IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. THOMAS/ST. JOHN

PEOPLE OF THE VIRGIN ISLANDS	)	CASE NO. ST-10-CR-335
Plaintiff	)	
	)	
Vs.	)	ACTION FOR:
	)	
	)	
PETER AMEDEE Defendant	)	

NOTICE
OF
ENTRY OF JUDGMENT/ORDER

TO: RENEE GUMBS-CARTY Esquire — JUDGES AND MAGISTRATES OF THE SUPERIOR COURT

J. BRION MORRISTTE Esquire — IT/LAW CLERKS

LIBRARIAN Esquire — ORDER BOOK

Please take notice that on November 16, 2010 a Memorandum Opinion and Order was entered by this Court in the above-entitled matter.

Dated: November 16, 2010

VENETIA H. VELAZQUEZ, ESQ.

Clerk of the Superior Court

By: MSkeete
MARSHA SKEETE

Court Clerk II

IN THE SUPERIOR COURT THE VIRGIN ISLANDS

DIVISION OF ST. THOMAS AND ST. JOHN

PEOPLE OF THE VIRGIN ISLANDS,	)	
	)	
Plaintiff,	)	CASE NO. ST-10-CR-335
	)	
v.	)	
	)	
PETER AMEDEE,	)	
	)	
Defendant.	)	
	)	

MEMORANDUM OPINION

This matter comes before the Court on Defendant's October 8, 2010, Motion for Judgment of Acquittal, or, in the Alternative, for a New Trial. Defendant originally made an oral motion for judgment of acquittal at the close of the People's case and orally renewed the motion following the jury's return of a verdict of guilty of assault in the third degree and aggravated assault and battery on September 29, 2010. In the written motion Defendant contends that the verdict is not supported by the evidence, that no reasonable jury could have disregarded the testimony of three alleged eyewitnesses who testified on behalf of Defendant, and that the jury did so because counsel for the People created confusion by misrepresenting in closing argument that all three of the witnesses were employed by the Defendant. (Defendant indicates he does not contend that the alleged misrepresentation was intentional.) The People submitted an Opposition on November 10, 2010, asserting that the evidence was sufficient to establish Defendant's guilt, and Defendant replied on November 15, 2010. Contrary to Defendant's assertion in the reply, the People did not specifically address the allegation that the People's closing argument misstated the evidence. Defendant's

reply argues that there was no reasonable basis for the jury to disregard the testimony of the defense witnesses other than the People's misrepresentation in closing argument.

LEGAL STANDARDS

Rule 29 of the Federal Rules of Criminal Procedure, made applicable to the Superior Court through Rule 7 of the Rules of the Superior Court, permits a defendant to move for a judgment of acquittal following the return of a jury verdict when the evidence is insufficient to sustain a conviction. A judgment of acquittal must be granted when, viewing all the evidence in the light most favorable to, and drawing all reasonable inferences in favor of, the prosecution, the Court determines as a matter of law that no reasonable jury could find the defendant guilty beyond a reasonable doubt. *Walters v. Virgin Islands*, 36 V.I. 101 (D.V.I. 1997), *affd.*, 135 F.3d 764 (3rd Cir. 1997); *United States v. Charles*, 35 V.I. 309 (D.V.I. 1996). Unlike a motion for a new trial, a Rule 29(c) motion made after verdict does not permit the court to be a "13th juror". *United States v. Genova*, 333 F.3d 750 (7th Cir. 2003). The Court has limited latitude when considering a motion for judgment of acquittal in that it may not weigh the evidence or assess the credibility of the witnesses. *United States v. Sparkman*, 235 F.R.D. 454, 455 (E.D. Mo. 2006), *affd.*, 500 F.3d 678 (8th Cir. 2007). See also *United States v. Hoover-Hankerson*, 406 F.Supp.2d 76, 85 (D.C.Cir. 2005) (in reviewing sufficiency of evidence court "must consider all the evidence submitted to a jury, 'regardless of whether it was properly admitted.'") If the evidence rationally supports two conflicting hypotheses, the court will not disturb the conviction. *Sparkman, supra.*

On the other hand, when considering a motion for a new trial under Rule 33 of the Federal Rules of Criminal Procedure, the Court's power is broader. The Court may consider witness credibility and weigh the evidence, and the Court may grant a new trial "if the interest of justice so requires". *Id.* A motion for new trial may be made on any ground that demonstrates that the

verdict was against the interest of justice, including, among others, prosecutorial misconduct in closing argument. *United States v. Schneider*, 157 F.Supp.2d 1044 (N.D.Iowa 2001). Even when there has been misconduct, a new trial will generally not be granted in the absence of a demonstration of prejudice. *United States v. Cunningham*, 54 F.3d 295 (7th Cir.), *cert. den.* 516 U.S. 883 (1995).

DISCUSSION

The Sufficiency of the Evidence

Count I of the Information charged Defendant with assault in the third degree by striking Althea Frederick in the head with a dangerous weapon, a pair of pliers, and Court II charged him with aggravated assault and battery in that Defendant, an adult male, used unlawful violence upon Althea Frederick, a female, by striking her in the head.

At trial, the People presented the testimony of Althea Frederick that she and her husband Francis Frederick occupied a house they had built themselves and had moved onto property owned by Defendant at 1-7 Grunwald, St. John, VI. She testified that on July 11, 2009, their power went off as they were getting dressed for church. They observed Defendant and a "tall, fair skinned Spanish man", "Peter's wife's nephew", (identified in later testimony as Socrate Antonio Diaza) near the meter box by the road above their home. When the Fredericks later started to leave for church, they saw Defendant and Antonio, who had a pair of pliers in his hand. Defendant became angry when Antonio turned away after Mr. Fredericks confronted him about interrupting of the power, whereupon Defendant grabbed the pliers and rushed toward the area below the house where the power was connected. Believing that Defendant intended to cut off their power (apparently by cutting and removing an electrical cord belonging to Defendant), Mrs. Frederick stepped in front of Defendant and blocked him from gaining access to the electrical connection. She testified that she

was standing on a stairway below Mr. Amedee when he approached her angrily, said "this is my house", raised the pliers, and struck her in the head with them. Ms. Frederick was treated at the hospital for a cut approximately one inch in length on top of the left side of her head that required four staples to close. She testified that after the incident Defendant ran down the hill and fell, but that she didn't see him fall.

Francis Frederick, Mrs. Frederick's husband, who had at one time been an employee of Defendant, largely corroborated the testimony of his wife, most significantly with regard to how his wife came to be struck with the pliers. He identified the person from whom Defendant had taken the pliers as "Socrate", and described him as an employee of Defendant having a close relationship with Defendant. He also testified that there were other tenants who resided on Defendant's property in different dwellings that all received power from the same source as the Fredericks and were not separately metered. An informal method of splitting the electrical bill in accordance with relative usage had been developed, but disputes had arisen about the Fredericks' share of the bill. He confirmed his wife's version of events surrounding her injury and testified that, after Defendant struck her, Defendant ran down the hill and fell. Mr. Frederick admitted that after Defendant struck his wife, he picked up a stone and chased Defendant, but said he dropped the stone when Defendant fell. Mr. Frederick said he retrieved the pliers after Defendant dropped them to pick up stones as well. Most importantly, Mr. Frederick also stated that his wife was standing on the stairs below Defendant when the blow was struck and described Defendant as being "in a rage" at the time.

The People also called Detective Corporal Neal Bailey, who received the pliers from Mr. Frederick, and Rita M. Liburd, a neighbor who observed Defendant and two other men near the meter box near the road and, later, heard screaming and observed Ms. Frederick sitting near the

road bleeding from her head wound. The People's final witness in their case in chief, Sergeant Clayton Brown, stated that he was dispatched to the scene, where he saw Ms. Fredericks bleeding from the top of her head. Defendant told him what had happened, and, describing Defendant's version of events, Sgt. Brown said he "found it strange" considering the location of Ms. Frederick's wound. Sgt. Brown transported Defendant to the police station after Defendant was arrested.

In addition to his own testimony, Defendant presented the testimony of three purported eyewitnesses, all of whom were his tenants at the time and all of whom testified through a Spanish – English interpreter. Cornelia Elizabeth Pepen testified that Defendant cut the power to the Fredericks' house because of a dispute over payment of the Fredericks' share of the electric bill and that Defendant was cutting the cable when Ms. Frederick "assaulted" him. She also testified that Mr. Frederick attacked Defendant as well, who slipped and fell, causing Defendant to accidentally strike Ms. Frederick with the pliers. She testified that Defendant "swung his hand when walking backward" and struck Ms. Frederick "when he fell". She testified that she did not work for Defendant and was no longer his tenant at the time of trial. On cross examination, she admitted that she was outside her apartment some distance away when the events occurred, and that Socrate Antonio, with whom she used to live, lived in a divided portion of the same house in which her apartment was located. She also testified that "Jose", the nephew of her stepfather, who worked for Defendant and lived in another apartment on Defendant's property, was also present. Significantly, when shown People's Exhibit No. 3, a photograph of Defendant standing at the bottom of the stairs, she indicated that it showed Defendant's location when he was attached by Mr. Frederick and fell.

Socrate Antonio Diaza testified that he worked for Defendant and was assisting Defendant in disconnecting the Fredericks' power on the day of the incident. He testified that he gave the

pliers to Defendant "and left", that Mr. Frederick came on top of Defendant and "assaulted" Defendant, and that Ms. Frederick then "attacked" Defendant, yelling at him and blocking the electrical cables. He testified Ms. Frederick slipped, that Mr. Frederick pushed Defendant, who slipped, that Defendant "fell trying to run away", and that Defendant struck Ms. Frederick while falling. Mr. Antonio also stated that People's Exhibit No. 3 depicted the location of Defendant at the time of the incident. On cross-examination he testified that Defendant was below Ms. Frederick when she slipped trying to attack Defendant, that Defendant slipped, and his hands went up trying to catch his balance, resulting in Defendant hitting her. He also said Defendant was walking backward and "caught his balance" when he hit her. In an apparent attempt to explain the location of Ms. Frederick's wound, he was the only witness to suggest that Ms. Frederick bent forward as she fell.

Jose Elias testified that he was a tenant of Defendant and that he was also present when Defendant went to cut the electrical cable to the Fredericks' house. He said Ms. Frederick was above Defendant at the time of her injury, that both Ms. Frederick and Defendant slipped when she pushed Defendant, and that she got injured when he hit her with the pliers as he fell.

Finally, Defendant testified that he had decided to cut the Fredericks' power and had told Socrate to pull the power cable, but that the Fredericks stopped Socrate. Defendant said he was going down to cut the cable when the Fredericks attacked him, that Ms. Fredericks "jumped" him and pushed him, that both the Fredericks punched him, and that he had his hands up to block the punches. He indicated that People's Exhibit No. 3 accurately depicted his location at the time Ms. Fredericks was struck. Incredibly, Defendant repeatedly insisted that he had taken the picture, even though he appeared in the photograph and was clearly located many feet from the camera. After repeating this statement several times, Defedant then said he had asked Socrate to take the

photograph. He insisted that he was he was below Ms. Frederick at the time she was struck, indicating she slipped and he "dropped his hand as she raised up." Defendant said he did not intend to hit her.

In rebuttal, the People called Officer Chadka Mayers, who testified that she was the person who arrested Defendant and that she had taken a statement from him in which he had told her that he fell with the pliers in his hand and was falling backward when he hit Ms. Frederick. She testified that the Defendant's version of events was inconsistent with Ms Frederick's injury, and that he made no mention of Ms. Frederick punching him. She also stated that she saw Socrate Antonio at the scene and asked if anyone wanted to make a statement, but that he refused to make a statement on the scene. The People also recalled Francis Frederick who testified that neither he nor his wife had punched Defendant.

During closing argument, the People primarily argued that the testimony presented conflicting versions of what occurred and that the version presented by the prosecution was more credible. The prosecutor argued that the Defendant's version of what occurred was inconsistent with the injury Ms. Frederick received and that her injury could not have been an accident. He did indicate that all of the witnesses called by Defendant worked for him and lived on his property, and argued as well that they would "say whatever they can to save their jobs".

Defense counsel argued that the police were prejudiced against Spanish-speaking witnesses, that the Fredericks' testimony was motivated by greed, as they had sued Defendant over this incident, and that the Fredericks "are lying over money". He specifically pointed out that while Antonio had worked for Defendant off and on for years, Elias hasn't worked for Defendant in a year and Pepen had never worked for Defendant. He also argued that Ms. Frederick's injury was not serious and that the pliers were not a deadly weapon.

The jury deliberated for approximately two hours before returning a verdict of guilty on both counts of the Information.

Viewing all the evidence in the light most favorable to, and drawing all reasonable inferences in favor of, the prosecution, as it must in deciding the Motion for Judgment of Acquittal, the Court determines as a matter of law that a reasonable jury could find the defendant guilty beyond a reasonable doubt. The testimony of Mr. and Ms. Frederick, as well as the photographs of her injury provided more than sufficient evidence to support the convictions. Ms. Frederick's testimony alone was sufficient to establish that Defendant struck her with pliers with intent to injure her, and the weight of the pliers and manner in which they were used was sufficient to establish the use of a dangerous or deadly weapon. The location of the injury suffered by Ms Frederick was consistent with the version of events to which she and her husband testified and was consistent with a downward blow to the top of her head delivered from someone standing above her. As the Court may not weigh the evidence or assess the credibility of the witnesses in deciding a Rule 29 motion, the Court cannot consider any of Defendant's arguments other than the alleged insufficiency of the evidence in deciding the Motion for Judgment of Acquittal. Because there is substantial evidence to support the verdict, the Court denies Defendant's Motion for Judgment of Acquittal.

Motion for a New Trial

Defendant also contends that no reasonable jury could have disregarded the testimony of the three alleged eyewitnesses who testified on behalf of Defendant, and that the only reason this jury did so was because counsel for the People misrepresented in closing argument that all three of the witnesses were employed by the Defendant.

A prosecutor's comments during closing argument warrant a mistrial only if the remarks were improper and the remarks prejudiced the substantive rights of the accused. *Edwards v. Government of the Virgin Islands*, 48 V.I. 468 (D.V.I. 2006). When reviewing prosecutorial misconduct claims, consideration is given to the scope of the comments within the context of the whole trial, the effect of any curative instructions given, and the weight of the evidence against Defendant. *Potter v. Government of the Virgin islands*, 48 V.I. 446 (D.V.I. 2006). If the court is convinced that the jury would have convicted the accused even had it not been exposed to the allegedly improper prosecutorial comments, it must conclude that no actual prejudice accrued. *Id.*

The Court does not have the benefit of a transcript of the proceedings, but does not recall any objection from Defendant at the time of the allegedly improper comments. The Court did not issue any curative instruction, but the Court does not recall that Defendant ever requested a curative instruction. Regardless, Defendant immediately refuted the inaccurate statement in his closing argument, pointing out that Elias hasn't worked for him in a year and Pepen had never worked for Defendant. The Court also instructed the jury that the arguments of counsel were not evidence and that they should instead rely on their memories of the evidence in arriving at a verdict.

The discrepancy between the People's closing argument and the testimony of the three witnesses was relatively insignificant when viewed in the context of the arguments as a whole. Moreover, Defendant has not demonstrated that he was actually prejudiced by the allegedly improper argument.

Weighing the inconsistency between the injury suffered by Ms. Frederick and the rather incredible version of events presented by the defense, considering the evidence as a whole, the Court is compelled to conclude that there was a reasonable basis for the jury to disregard the testimony of the defense witnesses other than the People's unintentional misstatement in closing

argument. It would have been nearly impossible for Defendant, while falling backward and trying to catch his balance, to strike Ms. Frederick on the top of the head when she was standing above him on the stairs. Ms. Pepen was some distance away at the time of the occurrence, but claims to have witnessed all of the significant events. Mr. Antonio and Mr. Elias either were working for Defendant or had worked for him in the past, and all three witnesses were tenants of Defendant. Thus, while the credibility of one of the witnesses could not be attacked on the basis of employment, the jury could have drawn negative inferences concerning all three of them based upon their tenancy on Defendant's property at the time of the occurrence. The case was, as the attorneys argued, one of credibility, and the Court is not convinced that the jury made its credibility determination based solely upon a single comment from the prosecutor. When viewed in light of all of the evidence, it appeared to the Court that the version of events described by Defendant and his witnesses was not credible and appeared to defy the laws of physics. The jury could clearly have drawn the same conclusion. The Court cannot conclude that the interest of justice requires a new trial, and the motion for new trial is, therefore, also denied.

An Order consistent with this Memorandum Opinion shall issue.

Dated: November 16, 2010.

HON. MICHAEL C. DUNSTON
JUDGE OF THE SUPERIOR COURT
OF THE VIRGIN ISLANDS

ATTEST: Venetia Harvey-Velazquez, Esq.
Clerk of the Court ____/____/_____

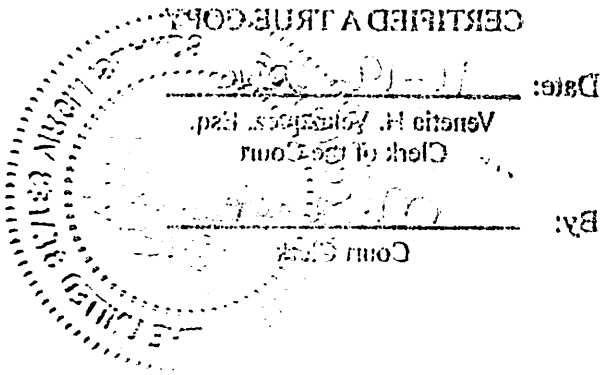
by: _____
Rosalie Griffith
Court Clerk Supervisor 11/16/10

CERTIFIED A TRUE COPY

Date: 11-19-2010

Venetia H. Velazquez, Esq.
Clerk of the Court

By: _____
Court Clerk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Plaintiff,	)	CASE NO. ST-10-CR-335
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v.	)	
	)	
PETER AMEDEE,	)	
	)	
Defendant.	)	
	)	

ORDER

The Court having issued a Memorandum Opinion on this date, consistent therewith it is hereby

ORDERED that Defendant's Motion for Judgment of Acquittal is DENIED; and it is

ORDERED that Defendant's Motion for New Trial is DENIED; and it is

ORDERED that a copy of this Order shall be served on Defendant and copies shall be directed to counsel of record.

Dated: November 16, 2010.

HON. MICHAEL C. DUNSTON
JUDGE OF THE SUPERIOR COURT
OF THE VIRGIN ISLANDS

ATTEST: Venetia H. Velazquez, Esq.
Clerk of the Court ____/____/_____

by: _____
Rosalie Griffith
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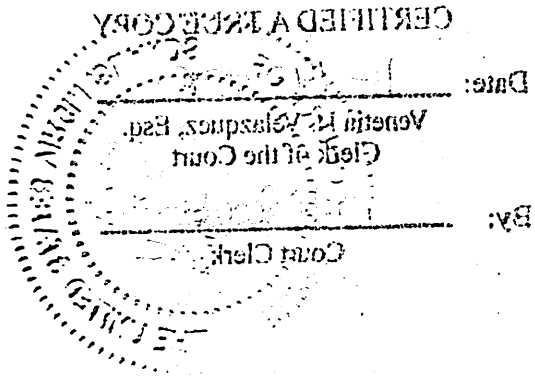
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