For Publication

IN THE SUPREME COURT OF THE VIRGIN ISLANDS

EMANUEL GREER, Appellant/Defendant,	)	**S. Ct. Crim. No. 2018-0025** Re: Super. Ct. Crim. No. 193/2016 (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. Kathleen Y. Mackay

Considered: October 13, 2020
Filed: April 20, 2021

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

APPEARANCES:

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OPINION OF THE COURT

SWAN, Associate Justice.

¶1 Appellant, Emanuel Greer, seeks reversal of his conviction for "Mayhem," V.I. CODE ANN. tit. 14, § 1341(a)(1), in the Superior Court of the Virgin Islands ("Superior Court"). Greer entreats

this Court to declare that, by operation of 14 V.I.C. § 1344, there was insufficient evidence to sustain his conviction because the People failed to present evidence that the victim was disfigured at the time of trial, or alternatively, that if the victim was disfigured at that time, the People failed to present evidence that the disfigurement was serious, as contemplated under 14 V.I.C. § 1341(a)(1). For the reasons elucidated below, the conviction is affirmed.

I. BACKGROUND

¶2 For his actions on June 4, 2016, Greer was charged and tried on two counts.[1] Count two charged that Greer committed Mayhem in violation of subsection 1341(a)(1) of title 14 of the Virgin Islands Code when he "willfully and with intent to injure, disfigure or disable, inflicted upon the person of another an injury which seriously disfigures a person by 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."

¶3 Greer's trial began with jury selection on May 22, 2017; selection having taken most of the day, the jury was dismissed with instructions to not discuss the matter with anyone or listen to or read any news reports during the pendency of the trial. On May 23, 2017, the jury was sworn and given preliminary instructions, and counsel gave their opening statements.

¶4 The People's first witness was Sergeant Lorne Clarke of the Virgin Islands Police Department ("VIPD"), who, on June 4, 2016, was a detective assigned to the island of St. John. At approximately 9:00 a.m., Clarke was on the ferry from St. Thomas to St. John when he saw

[1] The jury did not reach a verdict on count one of the information, which charged "First Degree Assault" in violation of subsection 295(3) of title 14. It is noted that the prosecution was permitted to file an amended information in the trial court's May 24, 2017 order. While it is unclear whether the information in the record is the amended information, as noted by the trial court in its order denying the motion for judgment of acquittal, the amendment only related to the count for which the jury did not reach a verdict. As such, the lack of clarity as to which information is included in the record does not affect the Court's analysis on appeal.

Greer "walking back and forth speaking loudly to himself." Greer was being boisterous and attracted Clarke's attention, but Clarke did not see Williams at that time. At about 10:15, having arrived in Cruz Bay, St. John, Clarke was approached by Williams who reported that Greer had threatened him while on the ferry, pointing to Greer who was standing in the park across from where Clarke's patrol vehicle was parked. Greer then walked away from Clarke toward a business in Cruz Bay. Williams declined to make an official police report but did want to inform an officer that he had been threatened and wanted the police to warn Greer not to contact him. Clarke took no action, beyond this interaction, to further investigate the complaint or contact Greer.

¶5 Ten minutes later, Clarke was contacted by a customs officer who reported that an altercation had occurred in a location that was in the direction Greer had walked; Clarke then drove his patrol vehicle to the reported location. Upon arrival, Clarke saw Williams bleeding "from the side of his head" and transported him to a clinic for treatment. When they arrived, Clarke was better able to observe the injury to Williams and saw that he was missing a portion of his ear. Subsequently, the piece of Williams' ear was brought to the clinic by Officer Herbert. While there, Clarke interviewed Williams, who reported that he had been attacked and bitten by Greer.

¶6 Upon leaving, Clarke went to Cruz Bay to search for Greer, who was found at the smoothie stand. After Clarke inquired as to what had transpired and Greer declined to give further details, he was arrested. At the trial, Clarke specifically identified Greer as the person who, on June 4, 2016, had been identified by Williams and was arrested.

¶7 Upon cross-examination, Clarke explained that his patrol car had been parked near the ferry dock for him to retrieve after his arrival. He also explained that he had boarded the ferry on St. Thomas at 9:00 a.m., and the ferry ride usually takes fifteen to twenty minutes to St. John. Likewise, Clarke confirmed that a person could readily have arrived on St. John at 9:15 and walked

to Star Fish Market, Williams' place of employment, well before 10:15. Indeed, Clarke confirmed that a person could walk from the ferry dock to the market and back "five times" in that amount of time if they wished. Clarke further admitted he had no knowledge of what Williams had done between Williams' arrival in Cruz Bay at 9:15 and the report of the fight at 10:15.

¶8 Aleem Richards then testified. Richards lived on St. Thomas and, on June 4, 2016, was working as a crew member on the ferry that transported Williams to St. John. Richards had waited in the marine terminal prior to boarding the ferry, during which time he saw Greer. In the terminal, Greer had been constantly pacing back and forth—walking the length of the terminal. At some point, Richards was joined by Williams, and, being friends, they sat together discussing weight lifting. While on the ferry, Greer came inside the ferry's cabin and stood about a row in front of Williams and Richards, mumbling "something about, oh, we made him drop something, we made him drop something; our f'ing voices are annoying." Following these comments, Greer exited the cabin and proceeded to the upper deck. Richards noted that Greer was behaving strangely—Greer's "hands weren't really moving" but "his mouth was moving and mumbling different words."

¶9 Because Greer's behavior appeared irrational or abnormal, Richards chose to ignore him. In contrast, Williams followed Greer outside and asked him if he was okay, to which Greer responded that he would throw Williams overboard, and further questioned why Williams would follow him. When Williams returned to the cabin, Greer followed shortly thereafter to sit near them but then left to sit in the front of the ferry. At no point did Richards feel threatened by Greer. When Richards disembarked, along with Williams, he saw Greer. After they exited the ferry dock through the security gate, Richards parted ways with Williams. He did not witness the events

leading to the altercation or the altercation itself. Richards specifically identified Greer as the man who had spoken to him and Williams on the ferry.

¶10 Upon cross-examination, Richards was asked directly "would [your friendship with Williams] lead you to testify anything other than truthfully today? Do you feel like you have a bias to speak in favor of Mr. Williams?" He responded bluntly, "Yes, sir." Further, defense counsel questioned Richards as to Williams' weightlifting abilities. On re-direct examination, Richards described Williams as "small-framed."

¶11 Officer Lisa Herbert, of the VIPD, was then called to testify. On June 4, 2016, Herbert was assigned to the Leander Jergen Command on St. John as a tourism officer responsible for patrolling the area near the Cruz Bay ferry dock. At 10:25 a.m., Herbert saw Clarke, and they were approached by a customs officer who informed them that a fight had occurred at a nearby business. Herbert immediately went to the scene, where, upon arrival, she saw Williams, wearing a polo shirt with a Starfish Market logo, holding his right ear with blood covering his hand. She questioned Williams as to what had happened, and Williams responded that he had fought with Greer and had been bitten on his ear so badly that a piece of it had been severed.

¶12 The severed part of Williams' ear was on the ground near him. Herbert retrieved it, placed it in a cup with ice, and took it to the clinic for the doctors. Herbert then identified Exhibits 1-4 as photographs she had taken while at the clinic that depicted Williams and his injured ear, and they

were admitted in evidence. The photos vividly display the portion of Williams' ear that was missing[2] and are included in the record.[3]

¶13 After she had taken the piece of Williams' ear to the medical clinic, Herbert returned to Cruz Bay and located Greer near the smoothie stand. At trial, Herbert also identified Greer as the

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[2] *See generally Luke v. Calhoun Cty.*, 52 Ala. 115, 118-19 (Ala. 1875) (Brickell, C.J.) ("The fact essential to the support of the action was the identity of the man murdered [as] the plaintiff's husband. . . . [A] photograph, though it is not the original likeness, and is only a copy taken from a negative, is recognized as evidence of the same character as a portrait or miniature, which, when a question of personal identity is involved, and its resemblance is shown, can be used in evidence. [P]ersons not experts can testify whether a photograph was a good likeness. 'Evidence on such a question stand upon the same footing as evidence of handwriting, the value of property, the identity of an individual, &c.' and we think that the testimony of witnesses, that pictures which the plaintiff, while in defendant's employment, had 'executed for them,' were good likenesses, was competent evidence in this cause.' . . . The photograph offered in evidence had been taken in Alabama, and had been sent to her by her husband, with the indorsement in his handwriting. The artist by whom it was taken proved that it was taken about the time, and at the place stated in the indorsement, and that the person for whom it was taken, and whose likeness it was, bore the surname of the plaintiff's husband. A witness present when the disguised men carried off the man subsequently murdered, proves that the photograph is a likeness of the murdered man, who bore the name of William C. Luke, one of the names by which the plaintiff's husband was known. We are unable to perceive any substantial reason for the rejection of the photograph and indorsement thereon as evidence. They seem to us legitimate to establish the fact material to support the action—the identity of the plaintiff's husband and the man murdered. A court cannot refuse to take judicial cognizance that photography is the art of producing facsimiles, or representations of objects by the action of light on a prepared surface. As such it has been so long recognized, that the mechanical and chemical process employed, and the scientific principles on which it is based are so generally known, that it would be vain for a court to decline cognizance of it. If the art was not judicially noticed, the evidence of the resemblance of the photograph to the appellant's husband, and to the murdered man, would require that the photograph should be submitted to the jury, to enable them intelligently to declare whether the weight of the evidence established the identity. On a question of personal identity, a large latitude is allowed in the admission of evidence authorizing, in the absence of positive evidence, the introduction of facts, slighter and more insignificant than the resemblance of a photograph to the person whose identification is the matter in issue. Marks upon the person, though similar marks may be easily fabricated; physical peculiarities, though many persons may bear them; articles of dress, or whatever fact has a reasonable tendency to establish the identity, have been received. The photograph and its endorsement should have been allowed to go to the jury, in connection with all the other evidence bearing on the question of identity." (quoting *Barnes v. Ingalls*, 39 Ala. 193 (Ala. 1863), and citing *Ruloff v. People*, 45 N.Y. 213 (N.Y. 1871); *Udderzook v. Commonwealth*, 76 Pa. 340 (Pa. 1874))).

[3] *See* V.I. R. APP. P. 11 ("Transmission of the Record on Appeal"); *Fontaine v. People*, 56 V.I. 660 (V.I. 2012); *see generally Robertson v. Cease*, 97 U.S. (7 Otto) 646, 648 (1878) (Harlan, J.) ("When we declared that the record, other than pleadings, may be referred to in this court, to ascertain the citizenship of parties, we alluded only to such positions of the transcript as properly constituted the record upon which we must base our final judgment, and not to papers which had been improperly inserted in the [record]. **Those relied upon here to supply the absence of distinct averments in the pleadings as to the citizenship of Cease, clearly do not constitute any legitimate part of the record. They are not made so either by bill of exceptions or by any order of the court referring to them, or in any other mode recognized by law. As there is nothing to show that the deposition of Cease, or the commission or notice under which it was taken, was before the jury or the court for any purpose, during the trial,** no fact stated in them can be made the foundation of any decision we might render, either upon the merits or the question of jurisdiction." (emphasis added) (citing *Pittsburgh, Cincinnati, & St. Louis Ry. Co. v. Ramsey*, 89 U.S. (22 Wall.) 322 (1874); *Briges v. Sperry*, 95 U.S. (5 Otto) 401 (1877); and *Parker v. Overman*, 59 U.S. (18 How.) 137 (1855))).

man who had been identified as Williams' assailant and was arrested. During cross-examination, Herbert explained that Greer had blood on his face and dripping from one of his eyes. Further, Herbert knew the charges for which Greer was arrested, but, as she was not the arresting officer, she did not know what facts led to the decision to arrest him rather than Williams, considering the men had fought each other.

¶14 Dina Alford, the custodian of records at the clinic where Williams was treated, was the People's next witness. Alford identified Exhibit 5 as Williams' records from the clinic on the day of his injury, and the exhibit was admitted in evidence. Alford read portions of the medial record indicating that Williams was treated by Dr. Barot and had a "traumatic injury, human bite, right ear, ear helix absent."

¶15 Dr. Elizabeth Barot then testified for the People. Dr. Barot was both the staff and emergency room physician at the clinic where Williams was treated following his injuries. She examined Williams and recorded that he had an open wound to the external part of his ear from a human bite. She cleaned and bandaged the wound and prescribed antibiotics. Although the missing portion of the ear had been retrieved, it could not be reattached because it was "dead already," and it would not heal if it were re-attached. She further explicated that Williams would be disfigured for life, stating, "aesthetically, I wouldn't want my ear cut off."

¶16 During cross-examination, Dr. Barot offered her opinion as to what injuries would constitute "serious disfigurement." A "mangled torso," "loss of an arm," "loss of a leg," and "loss of a thumb" were examples of serious disfigurement given; generally, if a person were to lose function, she believed the injury would be a serious disfigurement. She also testified that Williams lost skin and cartilage from his ear and stated that this loss was unlikely to affect his hearing. However, at this juncture in the testimony, Dr. Barot vacillated in her opinion, stating that she

considered the disfigurement mild because Williams retained his hearing but also stated that, aesthetically, no person should "lose their beauty." Further, on re-direct examination, she explained that, in Exhibit 3, a photograph, the "white piece" hanging from Williams' ear was cartilage.

¶17 Williams then testified, stating that, on June 4, 2016, he lived on St. Thomas and worked at Starfish Market on St. John. On that day, Williams was taking the ferry to work when, in the St. Thomas ferry terminal, he saw Greer sweating profusely and walking aggressively and very quickly with his "hands and locks swinging"; from his body posture, Greer appeared to Williams to be angry and aggressive. When Williams boarded, he sat near the back of the ferry with a crew member. While they were seated, Greer stood in the row across from them with his head down. A coworker of Williams then boarded the ferry and attempted to sit with them and asked Greer to let him pass, but Greer refused to move and told the man "you can get any seat you want." In response, the coworker sat elsewhere.

¶18 At that time, Greer went on the deck outside, swearing and aggressively saying to Williams and his friend that their voices annoyed him, while gesticulating upwards with his hands. Greer looked at Williams while making his statements, causing Williams to be afraid. Williams then went outside because he wanted to ask Greer "what's his problem" and further asked "how can a voice irritate you or annoy you." Greer responded by threatening to throw Williams off the boat and drown him, again while swearing. Following this confrontation, Greer went to the ferry's upper deck, daring Williams to follow him if "he's bad." Williams apologized and returned to the cabin. A moment later, Greer followed and briefly sat in front of Williams and his friend before returning to the upper deck.

¶19 The ferry then arrived in Cruz Bay, and as Williams was disembarking, Greer threatened him again with an aggressive and angry look on his face. Greer had exited the ferry dock security gate prior to Williams, and as Williams was passing through the gate, he looked up and saw Greer standing a short distance off looking at him. Greer then approached Williams and stood face to face with him appearing belligerent and desiring a fight. Following this, Williams approached the police officer he saw nearby, asking the officer to warn Greer to leave him alone.

¶20 As Williams was speaking with Clarke, he saw Greer walking away but looking backward at him and pointing at him. Williams then began walking to work, and on the way, he saw Greer standing on a corner. Greer then crossed the street to the side opposite from Williams but kept looking at him menacingly. As Williams passed Greer, he looked back and saw Greer still staring, at which point Williams called to Greer by his sobriquet. Williams decided not to ignore Greer because he was concerned Greer could have thrown a rock or otherwise attacked him from behind.

¶21 Greer responded and rushed at Williams with his hands balled up in fists. Williams had little time to react and threw his hands upward to protect himself when Greer grabbed him from behind. Greer was attempting to throw Williams on the ground, and Williams struggled to get free. During this squabble, Greer began biting Williams' ear. In an effort to extricate himself, Williams stuck his finger in Greer's eye. Greer bit Williams' ear four times while shaking his head and growling like a dog. Bystanders then intervened to separate Greer from Williams.

¶22 Upon viewing Exhibits 1-4, Williams confirmed that they showed him at the time of his injury and clearly depicted his ear with the portion missing as a result of Greer's attack. Regarding the missing portion of his ear, he stated that he feels deformed and prefers to avoid being around people because of how he looks. Williams then identified Greer as the person who attacked him and bit off his ear.

¶23 During cross-examination, Williams explained that he was expected to be at work at 8:00 a.m. but had been late that day and caught the 9:00 ferry. He confirmed that the ferry ride normally takes 15-20 minutes and had arrived in Cruz Bay at around 9:20 a.m. Additionally, he estimated that the fight occurred at approximately 9:40. Williams confirmed the events that occurred on the ferry and further explained that he followed Greer onto the ferry deck because he "just wanted to know what his problem" was because he could see that Greer "wasn't going to leave it alone."

¶24 Defense counsel further reviewed the timeline of what happened after the ferry arrived, and Williams explained that he had to disembark, speak with the police officer, and then walk to work. He again confirmed that, as he was walking to work, he saw Greer who crossed the road to the opposite side. When Williams had passed Greer by a few steps, he did not feel safe having his back to him; therefore, Williams turned to maintain a view of Greer.

¶25 Following re-direct examination, the trial court considered Greer's motion for judgment of acquittal, in which he argued that the doctor's testimony that the loss of a portion of the ear was not a serious disfigurement warranted dismissal of the Mayhem charge.[4]

¶26 Greer then testified in his defense. He stated that he had been visiting with family on St. Thomas and was returning home to St. John on the morning of June 4, 2016. He was in a particularly good mood that morning, as he had seen family members that he had not seen in a long time. When he boarded the ferry, he saw Williams standing around talking with a friend. Williams and his friend were being "kind of loud"; so, he asked them, "excuse me, please, you could quiet down so I could hear the program?" Williams responded by arguing with Greer. In order to avoid further argument and disturbing other passengers, Greer went outside on the deck.

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[4] Ultimately, the trial court denied the motion. *People v. Greer*, ST-16-CR-193, 2018 WL 4348342 (V.I. Super. Ct. Feb. 21, 2018) (unpublished).

After Greer had been outside for "a little while," Williams followed and mumbled something to him. Williams then returned inside; Greer ignored him and stayed outside. Williams was being rowdy, and Greer chose to remain outside, maintaining that he never returned inside the ferry's cabin. Additionally, Greer admitted that he and Williams argued and exchanged swear words.

¶27 Once the ferry arrived at the dock on St. John, Greer chose to lag behind in order to avoid crossing paths with Williams again. When Greer was at the end of the ferry dock, he saw Williams speaking with a police officer nearby. Greer then procrastinated until Williams left the area, while speaking with some people in the park. He even took a moment to say hello to the police officer. Greer was then walking further into Cruz Bay to visit his family and children when he approached the corner that Williams had described in his earlier testimony. As Greer described what happened:

> I was walking up and just minding my business trying to turn to the left to go to my family and my kids, and when I came to the corner he was right there on the corner right there. And then he asked me if I want something with him, but I didn't hear what he was saying. As I looked towards h[im], he punch me in my eye, my right eye, then he tried to chuck out my left eye with h[is] other hand, and he was choking me around my neck. I was totally blind at that point.

¶28 At this point, Greer again contradicted Williams' testimony. By Greer's account, Williams never walked past him because he had stayed behind, and Williams was already ahead of him in the direction he was walking. Similarly, Greer denied rushing toward Williams. Rather, by Greer's telling, Williams asked him "if I want something with h[im]." Greer did not understand what Williams was saying, and when Greer looked toward Williams, at that moment, Williams punched him and grabbed him. Greer's right eye was bleeding and blood shot from being punched, and he was unable to see. Holding his eye, Williams grabbed Greer and tried to "chuck out" Greer's left eye. As Greer further describes the altercation, he "was just biting to get him off me";

"when I was finished or whatever happen, people separated us. I didn't . . . know that I bite his ear off."

¶29 During cross-examination, Greer maintained he was in a good mood that morning but also admitted that he was pacing up and down the ferry terminal singing to himself, "enjoying [his] own company." He denied swearing at Williams and his friend and telling them their voices annoyed him. He further denied telling Williams he would throw him off the boat and maintained that he never returned to the ferry cabin. Similarly, he maintained his version of disembarking the ferry and speaking with people in the park. Greer denied growling as he bit Williams ear, asserting he "was probably making noise because of my eye." He also asserted that, because he was panicking, he could not remember how many times he bit Williams' ear or even that he bit Williams' ear at all.

¶30 Sergeant Clarke was then called by the prosecution in the presentation of their rebuttal case. His testimony confirmed that Williams approached him as he was in his patrol vehicle near the ferry dock and that, between 10:15 and 10:25 a.m., he responded to a report of an altercation in Cruz Bay, at which time he saw Williams bleeding from his ear. Upon questioning by defense counsel, Clarke further explained that Williams' injuries were consistent with what he had said happened, and upon making contact, Greer declined to provide any details of what had occurred.

¶31 The prosecution rested at the close of Clarke's testimony. The parties then made closing arguments, and the court instructed the jury. As relates to the charge of Mayhem, the court instructed the jury that "if it appears that Akeino Williams has so far recovered from the injury and

is no longer disfigured in his personal appearance or disabled or affected in physical vigor, the jury must find the defendant not guilty of mayhem."[5]

¶32 The jury was unable to agree as to Greer's guilt on count one but, on May 24, 2017, found him guilty of Mayhem as charged in count two. The prosecution announced that it would not retry Greer on the assault charge, and that charge was, therefore, dismissed. Greer was sentenced on March 20, 2018. The "judgment and commitment" was entered on April 16, 2018. Although Greer filed his notice of appeal with the trial court on March 2, 2018, it was subsequently filed with this Court on March 9, 2018.

II. DISCUSSION

A. Jurisdiction

¶33 "This Court, being an appellate court, is a court of limited jurisdiction and must be satisfied of its own appellate subject matter jurisdiction before it considers the merits of an appeal." *World Fresh Markets, LLC v. Henry*, 71 V.I. 1161, 1167 (V.I. 2019) (citing *V.I. Gov't Hosp. & Health Facilities Corp. v. Gov't of the V.I.*, 50 V.I. 276, 279 (V.I. 2008); *People v. Rios*, S. Ct. Crim. No. 2007-0112, 2008 WL 5605714, at *1 (V.I. Nov. 14, 2008) (unpublished)).[6] "Pursuant to the Revised Organic Act of 1954, as amended, this Court has appellate subject matter jurisdiction over 'all appeals from the decisions of the courts of the Virgin Islands established by local law.'" *Id.* at 1167 (internal alterations omitted) (quoting *In re Petition for Expungement*, 66 V.I. 299, 302

[5] This instruction is based on the Legislature's directive embodied in section 1344 of title 14. 14 V.I.C. § 1344. This is a modification of the common law, making the jury the judge of the permanent, serious disfigurement upon inspection. *Cf. Union P. R.R. Co. v. Botsford*, 141 U.S. 250, 252 (1891) ("[T]he English courts of common law might, if they saw fit, try by inspection or examination, without the aid of a jury, . . . on an appeal of mayhem, the issue of mayhem or no mayhem . . . .").

[6] *See also First Am. Dev. Group/Carib, LLC v. WestLB AG*, 55 V.I. 594, 601 (V.I. 2011) ("Prior to considering the merits of an appeal, this Court must first determine if it has appellate [subject matter] jurisdiction over the matter." (citing *V.I. Gov't Hosp. & Health Facilities*, 50 V.I. at 279)); *Brown v. People*, 49 V.I. 378, 379 (V.I. 2008) ("Before this Court can decide the merits of [this] appeal, we must determine if we have jurisdiction.").

(V.I. 2017)); *Toussaint v. Stewart*, 67 V.I. 931, 939 (V.I. 2017). "The Final Judgment Rule is embodied in title 4, subsections 32(a) and 33(a) of the Virgin Islands Code, which state that 'the Supreme Court shall have jurisdiction over all appeals arising from final judgments, final decrees or final orders of the Superior Court, or as otherwise provided by law' and limits the availability of an appeal to 'only upon entry of Final Judgment in the Superior Court from which appeal or application for review is taken." *World Fresh Markets*, 71 V.I. at 1169 (internal alterations omitted) (quoting 4 V.I.C. §§ 32(a), 33(a)). Therefore, and this Court has jurisdiction over all appeals arising from a Final Judgment of the Superior Court. 48 U.S.C. § 1613a(d); 4 V.I.C. §§ 32(a), 33(a).[7]

¶34 "'A Final Judgment is a judgment from a court which ends the litigation on the merits, leaving nothing else for the court to do except execute the judgment.'" *Toussaint*, 67 V.I. at 939 (internal alterations omitted) (quoting *Ramirez v. People*, 56 V.I. 409, 416 (V.I. 2012) (citations omitted)). "In a criminal case, the written judgment embodying the adjudication of guilt and

[7] The jurisdiction of this Court, as set forth in subsections 32(a) and 33(a) of title 4 of the Virgin Islands Code, is a codification of the finality requirement that has been a part of U.S. common (and statutory) law since this country's founding and requires those wishing to challenge a ruling of a lower court to "'raise all claims of error in a single appeal following final judgment on the merits.'" *Enrietto v. Rogers Townsend & Thomas PC*, 49 V.I. 311, 315 (V.I. 2007) (quoting *Richardson-Merrell, Inc. v. Koller*, 472 U.S. 424, 429-30 (1985)); *see also Joseph v. Daily News Pub. Co., Inc.*, 57 V.I. 566, 578 (V.I. 2012) ("'Section 32 embodies the final judgment rule, which generally requires a party 'to raise all claims of error in a single appeal following final judgment on the merits.'" (quoting *Bryant v. People*, 53 V.I. 395, 400 (V.I. 2010))); *see generally* 4 V.I.C. § 33(b); *Bachowski v. Usery*, 545 F.2d 363, 368 n.20 (3d Cir. 1976) (citing *Metcalfe's Case*, 77 Eng. Rep. 1193 (K.B. 1615); 15 CHARLES ALAN WRIGHT, ARTHUR R. MILLER & EDWARD H. COOPER, FEDERAL PRACTICE & PROCEDURE § 3906 (2d ed. 1976)); *World Fresh Markets*, 71 V.I. at 1168 n.4 (setting forth the exceptions to the Final Judgment Rule); *Toussaint*, 67 V.I. at 940 n.3 (noting that the entry of a Final Judgment implicitly denies all pending motions, and all prior interlocutory orders merge with the Final Judgment (citing *Simpson v. Board of Dirs. of Sapphire Bay Condos. W.*, 61 V.I. 728, 731 (V.I. 2015); *In re Estate of George*, 59 V.I. 913, 919 (V.I. 2013))); *Penn v. Mosley*, 67 V.I. 879, 891 n.4 (V.I. 2017) (discussing the distinctions between a judgment, order, and decree); *Miller v. Sorenson*, 67 V.I. 861, 871 (V.I. 2017) (discussing the distinctions between a judgment and decree); *Prosser v. Prosser*, 33 V.I. 32, 40 (V.I. Super. Ct. 1995) (noting that, "with the procedural merger of law and equity in the federal and most state [and territorial] courts under the Rules of Civil Procedure, the term 'judgment' has generally replaced 'decree'" (quoting BLACK'S LAW DICTIONARY 410 (6th ed. 1990); and citing 16 V.I.C. §§ 108, 110, 111; 46 AM. JUR. 2D *Judgments* § 2 (1969)).

sentence imposed based on that adjudication constitutes a Final Judgment for purposes of 4 V.I.C. § 32(a)." *Gonsalves v. People*, 70 V.I. 812, 829 (V.I. 2019) (citing *Percival v. People*, 62 V.I. 477, 483 (V.I. 2015)). This appeal, having been filed in the Superior Court prior to the entry of the Final Judgment, V.I. R. APP. P. 5(b)(6)-(7), appellate jurisdiction vested in this Court upon entry of the Final Judgment on April 16, 2018. V.I. R. APP. P. 5(b)(1) (A notice of appeal filed prior to the entry of the judgment and commitment "is treated as filed on the date of and after the entry of judgment."); *e.g.*, *Rivera v. People*, 64 V.I. 540, 551 (V.I. 2016); *Williams v. People*, 55 V.I. 721, 726-27 (V.I. 2011).[8]

B. Standard of Review

¶35 "When a defendant challenges the sufficiency of the evidence via a motion for judgment of acquittal,[9] the sufficiency of the evidence is reviewed *de novo*, and this Court applies the same

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[8] *See generally cf. Cianci v. Chaput*, 68 V.I. 682, 688 (V.I. 2016) (quoting *Estate of George*, 59 V.I. at 919); *Brown*, 49 V.I. at 382-83 (holding that a notice of appeal filed after the deadline set by court rule is subject to an excusable neglect analysis to extend the time for filing); *Williams v. People*, 58 V.I. 341, 347-48 (V.I. 2013) (holding that a stay of execution of judgment does not render a judgment non-final); *Gov't of the V.I. v. UIW-SIU*, 64 V.I. 312, 320-21 (V.I. 2016) (holding that statutes of limitations are claims-processing rules that do not affect a court's jurisdiction and are subject to wavier); *Prosser v. Public Serv. Comm'n*, 56 V.I. 391, 403 n.9 (V.I. 2012) (citing *Gov't of the V.I. v. Martinez*, 620 F.3d 321, 328-29 (3d Cir. 2010)).

[9] Former Superior Court Rule 7 made the Federal Rules of Criminal Procedure applicable in the Superior Court. However, effective December 1, 2017, the Virgin Islands Rules of Criminal Procedure became operative and were subsequently amended on December 19, 2017. S. Ct. Prom. Orders 2017-010 (Dec. 1 & 19, 2017). Because this Court applies the rules in effect at the time the Superior Court decided the issue under consideration, we apply former Superior Court Rule 7 and Federal Rule of Criminal Procedure 29. *Toussaint*, 67 V.I. at 941 n.5 (explaining that the rule in effect at the time of entry of the order appealed from is the rule applied on appeal); *compare* FED. R. CRIM. P. 29(a) ("[T]he 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.") *with* V.I. R. CRIM. P. 29(a) ("[T]he 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."); *e.g.*, *Webster v. FirstBank Puerto Rico*, 66 V.I. 514, 519 n.3 (V.I. 2017) (applying former rules of the Superior Court in effect at the time the judgment was entered); *Merrifield v. People*, 56 V.I. 769, 775 (V.I. 2012); *Stevens v. People*, 52 V.I. 294, 304 (V.I. 2009) (quoting *Smith v. People*, 51 V.I. 396, 397 (V.I. 2009); *United States v. Silveus*, 542 F.3d 993, 1002 (3d Cir. 2008)); *see Rennie v. Hess Oil V.I. Corp.*, 62 V.I. 529, 548 n.13 (V.I. 2015) (applying version of statute in effect at the time the action was commenced); *cf. Billu v. People*, 57 V.I. 455, 461 n.3 (V.I. 2012) (noting that, where an amended rule utilized the same language as the rule in effect at the time the notice of appeal was filed, the amended rule is applied).

standard as the trial court." *Gonsalves*, 70 V.I. at 830 (citing *Ramirez*, 56 V.I. at 417; *Elizee v. People*, 54 V.I. 466, 482 (V.I. 2010)).[10] The hallmark of a review of the sufficiency of the evidence is the conflict between guaranteeing justice to defendants by ensuring that convictions are not founded upon speculation or irrational prejudice and, on the other hand, the competing role of the jury as the arm of the trial court responsible for making credibility determinations and weighing evidence.[11]

¶36 As a starting point, when seeking to have a conviction overturned for lack of evidence, an appellant bears a heavy burden. *Ritter v. People*, 51 V.I. 354, 359 (V.I. 2009). "Because the only

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[10] *See also United States v. McLean*, 802 F.3d 1228, 1233 (11th Cir. 2015) ("We review the grant of a motion for judgment of acquittal *de novo*, giving no deference to the district court's determination that the evidence was insufficient to support the jury's verdict." (citing *United States v. Vernon*, 723 F.3d 1234, 1252 (11th Cir. 2013))); *Silveus*, 542 F.3d at 1002 (ruling that an appellate court exercises, *de novo*, i.e, "plenary[,] review over a [trial] court's grant or denial of a motion for acquittal based on the sufficiency of the evidence, applying the same standard as the [trial] court"); *see generally Percival*, 62 V.I. at 484 ("[A] conviction entered on insufficient evidence is always plain error . . . ."); *Fahie v. People*, 59 V.I. 505, 511, 517 n.5 (V.I. 2013) ("To affect [the defendant's] substantial rights, the 'error must be prejudicial, which means there must be a reasonable probability that the error affected the outcome of the trial.' Unlike harmless error analysis, under [Plain Error Review], the burden falls on the [defendant] to show how the error prejudiced him.")); *Ponce v. People*, 2020 VI 2, ¶123 n.11 (Swan, J., concurring) (noting that the only difference between a Plain Error Review of the sufficiency of the evidence and a *de novo*/plenary review of the denial of a Rule 29 motion is that the People would usually bear the burden of establishing harmless error beyond a reasonable doubt, but under Plain Error Review, it is the defendant who has the burden of establishing the third Plain Error element, that the lack of evidence affected a substantial right, as well as the burden of establishing that the Plain Error (the existence of the first three elements of a Plain Error Review) adversely affects the reputation of the proceeding or the court (citing *Cornelius v. Bank of Nova Scotia*, 67 V.I. 806, 816-17 (V.I. 2017) ("A finding of Plain Error requires the existence of (1) an error, (2) that was obvious under existing law, and (3) affected substantial rights . . . . When Plain Error exists, this Court will conduct a Plain Error Review to determine if the error, though affecting a substantial right, seriously affected 'fairness, integrity, or public reputation of the judicial proceeding,' thus warranting reversal.")).

[11] The evidence in this case starkly demonstrates these competing values. Defense counsel did a remarkable job of creating contradictions and competing inferences through cross-examination. Richards openly admitted to being Williams' friend and having a bias in that regard. Similarly, Dr. Barot listed injuries constituting a serious disfigurement that were much more severe than Williams' injury. However, the testimony of both Richards and Williams was corroborated by Clarke. Similarly, Dr. Barot also stated that the loss of a significant portion of an ear was aesthetically an injury that caused a person to lose their attractiveness. These are classic examples of conflicts in evidence and testimony falling within the jury's province of weighing the evidence and determining credibility. *See Boardman v. Woodman*, 47 N.H. 120, 150 (N.H. 1866) (Doe, J., dissenting) ("Books written by physicians or people of science, are neither proofs on questions of fact for a jury, nor authorities on questions of law for a court."). While the verdict demonstrates how the jury weighed these—and other—evidentiary issues, these evidentiary conflicts also demonstrate the competing concerns involved in the standard of review of sufficiency of the evidence.

appropriate justification for granting a judgment of acquittal is that the evidence was insufficient to sustain the conviction," *Ponce v. People*, 72 V.I. 828, 880 (V.I. 2020) (Swan, J., concurring in part, dissenting in part) (citing *United States v. Mi Sun Cho*, 713 F.3d 716, 720 (2d Cir. 2013); *United States v. Jones*, 713 F.3d 336, 340 (7th Cir. 2013)),[12] this standard of review is "formidable, and 'defendants challenging convictions for insufficiency of evidence face an uphill battle on appeal.'" *Ubiles v. People*, 66 V.I. 572, 582 (V.I. 2017) (quoting *United States v. Santos-Rivera*, 726 F.3d 17, 23 (1st Cir. 2013), and citing *Augustine v. People*, 55 V.I. 678, 684 (V.I. 2011)).

¶37 Furthermore, this Court applies to the jury's verdict a "particularly deferential standard of review." *James v. People*, 60 V.I. 311, 317 (V.I. 2013); *Castor v. People*, 57 V.I. 482, 488 (V.I. 2012).[13] "We 'must not serve as the usurper of the jury's role as judges of credibility and must also not engage in reweighing the evidence.'" *Gonsalves*, 70 V.I. at 830 (quoting *Brathwaite v. People*, 60 V.I. 419, 432 (V.I. 2014)).[14] "As such, this is a standard of review that is extremely deferential to the jury's verdict and requires that we view the evidence in the light most favorable to the People, and reversal is 'confined to cases where the failure of the prosecution is clear.'" *Id.* (quoting *Mulley v. People*, 51 V.I. 404, 409 (V.I. 2009)). This Court must affirm a jury's verdict as long as substantial evidence was presented at trial to allow a rational trier of fact to convict, under the standard of beyond a reasonable doubt, when the evidence is viewed in the light most

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[12] *See Fontaine*, 56 V.I. at 591 n.13 ("'As a general rule, the remedy for trial error is a new trial while a judgment of acquittal is the appropriate remedy when the evidence is not sufficient to sustain a conviction.'" (quoting *Farrell v. People*, 54 V.I. 600, 619 (V.I. 2012))); *see also Gilbert v. People*, 52 V.I. 350, 364 n.11 (V.I. 2009) (defining a trial error (citing *Burks v. United States*, 437 U.S. 1, 15 (1978))).

[13] *See also United States v. Bosen*, 491 F.3d 852, 856 (8th Cir. 2007).

[14] *Cf. McLean*, 802 F.3d at 1233 (noting that an appellate court owes no deference to a trial court's determination of sufficient evidence, because that is a question of law).

favorable to the prosecution. *Fahie v. People*, 62 V.I. 625, 630 (V.I. 2015); *Webster v. People*, 60 V.I. 666, 678-79 (V.I. 2014); *Cascen v. People*, 60 V.I. 392, 401 (V.I. 2014).[15]

¶38 In order for the evidence to rationally support a verdict, there must be a logical and convincing nexus between the evidence—both direct and circumstantial—and the guilty verdict. *Gov't of the V.I. v. Williams*, 739 F.2d 936, 940 (3d Cir. 1984).[16] A trier of fact acts rationally if, in light of reason and everyday experience, the evidence, properly presented, rationally and logically supports the existence of the facts establishing the elements of the crime. *Davis v. People*, 69 V.I. 619, 652, 653 n.25 (V.I. 2018) (Swan, J., concurring) (citing *Leary v. United States*, 395 U.S. 6, 33-35 (1969); *Ventura v. People*, 64 V.I. 589, 601 (V.I. 2016)); *see Tot v. United States*, 319 U.S. 463, 466-67 (1943).

¶39 A verdict is irrational if there is a lack of connection between the facts offered in evidence and the essential elements of the crime charged. *Jackson v. Virginia*, 443 U.S. 307, 317 (1979) ("The *Winship* doctrine[, *see* 397 U.S. 358 (1970),] requires more than simply a trial ritual. A

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[15] *See generally Crane v. Morris's Lessee*, 31 U.S. (6 Pet.) 598, 617 (1832) ("**This instruction plainly called upon the court to decide mere matters of fact**, which were in controversy before the jury, and upon the assumption of such matters of fact direct the jury that they rebutted other matters of fact. It was not part of the duty of the court to decide upon the relative weight and force of these facts. **They exclusively belonged to the jury**; and the instruction was properly denied." (emphasis added)); *United States v. Kelerchian*, 937 F.3d 895 (7th Cir. 2019); *United States v. Atkins*, 881 F.3d 621 (8th Cir. 2018); *Ambrose v. People*, 56 V.I. 99, 107 (V.I. 2012) (noting that even evidence ultimately deemed to have been improperly admitted is considered when reviewing the sufficiency of the evidence (quoting *State v. Frazier*, 622 N.W.2d 246, 261 (S.D. 2001); *People v. Sisneros*, 606 P.2d 1317, 1319 (Colo. App. 1980); and citing *United States v. McClain*, 377 F.3d 219, 222 (2d Cir. 2004); *United States v. Mandel*, 591 F.2d 1347 (4th Cir. 1979))).

[16] *See also United States v. Acevedo*, 882 F.3d 251, 259 (1st Cir. 2018); *United States v. Shoemaker*, 746 F.3d 614, 619 (5th Cir. 2014); *United States v. Serrano-Lopez*, 366 F.3d 628, 634 (8th Cir. 2004); *see generally State v. Kelly*, 15 N.W. 2d 554, 562 (Minn. 1944) ("[R]eason, as well as respect for the rights of accused persons so firmly engrafted upon our system of jurisprudence, would prompt us to adopt the view taken by the United States Supreme Court, even were its views not binding upon us so far as federal constitutional requirements are concerned. The requirement of rationality appears to us a necessary safeguard to the constitutional rights of our citizens—a safeguard which is far more important than the practical advantage gained by our prosecutors in a few extreme cases where, under the Wigmore rule, a statutory presumption would be sustained notwithstanding its unreasonableness." (citing 4 WIGMORE, EVIDENCE § 1356 (3d ed. 1940)).

doctrine establishing so fundamental a substantive constitutional standard must also require that the factfinder will rationally apply that standard to the facts in evidence."); *see Tot*, 319 U.S. at 467-68; *Jones*, 713 F.3d at 339-40. Indeed, when the logical connection between the record evidence and the elements of the crime is so strained as not to have a reasonable and rational relation to everyday experience, common sense, and the circumstances of life as they are in reality, the verdict cannot stand. *See Thompson v. Louisville*, 362 U.S. 199, 204 (1960) ("The city correctly assumes here that if there is no support for these convictions in the record they are void as denials of due process."); *Tot*, 319 U.S. at 468.

¶40 Furthermore, if the whole of the evidence is equipollent supporting equally a conclusion of guilt and a conclusion of innocence, the jury must have necessarily possessed a reasonable doubt. *United States v. Glenn*, 312 F.3d 58, 70 (2d Cir. 2002); *United States v. Hernandez-Bautista*, 293 F.3d 845, 854 (5th Cir. 2002). However, "it is unnecessary for the evidence to be consistent only with the conclusion of guilt because conflicts in evidence are credibility determinations exclusively within the province of the jury." *Gonsalves*, 70 V.I. at 830 (citing *Ambrose v. People*, 56 V.I. 99, 106 (V.I. 2012); *Brito v. People*, 54 V.I. 433, 441-42 (V.I. 2010)). "'[W]here a cause fairly depends upon the effect or weight of testimony, it is one for consideration and determination of the jury, under proper directions as to the principles of law involved. It should never be withdrawn from them unless the testimony be of such conclusive character as to compel the court, in the exercise of a sound legal discretion, to set aside a verdict retuned . . . .'" *Connecticut Mut. Life Ins. Co. v. Lathrop*, 111 U.S. 612, 615 (1884) (quoting *Phoenix Ins. Co v. Doster*, 106 U.S. 30, 31 (1882)).[17]

[17] *See also United States v. Alarcon-Simi*, 300 F.3d 1172, 1176 (9th Cir. 2002); *United States v. Baker*, 367 F.3d 790, 798-99 (8th Cir. 2004); *United States v. Owusu*, 199 F.3d 329, 341-42 (6th Cir. 2000).

¶41 In order to sustain the jury's verdict, the credibility of witnesses and the weighing of evidence is not for this Court to second guess on appeal, and justices view the evidence in the light most favorable to the jury verdict. *Williams*, 55 V.I. at 734; *Ritter*, 51 V.I. at 359.[18] Stated differently, the evidence is not insufficient because testimony from witnesses may be contradictory or evidence may be in conflict, which, in reality, means that the finder of fact must have made a credibility determination and weighed the evidence presented. *Marcelle v. People*, 55 V.I. 536, 547 (V.I. 2011); *Smith v. People*, 51 V.I. 396, 401 (V.I. 2009).[19]

¶42 Conversely, evidence need not exclude every hypothesis of innocence; if the evidence rationally supports two conflicting conclusions, the conviction will not be reversed because a conviction must be affirmed if, in light of common sense and everyday experience, the conviction is logically and rationally supported by substantial evidence, and a rational trier of fact, taking the evidence in the light most favorable to the verdict, could have found the defendant guilty beyond a reasonable doubt. *United States v. Jimenez-Serrato*, 336 F.3d 713, 715 (8th Cir. 2003); *United States v. Khanu*, 675 F. Supp. 2d 55, 60 (D.D.C. 2009).[20] "However, a jury's verdict cannot be founded upon suspicion, speculation, conjecture, or any overly attenuated piling of inferences upon inferences." *Gonsalves,* 70 V.I. at 831 (citing *Ventura*, 64 V.I. at 601). "So long as circumstantial

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[18] *Cf. Rivera*, 64 V.I. at 553-57 (standard for credibility determination on appeal); *Gonsalves*, 70 V.I. at 832 n.8; *Phillip v. People*, 58 V.I. 569, 583-84 (V.I. 2013) (recognizing that "an appellate court may disregard a jury's reliance on a witness's testimony when that testimony is 'inherently incredible or improbable'" (quoting *Gov't of the V.I. v. Williams*, 51 V.I. 1053, 1086 (D.V.I. App. Div. 2009))); *see generally* 29A AM. JUR. *Evidence* § 1375 (2008) ("Testimony is deemed inherently incredible or improbable where it is 'either so manifestly false that reasonable [people] ought not to believe it, or it must be shown to be false by objects or things as to the existence and meaning of which reasonable [people] should not differ.").

[19] *See also Acevedo*, 882 F.3d at 259; *Serrano-Lopez*, 366 F.3d at 634; *United States v. Patel*, 370 F.3d 108, 111 (1st Cir. 2004); *United States v. Kone*, 307 F.3d 430, 433 (6th Cir. 2002).

[20] *See Coleman v. Johnson*, 566 U.S. 650, 655-56 (2021); *Ritter*, 51 V.I. at 359; *see also Shoemaker*, 746 F.3d at 619; *Williams*, 549 F.3d at 92; *United States v. Brodie*, 403 F.3d 123, 133 (3d Cir. 2005); *United States v. McCormack*, 371 F.3d 22, 27 (1st Cir. 2004).

evidence allows for a logical and rational inference based on common sense and every day experience, it will support a finding of guilt beyond a reasonable doubt as to the relevant element of the crime." *Id.* at 830 (citing *Galloway v. People*, 57 V.I. 693, 700 (V.I. 2012); *McIntosh v. People*, 57 V.I. 669, 680 (V.I. 2012)). Therefore, we will affirm a conviction if the elements of the crime could have been found beyond a reasonable doubt by a rational trier of fact. *Id.* (citing *Charles v. People*, 60 V.I. 823, 831-32 (V.I. 2014)).

C. Because There was Testimony From Multiple Witnesses That the Victim's Ear was Missing a Significant Portion of the Helix, That This Portion Would Not Regenerate With Time, and That Such a Disfigurement was Objectionable to the Average Person, the Evidence was Sufficient to Establish that the Victim was Permanently and Seriously Disfigured, Thus Establishing the Fourth Element of the Crime of Mayhem.

¶43 Greer challenges the sufficiency of the evidence to support his conviction under sections 1341(a)(1) and 1344 of title 14. Mayhem is defined 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;
> (2) destroys or disables any member or organ of his body; or
> (3) seriously diminishes his physical vigor by the injury of any member or organ
> shall be imprisoned not more than 15 years.

14 V.I.C. § 1341.[21] This requires proof beyond a reasonable doubt that (1) the defendant, (2) willfully with the specific intent to either (a) commit a felony or (b) injure, disfigure, or disable the victim (mens rea/mental intent), (3) inflicted upon the victim an injury (actus reus/criminal

[21] At no point was section 1342 of title 14 raised in the arguments, either in the trial court or this Court. While it would appear that this section's intended effect was to eliminate any considerations of prior statutory definitions of the elements of Mayhem that often included the methods and implements used to maim the victim—as judges and lawyers often fail to critically engage new statutory enactments and consider the full scope and effect of the changes made—the effect of this provision is not addressed. *Compare* 14 V.I.C. § 1342 ("To constitute mayhem, it is immaterial by what means or instruments, or in what manner, the injury was inflicted"); *with Tully v. People*, 67 N.Y. 15, 18-19 (N.Y. Ct. App. 1876) (discussing a statute that defined Mayhem by the mode of injury).

act), and (4) that injury either (a) mutilated a body part of the person such that they are seriously and permanently disfigured or (b) destroyed or disabled a part of the victim's body or one of the person's organs or (c) seriously diminished the victim's physical vigor as a result of the injury inflicted upon an organ or part of the victim's body (attendant circumstance). 14 V.I.C. § 1341.

¶44 As noted by both the trial court and Greer's counsel, the Legislature has not defined "injury," "the person of another," "mutilation," or "seriously disfigures." Therefore, the task of determining the Legislature's intended definition of these words falls to this Court.[22] "The intention of a criminal law is to govern, and is to be discovered by reading the whole law; although it is not to be extended by a supposed equity to cases not within its terms." *Wynehamer v. People*, 13 N.Y. 378, 479 (N.Y. Ct. App. 1856) (Mitchell, J., dissenting). In essence, we are to read the words of section 1341 in "their context and [must] construe [them] according to the common and approved usage of the English language. Technical words and phrases, and such others as may

[22] *See Ubiles*, 66 V.I. at 590 (explaining the "Dictionary Definition Rule" that requires the courts of the Virgin Islands, when engaging in statutory interpretation, to first, apply any statutory definitions provided by the Legislature that are specifically applicable to the section, chapter, title, etc. under consideration; second, apply the general definitions provided in section 41 of title 1; third, apply an accumulated legal meaning as articulated in binding precedent; fourth, apply the relevant definition provided in a law dictionary or relevant persuasive authority; fifth, apply relevant technical definitions such as when professional jargon is used; and sixth, apply the common meaning as provided in a dictionary); *Wallace v. People*, 71 V.I. 703, 763 (V.I. 2019) (Swan, J., concurring) ("Words and phrases defined by statute must be applied when determining the plain meaning of a statute, and in the instance of the Legislature's failure to provide a definition by statute, any commonly understood, specific legal or technical meaning must be utilized, failing which the words of the statue are given their commonly understood 'Dictionary Meaning.'" (citing *United States v. Wells*, 519 U.S. 482, 491 (1997); *Ubiles*, 66 V.I. at 594; *Mahabir v. Heirs of George*, 63 V.I. 651, 660 (V.I. 2015); *Cascen*, 60 V.I. at 403)).

have acquired a peculiar and appropriate meaning in the law, shall be construed and understood according to their peculiar and appropriate meaning." 1 V.I.C. § 42; *Ubiles*, 66 V.I. at 590.[23]

¶45 The first Virgin Islands statute defining Mayhem provided as follows:

> Section 10.—Every person who unlawfully and maliciously deprives a human being of a member of his body, or permanently disables, disfigures, or renders it useless, or cuts or disables the tongue, or puts out an eye, or slits the nose, ear, or lip, is guilty of mayhem.
> Section 11.—Mayhem is punishable by imprisonment in the penitentiary not exceeding 15 years.

Code 1921, Title IV, ch. 5, §§ 10, 11.[24] In 1954, when enacting the Revised Organic Act of 1954, Congress required the Secretary of the Interior to appoint a committee to both revise the 1921

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[23] *See also Dolan v. U.S. Postal Serv.*, 546 U.S. 481, 486 (2006) ("Interpretation of a word or phrase depends upon the whole statutory text . . . . Starting with context . . . 'a word is known by the company it keeps'—a rule that 'is often wisely applied where a word is capable of many meanings in order to avoid the giving of unintended breadth to' [legislative acts]." (quoting *Jarecki v. G.D. Searle & Co.*, 367 U.S. 303, 307 (1961))); *Dole v. Steelworkers*, 494 U.S. 26, 36 (1990) ("[W]ords grouped in a list should be given related meaning[s]." (internal quotation marks omitted)).

[24] The bulk of the 1921 Code was adopted from The Compiled Laws of the Territory of Alaska published in 1913, *People v. Simmonds*, 58 V.I. 3, 5 (V.I. Super. Ct. 2012) (quoting *Burch v. Burch*, 195 F.2d 799, 805 (3d Cir. 1952); and citing *Giurdanella v. Giurdanella*, 358 F.2d 321, 325 (3d Cir. 1966); *Municipality of St. Croix v. Stakemann*, 1 V.I. 60, 64 (D.V.I. 1924); *People v. Demming*, 1 V.I. 116, 125 (D.V.I. 1927)), which was, in turn, adopted from the code of the Territory of Oregon, Act of May 17, 1884, 23 Stat. 24, ch. 53, § 7 ("[T]he general laws of the State of Oregon now in force are hereby declared to be the law in [Alaska]."); *Bermudez v. V.I. Tel. Corp.*, 556 V.I. 174, n.9 (V.I. Super. Ct. 2011) ("The 1921 Codes were 'developed by two young lawyers, Leslie Curry and Denzil Noll, both of whom had come to the U.S. Virgin Islands from the Territory of Alaska soon after 1917. Taking as their lodestar the Alaska Code which, in turn, was derived from the Oregon Code, these two young lawyers compiled two separate codes—one for each municipality.'" (quoting John D. Merwin, *The U.S. Virgin Islands Come of Age: A Saga of Progress in the Law*, 47 A.B.A.J. 788, 779 (1961))); *see Commonwealth v. Munson*, 127 Mass. 459, 461 (Mass. 1879) (Gray, C.J.) ("This clearly appears on tracing the history of the legislation upon the subject; the whole of which, whether repealed or unrepealed, is by a familiar rule to be considered in ascertaining the intention of the Legislature." (citing *Church v. Croker*, 3 Mass. 17, 21 (Mass. 1807); *Eaton v. Green*, 39 Mass. 526 (Mass. 1839); *Commonwealth v. Bailey*, 95 Mass. 541 (Mass. 1866))). Because many states and the federal government based their definitions of Mayhem upon the statute of Charles II, 22 and 23, ch. 1, it is unsurprising that the 1921 Code's definition of Mayhem was remarkably similar to the original definition of that crime adopted in New York in 1788 and recodified in 1801, "'that every person who, form a premeditated design, etc., shall, first, cut out or disable the tongue; or second, put out an eye; or, third, slit the lip or destroy the nose; or, forth, cut off or disable any limb or member of another on purpose, upon conviction thereof, shall be imprisoned in a State prison.'" *Foster v. People*, 50 N.Y. 598, 607 (N.Y. Ct. App. 1872) (quoting 2 R.S. § 36 and noting that this provision "follow[ed] the enumeration in the previous statutes"). This statutory history is noted because it is not exactly clear when New York adopted the version of section 1400 of its Penal Law that served as a model for the present Virgin Islands definition of Mayhem, yet we rely on cases decided

Code and incorporate those statutes that had either altered the existing code provisions or established new laws, including those that had established new crimes, and the Legislature enacted the 1957 Code into law on May 16, 1957. Revised Organic Act of the Virgin Islands, Pub. L. No. 517, 68 Stat. 497, 501 (July 22, 1954) (subsection 8(3)); An Act to Enact the Virgin Islands Code, and for Other Purposes, Act No. 160, 1957 V.I. Sess. Laws 20 (May 16, 1957) (section 1); *see also* 1 V.I.C. § 3 (1957). At that time, the definition of Mayhem was substantially revised "to provide a more up-to-date provision" that was based on section 1400 of the New York Penal Law, although the penalty provision remained the same. 14 V.I.C. § 1341 (1957) (reviser's note). The definition of Mayhem established in the 1957 Code has remained unchanged;[25] therefore, we consider decisions of the courts of New York construing section 1400 of the New York Penal Law and its successor codifications. *See Virgin Islands Waste Mgmt. Auth. v. Bovoni Investments, LLC*, 61 V.I. 355, 364 n.3 (V.I. 2014).

¶46 The first significant case from New York addressing Mayhem is *Foster v. People*, 50 N.Y. 598, 604-09 (N.Y. Ct. App. 1872). *Foster* is noteworthy for purposes of our construction of section 1341 because it establishes that the New York statute defining Mayhem was not a codification of the English common law crime of Mayhem[26] and, instead, was based on "the statute 22 and 23

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by New York courts that predate 1957. As the provisions are similar, those cases remain relevant and persuasive for the present statutory analysis.

[25] In 2014, the Legislature repealed subsection (b) of section 1341 of title 14 of the 1957 Code, which had been declared to be an unconstitutional mandatory presumption in *Gov't of the V.I. v. Parrilla*, 7 F.3d 1097, 1106 (3d Cir. 1993). An Act Amending Title 14 Virgin Islands Code, Chapter 67 to Redefine the Crime of Mayhem, Act No. 7657, 2014 V.I. Sess. Laws 266 (Oct. 13, 2014) (section 1).

[26] Statutory codifications of common law crimes—whether English common law or U.S. common law—are interpreted in a slightly different manner than other statutes. While, usually, a legislature is presumed to have utilized the ordinary meaning of the language of a statute and, thus, fully expressed the intent of the statute in the words that it chose, *Ubiles*, 66 V.I. at 590, a codification of a common law crime is presumed to incorporate the substance of the common law. *Wallace*, 71 V.I. at 763 (Swan, J., concurring) (citing *Wells*, 519 U.S. at 491; *United States v. United*

Charles II, chap. 1, entitled 'An act to prevent malicious maiming and wounding.'" *Foster*, 50 N.Y. at 606.[27]

¶47 Subsection 1341(a)(1) of title 14 requires proof beyond a reasonable doubt that the defendant willfully, and with the specific intent to either injure, disfigure, or disable, inflicted an

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States Gypsum Co., 438 U.S. 422, 436 (1978); *Morisette v. United States*, 342 U.S. 246, 251-52 (1952))); *Baumann v. Pub. Emps. Relations Bd.*, 68 V.I. 304, 339 (V.I. Super. 2018) (observing that it is "presume[d] that the Legislature enacts statutes with knowledge of the common law and court decisions" addressing a subject); *see* 1 V.I.C. § 42 ("Technical **words and phrases**, and such others **as may have acquired a peculiar and appropriate meaning in the law**, shall be construed and understood according to their peculiar and appropriate meaning." (emphasis added)); *State v. Pike*, 49 N.H. 399, 406 (N.H. 1870) ("That statute does not provide that the words 'malice aforethought,' when used in indictments for murder, shall be construed according to their popular meaning. In the absence of such a proviso, these words, having acquired a definite meaning at common law, must be understood as having this common law meaning affixed to them when used in the statute, although such legal meaning may differ from their literal sense, or form the meaning when used in common conversation." (citing *Mayo v. Wilson*, 1 N.H. 53, 55 (N.H. 1817); *Thurber v. Blackbourne*, 1 N.H. 242, 245 (N.H. 1818))). This is particularly significant in the present analysis because, under the English common law unmodified by the statute of Charles II, it was not Mayhem to cut off an ear. *State v. Johnson*, 51 N.E. 40, 40 (Ohio 1898) ("[A]t common law, whatever the injury to any member of the body might be, if it did not permanently affect the physical ability of the person to defend himself, or annoy his adversary, it did not amount to mayhem. Neither the biting of an ear, nor the slitting of the nose, was regarded as an injury of this character."); *see Foster*, 50 N.Y. at 604 ("Mayhem at common law is defined by Blackstone as the violently depriving another of the use of such of his members as may render him less able in fighting either to defend himself or to annoy his adversary." (citing 4 WILLIAM BLACKSTONE, COMMENTARIES 204)). Furthermore, as discussed in the following footnote and footnote 33, New York, although having codified the U.S. common law definition of Mayhem, *Foster*, 50 N.Y. at 606-07, had altered that codification prior to the Virgin Islands' adoption of the New York definition of Mayhem in 1957. As such, the V.I.'s abandonment of the definition of Mayhem provided in the 1921 Code was an express alteration of a codification of the U.S. common law, just like New York's prior alteration of that definition.

[27] The 1921 Code provision defining Mayhem was a codification of U.S. common law. *See Cascen*, 60 V.I. at 404-05 (observing that the Legislature "is presumed to know the common law [in existence] before . . . [a] statute was enacted" and that because it is also presumed that "statutes are consistent with the common law," courts will "not presume that the Legislature intends to abrogate or modify a common law rule except to the extent expressly declared or clearly indicated" in a statute). As the United States Supreme Court has explained, when referring to the "common law" in this country, the reference is to "those settled usages and modes of proceeding **existing in the** common and **statute law of England**, before the emigration of our ancestors, and which are shown not to have been unsuited to their civil and political condition by having been acted on by them after the settlement of this country [and] the laws of many of the states at the time of the adoption of" the Constitution or amendment thereto. *Den v. Hoboken Lamp & Imp. Co.*, 59 U.S. (18 How.) 272, 277, 279-80 (1855) (Curtis, J.) (emphasis added) ("[W]e must look to those settled usages and modes of proceeding existing in the common and statute law of England, before the emigration of our ancestors, and which are shown not to have been unsuited to their civil and political condition by having been acted on by them after the settlement of this country. . . . This legislative construction of the Constitution, commencing so early in the government, when the first occasion for this manner of proceeding arose, continued throughout its existence, and repeatedly acted on by the judiciary and the executive, is entitled to no inconsiderable weight upon the question whether the proceeding adopted by it was 'due process of law.' **Tested by the** common and **statute law of England prior to the emigration of our ancestors**, and by the laws of many of the states at the time of the adoption of this amendment, the proceedings authorized by the act of 1820 cannot be denied to be due process of law . . . . '[D]ue process of law' generally implies and includes actor, reus, judex, regular allegations, opportunity to answer,

"injury" upon "the person of another" that leaves the victim "seriously disfigured" through the "mutilation" of a part of the victim's body. The "person of another" indicates "the living body of a human being." COMPACT AMERICAN DICTIONARY: A CONCISE DICTIONARY OF AMERICAN ENGLISH at 619 (defining "person"); *id.* at 34 (defining "another" as a pronoun that indicates "an additional or different one"); *see Gonsalves*, 70 V.I. at 834 n.10 (citing BLACK'S LAW DICTIONARY 1324 (10th ed. 2014) (defining a person as a human being)). To "seriously disfigure" indicates "to spoil the appearance or shape of," and the use of the adverb "seriously" indicates that such disfigurement must be "grave in quality or manner." COMPACT AM. DICT. at 245 (defining "disfigure"); *id.* at 747 (defining "serious").[28] Grave is an adjective indicating something serious in quality. *See id.* at 367 (defining "grave"); *Wallace v. People*, 71 V.I. 703, 756 (V.I. 2019) (Swan, J., concurring) (defining "grave"). Therefore, Mayhem requires that the defendant's actions harm or wound a part of another person's body and that such body part be irreparably damaged or spoiled in appearance such that "'a reasonable observer would find [the victim's]

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and a trial according to some settled course of judicial proceedings . . . ." (emphasis added) (citing Laws of Massachusetts, vol I, p. 266; Connecticut, Revision of 1784, p. 198; 2 Laws of Penn. 13; 5 Stats. of S.C. 55; 1 Jones & Varick's Laws 34 (N.Y.); 1 Henning's Stats. of Virginia, 319, 343; 12 Henning's Stats. of Virginia, 562; Laws of Vermont, 340 (1797, 1800); 7 Louis. An. R. 192; 3 Stats. at Large, 33, § 28; 3 Stats. at Large, 177, § 33; *Prigg v. Pennsylvania*, 41 U.S. (16 Pet.) 621 (1842); *United States v. Nourse*, 34 U.S. (9 Pet.) 8 (1835); *Bullock's Case*, 31 U.S. (6 Pet.) 485, n.a (1832) (M'Lean, J.); *Randolph's Case*, 20 F. Cas. 242 (D. Va. 1833) (Barbour, D.J.); *United States v. Nourse* (*Nourse's Case*), 27 F. Cas. 192 (D.C. Cir. Ct. 1831) (Thruston, C.J.); *Greene v. Briggs*, 10 F. Cas. 1135, 1139 (D.R.I. 1852); *Hoke v. Henderson*, 15 N.C. 1 (N.C. 1833) (Ruffin, C.J.); *Taylor v. Porter*, 4 Hill 146 (N.Y. 1843); *Van Zandt v. Waddle*, 10 Tenn. 260 (Tenn. 1829); *State Bank v. Cooper*, 10 Tenn. 599 (Tenn. 1831); *Jones's Heirs v. Perry*, 18 Tenn. 59 (Tenn. 1836); Coke, 2 Inst. 50; 3 Coke 12b; Com. Dig., Debt, G.2; Coke, 2 Inst. 19; Coke, 2 Inst. 47, 50; 33 Hen. VIII c. 39; Gilbert's Exch. 127; 2 Tidd's Practice 1047; 1 Vest. 269; Chitty's Prerog. 267; West, 22; 11 Price, 29; 13 Elix. Ch. 4; Price, Law and Practice of the Exchequer, Ch. 9; Price, 231, 162, 233 n.3)); *Botsford*, 141 U.S. at 253 ("But the learning and research of the counsel for the plaintiff in error have failed to produce an instance of its ever having been considered, in any part of the United States, as suited to the habits and condition of the people.").

[28] *See generally* COMPACT AM. DICT. at 521 (defining "member" as "a part or an organ of a human . . . body"); *id.* at 432 (defining "injury" as "an act that harms or damages," "a wound or other particular form of hurt, damage, or loss."); *id.* at 551 (defining "mutilation" as the act of mutilating, and to "mutilate" means "to disfigure by damaging irreparably").

appearance distressing or objectionable.'" *People v. Greer*, ST-16-CR-193, 2018 WL 4348342, at *3 (V.I. Super. Ct. Feb. 21, 2018) (unpublished) (quoting *People v. McKinnon*, 15 N.Y.3d 311, 315 (N.Y. 2010)). This standard is objective, and "the [victim's] injury must be viewed in context, considering its location on the body and any relevant aspects of the victim's overall physical appearance." *McKinnon*, 937 N.E.2d at 526.

¶48 It remains true that, if the legislative intent is clear from the plain language of a statute, no further inquiry is necessary. *In re Infant Sherman*, 49 V.I. 452, 456 (V.I. 2008). Yet, determining the meaning of a word requires consideration of the context, structure, placement, and other linguistic indicators in the statute. *Ubiles*, 66 V.I. at 591; *e.g.*, *Gilbert v. People*, 52 V.I. 350, 356 (V.I. 2009) (discussing the legal effect of the grammatical meaning of an adjective). In defining Mayhem, the Legislature has provided a further standard of proof in order to support a conviction for Mayhem by specifically precluding a conviction under certain circumstances, stating that "no conviction for mayhem can be had" if, at the time of trial, the victim has "so far recovered from injury, that he is no longer disfigured by it in personal appearance, or disabled in any member or organ of his body, or affected in physical vigor." 14 V.I.C. § 1344.[29] This section limits the definition of "seriously disfigured" to an injury that has not healed such that it appears "normal."

¶49 Greer argues that "under this definition of serious disfigurement" the prosecution's evidence was insufficient, as demonstrated "by the fact that Williams elected not to so much as

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[29] It should be noted that "The intention of a criminal law is to govern, and is to be discovered by reading the whole law." *Wynehamer*, 13 N.Y. at 473 (Mitchell, J., dissenting). Additionally, the Legislature has specifically provided that "no implication, inference, or presumption of a legislative construction" can be drawn from the "titles, parts, chapters, subchapters, and sections" or "heading" "of this Code." 1 V.I.C. § 44; *see also* 1 V.I.C. § 45; *e.g.*, *First Am. Dev.*, 55 V.I. at 603-04 (quoting 1 V.I.C. § 44 and citing *In re Najawicz*, 52 V.I. 311 (V.I. 2009)). Therefore, although the heading of section 1344 states "recovery of injured person as a defense," it is the actual text of the statute that governs the provision's construction and effect. *See Knowles v. Knowles*, 354 F. Supp. 239, 244 (D.V.I. 1973) (citing 1 V.I.C. § 44 and noting that the section's title "should not defeat an otherwise clear substantive provision"). By its

show the jury his ear on the day of trial."[30] While this argument could very well be convincing in a case with facts different from those presented in this appeal,[31] there is absolutely no question that Williams was seriously disfigured and that his appearance remained such as "a reasonable observer would find his appearance distressing or objectionable." Indeed, the facts here forcefully demonstrate the old adage that a picture is worth a thousand words. Exhibits 1-4 graphically display that a significant portion of Williams' ear was bitten off and that the missing portion was visible by any casual observer. Furthermore, Dr. Barot explained that the "white part" in the picture was exposed, severed cartilage and further explained that the severed portion of the ear could not be reattached; therefore, it is irrefutable that the disfigurement was permanent. There is no doubt that a reasonable observer would find the loss of such a significant portion of an ear distressing; indeed, Dr. Barot said so herself.[32]

¶50 Moreover, this interpretation is bolstered by consideration of the legislative history. The original Mayhem provision in the 1921 Code was a specification of particular injuries that constituted the crime of Mayhem; this included anyone who "slits an . . . ear." Code 1921, Title IV, ch. 5, §§ 10, 11. In the 1957 Code, the definition of Mayhem was expanded "to provide a

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plain language, this section is a definitional limit on what constitutes a permanent and serious disfigurement. 14 V.I.C. § 1344 ("[N]o conviction for mayhem can be had . . . ."); *see generally Cincinnati v. Vester*, 281 U.S. 439, 448 (1930) ("To define is to limit . . . .").

[30] This case does not present an opportunity to consider what sort of disfigurement may, in fact, be *de minimus* such that construing the definition of Mayhem to apply to the injury would be an absurd result not contemplated by the Legislature. That issue remains to be determined upon a case with facts that present such a consideration.

[31] The prosecution is advised to present the disfigurement at the time of trial in future cases so as to avoid a judgment of acquittal due to insufficient evidence.

[32] If anyone wishes to argue that the loss of a significant portion of an ear is not a serious disfigurement, they should watch a cinematic depiction of this kind of injury. *E.g.*, Vikings, Season 3 Episode 6, Born Again (History Channel Mar. 26, 2015) (in which Judith's ear is severed as punishment for adultery).

more up-to-date provision" that governed all injuries willfully inflicted upon another that, in a significant way, destroyed or disfigured a body part or diminished the victim's health.[33] Undeniably, this includes a disfigurement that, from the perspective of "'a reasonable observer[, makes the victim's] appearance distressing or objectionable.'" *Greer*, 2018 WL 4348342, at *3 (quoting *McKinnon*, 15 N.Y.3d at 315). Indeed, it would be absurd to conclude that the Legislature did not intend for injuries such as presented in this case to fall within the definition of Mayhem as embodied in 14 V.I.C. § 1341 when it amended this provision and chose to use significantly broader language than the prior definition. *See Thompson v. Thompson*, 218 U.S. 611, 614 (1910) (Day, J.) ("In construing a statute, the courts are to have in mind the old law and the change intended to be effected by the passage of the new."); *Haggett v. Hurley*, 40 A. 561, 563 (Me. 1898) (Emery, J.) ("The important and decisive question is whether a married woman can enter into the relation of a business partnership with her husband, and thus subject herself and her separate estate to liability for the partnership debts contract in the name of the partnership. . . . Is such an authority within the spirit of the statue? To determine this question we shall consider the rules and reasons of the anterior law, the character and tread of its successive modifications, and the reasons for them, and the course, purpose, and policy of legislation upon the subject. If the purpose of a course of legislation can be perceived, it is always to be presumed that the legislature intends to further that purpose, rather than abandon it." (emphasis added)); *cf. Ubiles*, 66 V.I. at 595-97 (finding that

[33] The definition of Mayhem in the 1957 Code was very clearly a statutory alteration of a prior statute, in this instance altering the 1921 codification of the U.S. common law crime of Mayhem. *See Tyson v. People*, 59 V.I. 391, 414 (V.I. 2013) (concluding that "to expand the application of . . . [a common law] doctrine" as addressed in a statute, the Legislature "must amend the statute"); *Banks v. Int'l Rental & Leasing Corp.*, 55 V.I. 967, 979 (V.I. 2011) (observing that the Legislature has the "inherent power to alter or abrogate the common law").

the Legislature's use of the broad language of "actual physical control" encompassed both operation of a motor vehicle as well as a larger range of conduct).

¶51 Finally, this conclusion is supported by the decisions of New York courts. For example, it was deemed to be sufficient evidence of a serious injury when the victim suffered a gunshot wound that had inflicted "a substantial and serious disfigurement" that could be seen "from [viewing] the wound inflicted, which left a substantial depression in the victim's thigh." *People v. Brown*, 585 N.Y.S.2d 106, 108 (N.Y. App. Div. 1992) (citing *People v. Steven S.*, 553 N.Y.S.2d 812 (N.Y. App. Div. 1990)). Certainly Williams' loss of a large portion of his ear was a more serious disfigurement than a depression in one's thigh.

¶52 Additionally, a conviction was also upheld where the defendant bit off the victim's ear lobe, and this was found to be sufficient evidence of a serious and permanent disfigurement. *People v. Elforte*, 633 N.Y.S.2d 14, 14 (N.Y. App. Div. 1995) (citing *People v. Mohammed*, 557 N.Y.S.2d 35 (N.Y. App. Div. 1990)). Likewise, when the victim was left with a permanent, visible scar near her eye that could be concealed with makeup, the evidence was deemed sufficient to support a finding of a serious and permanent disfigurement. *People v. Kenney*, 737 N.Y.S.2d 856, 856 (N.Y. App. Div. 2002) (citing *People v. Jackson*, 700 N.Y.S.2d 453 (N.Y. App. Div. 1999); *People v. Askerneese*, 683 N.Y.S.2d 200 (N.Y. App. Div. 1998)). Finally, in *People v. Felice*, the court found that there was sufficient evidence establishing a permanent, serious disfigurement when, after the defendant had bitten the victim's nose, the victim was left with a visible scar. 846 N.Y.S.2d 531, 532 (N.Y. App. Div. 2007) (citing *Kenney*, 737 N.Y.S.2d at 856; *Elforte*, 633 N.Y.S.2d at 14). While these cases do not present precisely the same permanent disfigurement as Williams', they are sufficiently similar to support the conclusion that Williams' disfigurement was permanent and serious such that "a reasonable observer would find his appearance distressing or

objectionable."[34] The trial court's definition of "seriously disfigure[d]" and its denial of Greer's motion for judgment of acquittal are supported by the plain language of 14 V.I.C. § 1341, the statutory history, and cases decided in New York (the jurisdiction from which the Virgin Islands borrowed the present definition of Mayhem). Therefore, the trial court did not err in finding sufficient evidence of permanent, serious disfigurement and denying Greer's motion for judgment of acquittal.

III. CONCLUSION

¶53 Because there was both documentary and testimonial evidence that Greer bit off a significant portion of Williams' ear such that the ear was permanently and seriously disfigured, the evidence was sufficient to rationally support the jury's finding of guilt beyond a reasonable doubt for the crime of Mayhem, and Greer's conviction is affirmed.

Dated this 20th day of April, 2021.

BY THE COURT:

IVE ARLINGTON SWAN
Associate Justice

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

By: _____
Deputy Clerk II

Date: 4/20/2021

[34] *See also Askerneese*, 683 N.Y.S.2d at 201 (citing *People v. Wade*, 590 N.Y.S.2d 245 (N.Y. App. Div. 1992); *People v. Perez*, 584 N.Y.S.2d 697 (N.Y. App. Div. 1992)); *Tully*, 67 N.Y. at 18.