

Mayhem¹

DFT is charged with mayhem against AVM on [DATE].

[<*If both theories are charged:*> The Commonwealth may prove a person guilty of mayhem in either of two ways.]

<*Otherwise charge only on the relevant theory.*>

(a) Mayhem – First Theory (Specific Injuries)²

To prove DFT guilty of mayhem [<*If both theories are given:*> under the first theory], the Commonwealth must prove two elements beyond a reasonable doubt:

<*Note: the judge should only include the specific injury at issue in the case, and delete all the others.*>

1. DFT cut out or maimed the tongue; put out or destroyed an eye; cut or tore off an ear; cut, slit, or mutilated the nose or lip; or cut off or disabled a limb or member, of AVM; and
2. DFT maliciously intended to maim or disfigure AVM.

First, the Commonwealth must prove DFT <*Include only the specific injury in the case from the list that follows. If more than one alleged act, include*

¹ G.L. c. 265, § 14 contains two “distinctive and independent” bases for liability. *Commonwealth v. Ogden O.*, 448 Mass. 798, 800 (2007), quoting *Commonwealth v. Hogan*, 7 Mass. App. Ct. 236, 246 n.11, *aff’d*, 379 Mass. 190 (1979). The two theories potentially overlap: one requires a particular type of injury; the other requires only more generalized injuries, but the use of a dangerous weapon, substance, or chemical. A separate instruction for each theory is provided. The statute also makes it a crime to aid another in conduct culpable under either theory. See G.L. c. 265, § 14 (“whoever is privy to such intent, or [sic] is present and aids in the commission of such crime . . . shall be punished”). Charges of aiding another in committing mayhem have been handled under general joint venture principles. See, e.g., *Commonwealth v. Silvia*, 97 Mass. App. Ct. 151, 155-156 (2020); *Hogan*, 7 Mass. App. Ct. at 245-246 n.10.

² G.L. c. 265, § 14 states: “Whoever, with malicious intent to maim or disfigure, cuts out or maims the tongue, puts out or destroys an eye, cuts or tears off an ear, cuts, slits or mutilates the nose or lip, or cuts off or disables a limb or member, of another person . . . shall be punished.”

as relevant from the following:> did at least one of the following acts: (a) cut out or maimed AVM's tongue; (b) put out or destroyed AVM's eye; (c) cut or tore off AVM's ear;³ (d) cut, slit, or mutilated AVM's nose or lip; or (e) cut off or disabled at least one of AVM's limbs or members. [***<If "member" is relevant, include the following, or just refer to the relevant body part in the definition of "member":>*** A "member" is a part or organ of the human body, such as a finger⁴ or sexual organ.]

Second, the Commonwealth must prove DFT did so with a specific malicious intent to maim or disfigure AVM.⁵ Intent is a state of mind. It means a person's purpose or objective. A person does an act with a malicious intent to maim or disfigure if the person has in mind the specific purpose or objective of maiming or disfiguring AVM when the person does the act.

An intent to "maim" is an intent to inflict serious bodily injury, or to disable, wound, or cause disfigurement to the body.⁶ An intent to "disfigure" is an intent to do harm to or to spoil a person's appearance. The decision to do the act for that purpose requires some period of thought and deliberation, however brief.

³ "[O]ne need not cut off or tear off an entire ear to be guilty." *Commonwealth v. Forbes*, 86 Mass. App. Ct. 197, 201 (2014). "At least where . . . the evidence shows that the defendant severed a substantial portion of the victim's ear, we conclude that a jury reasonably could have concluded that the defendant's actions amounted to 'cut[ting] or tear[ing] off an ear.'" *Id.*

⁴ See, e.g., *Commonwealth v. Silvia*, 97 Mass. App. Ct. at 156-157 (finger).

⁵ "Mayhem requires 'specific intent to maim or disfigure.'" *Commonwealth v. Johnson*, 92 Mass. App. Ct. 538, 544 n.16 (2017), quoting *Forbes*, 86 Mass. App. Ct. at 202.

⁶ *Commonwealth v. Farrell*, 322 Mass. 606, 619 (1948).

(b) Mayhem – Second Theory (General Injuries with a Dangerous Weapon)⁷

To prove DFT guilty of mayhem [<If both theories are given:> under the second theory], the Commonwealth must prove four elements beyond a reasonable doubt:

1. DFT touched AVM;⁸
2. DFT did so by means of a dangerous weapon, substance, or chemical;
3. DFT maliciously intended to maim or disfigure AVM; and
4. AVM was disfigured, crippled, or suffered serious or permanent physical injury as a result.

As to the first element, the Commonwealth must prove that DFT touched, that is, made physical contact with, AVM. A touching may be direct, such as a person striking another with an object, or it may be indirect, such as a person causing another to come in contact with an object or surface.

As to the second element, the Commonwealth must prove that DFT did the touching with a weapon, substance or chemical that is dangerous, meaning that by its design or how it is used can cause serious bodily injury or death. For instance, an object such as a gun, dagger, sword or the like⁹ is a dangerous weapon based on its designed purpose to cause serious bodily

⁷ G.L. c. 265, § 14 states: “whoever, with malicious intent to maim or disfigure, assaults another person with a dangerous weapon, substance or chemical, and by such assault disfigures, cripples or inflicts serious or permanent physical injury upon such person . . . shall be punished.” Assault and battery by means of a dangerous weapon causing serious bodily injury, and assault and battery by means of a dangerous weapon, are lesser included offenses of the second theory of mayhem. *Ogden O.*, 448 Mass. at 808; *Forbes*, 86 Mass. App. Ct. at 202.

⁸ The mayhem statute requires only that defendant “assaults another person.” Despite the language of “assault,” cases recognize that defendant’s act under the second theory of mayhem must include a battery. *Commonwealth v. Martin*, 425 Mass. 718, 722 n.4 (1997) (“Although § 14 uses only the term ‘assault,’ . . . mayhem requires proof of a battery as well.”). See also, *supra*, n.6 (lesser included offenses).

⁹ See G.L. c. 269, §§ 10, 12.

injury or death. *<If the object is dangerous by use, include:* Another object, substance, or chemical such as a pocket knife, baseball bat, lighter fluid, or even a pencil are not designed to cause injury or harm, but becomes dangerous if used to cut, strike, burn, or otherwise injure someone.>

For the third element, the Commonwealth must prove that DFT acted with a specific malicious intent to maim or disfigure. [*<If both theories are given:>* I have already described this element to you in my instructions on the first theory of mayhem.] *<Otherwise insert the instructions on this element from the instruction explaining the second element of the first theory of mayhem.>*

Finally, the Commonwealth must prove that as a result of DFT's action, AVM was disfigured, or crippled, or suffered serious or permanent physical injury. "Crippled" means left without the use of a limb, lame, or lacking the strength or capability to work, even if the injury is not permanent.¹⁰

¹⁰ See *Farrell*, 322 Mass. at 619 ("The word 'cripple' has been defined as meaning to deprive of the use of a limb, particularly of a leg or foot, to lame, to deprive of strength, activity, or capability for service. . . . And so a crippling may be found under the third part of the definition even though there may be complete recovery in time.").