, as charged in the amended information.

i. There was sufficient evidence to convict Viera of voluntary manslaughter.

¶ 25 The amended information charged Viera with first degree murder in violation of title 14 § 922(a)(1). At trial, Viera made a motion pursuant to Federal Criminal Procedure Rule 29 seeking to dismiss all the charges in the amended information. The Superior Court denied the Rule 29 motion but determined that the evidence presented was insufficient to support a finding of premeditation and deliberation necessary for conviction of the first degree murder charge in count one and reduced that charge to murder in the second degree with the lesser included offense of voluntary manslaughter. After deliberation, the jury returned a verdict of guilty on the charge of voluntary manslaughter in violation of 14 V.I.C. § 924(1).

¶ 26 On appeal, Viera contests the sufficiency of the evidence presented for his conviction of voluntary manslaughter in violation of 14 V.I.C. § 924(1). “When reviewing a challenge to the sufficiency of the evidence leading to a conviction, the standard of review is whether there is substantial evidence, when viewed in the light most favorable to the government, to support the jury’s verdict.” *McIntosh v. People*, 57 V.I. 669, 678 (V.I. 2012) (citation and internal quotation marks omitted); *Coleman v. Johnson*, 566 U.S. 650, 654 (2012) (“[E]vidence is sufficient to support a conviction if, ‘after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.’” (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979))). “In making our determination, we do not weigh the evidence or substitute our credibility determinations for that of the jury[.]” *Brathwaite v. People*, 60 V.I. 419, 426 (V.I. 2014) (citing *Ramirez v. People*, 56 V.I. 409, 417 (V.I. 2012)); *United States v. Miller*, 527 F.3d 54, 60 (3d Cir. 2008); *United States v. White*, 698 F.3d 1005, 1013 (7th Cir. 2012); *United States v. Santos-Rivera*, 726 F.3d 17, 23 (1st Cir. 2013); *United States v. McIntosh*, 860 F.3d 624 (8th Cir. 2017). “We must affirm a jury’s verdict as long

as substantial evidence was presented at trial to allow a rational trier of fact to convict when the evidence is viewed in a light most favorable to the People.” *James v. People*, 60 V.I. 311, 318 (V.I. 2013) (citing *Todmann v. People*, 59 V.I. 926, 934 (V.I. 2013); *Stevens v. People*, 52 V.I. 294, 304 (V.I. 2009); *United States v. Wright*, 665 F.3d 560, 567 (3d Cir. 2012)); *United States v. Taylor*, 816 F.3d 12 (2nd Cir. 2016). “An appellant [,therefore,] has a very heavy burden in advancing an insufficiency of the evidence claim.” *James*, 60 V.I. at 318 (citing *Latalladi*, 51 V.I. at 145).

¶ 27 To establish his claim that there was insufficient evidence of voluntary manslaughter to support his conviction, Viera quotes extensively and randomly from the testimony of the witnesses at trial but supplies no legal authority to support his contention. In response, the People argue that there was sufficient evidence to find Viera guilty of voluntary manslaughter because the evidence of the verbal altercation that arose at Times Square between Coulon and Viera satisfied the “quarrel or heat of passion” requirement for the offense. (Appellee Br. 6.) The People argue additionally that the satisfaction of the heat of passion requirement, considered in conjunction with the testimony of De La Cruz, Cuevas, Viera, and Dr. Landron, satisfies all the elements for the conviction of voluntary manslaughter.

¶ 28 A thorough review of the complete record confirms that Viera dealt with this issue in his brief from page 10 to page 15. While Viera claims that the People presented insufficient evidence to convict him of voluntary manslaughter, he cited to no controlling case law or other precedential legal authority demonstrating that the quoted testimony undermines or negates the People’s proof. Viera also failed to sufficiently develop his contentions and failed to plausibly support the legal conclusions that he chose to present. Moreover, Viera failed to cite any binding or persuasive authority or any legal precedent or rationale to support his arguments. We have stated before that

“issues that were (1) not raised or objected to before the Superior Court, (2) raised or objected to but not briefed, or (3) are *only adverted to in a perfunctory manner or unsupported by argument and citation to legal authority*, are deemed waived for purposes of appeals except that the [this] Court, at its option, may notice an error not presented that affects substantial rights.” V.I.S. Ct. R. 22(m) (emphasis added) (superseded *see now* V.I.R. APP. P. 22(m) (same)). Additionally, the issues Viera raised in his brief, including his discussion of the witnesses’ testimony and the alleged inconsistencies in their testimony, concern the credibility of the witnesses and the weight, if any, that should be given to the evidence. *See Woodrup v. People*, 63 V.I. 696, 710 (V.I. 2015). But we have steadfastly held that “a sufficiency challenge is not a vehicle to relitigate credibility arguments that were unpersuasive to the trier of fact.” *Id.* (quoting *Webster*, 60 V.I. at 681). Because Viera’s appellate brief failed to sufficiently develop his contention as to the sufficiency of the evidence, this issue is deemed waived.

ii. The People presented sufficient evidence to disprove Viera’s claim of self-defense.

¶ 29 Viera raised the defense of self-defense to counter the voluntary manslaughter, assault, and reckless endangerment charges. He argues on appeal that the People failed to disprove beyond a reasonable doubt that he acted in self-defense. The People argue in opposition that the jury’s verdict should be affirmed because “the evidence supports a rational jury finding that either the right to self-defense never arose or Viera’s actions were disproportionate to the threat.” (Appellee’s Br. 9.)

¶ 30 Virgin Islands law allows “the use of force to protect oneself, one’s family, or one’s property from a real or threatened attack.” *See* 14 V.I.C. § 43; *Gov’t of the V.I. v. Robinson*, 29 F.3d 878, 884 (3d Cir. 1994) (observing that the right of self-defense is not absolute and does not extend to allow inflicting greater harm than is necessary to defend oneself). “In the Virgin Islands,

a homicide is justifiable on self-defense ground where (1) the defendant actually believed at the time of the killing that he “was in imminent or immediate danger of his life or great bodily harm,” and (2) this belief was reasonable.” *Gov’t of the V.I. v. Mills*, 821 F.3d 448, 465 (3d Cir. 1991). “[O]nce [a] defendant has properly placed self-defense in issue, [the] prosecution must prove its absence beyond a reasonable doubt.” *Gov’t of the V.I. v. Smith*, 949 F.2d 677, 680 (3d Cir. 1991). Notably, “[t]he right of self-defense does not extend to the infliction of more harm than is necessary for the purpose of defense.” *Robinson*, 29 F.3d at 882 (internal quotation marks omitted). “The force used to deflect an aggressor’s threatened harm must be merely sufficient to stop the harm, and application of a greater force than that which is necessary is unlawful.” *Marcelle v. People*, 55 V.I. 536, 544-45 (V.I. 2011) (citing *Robinson*, 29 F.3d at 884).

¶ 31 Viera raised the issue of self-defense in his testimony. He stated that he went to the Times Square Restaurant and Bar at approximately 4:00 a.m. in the morning, sat down and ordered a drink, after which a young woman approached him and commenced a conversation. He testified that shortly thereafter he was accosted by three men who began to argue with him, which instigated an altercation about the young woman. Viera testified that De La Cruz entered the fray to defuse the escalating tension among the parties and uttered something in Spanish to the men, which he did not comprehend. At this juncture, the men went outside the bar and sat back down but continued to imbibe. Viera testified that De La Cruz announced that the bar was closing, and he and the young woman walked outside together. He testified that when they were outside, the same group of three men approached him and started assaulting him and “bust a bottle [i]n . . . [his] head and eyebrow[,]” causing the hat he was wearing to fall off his head. (J.A. 572-73.) Viera testified that Coulon was the first person to hit him, using a Heineken beer bottle.

¶ 32 Viera further testified that the altercation between him and the group of men progressively escalated. He stated that during the physical altercation and pandemonium all the men were beating and kicking him, even though he fell to the ground. Viera stated that while he was on the ground suffering from the beating and from kicks administered upon him by the same men, he heard a “shot discharge.” (J.A. 573.) Viera testified that upon hearing the gunshot, he unholstered his firearm from his waist and discharged two gunshots. He then looked around and saw someone shooting at him. Viera further testified that he started shooting in the direction of the shooter, while endeavoring to escape from the scene because he feared for his life. Viera testified that even when he got to his car and entered it someone was still shooting at him. He stated that the shooting continued until he was able to successfully depart from the area.

¶ 33 De La Cruz’s testimony contradicts Viera’s testimony. De La Cruz testified that while he was attempting to prevent a physical altercation from occurring between Viera and the other men, Viera went to his car and retrieved his firearm. Thereupon, he recklessly discharged several shots at all the men standing at the front of Times Square without regard to whether each individual man was a participant in the altercation and bedlam. Importantly, De La Cruz’s testimony also established that Viera also callously and randomly discharged several shots as he departed the crime scene in his vehicle. Although De La Cruz’s testimony conflicts with Viera’s, it is in the exclusive province of the jury to weigh the credibility of the witnesses. *See, e.g., Woodrup*, 63 V.I. at 710; *Fahie v. People*, 62 V.I. 625, 636 (V.I. 2015) (“[It is] the exclusive province of the jury ‘to decide what conclusions should be drawn from evidence admitted at trial.’” (citing *Alexander v. People*, 60 V.I. 486, 498 (V.I. 2014) (citations omitted))). Therefore, the jury could view the evidence in the People’s favor and conclude that under the circumstances of the fracas and pandemonium that Viera used more force than was necessary to defend himself. Accordingly,

there was sufficient evidence for the jury to conclude that the People proved beyond a reasonable doubt that Viera did not act in self-defense, particularly after he retreated to his car and was making a successful departure and escape from the scene of the crime but he continued to discharge his firearm directed at the men in the area, causing the death of Coulon and inflicting injuries upon De La Cruz and Cuevas.

iii. There was enough evidence presented at trial to convict Viera of assault in the first degree of De La Cruz in count two of the amended information.

¶ 34 In count two of the amended information, the People charged Viera with first degree assault upon De La Cruz under 14 V.I.C. § 295(1). Section 295(1) provides that “[w]hoever with the intent to commit murder assaults another . . . shall be imprisoned for no more than 10 years.” 14 V.I.C. § 295(1). “Assault” in the Virgin Islands Code is further defined as “any unlawful violence upon the person of another with intent to injure him, whatever be the means or degree of violence used” 14 V.I.C. § 292. Therefore, to obtain a conviction under section 295(1), the People were required to prove that Viera, with the intent to commit murder, assaulted De La Cruz by shooting him in the face and right thigh and that he assaulted Cuevas by shooting him in the back of his thigh.

¶ 35 Here, De La Cruz testified that as Viera was returning from his car and towards the bar, he was discharging a fusillade of shots in the direction of him and the other men who were standing outside Times Square. De La Cruz also testified that he was shot in his hand, face, leg and belt, by four of the bullets Viera fired. Additionally, De La Cruz testified that although he had his licensed firearm in his possession, he did not initially return fire at Viera because he was afraid that Viera, who already had his weapon unholstered, would kill him. This evidence, when viewed

in the light most favorable to the People, is enough for a jury to convict Viera of assault in the first degree of De La Cruz beyond a reasonable doubt.

iv. There was sufficient evidence to convict Viera of unauthorized possession of a firearm during the commission of a crime of violence.

¶ 36 In count four of the amended information, the People charged Viera with unauthorized possession of a firearm during the commission of a crime of violence in violation of 14 V.I.C. § 2253(a). Title 14 section 2253(a) of the Virgin Islands Code in pertinent part provides that

Whoever, unless otherwise authorized by law, has, possesses, bears, transports or carries either, actually or constructively, openly or concealed any firearm . . . loaded or unloaded, may be arrested without a warrant, and shall be sentenced to imprisonment of not less than ten years and shall be fined not less than \$10,000 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 applicable 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.

“Firearm” is defined in the statute as “any device by whatever name known, capable of discharging ammunition by means of gas generated from an explosive composition, including any air gas or spring gun or any ‘BB’ pistols or ‘BB’ guns that have been adapted or modified to discharge projectiles as a firearm.” 23 V.I.C. § 451(f). Accordingly, to convict Viera of unauthorized possession of a firearm during the commission of first degree murder upon Coulon and first degree assault upon De La Cruz in violation of 14 V.I.C. § 2253(a), the People must prove beyond a reasonable doubt that Viera knowingly possessed a firearm without lawful authorization. 14 V.I.C.

§ 2253(a); see *M. Davis v. People*, 69 V.I. 619, 664 (V.I. 2018) (Swan, J. concurring in part); *Woodrup v. People*, 63 V.I. 696, 710 (V.I. 2015).

¶ 37 In this case, De La Cruz testified that when he, Viera and Coulon were outside the Times Square he stood between Viera and Coulon to prevent the verbal altercation between the two men from escalating into fisticuffs. De La Cruz further testified that he turned his back to Viera to speak to Coulon and when he turned to face Viera, he saw Viera returning from his car discharging gunshots. Viera himself testified that he had an unlicensed firearm that was holstered at his waist which he used to defend himself by firing shots after hearing gunshots while he was being physically assaulted and had fallen to the ground. The testimony of De La Cruz informs that De La Cruz was struck by four bullets.

¶ 38 As further proof of a violation of the statute, Detective Stout, a supervisor and record keeper for the Firearms Division of the VIPD, testified that she conducted a search of the firearms records in both the St. Thomas-St. John and St. Croix Districts which confirmed that Viera did not have a valid license to possess a firearm in the Virgin Islands on August 3, 2013. Accordingly, when viewed in the light most favorable to the People, there was sufficient evidence for a jury to convict Viera beyond a reasonable doubt for the crime of unauthorized possession of a firearm during a crime of violence.

v. There was sufficient evidence to convict Viera of unauthorized possession of ammunition.

¶ 39 Viera argues on appeal that there was insufficient evidence to convict him of unauthorized possession of ammunition under 14 V.I.C. § 2256(a). Specifically, Viera argues that pursuant to the legal precedent in *United States v. Daniel*, 518 F.3d 205 (3rd Cir. 2008), there is insufficient evidence to sustain his conviction because there is no mechanism for authorizing possession of

ammunition in the Virgin Islands. The People argue in response that Viera is incorrect, because the statute was amended to correct the legal issue that he raised. We agree with the People.

¶ 40 In *Nicholas v. People*, 56 V.I. 718, 730 (V.I. 2012), we explicated that because 14 V.I.C. § 2256(a), as it existed before it was amended by Act No. 7128 on August 20, 2010, generally criminalized the possession of ammunition ‘unless authorized by law’ but provided no means for such authorization, the People were incapable of proving that any defendant so charged was in violation of the statute. Here, the People charged Viera in an amended information in violation of 14 V.I.C. § 2256(a) on September 8, 2014, after the statute was amended and accordingly Viera’s argument is incorrect.

¶ 41 Title 14 section 2256(a) of the Virgin Islands Code, as amended, provided at the time of the offense charged in the case that:

Any person who is not: (1) a licensed firearms or ammunition dealer; or (2) officer, agent or employee of Whoever, unless otherwise authorized by law, has possesses, bears, transports or carries either, actually or constructively, openly or concealed any firearm or ammunition dealer; or (2) officer, agent or employee of the Virgin Islands or the United States, on duty and acting within the scope of his duties; or (3) holder of a valid firearms license for the same firearm gauge or caliber ammunition of the firearm indicated on such license; and (4) who possesses, sell, purchases, manufacture, advertises for sale, or uses any firearm ammunition is guilty subject to imprisonment for up to seven years or a fine not more than \$10,000 to both fine and imprisoned.

To convict Viera of possession of ammunition without authorization, the People were required to prove that Viera possessed ammunition without authorization. “Firearm ammunition means any self-contained cartridge or shotgun shell by whatever name known, which is designed to be used or adaptable for use in a firearm.” 14 V.I.C. § 2256(c)(2).

¶ 42 Here, Viera himself testified that on August 3, 2013, he possessed a firearm and ammunition for the firearm without authorization. Viera’s crucial admission under oath is sufficient to prove the elements of the crime. Accordingly, a reasonable jury, viewing the evidence in the light most favorable to the People could conclude beyond a reasonable doubt that there was sufficient evidence to convict Viera of possession of ammunition without authorization in violation of 14 V.I.C. § 2256(a).

vi. There was sufficient evidence to convict Viera of reckless endangerment in the first degree.

¶ 43 In count eight of the amended information, the People charged Viera with the crime of reckless endangerment in the first degree under 14 V.I.C. § 625(a), which provides that “[a] person is guilty of reckless endangerment in the first degree when, under . . . 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 results when a person consciously and knowingly engages in conduct or behavior that creates a grave risk of death to another person.

¶ 44 A public place within the meaning of section 625(a) of the reckless endangerment statute is “a place to which the general public has a right to resort; but a place which is in point of fact public rather than private and visited by many persons and usually accessible to the public.” *M. Davis*, 69 V.I. at 635 (citing *Estick*, 62 V.I. 604, 615 (V.I. 2015) and *Augustine v. People*, 55 V.I. 678, 689 (V.I. 2011)). The statute “[r]equires only a showing that the [defendant’s] conduct was done in a place that is open to the public or where the public has a right to be, thereby posing a risk of death to members of the public who may be in the area.” *Cascen v. People*, 60 V.I. 392, 408 (V.I. 2014) (quoting *Tyson v. People*, 59 V.I. 391, 417 (V.I. 2013) (citations omitted)).

“Accordingly, reckless endangerment may be established based on the conduct of the defendant in a public place where the public has the right to be—it does not hinge on the naming of a particular or finite number of endangered persons.” *Tyson*, 59 V.I. at 417 (citing *Augustine*, 55 V.I. 698); *see also Mulley v. People*, 51 V.I. 404, 412-13 (V.I. 2009).

¶ 45 Viera challenges his conviction for the crime of reckless endangerment. He contends that his conviction on reckless endangerment in the first degree is unsustainable. Viera argues further that because he was convicted of voluntary manslaughter his behavior could not be reckless. The amended information charged that Viera unlawfully engaged in conduct in a public place which created a grave risk of death to other persons by discharging several shots in the area of Times Square Bar and Restaurant, a public establishment, where other persons could have been injured without any need for self-defense or without any legal justification. To convict Viera of the charge of reckless endangerment in the first degree, the People were required to prove beyond a reasonable doubt that Viera, recklessly engaged in conduct, which under the circumstances, created a grave risk of death or physical injury to another person. 14 V.I.C. § 625(a); *see also Powell*, 2019 VI 2, ¶80 n.23.

¶ 46 Here, the evidence presented at trial substantiated that Viera’s unlawful conduct constituting voluntary manslaughter, assault in the first degree, and assault in the third degree, occurred in a public place on St. Croix. The trial testimony of De La Cruz, Cuevas, and Viera himself established that the shooting transpired in a public area, i.e. a public place, outside Times Square. Moreover, the People established that Viera acted with a depraved indifference to human life, since the act of indiscriminately firing a loaded gun in a public place where others are present is the “epitome of reckless conduct creating a grave risk of death under circumstances evincing an extreme indifference to human life.” *Augustine v. People*, 55 V.I. 678, 689 (V.I. 2011) (quoting

State v. Coward, 972 A.2d 691, 702-03 (Conn. 2009)). Accordingly, the jury had sufficient evidence on which to find beyond a reasonable doubt that Viera was guilty of reckless endangerment in the first degree.

B. Viera presented no circumstances that would entitle him to a new trial.

¶ 47 Viera asserts in his brief, without more, that “justice requires that [he] be granted a new trial.” (Appellant’s Br. 19). Viera also cites case law precedent addressing the issue of a new trial but fails to explain how the facts of his case, considering the applicable law, entitle him to a new trial. Additionally, he failed to explicate what error was committed by the Superior Court and failed to explain how such error entitles him to a new trial. Moreover, Viera identifies no newly discovered evidence nor an iota, modicum or scintilla of evidence that the Superior Court erred in denying his motion for a new trial. The People argue that, pursuant to Supreme Court Rule 22(m), Viera waived this issue because he failed to substantiate how the Superior Court erred as well as how the denial of his motion for a new trial resulted in an injustice.

¶ 48 At the time Viera filed his motion, Rule 135 of the Superior Court governed the Superior Court’s authority to “grant a new trial in the interest of justice.” Rule 135 states that,

The court may grant a new trial to a defendant if required in the interest of justice. The court may vacate the judgment if entered, take additional testimony and direct the entry of a new judgment. A motion for a new trial based on the ground of newly discovered evidence may be made only before or within two years, after final judgment. A motion for a new trial based on other grounds shall be made within 10 days after finding of guilty, or within such further time as the court may fix during the 10-day period. In no event shall this rule be construed to limit the right of a defendant to apply to the court for a new trial on the ground of fraud or lack of jurisdiction.

Rule 22(a)(5) of the Rules of the Supreme Court is instructive on this issue: “the argument [presented] shall contain the contentions of the appellant with respect to each of the issues

presented and the reasons therefore, with citation to the authorities, statutes, and parts of record relied on.” V.I.S. CT. R. 22(a)(5) superseded: *see now* V.I.R. APP. P. 22(a)(5)(same)). A review of Viera’s brief confirms that he inadequately briefed this issue on appeal. In the section of his brief addressing the issue of a new trial, Viera cites case law on the issue of motion for a new trial but failed to advance an argument for his request for a new trial. Viera’s failure to make an argument renders this section of his brief purely perfunctory and unsupported by facts or law. Moreover, even if this Court were to address Viera’s argument on the merits, we would reject it because a motion for a new trial should be granted in the “interest of justice.” Super. Ct. 135. Additionally, Viera has failed to provide any “newly discovered evidence” to substantiate his request for a new trial under this provision. *Id.* Accordingly, Viera has failed to demonstrate that the Superior Court’s denial of his motion for a new trial under this standard was an abuse of discretion. Accordingly, we affirm the Superior Court’s denial of Viera’s motion for a new trial.

V. CONCLUSION

¶ 49 For the forgoing reasons, we affirm the Superior Court’s June 7, 2016 judgment and commitment.

DATED this 17th day of June, 2019.

/s/ Ive Arlington Swan
IVE ARLINGTON SWAN
Associate Justice

ATTEST
VERONICA J. HANDY, ESQ.
Clerk of the Court