

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

PEOPLE OF THE VIRGIN ISLANDS,

PLAINTIFF / RESPONDENT ON
REVIEW,

v.

GABRIEL REYES,

DEFENDANT / PETITIONER ON
REVIEW.

SX-09-CR-621

On Appeal from the Magistrate
Division

Appearances:¹

DUSTIN J. CALHOON, ESQ.

Assistant Attorney General
Virgin Islands Department of Justice
Christiansted, V.I. 00820
For Petitioner

NULLISSA A. DEWESE, ESQ.

Office of the Territorial Public Defender
Kingshill, V.I. 00824
For Respondent

MEMORANDUM OPINION

WILLOCKS, Administrative Judge

THIS MATTER is in the Appellate Division on review from the Magistrate Division. Gabriel Reyes (hereinafter “Reyes”) was charged by amended information with one count of simple assault and battery and tried and found guilty by a Superior Court magistrate² in a bench trial. Reyes appealed to the Appellate Division after the trial but before sentencing. The Magistrate Court did not sentence

¹ Counsel of record in the trial court. The Court notes that both attorneys have since left their respective offices. Substitute counsel have not appeared.

² The Legislature recently amended the Virgin Islands Code to replace all references to “magistrate” with “magistrate judge.” See Act 7888, § 15, 2016 V.I. Sess. L. 103, 114 (July 30, 2016). Since the trial court judge was referred to as magistrate at the time, the Court will use magistrate throughout this Opinion to avoid confusion.

Reyes. Instead, because he had filed for review in the Appellate Division, the court continued sentencing *sine die*. Superior Court Rule 322.1 directs that when an appeal “is filed after an oral decision but before entry of a written order or judgment, it is deemed filed as of the date of the written order or judgment appealed from.” Super. Ct. R. 322.1(b)(2)(C). But another rule provides that the magistrate court “has no jurisdiction to act on any matter in the case, or to enter any order, after the filing of a petition for review.” Super. Ct. R. 322.1(e)(5). Although the filing of an appeal generally divests a trial court of jurisdiction, trial courts do retain jurisdiction to finalize the order or judgment that is being appealed. Since criminal cases conclude with the entry of a written judgment, *see Williams v. People*, 58 V.I. 341, 345 (2013) (collecting cases), and there is no written judgment yet, this appeal is not final. The Appellate Division of the Superior Court of the Virgin Islands is limited by the final judgment rule. *See generally Valerino v. Manning*, SX-15-RV-005, 68 V.I. ___, 2018 V.I. LEXIS 28 (V.I. Super. Ct. App. Div. Mar. 9, 2018); Super. Ct. R. 322.1(a). However, because the Magistrate Court has not imposed a sentence here, this Court could issue an order formally holding this appeal in abeyance pending sentence and issuance of a written judgment. But given the length of time that has passed—and because Reyes has obtained a transcript, filed a brief, and has not objected to the delay—the Court finds this to be a rare instance where an exception to the final judgment rule is required. For the reasons stated below, the Court will proceed to address the merits of this appeal. Having considered the errors Reyes raised, the Court will affirm the conviction and remand for sentencing.

BACKGROUND

Reyes and Anthony Hector (hereinafter “Hector”) got into an altercation at a bar on St. Croix on November 5, 2009. Hector, a sergeant with the Virgin Islands Police Department, was off-duty at the time. Earlier in the day, Hector had seen someone wearing a blue coverall riding an ATV through the parking lot of the Sunny Isle Shopping Centre. He later spotted the same ATV parked outside JTY Bar in Peter’s Rest. He went inside to find the owner to inform him that ATVs cannot be driven on

public roads in the Virgin Islands. Reyes and John O'Shaughnessy (hereinafter "O'Shaughnessy") were inside having a drink after work. Reyes was wearing a blue coverall. O'Shaughnessy was wearing a green coverall. Since both men were wearing coveralls, Hector approached both men and asked if either of them owned the ATV.

"It depends," O'Shaughnessy said. (Trial Tr. 8:6, May 4, 2011.) "[O]n what," Hector asked. *Id.* at 8:7. "It depends on if you're a cop," O'Shaughnessy answered. *Id.* at 8:25-9:1. Hector then told them that he was and began to explain that ATVs cannot be driven on public roads in the Virgin Islands. According to Hector, O'Shaughnessy "admitt[ed] that the bike was his, [and] that he was riding the bike." *Id.* at 9:8-9. Reyes interrupted and asked Hector, "'what the fuck" he was "going to do about it?"' *Id.* at 9:16-17. Reyes then started "getting boisterous and waiving his hand," so Hector went outside to his vehicle, an unmarked police car, and called for back-up. *Id.* at 9:23-24; *see also id.* at 11:20-25. The situation escalated when Reyes punched Hector in the chest. Hector "said, '[n]ow you're under arrest.'" *Id.* at 9:24-25. Reyes reached for Hector's throat, grabbed a chain around Hector's neck, and started choking him. Corporal Uston Cornelius (hereinafter "Cornelius") arrived and had to "taser" Reyes twice to subdue him. Reyes was handcuffed and placed under arrest and transported to a police station for booking.

Reyes painted a different picture of what happened on November 5, 2009. He stated that he and O'Shaughnessy were at JTY Bar having a drink after work. Both worked at HOVENSA. Hector showed up and started cursing and asking about the ATV outside. Reyes said he "kept quiet" at first because "[c]learly he was aggressive and upset about something." *Id.* at 34:15-16. Words were exchanged, including "a lot of exchange of 'fucks.'" (Trial Tr. 35:1.) Reyes said Hector left and went out to his car. Neither his clothes nor his car had "police" displayed anywhere. Reyes suspected Hector might have gone to get a weapon, so O'Shaughnessy suggested that Reyes leave. But when Hector returned empty-handed, Reyes stayed. Reyes and Hector continued exchanging words until Hector

pulled Reyes off the stool he was seated on at the bar. Cornelius arrived just as Hector and Reyes began to struggle. Hector “tried to slam [him] on the bar,” but Reyes “didn’t let him.” (Trial Tr. 38:23-24.) They “push[ed] each other back and forth because” Hector “was choking” Reyes by pulling on his coverall. *Id.* at 39:2-3. Reyes then felt “a shocking sensation” on his back, saw “Cornelius with a stun gun or something,” and stopped struggling. *Id.* 39:8-9. Reyes denied touching Hector first and said he did not “intend to cause [him] any physical injury.” *Id.* at 39:17-19. Reyes stated he only pushed him away because he “didn’t know who th[e] guy was” or what . . . his intentions” were and that was when they started to struggle. *Id.* at 39:21, 39:24.

O’Shaughnessy, whom Reyes called as a witness, gave yet another version of what happened. O’Shaughnessy said he was the first person who cursed at Hector, not Reyes. *See id.* at 49:23-25. It was then that Hector “started going on bad and . . . saying a bunch of bad words.” *Id.* at 50: 3-4. Hector never identified himself as a police officer. In fact, he “was wearing a basketball T-shirt and basketball shorts, and . . . high tops,” not “police officer clothes” and he did not have “a badge around his neck.” *Id.* at 50:23-51:2. “He looked like a regular mad-man off the street,” O’Shaughnessy recalled. *Id.* at 51:12. But once Hector went out to his car and got “on a radio . . . underneath the dashboard,” O’Shaughnessy “figur[ed] . . . maybe this guy is some sort of law enforcement officer.” *Id.* at 51:20-22. Sixty seconds later, Cornelius pulled up. That was when Hector “grabbed . . . Reyes by the shoulder, and . . . pulled him off the stool.” *Id.* at 52:10-11. Until that point, Reyes and “[t]he guy . . . in the basketball outfit” only had a “[m]inor verbal” altercation, not “anything physical.” *Id.* at 52:4-5. On cross-examination, O’Shaughnessy denied that he told Hector that the ATV was his. “I don’t own a bike,” he said. *Id.* at 54:21. O’Shaughnessy also testified that Reyes never hit Hector.

The People charged Reyes with one count of aggravated assault and battery on a police officer in violation of Section 298(1) of Title 5 of the Virgin Islands Code. The People later reduced the charge to simple assault and battery, a violation of Section 299(2) of Title 14 of the Virgin Islands Code.

Reyes was released on bail pending trial. After a delay unrelated to this appeal,³ the Magistrate Court held a bench trial on May 4, 2011. After hearing the evidence summarized above, the court took the matter under advisement. By order dated June 13, 2011, entered June 15, 2011, the court issued its findings of fact and conclusions of law and found Reyes guilty of simple assault and battery. The court then scheduled sentencing for July 27, 2011. However, on June 29, 2011, Reyes, through counsel, filed a notice of petition for review, which the Clerk's office construed as a petition, *see* Super. Ct. R. 322.1(b)(1)(B), and assigned to the undersigned judge sitting in the Appellate Division. By order dated June 15, 2011 and entered June 18, 2011, the Magistrate Court *sua sponte* continued the sentencing hearing *sine die*. Reyes requested a transcript of the May 4, 2011 bench trial, which was submitted on September 20, 2011. He filed his brief on October 4, 2011. The People did not file a brief despite an order this Court issued on March 13, 2014 to provide them a final chance. Nothing further has been filed to date and Reyes still has not been sentenced.

DISCUSSION

Reyes raises two errors on appeal. First, he claims the People failed to prove intent beyond a reasonable doubt. Second, he claims the Magistrate Court erred in denying his motion for judgment of acquittal without determining first whether his arrest was lawful. However, before proceeding to the merits, this Court must first determine whether this appeal is properly before the Appellate Division since Reyes has not been sentenced yet.

A. Reviewability of Non-Final Orders

The trial occurred on May 4, 2011. After taking the matter under advisement, the Magistrate Court, by order dated June 13, 2011, found Reyes guilty of simple assault and battery. The Clerk's

³ The Clerk's office initially assigned this case at random to Judge Darryl Dean Donohue, Sr. after Reyes demanded a trial by jury. However, after Judge Donohue granted a motion the People filed for a bench trial pursuant to Section 4 of Title 14 of the Virgin Islands Code, the Clerk's Office reassigned the case at random to Magistrate Jessica Gallivan. In the interim, the Supreme Court of the Virgin Islands held in *Murrell v. People*, 54 V.I. 338 (2010), that Section 4 of Title 14 was unconstitutional. After *Murrell*, the Clerk returned the case to Judge Donohue, but then Judge Donohue granted a motion the People filed to reduce the charges to simple assault and battery. With the complaint amended and the charges reduced, the Clerk's Office returned the case to Magistrate Gallivan again for all further proceedings.

Office entered the order on June 15, 2011. Sentencing was scheduled for July 27, 2011. Before being sentenced, Reyes appealed to the Appellate Division. Rather than proceed with sentencing, the Magistrate Court, for reasons unclear from the record, continued sentencing *sua sponte*, without setting another date, citing a rule, or explaining why. The only reason the court gave was that Reyes had filed a petition for review. (See Order 1, entered July 18, 2011 (“**THIS MATTER** is scheduled for sentencing on July 27, 2011. On June 29, 2011, Attorney Nullissa Dewese, Defendant’s Counsel, filed a Petition for Review The sentencing scheduled for July 27, 2010, at 1:00 p.m., will therefore be continued without date.”)).

Trial courts must explain their decisions or cite supporting authority, otherwise appellate courts cannot conduct a meaningful review. See *Ferris v. Withey*, SX-2014-sm-038, 2014 V.I. LEXIS 48, *3-4 (Super. Ct. App. Div. May 9, 2014) (“[I]n order for the Appellate Court to . . . meaningfully review . . . the Magistrate Court[’s] factual findings and legal conclusions, the Appellate Court must have sufficient findings and conclusions to review.”); see also *James v. Faust*, 62 V.I. 554, 559 (2015) (“Th[e] lack of explanation makes it impossible for this Court to meaningfully review the Superior Court’s determination—under abuse of discretion or any other standard.” (citing *Tutein v. Arteaga*, 60 V.I. 709, 721 (2014))); cf. *Pickering v. People*, 66 V.I. 276, 289 (2017) (“[T]he court is just as responsible as counsel for seeing that the record supports its rulings.” (quotation marks and citation omitted)); accord *Smith v. Krieger*, 643 F. Supp. 2d 1274, 1285 (D. Colo. 2009) (observing that even if “the rules do not require it,” it is “better practice for a magistrate judge to issue an explanation for every order.” (citing Fed. R. Civ. P. 72(a))). Although the Magistrate Court did not cite any authority in its July 18, 2011 Order or explain why sentencing had to be continued, the court clearly reached the conclusion that sentencing could not go forward because Reyes filing for review. That was in error.

Superior Court Rule 322.1(e) directs that “[a] magistrate judge whose order is being challenged on review may not enter any subsequent order in the case after a petition for review is filed.” Superior

Court Rule 322.1(e) limits the authority of magistrate courts to act after an appeal is filed. By contrast, Superior Court Rules 322.1(a) limits the authority of appellate courts to act. *See* Super Ct. R. 322.1(a) (“Final orders or judgments of magistrates resolving completely the merits of cases which came before them pursuant to their original jurisdiction, as provided by 4 V.I.C. § 123(a), are immediately reviewable.”). But overarching both rules is Superior Court Rule 134, which declares that “[s]entence shall be imposed *immediately after* a defendant has been found guilty or has pleaded guilty, unless the court, for good cause shown, shall postpone the imposition of sentence for a period not to exceed 15 days . . . [or] 120 days when the court has requested a pre-sentence investigation from the probation officer.” Super. Ct. R. 134(a) (emphasis added).⁴ Because no court has construed how these rules intersect insofar as appeals from the Magistrate Division are concerned, this Court turns to this issue first, before addressing the errors Reyes raises.

Courts generally construe rules of procedure like statutes because “the canons of statutory construction . . . apply to the interpretation and application of court rules.” *In re: Application of Shores*, 59 V.I. 994, 1001 n.5 (2013) (citing *In re: Petition for Disbarment of Plaskett*, 56 V.I. 441, 447 (2012)). Hence, the starting point when construing a rule of procedure is to “look at the language of the rule to determine its meaning” and then give those “words their plain, ordinary and commonly understood meaning.” *Disbarment of Plaskett*, 56 V.I. at 447 (quotation marks, ellipsis, and citations omitted); *cf.* *In re: L.O.F.*, 62 V.I. 655, 661 (2015) (“The first step . . . is to determine whether the language at issue has a plain and unambiguous meaning. If the . . . language is unambiguous . . . no further inquiry is needed.” (quotation marks and citation omitted)). If the language of the rule is clear and unambiguous, there is no need to look further. *Cf. Mustafa v. Camacho*, 59 V.I. 566, 570 (2013) (*per curiam*)

⁴ Superior Court Rule 134 was in force at all times relevant to this case, but was repealed, effective December 1, 2017, when the Supreme Court of the Virgin Islands promulgated the Virgin Islands Rules of Criminal Procedure. *See In re: Adoption of the V.I. R. Crim. P.*, Prom. No. 2017-010, 2017 V.I. Supreme LEXIS 68, *115-16 (V.I. Oct. 16, 2017) (promulgating V.I. R. Crim. P. 32(b)); *see also In re: Adoption of the V.I. R. Crim. P.*, Prom. No. 2017-010, 2017 V.I. Supreme LEXIS 69, *2 (V.I. Dec. 19, 2017) (“[A]ll Rules of the Superior Court inconsistent with the Virgin Islands Rules of Criminal Procedure are **HEREBY REPEALED**.”).

(dismissing appeal for failure to comply with court rule) (“The *plain, unambiguous language* . . . provides that “[n]o review may be submitted to a judge for consideration, or decided, unless payment of the filing fee is made in accordance with these rules.” (emphasis added) (quoting Super. Ct. R. 322.1(b)(4)).

The plain language of Superior Court Rule 322.1(e) limits the authority of magistrate courts to take action in a case after an appeal has been filed. See Super. Ct. R. 322.1(e) (“A magistrate judge whose order is being challenged on review *may not enter any subsequent order* in the case after a petition for review is filed.” (emphasis added)). But the rule also permits some exceptions. Superior Court Rule 322.1(e) permits the magistrate courts, after an appeal has been filed, to issue “a written opinion or order elucidating or memorializing an oral order,” or “an order setting an [a]ppeal [b]ond,” or “an order resolving . . . [a] motion for reconsideration, if such order is entered within twenty (20) days,” or “an order granting or denying a motion for stay, if otherwise permitted by these rules or by law.” Super. Ct. R. 322.1(e)(1)-(4). “[I]n all other circumstances,” however, “[t]he magistrate [court] . . . has no jurisdiction to act on any matter in the case, or to enter any order, after the filing of a petition for review.” Super. Ct. R. 322.1(e)(5). The plain language of the rule clearly imparts a “hands-off” approach for each appeal from the Magistrate Division. It ensures that the Magistrate Division and the Appellate Division are not acting in the same case at the same time. It also underscores that the Magistrate Division and the Appellate Division must mirror the traditional hierarchy between trial courts and appellate courts. *Cf. Gov’t of the V.I. v. Connor*, 60 V.I. 597, 604 (2014) (*per curiam*) (“Within every judicial system in the United States, including the Virgin Islands, courts are arranged in a pyramid, with trial courts at its base and a single court at the top with ultimate authority.” (quotation marks, brackets, and citation omitted)).

Clearly, Superior Court Rule 322.1(e) is “a divestiture rule as between the Magistrate and Appellate Divisions of the Superior Court” of the Virgin Islands. *Chaput v. Scafidi*, 66 V.I. 160, 203

n.19 (Super. Ct. App. Div. 2017) (citing *People v. San Nicolas*, 2016 Guam 21, ¶ 13)). “[T]he divestiture rule . . . is a judge-made rule designed to avoid confusion or waste of time from having two courts considering the same issues at the same time.” (quotation marks and citation omitted). Filing an appeal removes authority over a case from the trial court and transfers it to the appellate court. *See, e.g., Marrese v. Am. Academy of Orthopaedic Surgeons*, 470 U.S. 373, 379 (1985) (“In general, filing of a notice of appeal confers jurisdiction on the court of appeals and divests the district court of control over those aspects of the case involved in the appeal.” (citing *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 58 (1982) (*per curiam*))); accord *In re: Rogers*, 56 V.I. 325, 342 (2012) (“An effective notice of appeal of a final order typically divests the trial court of jurisdiction.”) (brackets omitted) (citing *In re: Burke*, 50 V.I. 346, 351 n.1 (2008)); cf. *Brunn v. Dowdye*, 59 V.I. 899, 902 n.4 (2013) (“[T]he Superior Court lacks jurisdiction . . . until the Clerk of the Supreme Court issues the mandate formally divesting th[e] Court of jurisdiction.” (explaining *Williams v. People*, 58 V.I. 341-350-51 (2013) parenthetically)). Filing an appeal from a Magistrate Division case divests magistrate court of jurisdiction and transfers jurisdiction to the Appellate Division.⁵ Once an appeal is filed, the magistrate court has no authority to issue orders in the case, except for those instances stated in the rule. *See* Super. Ct. R. 322.1(e)(1)-(4). Reyes’s appeal concerns an “exception” not stated in the divestiture rule, but which is covered by the final judgment rule. *See Valerino*, 68 V.I. at ____, 2018 V.I. LEXIS 28 at *31; Super. Ct. R. 322.1(a).

Superior Court Rule 322.1(a) provides that “[f]inal orders or judgments of magistrates resolving completely the merits of cases which came before them pursuant to their original jurisdiction, as provided by 4 V.I.C. § 123(a), are immediately reviewable by judges of the Superior Court of the

⁵ Case law has clarified that orders and judgments issued in Section 123(a) cases are issued by the Magistrate Division—regardless whether by a Superior Court magistrate judge or by a Superior Court judge sitting as a magistrate—and appealed the Appellate Division. *See, e.g., Xavier v. Treasure Bay V.I. Corp.*, 67 V.I. 251, 263 (Super. Ct. App. Div. 2017) (“The Appellate Division reviews appeals from cases heard and decided in the Magistrate Division, not just decisions issued by Superior Court magistrates.” (citing *In re: Estate of George*, 59 V.I. 913, 920 (2013)). Accordingly, the Court employs “Magistrate Division cases” to refer to those cases within the original jurisdiction of the Magistrate Division. *See* 4 V.I.C. § 123(a).

Virgin Islands.” Superior Court Rule 322.1(a) is the final judgment rule for the Appellate Division. *See Valerino*, 68 V.I. at ____; 2018 V.I. LEXIS 28 at *31 (“Superior Court Rule 322.1(a) should be interpreted as the final judgment rule. Any other construction would lead to absurd results, contravene binding precedent, and conflict with legislative intent.”). Courts agree that a defendant’s right of direct appeal in a criminal case is not ripe until a conviction has been announced, a sentence imposed, and a written judgment entered. *See, e.g., State v. London*, 316 So. 2d 743, 743 (La. 1975) (“It is firmly established that a defendant can appeal from a final judgment of conviction only when sentence has been imposed.” (citations omitted)); *Kennedy v. State*, 101 N.W.2d 853, 855 (Neb. 1960) (“In a criminal case, after trial and conviction in the district court by a jury, error proceedings cannot be taken to this court by the defendant therein before a judgment has been rendered or a final order made by the court below, which judgment or final order must include a sentence.”); *accord Parr v. United States*, 351 U.S. 513, 518 (1956) (“Final judgment in a criminal case means sentence. The sentence is the judgment.” (quoting *Berman v. United States*, 302 U.S. 211, 212 (1937))). The Virgin Islands has recognized and follows this legal norm. *See, e.g., Williams*, 58 V.I. at 345 (“This Court has stated, in virtually every criminal case that has come before it on appeal, that the written judgment embodying the adjudication of guilt and the sentence imposed based on that adjudication constitutes a final judgment.”) (collecting cases); *cf. Gov’t of the V.I. v. Latalladi*, 8 V.I. 137, 139 (Mun. Ct. 1970) (“In the present status of this case, since the Court did defer sentencing and as *no final appealable judgment has yet been entered* under 5 App. IV, V.I.C. Rule 134(b) (Judgment), the Court is authorized and free to do what it perceives is fair and just under the law.” (emphasis added)).

Here, Reyes has been found guilty, but has not been sentenced and a written judgment has not been issued. Technically, the order he appealed is not final and the Appellate Division cannot review non-final or interlocutory orders. However, courts have also recognized, because the divestiture rule is a judge-made rule, judges can create exceptions. *Cf. Cunningham v. State*, 349 So. 2d 702, 706 (Fla.

Ct. App. 1977) (“While the trial court is generally divested of jurisdiction on appeal for most purposes, we do not believe jurisdiction is divested for purposes of sentencing by virtue of an appeal of the conviction.”). Superior Rule 322.1(a) does not provide that **only** final orders or judgments are reviewable in the Appellate Division. Furthermore, no Appellate Division rule authorizes the dismissal of an appeal simply because the order or judgment appealed is not final yet. In fact, Superior Court Rule 322.1(b)(2)(C) is to the contrary because it directs that an appeal “filed after an oral decision but before entry of a written order or judgment . . . is deemed filed as of the date of the written order or judgment appealed from.” Super. Ct. R. 322.1(b)(2)(C).

Superior Court Rule 322.1(b)(2)(C) is clearly a protective notice of appeal rule, requiring that the Appellate Division hold an appeal in abeyance until a final, written order or judgment has been entered. Other appellate courts have similar rules. *Cf. United States v. Owen*, 553 F.3d 161, 164 (2d Cir. 2009) (“In the normal course, a ‘protective’ notice of appeal should be held in abeyance pending the resolution of a Rule 33 motion by the District Court.” (footnote and citations omitted)); *United States v. Tulsiram*, 815 F.3d 114, 118 n.6 (2d Cir. 2016) (citing *Owen* and noting parenthetically the “practice of holding a ‘protective’ notice of appeal in abeyance until it becomes ‘effective.’”) (citation omitted)); *Salerno v. State*, 567 So. 2d 503, 504 (Fla. Ct. App. 1990) (“In the judicial arena, economy of both time and expense prefers one appeal; Rule 9.140(b)(2) recognizes that, as well as the committee note allowing the district courts to abate an appeal until sentence is rendered.”); *accord* V.I. R. App. P. 5(b)(2) (“A notice of appeal filed after the Superior Court announces a decision, sentence, or order but before it disposes of any of the above motions, if the motion was timely filed, is ineffective until the date of the entry of the order disposing of the last such timely filed motion outstanding, or until the date of the entry of the judgment of conviction, whichever is later.”); *see also Rivera v. People*, 64 V.I. 540, 551 n.4 (2016) (“A notice of appeal filed after the announcement of an order or judgment, but before the entry of a writing memorializing the same, is treated as filed on the date of and after such

entry and is considered timely filed.” (quotation marks, ellipsis, and citations omitted)). The concern here, however, is that, according to Superior Court Rule 322.1(b)(2)(C), Reyes’s appeal is technically not before the Appellate Division yet and it will not be “deemed filed” in the Appellate Division until the Magistrate Court issues a final, written judgment. Hence, Reyes’s appeal finds itself wedged between competing and conflicting rules.

The Magistrate Court had to sentence Reyes within fifteen days after finding him guilty. *See* Super. Ct. R. 134(a). It did not. But Reyes also appealed during the same window of time, which divested the Magistrate Court of authority “to act on any matter in the case, or to enter any order,” Super. Ct. R. 322.1(e)(5), if the rule were read strictly. Reyes appeal will not be “deemed filed” in the Appellate Division, however, until the “written order or judgment appealed from” is entered. Super. Ct. R. 322.1(b)(2)(C). And since “[f]inal judgment or order,” Super. Ct. R. 322.1(a), means the same for the Appellate Division as it does for other appellate courts, *see Valerino*, 68 V.I. at ____; 2018 V.I. LEXIS 28 at *31, the Appellate Division won’t have jurisdiction over Reyes’s appeal until the Magistrate Court has issued a “written judgment embodying the adjudication of guilt and the sentence imposed based on that adjudication.” *Williams*, 58 V.I. at 345. But the Magistrate Court effectively concluded that it was divested of authority to sentence Reyes because he had appealed to the Appellate Division.

“Rules like statutes should be ‘construed so as to avoid absurd results.’” *Valerino*, 68 V.I. at ____; 2018 V.I. LEXIS 28 at *31 (quoting *Application of Shores*, 59 V.I. at 1001 n.5)). Courts consider this principle to be a “cardinal principle” for a very important reason: allowing a rule or a statute to be construed in a way that would “produce odd or absurd results is inconsistent with common sense.” *Id.* (quotation marks, ellipsis, brackets, and citation omitted)). Superior Court Rule 322.1(a), 322.1(b)(2)(C), and 322.1(e) are different parts of the same rule and were all promulgated at the same time to govern the procedure by which appeals are taken from the Magistrate Division and heard in

the Appellate Division. Like statutes, rules *in pari materia* must be harmonized unless there is a clear inconsistency between them.” *Phillip v. People*, 58 V.I. 569, 590 (2013) (citation omitted).

Superior Court Rule 322.1(e) directs that a magistrate court “*may not enter any subsequent order* in the case *after* a petition for review is filed” (emphasis added). Superior Court Rule 322.1(a) directs that “[f]inal orders or judgments of magistrates *resolving completely the merits* of cases . . . are immediately reviewable (emphasis added).” Read separately, each rule allows for the result here – the appellate court lacks a final order because the defendant has not been sentenced and the trial court lacks the authority to sentence the defendant because he appealed before sentence was imposed. But when read in harmony, the answer is clear: Superior Court Rule 322.1(a) modifies Superior Court Rule 322.1(e). The former rule embodies the final judgment rule and permits an appeal only after a final judgment or order has entered completely resolving the merits of the case. The latter rule embodies the divestiture rule and removes jurisdiction from the Magistrate Division once an appeal has been filed, provided, however, that the magistrate court has finalized the order to be appealed. Additionally, while Superior Court Rule 322.1(b)(2)(C) permits a protective appeal before final judgment is entered, filing a protective appeal does not divest the Magistrate Division’s authority to finalize the order to be reviewed by the Appellate Division.

The same considerations regarding efficient judicial administration of cases appealed from the Superior Court of the Virgin Islands to the Supreme Court of the Virgin Islands apply equally, if not more so,⁶ to cases on appeal from the Magistrate Division to the Appellate Division. Both the

⁶ See, for example, *People v. Joseph*, SX-15-RV-005, 2016 V.I. LEXIS 5, *3 n.1 (Super. Ct. App. Div. Jan. 19, 2016), in which the Appellate Division noted that, “[b]eginning in January 2015, the Clerk of the Superior Court adopted a new internal procedure whereby petitions for review filed with the Appellate Division on appeal from the Magistrate Division are assigned a new case number designated with the code RV referring to petitions for review” (quotation marks omitted). See also *David v. People*, SX-15-RV-007, 2016 V.I. LEXIS 15, *13 n.2 (Super. Ct. App. Div. Feb. 22, 2016), in which the Appellate Division also discussed at length the “[c]onfusion and delay [that] often resulted” in the past because petitions for reviews, like Reyes’s, were “docketed within the same . . . case file that was before the magistrate court.” “That same case file, with all of the pleadings, orders, and filings generated at the trial level, would then be forwarded to the appellate court along with all of the filings, orders, and briefs generated in the review proceeding.” *Id.* “[O]ccasionally,” both the magistrate court and the appellate court would end up “issuing orders in the same case at the same time.” *Id.* To further complicating matter, “the electronic docket for the case also showed that it was still assigned to the magistrate (or the judge

divestiture rule and the final judgment rule embody these considerations and strive to ensure comity between the Magistrate and Appellate Divisions as well as finality. Superior Court Rule 322.1(a) limits the Appellate Division to final orders of the Magistrate Division and Superior Court Rule 322.1(e) divests the Magistrate Division's authority to act when an appeal is filed. Since the divestiture rule is a judge-made rule to govern relations between trial and appellate courts, courts can and have created exceptions. *Cf. Dumaliang*, 2000 Guam 24 at ¶ 14 (“[G]iven the rule’s purposes, it should not be used to defeat its purpose or to induce needless paper shuffling. Thus, appellate courts have recognized exceptions such as post-appeal motions to the trial court that are in furtherance of the appeal.” (citations omitted)); *see also Knox v. Dick*, 665 P.2d 267, 269 (Nev. 1983) (“An appeal from a non-appealable order does not divest the trial court of jurisdiction.”). “[T]he rule against trial court action affecting matters on appeal is grounded not in metaphysical notions regarding transfer of power, but on practical considerations concerning efficient judicial administration.” *Williams*, 58 V.I. at 351 n.8 (brackets omitted) (quoting *Harvey v. Christopher*, 55 V.I. 565, 569 n.2 (2011)). Here, even though the goal of the final judgment rule is to avoid piecemeal appeals, courts have, in rare instances, proceeded to address the merits of an appeal even though the order appealed is not final, including in cases where a defendant has not been sentenced. *See, e.g., Salerno*, 567 So. 2d at 504 (“Should a sentence be delayed beyond a reasonable time, the appellate court may consider and rule upon an adjudication of guilt and allow the defendant to file a separate appeal of a sentence.”); *see also People v. Akins*, 43 Ill. App. 3d 943, 946 (Ct. App. 1976) (denying petition for rehearing) (“It thus follow, in the instant case, that since a judgment of conviction for aggravated battery was entered upon the jury's verdict, defendant stands

sitting as a magistrate) who handled the case through conclusion.” *Xavier*, 67 V.I. at 260 n.5 And since “the judge code on the electronic docket was not changed to reflect that the case was now in the Appellate Division” and assigned to different judicial officer on review, *id.*, it further meant that “judges, magistrates, and their staff, as well certain court clerks, could [not] run reports and identify all cases assigned to [that] specific judge.” *Id.* Here, for example, case number SX-09-CR-621 is still technically assigned (according to the Superior Court’s electronic docketing system) to Magistrate (now Magistrate Judge) Jessica Gallivan. But truthfully, it is not. Notwithstanding the new numbering system the Clerk adopted for Magistrate Division appeals, practical considerations as to efficient judicial administration certainly weighed in favor of promulgating Superior Court Rule 322.1(e) to limit the actions the magistrate courts could take after appeals were filed.

convicted thereof. The fact that no sentence was imposed on the conviction, does not, in our opinion, require vacation of the conviction.”); *State v. Dukes*, 57 So. 3d 489, 491 (La. Ct. App. 2011) (“The defendant’s convictions, adjudication as a fourth felony habitual offender and sentence as such are affirmed. However, finding error patent in the trial court’s failure to sentence the defendant on his conviction for possession of ecstasy, we remand.”); *State v. Dukes*, 121 So. 3d 1256, 1257 (La. Ct. App. 2013) (“[Dukes] appealed, and although his convictions and cocaine sentence were affirmed, this court remanded the matter after determining that the trial court did not impose a sentence for the possession of ecstasy conviction.”).

Because of the lack of any binding or persuasive precedent regarding Rule 322.1, this Court is reluctant to say that the Magistrate Court erred by declining to sentence Reyes. But it did. The Supreme Court of the Virgin Islands had held that finality is determined by the entry of a judgment in a criminal case. *See Brown v. People*, 48 V.I. 378, 380 (2008) (*per curiam*) (“The trial court entered its Judgment on March 29, 2007. There is, therefore, a proper final judgment from which Brown could appeal.”). The Virgin Islands Supreme Court reaffirmed this legal principle a few months after the Magistrate Court issued its June 15, 2011. *See Beaupierre v. People*, 55 V.I. 623, 630 (2011) (“A judgment in a criminal case is a final order from which an appeal may lie.” (citng *Brown*, 49 V.I. at 380)). The Appellate Division of the District Court of the Virgin Islands, the former intermediate appellate court for the Territory, had also explained that:

[t]he general divestment rule is a judge-made rule designed to avoid confusion or waste of time that might flow from putting the same issues before two courts at the same time. However, a critical exception to this general rule is that the jurisdiction of the lower court is not lost by the taking of an appeal from an order or judgment which is not properly appealable. An appeal taken from a non-appealable judgment or order is thus, a “nullity” as it pertains to divesting the lower court of jurisdiction. *Peter v. Hess Oil V.I. Corp.*, 54 V.I. 698, 702 (D.V.I. App. Div. 2009) (paragraph break omitted) (citing *United States v. Leppo*, 634 F.2d 101, 104 (3d Cir. 1980) (remaining citations omitted).

A premature or protective appeal does not deprive the trial court of jurisdiction. Accordingly, the Magistrate Court should have proceeded to sentence Reyes, perhaps with a written explanation, rather

than effectively abandoning this case. *Cf. Leppo*, 634 F.2d at 105 (“[A]n appeal from the denial of a double jeopardy motion does not divest the district court of jurisdiction to proceed with trial, *if the district court has found the motion to be frivolous and supported its conclusions by written findings*. Rather, both the district court and court of appeals shall have jurisdiction to proceed.” (emphasis added)).

Nevertheless, almost seven years have passed and Reyes still has not been sentenced. The Magistrate Court has not proceeded and the Appellate Division has been holding his appeal in abeyance awaiting a final order. *Cf. Super. Ct. R. 322.1(b)(2)(C)*. Since nothing further has occurred—and since neither side has voiced any objection to the delay—this Court finds this to be a rare instance where the final judgment rule can be set aside to clarify the law and to avoid further delay. *Cf. Peter*, 54 V.I. at 702 (“general divestment rule is a judge-made rule.”); *Leppo*, 634 F.2d at 104 (“A ritualistic application of the divestiture rule . . . conflicts with the public policy favoring rapid adjudication of criminal prosecutions.”); *accord Cunningham*, 349 So. 2d at 706 (“A defendant may appeal from a conviction or from a sentence after conviction, or both, as is illustrated by this case. It is not necessary to appeal the order of conviction to later have it reviewed upon appeal after sentencing.”). *But cf. id.* at 706 n.8 (citing Florida App. R. 6.2).⁷ Like *Cunningham*, this Court is also faced with a lack of

⁷ *Cunningham* is somewhat instructive. It involved a conviction of a lawyer for indirect criminal contempt. *See id.* at 704. The Court of Appeal of Florida for the Fourth District affirmed the trial court’s finding of guilt. *See Cunningham v. State*, 337 So. 2d 993, 944 (Fla. Ct. App. 1976) (*per curiam*). Cunningham then filed a second appeal after he was sentenced, arguing that the trial court lost jurisdiction to sentence him “upon the expiration of the maximum period, one day less than six months, that he could have been sentenced for criminal contempt.” 349 So. 2d at 704. The court rejected that argument, noting that under Florida law, “[a] defendant may appeal from a conviction or from a sentence after conviction, or both It is not necessary to appeal the order of conviction to later have it reviewed upon appeal after sentencing.” *Id.* at 706 (footnote omitted). The court reasoned that, “while the trial court is generally divested of jurisdiction on appeal for most purposes,” the court did “not believe jurisdiction is divested for purposes of sentencing by virtue of an appeal of the conviction.” *Id.*

The underlying principle involved here is that one convicted of an offense is entitled to know just when in his life, he meanwhile being at liberty, he is no longer subject to the power of the court to translate his liberty to imprisonment. Any delay which violates this principle cannot be justifiable delay.

It is difficult for us to see a violation of this principle under the circumstances here. Cunningham himself made the decision to appeal from the adjudication, rather than wait for sentencing and then appeal both the judgment and sentence. During the appeal he remained free on his own recognizance. And while we do not know that he would have sought bail pending appeal, or chosen to serve any sentence imposed,

“precedential authority” concerning the questions raised here. *Id.* at 706. Taking the facts of this case as presented, *cf. id.* at 707, the Court believes that the just course here—given the trial court’s refusal to proceed and the length of time that has passed—is to address Reyes’s appeal on the merits and remand for sentencing. While this case is distinguishable from *Cunningham*, because Cunningham objected to the delay and because Florida law permitted appeal after conviction and before sentence, if the Court were to issue an order to hold this appeal in abeyance until Reyes has been sentenced, only further delay will result.

Reyes has not complained about the delay in his sentence. So far as the record shows, he has

the record does not reflect any effort by him to have sentence imposed during appeal. In short, Cunningham has shown no prejudice by the delay. Nor was he faced with not knowing just when in his life sentence would be imposed. By his appeal he rightfully made every reasonable effort to overturn his conviction and to avoid the imposition of sentence. But he could not be deemed to have been unaware that he would be sentenced if his appellate efforts were unsuccessful.

While we are not faced with a situation where sentence was imposed and the execution thereof delayed, the rule in those cases is helpful:

The general rule, as we understand it, is that there is no statute of limitations or estoppel against the enforcement of an otherwise valid and unsatisfied judgment imposing a sentence, nor can the delay in execution on such judgment waive the state’s right or work estoppel against it. However, an exception to the general rule appears to be that although mere delay in the infliction of punishment may not be sufficient reason for releasing one convicted of a crime from the consequences of the judgment against him, when the delay has been so great that society could derive no good from its enforcement and when such delay has occurred without the fault of the convict, even though with his consent, there should be no hesitancy in refusing to enforce the judgment.

Clearly, Cunningham would not be entitled to relief under this standard.

We believe that Rule 3.720 of the Florida Rules of Criminal Procedure should be followed upon a defendant’s conviction:

As soon as practicable after the determination of guilt and after the examination of any presentence reports the sentencing court shall order a sentencing hearing.

But we must take the facts of a particular case as we find them. Here, the trial court did not defer sentence from day to day or term to term or defer sentence pending appeal; rather, he deferred sentence pending a presentence investigation. However, when the presentence investigation was completed, the case was on appeal. Under these circumstances, absent an objection or some showing of prejudice, we cannot say that it was unreasonable for the trial court to await the outcome of the appeal before sentencing. We therefore hold that the circumstances of this case justified the delay in the imposition of sentence and the trial court did have jurisdiction to impose sentence. *Id.* at 706-07 (quotation marks, footnotes, and citations omitted).

Here too, the Court must take the facts of the case as it finds it.

never inquired about this review. Reyes remains on bail and awaiting sentencing for seven years. Furthermore, the attorneys for both parties have resigned their offices, so substitute counsel would have to appear. Substitute counsel will have to appear on remand, assuming a sentence is imposed. *Cf. Cunningham*, 349 So. 2d at 707 (noting an exception “when the delay has been so great that society could derive no good from its enforcement” (footnote and citation omitted)). But rather than delay this appeal any longer, this Court finds this to be a rare instance—absent binding precedent to the contrary—where the final judgment rule should be set aside. *See In re: Application of Payton*, S. Ct. BA No. 2007-146, 2009 V.I. Supreme LEXIS 17, *14 (Mar. 20, 2009 (court “may grant a waiver of its own rules . . . [when] a valid and extraordinary reason exists that justifies dispensing with the rule in [a] particular case.”) (quotation marks and citation omitted)); *accord Murrell v. People*, 54 V.I. 338, 360 n.13 (2010) (“[C]onstitutional rights may not be sacrificed in the name of judicial economy.” (quoting *State v. Gibbons*, 740 P.2d 1309, 1314 (Utah 1987))). Reyes can file another appeal from any sentence imposed, even if only out of an abundance of caution to ensure the Supreme Court will have jurisdiction should he seek further review.

B. Merits of the Appeal

Turning to the merits, Reyes raises two issues on appeal. First, he argues that the Magistrate Court erred in denying his motion for judgment of acquittal because the People failed to prove beyond a reasonable doubt that he had intent to injure Hector. Reyes also claims the Magistrate Court erred in denying his motion for judgment of acquittal without determining first whether his arrest was lawful. Both arguments concern the sufficiency of the evidence and are reviewed under the same standard: “the appellate court defers to the facts found by the magistrate court, including which witnesses’ testimony to credit and how much weight to give such testimony. However, the appellate court does not defer to the law the magistrate court applied. Instead, questions of law are reviewed under a plenary standard.” *David v. People*, SX-15-RV-007, 2016 V.I. LEXIS 15, *10 (Super. Ct. App. Div. Feb. 22,

2016) (citations omitted)).

Section 299(2) of Title 14 of the Virgin Islands Code makes it a crime to commit an assault and battery on another person.

To convict a defendant of simple assault under title 14, section 299(2), the People are required to prove that the defendant committed an assault or battery. Assault is defined as an attempt to commit a battery or a threatening gesture showing in itself an immediate intention coupled with an ability to commit a battery. Additionally, assault and battery is defined as any unlawful violence upon the person of another with the intent to injure him. *Boston v. People*, 56 V.I. 634, 641 (2012) (quotation marks and citations omitted).

Based on the evidence and after hearing argument of the parties, the Magistrate Court found that Reyes had

unlawfully perpetuated violence upon Sgt. Hector with an intent to cause him injury when he struck him in the chest and then grabbed him on the upper torso, resulting in the struggle which ultimately resulted in Defendant's arrest.

This altercation occurred after the use of profanity by Defendant, which was demonstrated by the testimony of both Sgt. Hector and Cpl. Cornelius. The Court notes Defendant's allegation that it was Sgt. Hector who initiated the altercation by grabbing Defendant and striking him. However, the Court credits the testimony of both Sgt. Hector and Cpl. Cornelius. Both officers were present at the time and their testimony was consistent. The Court therefore finds that the People have met the burden of proof in this matter. (Order 3, entered July 15, 2011.)

In his first argument, Reyes correctly notes that "[t]he offense of simple assault and battery requires more than incidental contact" and further, that "[n]ot only must the contact be intentional, it must carry with it the intent to cause harm." (Pet'r's Br. 4, filed Oct. 4, 2011.) But Reyes claims that "Officer Hector admitted that . . . [he] never pushed, punch, slapped, or kicked him, all of which would be clearly intentional acts. Rather, his testimony revealed that the contact was incidental, occurring as . . . [he] was gesturing with his hands." *Id.* "[T]his issue is critical," Reyes argues, "because the incidental contact [between him and Hector] was the basis for . . . his arrest." *Id.* The Magistrate Court failed to "parse the pre-arrest conduct from the post-arrest conduct in making its determination of intent," Reyes argues, and instead "looked at the incident as a whole" and "chose to believe . . . Officer

Hector[] . . . but ignore that the contact was made while . . . [Reyes] was gesticulating.” *Id.*

Clearly, Reyes is asking this Court to reevaluate the credibility of the witnesses’ testimony. That request cannot be granted. “‘It is well established that, on appeal, the court must defer to the credibility decision made by the factfinder, whether it be the judge or the jury.’” *People v. Joseph*, SX-15-RV-006, 2016 V.I. LEXIS 5, *7 (Super. Ct. App. Div. Jan. 19, 2016) (quoting *Moore v. Walters*, 61 V.I. 502, 508 (2014)). Reyes fails to appreciate that “the Appellate Division ‘is not charged with re-assessing the credibility of witnesses.’” *People v. Mayers*, SX-14-MV-190, 2016 V.I. LEXIS 6, *5 (Super. Ct. App. Div. Jan. 19, 2016) (quoting *Bekker v. People*, ST-14-MV-504, 2015 V.I. LEXIS 82, *3 (Super. Ct. App. Div. July 7, 2015)). “Deciding who to believe and who not to believe is for the factfinder, not for the appellate court on review.” *Joseph*, 2016 V.I. LEXIS 5 at *10. In Magistrate Division cases, the fact finder is the trial court judge. As the evidence supports the factfinder’s determination, the Appellate Division must affirm the trial court’s determination.

The Magistrate Court clearly considered—and rejected—Reyes’s version and credited the testimony of the officers. There is no dispute that Reyes and O’Shaughnessy were at JTY Bar after work when Hector arrived and started asking questions about an ATV parked outside. The dispute in the testimony begins when Hector approached them. Hector testified that he admitted being a police officer only after O’Shaughnessy asked. According to Hector, that occurred before Reyes interjected and began “gesturing with his hands,” as he put it. (Pet’r’s Br. 4.) The situation escalated and, again according to Hector, Reyes hit him, grabbed a chain around his neck, and began to choke him with it. Reyes disregards this testimony and claims that the contact between him and Hector was accidental. That, only after Hector laid hands on him did he intentionally make contact with Hector. (See Pet’r’s Br. 4 (“It was after that accidental contact that Officer Hector decided to arrest petitioner.”).) Again, Reyes’s version of what transpired was for the factfinder to weigh, not this Court on appeal. Appellate courts cannot reevaluate the credibility of the witnesses or give more or less weight to any of their

testimonies. Instead, appellate courts can only accept the factfinder's determination to credit a given witness's testimony or reject that determination if it lacks a factual basis in the record. *See In re Estate of Small*, 57 V.I. 416, 430 (2012) ("Clear error is a very deferential standard; an appellate court should only reverse a factual determination as being clearly erroneous if it is completely devoid of minimum evidentiary support or bears no rational relationship to the supportive evidentiary data." (quotation marks, ellipsis, and citations omitted)).

In his second argument, Reyes argues that the court erred when it denied his motion for judgment of acquittal because the court failed to determine whether his arrest was lawful before it found him guilty. Reyes acknowledges that "[w]arrantless arrests are generally lawful when a public offense [is] committed or attempted in the officer's presence as the commission or attempted commission provides the probable cause necessary to effectuate the arrest." (Pet'r's Br. 5 (citing 5 V.I.C. § 3562(a)).) But he argues that "[it] is well established that persons are allowed to resist an unlawful arrest" and further that "force may be used to resist being detained or placed in custody where the arrest is unlawful." *Id.* at 5-6 (citing *People v. Robles*, SX-10-CR-430, 2010 V.I. LEXIS 87, *11 (Super. Ct. Dec. 9, 2010); *Gov't of the V.I. v. Gilliam*, 17 V.I. 14, 20 (Terr. Ct. 1980)). Reyes's claim is rejected because he again invites this Court to reevaluate the facts found by the trial court.

Reyes's second argument again presupposes that he touched Hector "incidentally." (See Pet'r's Br. 5 ("As Officer Hector's testimony clearly shows the contact to his chest to be incidental, [appellant] did not commit the crime of simple assault and battery. Therefore, [appellant]'s arrest was unlawful as he had committed no crime.")) But even assuming, *arguendo*, that the trial court failed to determine whether his arrest was lawful before it found him guilty that error would be harmless here because Reyes was tried by a judge in a bench trial, not by a jury and "a judge, sitting as trier of fact, is presumed to have rested his verdict only on the admissible evidence before him and to have disregarded that which is inadmissible." *Dunlop v. People*, S. Ct. Crim. No. 2008-037, 2009 V.I. Supreme LEXIS 41,

*14-15 (Sep. 15, 2009) (quotation marks and citation omitted)). If a judge, sitting as a factfinder, must be presumed to have relied only on admissible evidence when rendering a verdict, the same judge, sitting as a factfinder, must also be presumed to have found all the elements of the offense. *Cf. United States v. Argueta-Rosales*, 819 F.3d 1149, 1156 (9th Cir. 2016) (“When a district court in a bench trial has made a legal error regarding the elements of an offense, the error is reviewed using the same harmless error standard that would apply to an erroneous jury instruction.” (citing *Wilson v. United States*, 250 F.2d 312, 323-34 (9th Cir. 1957))); accord *Prince v. People*, 57 V.I. 399, 405 (2012) (“A jury instruction that omits a required element of the offense or defense will be disregarded if it does not impact substantial rights and is harmless beyond a reasonable doubt, even if the instruction was objected to at trial.” (quotation marks and citation omitted)). Here, the Magistrate Court found that Reyes “was then placed under arrest by Sgt. Hector,” (Order ¶ 15), after he “*struck* Sgt. Hector in the chest and took ahold of his upper torso.” *Id.* ¶ 11 (emphasis added). In other words, according to the trier of fact, Reyes was placed under arrest after he committed assault and battery on Hector, not before. Whether Reyes’s arrest was unlawful or not was for the trier of fact to determine, not this Court sitting on appeal.

CONCLUSION

For the reasons stated above, the Court holds that the divestiture rule governing the Magistrate Division of the Superior Court is limited by the final judgment rule governing the Appellate Division of the Superior Court. Although the filing of an appeal divests the Magistrate Division of jurisdiction over a case, the Magistrate Division is not divested when the appeal is a protective appeal filed after an oral decision and before a written judgment. Here, the Magistrate Court should have proceeded to sentence Reyes, notwithstanding his appeal to the Appellate Division, since the final order in a criminal case is the written judgment embodying both a conviction and a sentence. In this instance, however, given the amount of time that has passed, rather than dismiss Reyes’s appeal or hold it in abeyance,

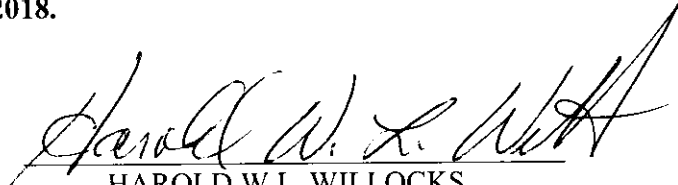
the Court decided to address it on the merits. Having considered the merits, Reyes's conviction will be affirmed. This matter is remanded to the Magistrate Division for further proceedings not inconsistent with this Opinion.

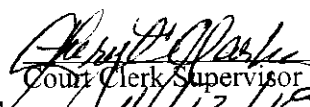
An appropriate order follows.

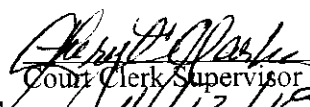
DONE this _____ day of April, 2018.

ATTEST:

Estrella H. George
Clerk of the Court


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

By: 

Dated: 

Court Clerk Supervisor

4/12/18

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

PEOPLE OF THE VIRGIN ISLANDS,

**PLAINTIFF / RESPONDENT ON
REVIEW,**

v.

GABRIEL REYES,

**DEFENDANT / PETITIONER ON
REVIEW.**

SX-09-CR-621

**On Appeal from the Magistrate
Division**

ORDER

COMES NOW, the Court, *sua sponte*, and issues this Order to correct the following scrivener's errors in the Memorandum Opinion dated and entered April 12, 2018:

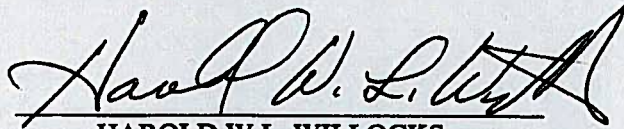
On page 6, three lines from the bottom of the page, change "filing" to "filed"; on page 9, eight lines from the bottom, add an "s" to the word "court"; on page 12, nine lines from the top of the page, add an "s" after Reyes; on page 13, in the first line, add a quotation mark before the word "in" and in the last line of footnote 6, change "complicating matter" to "complicate matters"; and on page 14, in the second line of footnote 6, insert the word "a" after "to" and before "different".

It is further **ORDERED** that a copy of this Order be served on counsel of record and forwarded to the IT Division to accompany the opinion on the Superior Court's website.

DONE and so ORDERED this 16 day of April, 2018.

ATTEST:

Estrella H. George
Clerk of the Court



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

By: 

Court Clerk Supervisor

Dated: 4/16/18

CERTIFIED TO BE A TRUE COPY
This 16 day of 4 2018
ESTRELLA GEORGE
CLERK OF THE COURT

By:  Court Clerk
Shp