

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN

PEOPLE OF THE VIRGIN ISLANDS,	)	
	)	CASE NO.: ST-11-LT-1
Plaintiff,	)	
	)	19 V.I.C. § 1563(1)
vs.	)	
	)	
AZZAM A. SABLA,	)	
	)	
Defendant.	)	
_____	)	

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SMITH, ALAN D., Magistrate

MEMORANDUM OPINION
(Filed: March 4, 2011)

Summary

Defendant, Azzam A. Sabla, was charged with violating the anti-littering laws under Title 19, Chapter 56 of the Virgin Islands Code. An Environmental Enforcement Officer of the Waste Management Authority ("WMA") discovered the violation and issued Sabla a "litter ticket". Sabla did not pay the fine but appeared before the Court for trial. The ticketing procedure followed by WMA and the Office of the Attorney General was in compliance with Virgin Islands law. Therefore, Sabla and this matter are properly before the Court.

Facts

While patrolling on December 22, 2010, WMA Environmental Enforcement Officers Perez and Carr discovered trash placed on the sidewalk outside the RADD Convenience Store. The officers entered the store, and Officer Perez questioned Sabla, the cashier, about the trash.

Thereafter, Officer Perez cited Sabala for “throw[ing], plac[ing] or deposit[ing] any waste in any public place, except in receptacles”¹ and issued him Litter Ticket Number 15732 (the “Litter Ticket”). The Litter Ticket instructed Sabala to either pay a one thousand dollar (\$1,000.00) fine or appear before the Court on January 19, 2011. Sabla did not pay the fine but did timely appear before the Court for trial.

At trial, upon the conclusion of the parties’ cases, the Court raised concerns that the ticketing procedure followed by WMA and the Office of the Attorney General may not have been in compliance with Virgin Islands law. The Court then instructed counsel to brief relevant issues concerning the procedure. Upon receipt of the briefs, the Court conducted a second hearing on February 14, 2011 and informed the parties that written orders would issue.

Discussion

All violations of Virgin Islands anti-littering laws can be prosecuted as misdemeanors.² However, the Virgin Islands Code lays out a procedure where officers can issue “litter tickets” to violators rather than arresting them.

Whenever any person is apprehended for any [litter] violation . . . committed in a public place the apprehending peace officer may serve upon him a citation and levy a fine, which citation and notice . . . shall be known as a “litter ticket”. . . . If the fine is not paid within the stated time, a summons to appear in court shall be issued [T]he “Uniform Traffic Ticket” . . . may be used by members of the police force as “little tickets”.³

The Court is also aware of a statute enacted in 2004 that may have application. Under 5 V.I.C. § 3570 *et seq.*, a general procedure can be found for the issuance of “appearance tickets” in lieu of peace officers making arrests.

An appearance ticket is a written notice issued and subscribed by a peace office authorized to issue an appearance ticket, directing a designated person to appear in the Superior Court of the Virgin Islands at a future date in connection with his alleged commission of a misdemeanor offense. A notice conforming to this definition constitutes an appearance ticket regardless of whether it is referred to in some other provision of law as a summons or by any other name of title.⁴

The procedures are slightly different under each statute. For “litter tickets”, if the fine is not paid, then a summons is to issue.⁵ For “appearance tickets”, the Attorney General is to file a

¹ VI CODE ANN. tit. 19 § 1563(1) (1995).

² § 1562(a) (1995 & Supp. 2010).

³ § 1561(e) (1995).

⁴ VI CODE ANN. tit. 5 § 3570 (1997 & Supp. 2010).

⁵ VI CODE ANN. tit. 19 § 1561(e).

complaint with the Superior Court before the ticket is returnable.⁶ Other differences include the information required to be written on the tickets and who has authority to issue such tickets.

The Court must first determine whether the Title 19 and/or the Title 5 procedure applies here. The statute in Title 5 is a general statute for issuing citations for misdemeanors. Prior to the enactment of this statute, tickets could only be issued for specifically identified crimes and violations, which included littering. The litter ticket statute applies only to litter violations under Title 19, Chapter 56.⁷

General and special acts may be in *pari materia*. If so, they should be construed together. Where one statute deals with a subject in general terms, and another deals with a part of the same subject in a more detailed way, the two should be harmonized if possible; but if there is any conflict, the latter will prevail whether it was passed prior to the general statute, unless it appears that the legislature intended to make the general act controlling.⁸

The ticketing statutes found in Title 5 and Title 19 are *in pari materia* since they both set up a ticketing procedure for offenses. The Title 19 "litter ticket" statute, however, is a "special" act whereas the Title 5 "appearance ticket" statute should be considered a "general" act. Therefore, while the Court will construe the two statutes together, Title 19 will control if there are any conflicts.

Peace officer status

A Title 5 "appearance ticket" must be issued by a peace officer listed in 5 V.I.C. § 3561⁹ whereas a "litter ticket" must be issued by a peace officer listed in 19 V.I.C. § 1552(q).¹⁰ While the two lists of peace officers have some overlap, there is one critical difference. "[S]anitation supervisors of the Waste Management Authority" are listed in the Title 19 definition but not under Title 5.

Officer Perez is employed by WMA as an environmental enforcement officer. Officer Perez provided testimony that there is no position within WMA by the name of "sanitation supervisor" and further testified that environmental enforcement officers are issued badges and must take oaths. The Court, therefore, must determine whether "environmental enforcement officers" and "sanitation supervisors" are analogous. Even though the title of the position does not precisely match the term found in the statute, if the Court can determine that the position held by Officer Carr is the one intended by the Legislature to enforce the anti-littering laws of Title 19, then it can conclude he had authority to issue the Litter Ticket.

⁶ VI CODE ANN. tit. 5 § 3573(a).

⁷ VI CODE ANN. tit. 19 § 1561(e).

⁸ *Creaque v. Luis*, 803 F.2d 92, 94 (3d Cir. 1986) (quoting 2A *Sutherland Statutory Construction* § 51.05 (4th ed. 1984)).

⁹ VI CODE ANN. tit. 5 § 3571(a).

¹⁰ VI CODE ANN. tit. 19 § 1561(e).

Of most help to the Court is the comparison of the lists of “peace officers” under Titles 5 and 19. Again, “sanitation supervisors of the Waste Management Authority” only appear in the latter list. Therefore, it seems reasonable to the Court that the Legislature intended for WMA to employ peace officers with limited powers to enforce Title 19 but not be entrusted with the broader enforcement powers granted to Title 5 peace officers. It appears that WMA simply chose to use the title “environmental enforcement officer” instead of “sanitation supervisor”.

The Court is also aware that as part of the transition from the prior Department of Public Works to WMA, the Title 19 definition of “peace officer” was amended. Act 6638, Section 5(w) reads as follows: “Section 1552(q) is hereby amended by deleting the words “Department of Public Works” and inserting the words “Waste Management Authority” in lieu thereof.”¹¹ Therefore, prior to WMA’s existence, “sanitation supervisors of the Department of Public Works” was found in the statute. It appears that the purpose of Section 5(w) of the Act was to transfer all anti-littering enforcement powers previously granted to the Department of Public Works to WMA. Therefore, the Court is satisfied that Officer Perez was and is authorized under 19 V.I.C. §§ 1552(q) and 1561(e) to issue “litter tickets” for violations of the anti-littering laws, including the Litter Ticket issued to Sabla.

It is also significant that “sanitation supervisors of the Waste Management Authority” or anything to that effect are not listed under the Title 5 definition of peace officer.¹² Only those persons listed in 5 V.I.C. § 3561 are authorized to issue Title 5 “appearance tickets”. Therefore, Officer Perez, as a WMA environmental enforcement officer, had no authority to issue an “appearance ticket”. The Court should determine whether the Title 19 “litter ticket” procedure was properly complied with and not be concerned with the Title 5 statute and procedure. ✓

Presence of the officer

The testimony provided at the hearing supports the fact that Sabla did not place the trash on the sidewalk in Officer Perez’s presence. Virgin Islands law provides that “a peace officer shall not serve or issue a litter ticket for any offense or violation except when the same is committed in his presence.”¹³ Since litter violations must occur in the presence of the officer for the officer to legally issue a citation, and since this violation did not occur in the presence of Officer Perez, Officer Perez illegally issued the Litter Ticket to Sabla.

“[A]n illegal arrest, without more, has never been viewed as a bar to subsequent prosecution, nor as a defense to a valid conviction.”¹⁴ Furthermore, “[t]he fact that an original arrest may have been unlawful does not affect the jurisdiction of the court”¹⁵ There are circumstances where

¹¹ 2003 V.I. Sess. L. 205, 249.

¹² See VI CODE ANN. tit. 5 § 3561.

¹³ VI CODE ANN. tit. 19 § 112(d) (1997). Likewise, the same requirement applies for the issuance of a Title 5 “appearance ticket”. VI CODE ANN. tit. 5 § 3571.

¹⁴ *Gov’t of V.I. v. Josiah*, 641 F.2d 1103, 1105 (3d Cir. 1980) (quoting *U.S. v. Crews*, 445 U.S. 463, 474 (1980)); See 5 Am. Jur. 2d *Arrest* § 129 (2010).

¹⁵ 5 Am. Jur. 2d *Arrest* § 129.

suppression of evidence obtained from an illegal arrest may be proper.¹⁶ Otherwise, the remedies for an illegal arrest are civil in nature.¹⁷

Here, Sabla was not arrested but was instead issued the Litter Ticket. The issuance of this ticket was illegal in that the offense was not committed in the presence of Officer Perez. However, for purposes of jurisdiction and the People's right to prosecute this matter, the Court will treat the illegal issuance of the Litter Ticket like that of an illegal arrest.¹⁸ Therefore, the illegal issuance of the Litter Ticket does not bar prosecution in this matter or strip the Court of its jurisdiction.

Statutory requirements of "litter ticket" complied with

The "litter ticket" statute requires the following information to be included on all tickets.

A litter ticket shall include spaces for the name and address of the person cited, the offense charged and the time and place of its commission. Such spaces shall be filled with the appropriate information by the apprehending officer. The ticket shall also indicate the fine to be paid and a time limit for payment.¹⁹

All of the above-listed information was included on the Litter Ticket issued to Sabla. On the front of the Litter Ticket, Sabla's name, the offense of 19 V.I.C. § 1563, and the place of commission were clearly recorded. While the address listed was not Sabla's home address, the name of the convenient store where he worked was listed. Similarly, the time of issuance of the citation, not the time the offense actually took place, was recorded. The Court, however, believes these deviations to be of no consequence for purposes of prosecuting the offense. The back of the Litter Ticket indicated that the fine for this offense was one thousand dollars (\$1,000.00) and stated that the fine could be paid in lieu of appearing in court on the date and time listed on the front of the Litter Ticket.

The Litter Ticket suffices as a summons and complaint

The Litter Ticket suffices as a summons. Again, under 15 V.I.C. § 1561(e), "[i]f the fine is not paid within the stated time, a summons to appear in court shall be issued" In ordinary criminal proceedings, "the summons shall be signed by the judge or attested in his name and signed by the person empowered by law to take complaints and shall be directed to the defendant named in the complaint and shall describe the offense charged in the complaint."²⁰ The Litter Ticket was not signed by a judge or attested in his name. However, the definition of "summons" for purposes of litter violations is specially addressed by statute. As a general rule, "the

¹⁶ *Id.*

¹⁷ *Gov't of the V.I. v. Prescott*, 18 V.I. 152, 155 (Terr. Ct. 1982).

¹⁸ The Court of Criminal Appeals of Alabama found that the illegal issuance of a Uniform Traffic Ticket and Complaint for driving under the influence did not prevent the defendant from being prosecuted. *Muldoon v. State*, 959 So. 2d 698 (Ala. Crim. App. 2006).

¹⁹ *Id.*

²⁰ Super. Ct. R. 122(b)(2) (2010).

‘Uniform Traffic Ticket’ in the form prescribed by the [] Court may be used by members of the police force as ‘litter tickets’.”²¹ Furthermore,

The notice of traffic offense is the summons and complaint in the form described in Rule 151 of the Rules of the Superior Court, known as the “Uniform Traffic Ticket”, which must be filed directly by the issuing officer or prosecuting attorney in the Magistrate Division of the Superior Court.²²

Since “litter tickets” shall be in the same form as a “Uniform Traffic Ticket”, and since a “Uniform Traffic Ticket” automatically suffices as a summons, a “litter ticket” meets this definition of summons even though it was not signed by a judge. Additionally, the Litter Ticket contained the same information an ordinary summons would, namely that it “shall require the defendant to appear before the court in which the complaint is made at a time and place stated therein”²³ While a summons for litter violations is supposed to issue after a defendant fails to pay the fine²⁴, the Court finds nothing improper in having the summons issue contemporaneously with the citation.

The Litter Ticket also suffices as a complaint and complies with the following court rule definition.

The complaint is a written statement of the essential facts constituting the offense charged. It shall be made upon oath before the judge or the clerk of the court, or the Attorney General of the Virgin Islands or such Assistant Attorney General as the Attorney General shall authorize in writing, as well as any complaint clerk in the office of the Attorney General of the Virgin Islands.²⁵

Here, Officer Perez’s description of the facts was merely a verbatim rewriting of the alleged violation and reads as follows: “No person shall throw, place, except in receptacles in the manner provided by law and regulations thereunder.” This same statement was adopted by the Office of the Attorney General for purposes of a complaint. While this statement does not state any allegations that are personalized to Sabla, it “sufficiently apprises the defendant of what he must be prepared to meet.”²⁶ “[W]hat has been called a bare bones indictment using only statutory language is quite common and entirely permissible so long as the statutes set forth, fully, directly, and expressly all essential elements of the crime intended to be punished.”²⁷ Although the element of “waste” was omitted on the Litter Ticket, the code section 19 V.I.C. § 1563(1) was clearly indicated, thereby providing Sabla with the required notice.

²¹ *Id.*

²² VI CODE ANN. tit. 4 § 124(c) (1997 & Supp. 2010).

²³ Super. Ct. R. 122(b)(2).

²⁴ VI CODE ANN. tit. 19 § 1561(e).

²⁵ Super. Ct. R. 121.

²⁶ *Gov’t of the V.I. v. Smalls*, 32 V.I. 157, 171 (Terr. Ct. 1995).

²⁷ *Id.* at 170-71 (quoting 1 Charles Wright, Federal Practice and Procedure Section 125 (1982)).

The second requirement of complaints is that they are attested to. Here, the Litter Ticket was presented to a complaint clerk in the Office of the Attorney General. The complaint clerk placed her initials and the date of "12/30/10" on the bottom of it. When filed with the Court, the Litter Ticket became a valid complaint. Additionally, 4 V.I.C. § 124(c) expressly approves the "Uniform Traffic Ticket" to be a complaint like it does a summons. Since the basic form of traffic tickets may be used for litter tickets, the Court further concludes that this Litter Ticket is a valid complaint.

CONCLUSION

WMA and the Office of the Attorney General sufficiently complied with the requirements set forth in 15 V.I.C. § 1561(e) for the issuance of "litter tickets" and the prosecution of the Virgin Islands anti-littering laws. Officer Perez, as an environmental enforcement officer of WMA had statutory authority to issue litter tickets. Although he was not present at the time the violation was committed, thereby making the issuance of the Litter Ticket illegal, this does not bar the People from prosecuting this case nor remove jurisdiction from the Court. Finally, the Litter Ticket satisfied the requirements of a summons and a complaint. Therefore, an order denying Sabla's motion to dismiss with prejudice will issue.

Dated: *March 7, 2011*



ALAN D. SMITH

Magistrate of the Superior Court
of the Virgin Islands

ATTEST:

VENETIA H. VELAZQUEZ, ESQ.

Clerk of the Court

BY: *Colleen Salem*

COLLEEN SALEM

Court Clerk Supervisor *3 / 7 / 2011*