

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS  
DIVISION OF ST. THOMAS AND ST. JOHN**

|                                      |   |              |
|--------------------------------------|---|--------------|
| <b>PEOPLE OF THE VIRGIN ISLANDS,</b> | ) | CRIMINAL NO: |
|                                      | ) | ST-16-CR-193 |
| Plaintiff,                           | ) |              |
| vs.                                  | ) |              |
|                                      | ) |              |
| <b>EMANUEL GREER,</b>                | ) |              |
|                                      | ) |              |
| Defendant.                           | ) |              |
| _____                                | ) |              |

**MEMORANDUM OPINION**

**THIS MATTER** is before the Court on Defendant Emanuel Greer's "Renewed Motion for Judgment of Acquittal" filed November 2, 2017. The People of the Virgin Islands (People) filed its Opposition on November 17, 2017. The Defendant was found guilty of mayhem for inflicting a serious disfigurement (by biting off a portion of the victim's ear). The Defendant argues that the Court should set aside the verdict and enter judgment of acquittal as the disfigurement was not serious. However, for the reasons set forth herein, the motion will be denied.

**I. Defendant's Motion Was Untimely.**

The Court's June 1, 2017 Order stated that Defendant's post-trial motion was due 30 days after the trial transcripts were filed with the Court. The trial transcripts were filed on Friday, August 4, 2017, at 2:22 p.m. Therefore, 30 days would have run on Monday, September 4, 2017. However, September 4, 2017 was a legal holiday (Labor Day). Therefore, the due date would have been, Tuesday, September 5, 2017. However, following Hurricane Irma and Maria all time limits were tolled from 12:01

a.m. on Tuesday, September 5, 2017, through 11:59 p.m. on Monday, October 15, 2017.<sup>1</sup> Therefore, Greer's deadline was extended to October 16, 2017. But he did not file his motion until November 2, 2017. Therefore, his motion is untimely. Nevertheless, the Court will consider the merits of his argument as it had reserved ruling on Greer's Rule 29 Motion at the conclusion of the People's case in chief and again reserved ruling at the end of Greer's case. Therefore, Greer is entitled to a ruling.

## **II. Relevant Background**

On June 4, 2016, Defendant Emanuel Greer was arrested in St. John, Virgin Islands after a physical altercation with Akeino Williams. According to the People, Greer attacked Williams and willfully bit off a portion of his ear, causing serious disfigurement. Although the severed portion of the ear was recovered by the Virgin Island Police Department (VIPD), doctors could not re-attach it.

Greer was subsequently charged with First Degree Assault in violation of V.I. Code Ann. Tit. 14 § 295(3) and Mayhem in violation of V.I. Code Ann. Tit. 14 § 1341(a)(1).<sup>2</sup> Greer, having entered a plea of "Not Guilty," began trial on May 23, 2017.

The People called six witnesses during their case in chief. The victim Akeino Williams testified that on June 4, 2016, he was at the ferry dock in Red Hook, St. Thomas, VI, when he observed the person now identified as Defendant Emanuel Greer, who appeared angry and aggressive. They both got on the ferry to St. John,

---

<sup>1</sup> V.I. Supreme Court Administrative Order Number 2017-0005, issued on September 29, 2017.

<sup>2</sup> First Amended Complaint, May 22, 2017.

and at one point Greer said to Williams: *"de man, yo' come outside and I tell you yo' f\*\*\*ing voice annoying me? You want me throw you over the f\*\*\*ing boat and drown yo' mother sk\*\*t?"* After the boat docked in St. John, Greer told Williams he (Greer) has it in for Williams. After leaving the boat, Williams reported the incident to a police officer on the dock. As Williams proceeded up the street to his job he encountered Greer on the corner where Greer came at him in an aggressive manner and grabbed him. The two struggled and Greer bit down on Williams's ear, and Greer was growling and shaking his head. Williams testified that Greer was "like a dog, like he was just rrrrh, rrrrh, and he was just biting and just shaking and just pulling my ear, just pulling it."<sup>3</sup> When asked about the injury to his ear, Williams testified "basically I feel deformed now, and I was never born this way. And it really have me feeling just like I can't like be around people..."<sup>4</sup> In addition, Williams viewed People's Exhibit 3, and claimed that the photo showed the exposed cartilage and bone in his ear, that was the result of Greer's biting.<sup>5</sup>

VIPD Sergeant Lorne Clarke testified that, "I observed that a piece of his ear was missing."<sup>6</sup> The People also called VIPD Officer Lisa Herbert as a witness, who testified that she found the missing piece of Williams' ear on the ground.<sup>7</sup> Officer

---

<sup>3</sup> Trial Transcript Vol. II, 131:3-6.

<sup>4</sup> Trial Transcript Vol. II, 146: 6-9.

<sup>5</sup> Trial Transcript Vol. II, 144: 14-15.

<sup>6</sup> Trial Transcript Vol. II, 40:21-22.

<sup>7</sup> Trial Transcript Vol. II, 66: 4-7.

Herbert photographed Williams' ear injury at the time of the incident, and four of those photos were entered into evidence during her testimony.<sup>8</sup>

The only medical doctor to testify was Dr. Elizabeth Barot, Williams's treating physician. During her direct examination, she described Williams' injury as a "wound" to the external part of the ear, and explained it could not be reattached.<sup>9</sup> On cross-examination, Dr. Barot testified that the ear would be "disfigured for life,"<sup>10</sup> but also testified that she considered it a "mild disfigurement" in comparison to other injuries and because the ear still functioned.<sup>11</sup> On re-cross examination, Dr. Barot was asked by Defendant if she considered the injury a serious disfigurement, in response she stated, "Not really, no."<sup>12</sup>

After the People's case-in-chief, Greer moved for a judgment of acquittal under Rule 29. According to Greer, Dr. Barot's testimony that the Williams' injury was not a serious disfigurement, contradicted the necessary element of "serious disfigurement," required for "Mayhem" pursuant to 14 V.I.C. 1341(a)(1).<sup>13</sup> The Court

---

<sup>8</sup> Trial Transcript Vol. II, 68: 11-13.

<sup>9</sup> Trial Transcript Vol. II, 95:4; 96:6

<sup>10</sup> Trial Transcript Vol. II, 98: 21

<sup>11</sup> Trial Transcript Vol. II, 99: 6-13; 101: 1-5, 14

Q: "And so when we speak in terms of a body being disfigured, do we have a spectrum? Is there a mild disfigurement all the way up to, say, a loss of a limb or mangled torso?"

A: "The mangled torso, those are major. But aesthetically, I wouldn't want my ear cut off."

...

Q: And could you comfortably say that as disfigurement's go from mangled body to the edge of an ear, would this be a more mild disfigurement?

Dr. Barot: It's a mild disfigurement...

...

Dr. Barot: There's still the function

<sup>12</sup> Trial Transcript Vol. II, 106: 12

<sup>13</sup> Trial Transcript Vol. II, 191.

reserved ruling on Greer's Rule 29 motion, and Greer proceeded to present his case, in which Emanuel Greer was the sole witness. At the conclusion of Greer's case, he renewed his Rule 29 motion. The Court again reserved ruling on the motion. The Court did not rule on the motion on the record, and then the Defendant filed the current Renewed Motion.

The jury did not reach a verdict on Count One - First Degree Assault, but the jury did find Greer guilty of Count Two - Mayhem. The Court announced mistrial on Count One and the People announced that they would not retry Greer on that charge.<sup>14</sup> Greer has filed the instant motion for judgment of acquittal arguing that because mayhem requires serious disfigurement, and the "government's own witness, the treating physician, stated repeatedly that the disfigurement, if any, was mild," the Government failed to prove the necessary elements of mayhem. Def. Mot. For Judge. of Acquittal, 6.

### **III. Legal Standard**

Although Greer cites to Federal Rule of Criminal Procedure 29 as the legal standard governing his motion for judgment of acquittal, the Court notes that the Virgin Islands Rules of Criminal Procedure "govern the procedure of all criminal proceedings in the Superior Court of the Virgin Islands..." See V.I. R. Crim. P. 1(c). Therefore, the Court will analyze Greer's motion as a "Motion for a Judgment of Acquittal" pursuant to V.I. R. Crim. P. 29.

---

<sup>14</sup> Trial Transcript Vol. III, 36.

Pursuant to V.I. R. Crim. P. Rule 29(a), "After the government closes its evidence or after the close of all the evidence, the court on the defendant's motion must enter a judgment of acquittal of any offense for which the evidence is insufficient to sustain a conviction." If the defendant moves for the judgment of acquittal upon the government closing its evidence, the Court may reserve ruling on the motion until the close of all evidence and the case is submitted to the jury. V.I. R. Crim. P. 29(b). However, "[i]f the court reserves decision, it must decide the motion on the basis of the evidence at the time the ruling was reserved." *Id.* Therefore, the Court must now consider the available evidence at the conclusion of the People's case in chief.

The Court decides a motion for judgment of acquittal pursuant to Rule 29 by determining "whether any reasonable jury, viewing the evidence in light most favorable to the government, could find the defendant guilty beyond a reasonable doubt." V.I. Crim. P. Rule 29, Note. The Court does not assess witness credibility or weigh evidence. *See Williams v. People of the Virgin Islands*, 55 V.I. 721, 734 (V.I. 2011).<sup>15</sup>

#### **IV. Analysis**

##### **A. The Evidence Was Sufficient.**

The Virgin Islands Code defines Mayhem as follows:

- (a) Whoever willfully and with intent to commit a felony or to injure, disfigure or disable, inflicts upon the person of another any injury which—
  - (1) seriously disfigures his person by any mutilation thereof;

---

<sup>15</sup> In *Williams*, the Supreme Court of the Virgin Islands analyzed a Motion for Judgment of Acquittal pursuant to Federal Rule of Criminal Procedure 29. However, because V.I. Crim. P. was "adopted from federal practice without substantive change," the Court finds such Virgin Islands Supreme Court decisions are at least persuasive authority.

- (2) destroys or disables any member or organ of his body; or
  - (3) seriously diminishes his physical vigor by the injury or any member or organ –
- shall be imprisoned not more than 15 years.
- (b) The infliction of injury is presumptive evidence of the intent required by subsection (a) of this section.<sup>16</sup>

Defendant Emanuel Greer was charged pursuant to subsection (a)(1). Specifically, Count Two of the Amended Information reads:

On or about June 4, 2016, in St. John, Virgin Islands, **EMANUEL GREER**, willfully and with intent to injure, disfigure or disable, inflicted upon the person of another an injury which seriously disfigures a person by any mutilation, to wit: with intent to injure, he willfully bit off a portion of Akeino Williams' ear, and inflicted an injury which seriously disfigured his person, in violation of V.I. CODE ANN. Tit. 14 § 1341(a)(1). **[MAYHEM]**

Thus in this case Mayhem requires proof of (1) an intent to injure, disfigure, or disable and (2) serious disfigurement. Serious disfigurement is not defined within the Virgin Islands Code, nor could this Court find any local case law defining serious disfigurement. But the Court notes that the Virgin Islands statute criminalizing “Mayhem” was adopted in 1957 and patterned upon New York Penal Law. *See* 14 V.I.C. § 1341, *revision notes*. When the Virgin Islands Legislature borrows a statute from another jurisdiction, the local enactment is, absent any evidence to the contrary, construed to mean what the highest court of that jurisdiction construed it to mean before the Legislature adopted it. However, decisions from the source jurisdiction

---

<sup>16</sup> 14 V.I.C. § 1341.

made after the enactment of the statute in the Virgin Islands are not controlling, but persuasive only.<sup>17</sup> So the Court looks to New York for guidance.

Other than workmen's compensation decisions addressing whether certain facial injuries amounted to serious disfigurement, the Court did not find any New York case addressing the definition of serious disfigurement before 1957. However, in 2010 the highest court in New York, pondered the definition of serious disfigurement in *People v. McKinnon*, 15 N.Y.3d 311 (N.Y. 2010) (considering whether there was sufficient evidence to uphold a conviction on a first degree assault that included an element of serious disfigurement.) That court stated that the standard is an objective one, and the injury must be viewed in context, considering its location on the body and any relevant aspects of the victim's overall physical appearance. Ultimately, New York found that a person is seriously disfigured "when a reasonable observer would find [his] altered appearance distressing or objectionable."<sup>18</sup> This standard is persuasive for the Virgin Islands.<sup>19</sup>

Greer was not convicted of first degree assault, and his motion does not dispute his intent to injure, disfigure, or disable Williams. Therefore, the central issue before the Court is whether Greer committed mayhem by *seriously disfiguring* Williams.

---

<sup>17</sup> *Virgin Islands Waste Management Auth. v. Bovoni Investments, LLC*, 61 V.I. 355, 364 n.3 (V.I. 2014) (internal citations omitted).

<sup>18</sup> *People v. McKinnon*, 15 N.Y.3d 311, 315 (N.Y. 2010).

<sup>19</sup> Greer defines serious disfigurement, but does not provide any legal citation or reference; however, his definition is still somewhat comparable. See Def. Renewed Mot. for Judge. Of Acquittal 2 ("Mayhem is reserved for the injuries that make one cringe of wince, leaving a body permanently, seriously, and noticeably misshapen or deficient.") Nonetheless, for purposes of the instant motion, the difference in definitions is inconsequential because the Court finds a reasonable jury could have found Greer guilty of mayhem under either the proper definition, or Greer's definition for serious disfigurement.

Stated differently, for the Court to properly decide Greer's Rule 29 motion, the Court must determine if any reasonable jury, viewing the evidence in the light most favorable to the People, could have found that Greer committed mayhem by causing serious disfigurement to Williams.

The People presented an assortment of evidence that could lead a reasonable jury to find that Greer committed mayhem by causing serious disfigurement to Williams. For example, the People presented the testimony of a VIPD Sergeant and a VIPD Officer. The combined testimony of both VIPD witnesses included the nature of the injury, how the severed portion of the ear was found on the ground, and the photographic evidence of the injury.

Additionally, Williams testified to the permanency of his injury by stating that he still felt deformed because of the ear injury. Williams also testified that he felt his altered appearance may be distressing or objectionable to other members of the public by stating he felt like he couldn't be around other people. Williams' testimony alone may have led a reasonable jury to find that he was seriously disfigured.

Greer's entire Rule 29 motion seems to be predicated on the testimony of Dr. Barot. However, Dr. Barot testifying she considered the injury to be mild—in comparison to losing a limb<sup>20</sup>—does not, in itself, outweigh the rest of the People's evidence.

---

<sup>20</sup> See footnote 11.

Furthermore, even Dr. Barot's testified that Williams is going "to be disfigured for life," and stated "I wouldn't want my ear cut off." Therefore, even her testimony may have led a reasonable jury to find that Williams was seriously disfigured.

Greer relies upon *Stevens v. People of the Virgin Islands*, 52 V.I. 294,301 n.11 (Supreme Court 2009) to argue that judgment of acquittal is proper when there is no evidence that any member or organ of a victim's body was entirely destroyed or disabled. However, *Stevens* is easily distinguishable, as Stevens was charged under 14 V.I.C. § 1341(a)(2), which specifically requires that a member or organ be destroyed or disabled. *Contra*, here Greer is charged under 14 V.I.C. § 1341(a)(1), which requires serious disfigurement. Therefore, Defendant's reliance on *Stevens* is misplaced.

**B. The Jury's Findings Were Not Inconsistent And Do Not Mandate Acquittal.**

Greer also argues that the jury verdict was inconsistent and thus he should be acquitted on the mayhem charge.

Count One of the Amended Information charged Greer with First Degree Assault pursuant to 14 V.I.C. § 295(3), which provides: Whoever – with intent to commit rape, sodomy, mayhem, robbery of larceny, assaults another – is guilty of first degree assault.

Specifically, Count One of the Amended Information reads:

On or about June 4, 2016, in St. John, Virgin Islands, **EMANUEL GREER**, assaulted another with intent to commit mayhem, to wit: he

bit off a portion of Akeino Williams' earlobe, in violation of V.I. CODE ANN. Tit. 14 § 295(3). **[FIRST DEGREE ASSAULT]**

Thus, intent to commit mayhem was an element of the First Degree Assault charge. Greer therefore argues the verdicts were not inconsistent: no verdict on Count One and guilty on Count Two, and thus he should be acquitted of Count One. However, the jury did not reach a verdict on First Degree Assault. Therefore, we find there was no inconsistent verdict. But even if Greer had been acquitted of first degree assault, he is not entitled to acquittal of mayhem. It is well settled that an inconsistent verdict is not a sufficient reason for setting a verdict aside.<sup>21</sup> Elsewhere the V.I. Supreme Court has held that inconsistent verdicts by their very nature indicate that the jury has erred; however, courts should ... 'not infer innocence' as a result of this error.<sup>22</sup> Moreover, in this case, the jury may likely have been unable to reach a verdict on Count One because it charged Greer with "bit[ing] off a portion of Akeino Williams' earlobe" while Count Two charged him with "bit[ing] off a portion of Akeino Williams' ear" (emphasis added). There was no testimony that any part of Williams's earlobe was bitten, and the absence of such evidence likely caused or contributed to the jury's difficulty in reaching a verdict on Count One. But because we hold above that there is sufficient evidence for a rationale jury to find Greer guilty of mayhem beyond a reasonable doubt it would be error to

---

<sup>21</sup> *People of the Virgin Islands v. Faulkner*, 57 V.I. 327 (V.I. 2012) (citing *United States v. Powell*, 469 U.S. 57, 64-66 (1984)).

<sup>22</sup> *Powell v. People of the Virgin Islands*, 59 V.I. 444, 460 (V.I. 2013) (citing *People v. Thompson*, 57 V.I. 342, 350-51 (V.I. 2012) (quoting *United States v. Craig*, 358 Fed. Appx. 446, 451 n.5 (4th Cir. 2009)) (inconsistent verdicts should be upheld as long as a conviction is supported by sufficient evidence)).

acquit on that charge merely because of a purported inconsistent verdict, though we find the jury did not reach an inconsistent verdict.

Therefore, when viewing the collective evidence in the light most favorable to the People, a reasonable jury would have had sufficient evidence to find Greer seriously disfigured Williams, and thereby find Greer guilty of mayhem.

## V. Conclusion

The People provided sufficient evidence that Williams was seriously injured by Greer. Therefore, a reasonable jury viewing the evidence in the light most favorable to the People could have found that Greer committed mayhem. Therefore Greer's motion will be denied.

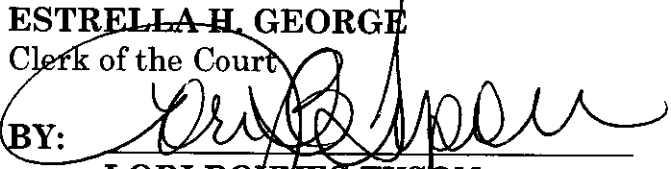
An Order consistent with this Memorandum Opinion will be entered. And the Court will schedule the matter for Sentencing.

DATED: February 21, 2018

  
**Kathleen Mackay**  
Judge of the Superior Court  
of the Virgin Islands

ATTEST:

**ESTRELLA H. GEORGE**  
Clerk of the Court

BY: 

**LORI BOYNES TYSON**  
Chief Deputy Clerk 2/21/18