For Publication

IN THE SUPREME COURT OF THE VIRGIN ISLANDS

RALPH TITRE, JR. Appellant/Defendant	)	**S. Ct. Crim. No. 2017-0043** Re: Super. Ct. Crim. No. 448/2012 (STT)
v.	)	
PEOPLE OF THE VIRGIN ISLANDS Appellee/Plaintiff.	)	

On Appeal from the Superior Court of the Virgin Islands
Division of St. Thomas & St. John
Superior Court Judge: Hon Michael C. Dunston

Argued: October 9, 2018
Filed: January 24, 2019

Cite as: 2019 VI 3

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

APPEARANCES:

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OPINION OF THE COURT

HODGE, Chief Justice.

¶1 Ralph Titre, Jr. appeals from multiple convictions stemming from the death of Tiny Jah Jarvis. For the reasons that follow, we affirm in part, reverse in part, and remand with instructions to vacate Titre's multiplicitous convictions.

I. BACKGROUND

¶2 On August 17, 2012, the People of the Virgin Islands charged Titre with numerous offenses stemming from the death of Jarvis in St. John, U.S. Virgin Islands. He stood trial from November 28-30, 2016. At the close of evidence, the Superior Court partially granted Titre's Rule 29 motion for judgment of acquittal, dismissing five counts (Counts Eleven through Fifteen) of the amended information. The court subsequently gave final jury instructions for each of the remaining counts, including the definition of malice aforethought relative to first and second-degree murder, without objection.

¶3 On December 1, 2016, the jury returned guilty verdicts on the following nine counts: unauthorized use of an unlicensed firearm during the commission of a first-degree murder in violation of 14 V.I.C. § 2253(a) (Count Two); second-degree murder in violation of 14 V.I.C. §§ 921, 922(b) (Count Three); unauthorized use of an unlicensed firearm during the commission of second-degree murder in violation of 14 V.I.C. § 2253(a) (Count Four); first-degree assault in violation of 14 V.I.C. § 295(1) (Count Five); unauthorized use of an unlicensed firearm during the commission of a first-degree assault in violation of 14 V.I.C. § 2253(a) (Count Six); third-degree assault in violation of 14 V.I.C. § 297(4) (Count Seven); unauthorized use of an unlicensed firearm during the commission of a third-degree assault in violation of 14 V.I.C. § 2253(a) (Count Eight); reckless endangerment in the first degree in violation of 14 V.I.C. § 625(a) (Count Nine), and; destruction of evidence in violation of 14 V.I.C. § 1506 (Count Ten). Titre does not dispute the sufficiency of the evidence for any of these convictions. However, the jury deadlocked on Count

One, first-degree murder in violation of 14 V.I.C. §§ 921, 922(a)(1), and the Superior Court dismissed that count with prejudice, and also dismissed Titre's conviction of Count Two for lack of a predicate offense.[1]

¶4 The Superior Court entered a written judgment and commitment on March 29, 2017 for Counts Three through Ten. With regard to Count Three, murder in the second degree, the Superior Court sentenced Titre to imprisonment for a term of twenty-five years. For Count Four, unauthorized possession of a firearm during the commission of second-degree murder, the Superior Court sentenced Titre to imprisonment for a term of fifteen years, running concurrently with the sentence imposed in Count Three, and a $25,000 fine. Finally, as to Count Ten, destruction of evidence, the Superior Court sentenced Titre to a term of imprisonment for five years, also running concurrently with the sentence imposed on Count Three.

¶5 Regarding the remaining charges, the Superior Court merged the convictions for Count Five, Count Seven, and Count Nine with the conviction for Count Three, and stayed their sentences. Additionally, the Superior Court merged the convictions for Count Six and Count Eight with the conviction for Count Four and stayed their sentences. Although the Superior Court entered convictions for a total of eight counts, it only imposed sentences for three of them (Counts Three, Four, and Ten).

¶6 On April 21, 2017, Titre filed a timely notice of appeal with this Court, raising double jeopardy concerns and challenging the jury instructions. V.I. R. APP. P. 5(a)(1).

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[1] The People have not cross-appealed from the Superior Court's dismissal of Count Two, which may have been a sustainable inconsistent verdict by the jury—in this case, failing to convict Titre of first-degree murder while simultaneously finding him guilty of unlawful unauthorized use of an unlicensed firearm during the commission of a first-degree murder. *See People v. Thompson*, 57 V.I. 342, 353 (V.I. 2012). We therefore have no need to address that issue. *See Percival v. People*, 62 V.I. 477, 487 (V.I. 2015).

II. DISCUSSION

A. Jurisdiction and Standard of Review

¶7 This Court has appellate jurisdiction over "all appeals from the decisions of the courts of the Virgin Islands established by local law[.]" 48 U.S.C. § 1613a(d); *see also* 4 V.I.C. § 32(a) (granting this Court jurisdiction over "all appeals arising from final judgments, final decrees or final orders of the Superior Court"). Because the Superior Court's March 29, 2017 judgment and commitment is a final order, this Court has jurisdiction over this appeal. *Allen v. HOVENSA, L.L.C.*, 59 V.I. 430, 434 (V.I. 2013).

¶8 This Court exercises plenary review of the Superior Court's application of law, including constitutional questions. *Id.* at 436 (citing *St. Thomas–St. John Bd. of Elections v. Daniel*, 49 V.I. 322, 329 (V.I. 2007)). Where a defendant fails to raise multiplicity of convictions at trial, however, we review for plain error. *See Williams v. People*, 56 V.I. 821, 830 (V.I. 2012) (citing *United States v. Zalapa*, 509 F.2d 1060, 1064 (10th Cir. 2007)); V.I. R. APP. P. 4(h). Additionally, we "exercise plenary review of questions of statutory construction." *V.I. Public Servs. Comm'n v. V.I. Water & Power Auth.*, 49 V.I. 478, 483 (V.I. 2008). Further, when there was a timely objection to a final jury instruction, this Court reviews the ruling on that objection for abuse of discretion. *Prince v. People*, 57 V.I. 399, 405 (V.I. 2012). But when there was no objection, we apply the plain error standard. *Id.*; V.I. R. APP. P. 4(h).

B. Double Jeopardy

i. Convictions Carrying Sentences (Counts Three, Four, and Ten)

¶9 Titre contends that his concurrent sentences for Counts Three, Four, and Ten (second-degree murder, unauthorized use of an unlicensed firearm during the commission of second-degree

murder, and destruction of evidence, respectively) violate the prohibition against double jeopardy. We disagree.

¶10 The Double Jeopardy Clause of the Fifth Amendment states that no person shall "be subject for the same offence to be twice put in jeopardy of life or limb." U.S. CONST. amend. V. Generally, "when a defendant has violated two different criminal statutes, the Double Jeopardy Clause is implicated when both statues prohibit the same act or transaction or when one act is a lesser included offense of the other." *United States v. Bobb*, 577 F.3d 1366, 1371 (11th Cir. 2009) (citing *Rutledge v. United States*, 517 U.S. 292, 297 (1996)); *Fontaine v. People*, 62 V.I. 643, 648 (V.I. 2015); *Estick v. People*, 62 V.I. 604, 620 (V.I. 2015). This Constitutional guarantee "assures that the court does not 'exceed its legislative authorization by imposing multiple punishments for the same offense." *Bobb*, 577 F.3d at 1371 (quoting *Brown v. Ohio*, 432 U.S. 161, 165 (1977)). Section 3 of the Revised Organic Act extends this Constitutional protection to the Virgin Islands. 48 U.S.C. § 1561 ("The following provisions of and amendments to the Constitution of the United States are hereby extended to the Virgin Islands . . . the first to ninth amendments inclusive.").[2]

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[2] The Legislature has also codified a statute that provides criminal defendants with additional protections that, in some respects, are greater than those conferred by the Double Jeopardy Clause. *See* 14 V.I.C. § 104. However, these authorities are not the same, in that

> The Double Jeopardy Clause protects criminal defendants against multiple prosecutions or punishments for a single offense—unless the Legislature has clearly intended to permit cumulative punishment. Section 104, on the other hand, speaks to multiple *punishments* for the *same* act. *Compare* U.S. CONST. amend. V (providing that no person shall "be subject *for the same offense* to be twice put in jeopardy of life or limb") (emphasis added) with 14 V.I.C. § 104 (noting that an *act*, though violative of multiple provisions of the Code, may be *punished* under only one).

Castillo v. People, 59 V.I. 240, 284 n.1 (V.I. 2013) (Hodge, C.J., concurring). Because Titre has only challenged his convictions under the Double Jeopardy Clause, and not section 104, we analyze this claim pursuant to the legal authorities applicable to the Double Jeopardy Clause, and not under our precedents applying section 104.

¶11 To determine whether the Fifth Amendment's Double Jeopardy Clause has been violated, courts apply the "*Blockburger*" test, as derived from an opinion issued by the United States Supreme Court in 1932. In *Blockburger*, the Supreme Court of the United States explained that "where the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one, is whether each provision requires proof of a fact which the other does not." *Blockburger v. United States*, 284 U.S. 299, 304 (1932); *Williams*, 56 V.I. at 831 ("The *Blockburger* test, however, is a rule of statutory construction, and because it serves as a means of discerning [legislative] purpose the rules should not be controlling where, for example, there is a clear indication of contrary legislative intent.") (alteration in original) (internal quotation marks omitted). Simply put, whether the Superior Court violated the Fifth Amendment's prohibition against double jeopardy by imposing separate, concurrent sentences for Counts Three, Four, and Ten depends on whether (1) they each require proof of a fact that the others do not; or (2) whether the legislature expressly intended for a specific count to be punished in conjunction with another. *Blockburger*, 284 U.S. at 304; *see also Ball v. United States*, 470 U.S. 856, 864-65 (1985) (explaining that multiplicitous convictions constitute impermissible punishment, even if sentences are served concurrently and no greater sentence results).

¶12 A review of the charging statutes underlying the respective Counts reveals that they contain separate and distinct elements, and no offense for which Titre was convicted and sentenced is a lesser included offense of another.[3] Moreover, the statutory language for the crime charged in

[3] *Compare* 14 V.I.C. §§ 921, 922(b) (Count Three) ("[m]urder is the unlawful killing of a human being with malice aforethought" and "[a]ll other kinds of murder [not constituting first-degree murder] are murder in the second degree") *with* 14 V.I.C. § 2253(a) (Count Four) ("Whoever . . . possesses . . . openly or concealed any firearm . . . loaded or unloaded . . . during the commission or attempted commission of a crime of violence . . . shall be fined $25,000 and imprisoned not less

Count Four expressly directs the Superior Court to impose a sentence for that crime *in addition to* punishment for the underlying crime of violence, such as Count Three. Thus, we hold that the Superior Court's imposition of separate convictions and sentences for the distinct crimes charged in Counts Three, Four, and Ten was not erroneous and did not violate the prohibition against double jeopardy. *Blockburger*, 284 U.S. at 304.

ii. Merged Offenses (Counts Five, Six, Seven, Eight, and Nine)

¶13 Titre further argues that the Superior Court committed reversible error when it merged several lesser included offenses with Counts Three and Four, entering their convictions but staying their sentences. Specifically, Titre argues that the Superior Court violated the prohibition against double jeopardy when it merged Count Six (use of an unlicensed firearm during the commission of a first-degree assault) and Count Eight (unauthorized use of an unlicensed firearm during the commission of a third-degree assault) with Count Four (unauthorized use of an unlicensed firearm during the commission of second-degree murder), and when it merged Count Five (first-degree assault), Count Seven (third-degree assault), and Count Nine (reckless endangerment in the first-degree) with Count Three (second-degree murder).[4]

¶14 Before considering this assertion, it is important to examine the two distinct legal authorities applicable to Titre's claim. As noted above, the Double Jeopardy Clause of the Fifth

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*.") (emphasis added) *and* 14 V.I.C. § 1506 (Count Ten) ("Whoever, knowing that any book, paper, record, instrument, writing or other matter or thing is about to be produced in evidence upon any trial, inquiry or investigation authorized by law, willfully destroys or conceals the same, shall be fined not more than $1,000 or imprisoned not more than 5 years, or both.").

[4] Titre does not challenge the Superior Court's disposition of his multiple convictions for unauthorized possession of a firearm, and this Court declines to review them *sua sponte*.

Amendment, by its own terms, provides that no person shall "be subject for the same offense to be twice put in jeopardy of life or limb." In the absence of clear instruction from the Legislature, to determine whether an individual has been convicted "for the same offense," courts apply the test set forth in *Blockburger*; that is, we must determine whether each offense requires proof of a fact that the others do not. *See e.g.*, *Connor v. People*, 59 V.I. 286, 310 (V.I. 2013); *Williams*, 56 V.I. at 831.

¶15 In addition to the constitutional prohibition on double jeopardy, the Legislature has codified a statute that provides criminal defendants with additional protections. Section 104, title 14 of the Virgin Islands Code provides that,

> An act or omission which is made punishable in different ways by different provision of this Code may be punished under any such provisions, but in no case may it be punished under more than one. An acquittal or conviction and sentence under any one bars a prosecution for the same act or omission under any other.

14 V.I.C. § 104. As we held in *Williams*, "[t]he plain language of section 104 indicates that despite the fact that an individual can be charged and found guilty of violating multiple provisions of the Virgin Islands Code arising from a single act or omission, that individual can ultimately only be punished for one offense." 56 V.I. at 832. In other words, the *Blockburger* test is irrelevant to whether convictions for multiple offenses is permitted by section 104; rather than considering whether the offenses have overlapping elements, a court must consider whether the offenses all arose from a single act or omission.

¶16 In addition to requiring application of different legal standards, different remedies are prescribed for violations of the Double Jeopardy Clause and violations of section 104. The Supreme Court of the United States has expressly held that the remedy for a violation of the Double Jeopardy Clause is for the court to impose a sentence on one offense, and then vacate the conviction of the second of the two offenses. *Rutledge*, 517 U.S. at 308; *Ball*, 470 U.S. at 864. Significantly,

the United States Supreme Court has expressly rejected the proposition that convictions should be stayed or merged as a remedy for a violation of the Double Jeopardy Clause:

> The second conviction, whose concomitant sentence is served concurrently, does not evaporate simply because of the concurrence of the sentence. The separate *conviction*, apart from the concurrent sentence, has potential adverse collateral consequences that may not be ignored. For example, the presence of two convictions on the record may delay the defendant's eligibility for parole or result in an increased sentence under a recidivist statute for a future offense. Moreover, the second conviction may be used to impeach the defendant's credibility and certainly carries the societal stigma accompanying any criminal conviction. Thus, the second conviction, even if it results in no greater sentence, is an impermissible punishment.

Rutledge, 517 U.S. at 302 (quoting *Ball*, 470 U.S. at 864-65) (citations omitted). To avoid these collateral consequences, the United States Supreme Court mandates that the lower court "exercise its discretion to vacate . . . the underlying *convictions*' as well as the concurrent [or stayed] sentence[s] based upon [them]." *Id.* at 301-02 (quoting *Ball*, 470 U.S. at 864).

¶17 This Court, however, announced a different remedy for a violation of section 104. In *Williams*, we adopted a merger-and-stay remedy, which was the remedy employed in the courts of California, the jurisdiction from which the Legislature borrowed section 104. *See In re Pope*, 237 P.3d 552, 557 (Cal. 2010) (explaining that a statute that prohibits an act or omission from being punished under more than one provision of law prohibits the imposition of multiple punishments but does not bar multiple convictions). Under that method, "the proper procedure is to sentence the defendant for one offense and stay the imposition of any punishment for all the remaining offenses which arose from the same act or indivisible course of conduct." *Williams*, 56 V.I. at 834 n.9. We posited in *Williams* that the merger-and-stay "procedure [would] eliminate[] the punitive consequences of multiple convictions, while ensuring that a defendant will not receive a windfall if the conviction for the crime being punished is reversed on appeal or vacated in a habeas corpus proceeding." *Id*. Specifically, we advised that,

> [a]s a practical matter, a conviction which has been stayed shall not be used to delay a defendant's eligibility for parole, increase a defendant's sentence for a future offense under a recidivist statute, or impeach a defendant's credibility in future proceedings. Moreover, upon successful completion of the sentence imposed, the convictions which were stayed shall be dismissed. But if the conviction for the offense being punished was reversed on appeal or vacated in a habeas corpus proceeding, the defendant would be returned to the sentencing court so that punishment for a conviction previously stayed would be imposed.

Id.

¶18 In this case, Counts Six and Eight are both lesser-included offenses to Count Four, in that the People were not required to prove any additional elements to obtain convictions for Counts Six and Eight that were not required to obtain a conviction under Count Four. Likewise, Counts Five, Seven, and Nine did not require the People to prove any additional elements beyond those required to obtain a conviction for Count Three. Consequently, the *Blockburger* test is satisfied, and all seven of these convictions come within the purview of the Double Jeopardy Clause of the Fifth Amendment. Pursuant to the *Rutledge* decision, the Superior Court was required to announce a sentence for only a single conviction of each group of offenses, and then to vacate—rather than merge or stay—the remaining offenses within that group. But the Superior Court did not do so; rather, it erroneously applied the merger-and-stay remedy for a violation of section 104. Thus, we agree with Titre that the Superior Court erred when it merged Counts Six and Eight into Count Four, and when it merged Counts Five, Seven, and Nine into Count Three. Rather, the Superior Court should have imposed sentences for Counts Three and Four, and vacated the convictions on Counts Five, Six, Seven, and Eight.

¶19 The Double Jeopardy Clause, however, is not violated by Titre's conviction on Count Nine (reckless endangerment in the first degree). To obtain a conviction for reckless endangerment, the People must prove as an element, that the conduct occurred in a public place. *See* 14 V.I.C. § 625. The People, however, did not need to prove the "public place" element in order to obtain a

conviction on any other counts. Consequently, the *Blockburger* test is satisfied, and a violation of the Double Jeopardy Clause has not occurred with Count Nine. But while Titre's conviction on Count Nine does not violate the Fifth Amendment's prohibition against double jeopardy, it does violate section 104, in that the act that gave rise to the reckless endangerment conviction occurred as part of an indivisible course of conduct. *Williams*, 56 V.I. at 834 n.9. Thus, Titre's conviction on Count Nine is an instance in which section 104 confers upon a criminal defendant greater rights than does the Double Jeopardy Clause. Although the Superior Court erred when it applied the merger-and-stay procedure to Counts Five through Eight since those convictions were implicated by the Double Jeopardy Clause and the vacatur remedy established in *Rutledge*, the Superior Court complied with this Court's *Williams* precedent when it merged and stayed Titre's conviction on Count Nine, since this Court announced that as the proper remedy for a conviction entered in violation of section 104.

¶20 Nevertheless, while the Superior Court properly applied our *Williams* precedent with respect to Count Nine, we conclude that reexamination of the *Williams* merger-and-stay procedure is warranted. In *Williams*, this Court adopted the merger-and-stay procedure not because it is required by section 104 or because it was otherwise compelled to do so, but primarily out of fidelity to the procedure that California courts had employed with respect to a virtually identical statute.[5]

[5] A secondary reason we provided for adopting California's merger-and-stay procedure was to "ensure[] that a defendant will not receive a windfall if the conviction for the crime being punished is reversed on appeal or vacated in a habeas corpus proceeding." *Williams*, 56 V.I. at 834 n.9. This was based on decisions of the Supreme Court of California which stated that a stay of the remaining convictions—as opposed to their dismissal—was necessary to avoid the potentially unfair consequence to the government of the defendant standing with no conviction at all. *People v. Pearson*, 721 P.2d 595, 600 (Cal. 1986). However, after those California cases were decided, the Supreme Court of the United States held that the failure to provide the government with a "backup" conviction would not provide the defendant with a windfall because there is no constitutional bar to reinstating a vacated conviction if the remaining conviction gets reversed on

However, since we issued *Williams*, there has been significant confusion regarding the relationship between the Double Jeopardy Clause and section 104. As this very case illustrates, much of that confusion is compounded by the fact that this Court adopted a different remedy for a section 104 violation than the Supreme Court of the United States chose for a violation of the Fifth Amendment's Double Jeopardy Clause. This Court was certainly within its purview to do so, given that section 104 is a creature of Virgin Islands law. Yet, no legitimate purpose is to be served by having the remedy for a section 104 violation be different from the remedy for a violation of the Double Jeopardy Clause; as this appeal illustrates, the practice of having different remedies only creates confusion and the possibility of more errors at the trial court level which then need to be corrected by this Court. Notably, in the years since this Court decided *Williams*, other courts have exercised their supervisory powers to replace merger with vacatur as the remedy for violations of state double jeopardy protections. *See, e.g.*, *State v. Polanco*, 61 A.3d 1084, 1087 (Conn. 2013) ("[T]he vacatur approach shall replace the use of the merger of convictions approach when a defendant is convicted of greater and lesser included offenses."). We join these courts and overrule the portion of our *Williams* decision that mandates merger-and-stay as the remedy for a violation of section 104; rather, vacatur shall be the remedy in cases in which section 104 is implicated, just as is the case with violations of the Fifth Amendment's Double Jeopardy Clause.

C. Jury Instruction

¶21 Finally, Titre asserts that the Superior Court erred when it issued jury instructions for Count Three (second-degree murder) because it did not reiterate the definition of "malice aforethought" that it included in its instruction for Count Two (first-degree murder). We disagree.

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appeal or in a habeas proceeding. *Rutledge*, 517 U.S. at 306. Therefore, this secondary rationale for adoption of the merger-and-stay procedure is no longer valid.

¶22 Because Titre did not object to the final jury instructions, we review this issue on appeal for plain error. *Prince*, 57 V.I. at 405. For this Court to find plain error there must be "(1) error, (2) that is plain, and (3) that affects substantial rights." *Francis v. People*, 52 V.I. 381, 390-91 (V.I. 2009). However, we will generally not invalidate a jury instruction "unless it is shown that the instruction substantially and adversely impacted the constitutional rights of the defendant and impacted the outcome of the trial." *Prince*, 57 V.I. at 405. V.I. R. APP. P. 4(i). To determine whether the Superior Court's jury instructions were clearly erroneous, "we must view the instructions as a whole to determine whether they were 'misleading or inadequate to guide the jury's deliberation.'" *Jackson-Flavius v. People*, 57 V.I. 715, 722 (V.I. 2012) (quoting *Prince*, 57 V.I. at 409); *see also United States v. Dixon*, 201 F.3d 1223, 1230 (9th Cir. 2000) ("A single instruction to a jury may not be judged in artificial isolation, but must be viewed in the context of the overall charge.").

¶23 Here, the Superior Court issued a jury instruction for Count Three that included each element of second-degree murder, including malice aforethought.[6] Although the Superior Court did not define malice aforethought within the context of second-degree murder, it did so in the directly preceding jury instruction for first-degree murder, which also includes malice aforethought as an element.[7] Although Titre argues that "it seems to not be too much to ask, to

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[6] The jury instruction was as follows:

> In order to prove the offense of murder in the second degree, as charged in Count Three, the People must prove each of the following elements beyond a reasonable doubt:
>
> (1) On or about August 17, 2012, on St. John, U.S. Virgin Islands
> (2) the Defendant
> (3) unlawfully killed a human, Tiny Jah Jarvis
> (4) with malice aforethought.

(J.A. 124.)

[7] The Superior Court's definition of malice aforethought given to the jury was as follows:

ensure the integrity of the jury's deliberation process, that jury instructions for each and every count in a criminal proceeding should be independently sufficient, and should stand on their own," that is not the standard for proper jury instructions. Appellant's Br. at 12. Within the context of these instructions that the jury was properly instructed on the definition of malice aforethought and could freely apply that definition to both Counts One and Three. There was no interruption during the instructions that would encourage confusion, and the term "malice aforethought" is identical in both counts. Given this context, it is readily apparent that the jury instruction on malice aforethought was neither "misleading [n]or inadequate to guide the jury's deliberation." *See Prince*, 57 V.I. at 409. Accordingly, we find no error.

III. CONCLUSION

¶24 For the foregoing reasons, we affirm the Superior Court's judgment and commitment for Counts Three, Four, and Ten. However, because Titre's convictions for Counts Five through Nine violate either the Double Jeopardy Clause of the Fifth Amendment or section 104 of title 14 of the Virgin Islands Code, we remand with instructions for the Superior Court to vacate those convictions. Finally, because we hold that the jury instruction for malice aforethought was sufficient to direct the jury, we find no error.

> To Say that the Defendant acted with malice aforethought means that the Defendant either (1) intended to kill Tiny Jah Jarvis; or (2) intentionally committed an act the consequences of which were dangerous to human life, and at the time he acted the Defendant knew his act was dangerous to human life, and the Defendant deliberately acted with conscious disregard for human life.
>
> You may infer malice aforethought from circumstances that show a wanton intent to act without regard to the consequences. If a killing is proved to have been accomplished with a deadly weapon, malice may be inferred, but need not be inferred from that fact alone.

(J.A. 122-23.)

Dated this 24th day of January, 2019.

BY THE COURT:

/s/ Rhys S. Hodge
RHYS S. HODGE
Chief Justice

ATTEST:

VERONICA J. HANDY, ESQ.
Clerk of the Court