

NOT FOR PUBLICATION

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

PEOPLE OF THE VIRGIN ISLANDS,

Plaintiff,

v.

VASADAVE BOODOOSINGH,

Defendant(s).

SX-13-CR-165

CHARGE(S):

**AGGRAVATED ASSAULT AND
BATTERY/ DOMESTIC VIOLENCE**

14 V.I.C. § 298(5)

14 V.I.C. § 91(b)(1)&(2)

CHILD ABUSE

14 V.I.C. § 505

DISTURBANCE OF THE PEACE

14 V.I.C. § 622(1)

MEMORANDUM OPINION

THIS MATTER comes before the Court on Defendant Vasadave Boodoosingh's (hereinafter "Defendant") Motion to Dismiss and Memorandum of Points and Authorities in Support of Motion to Dismiss, filed July 8, 2013. The People filed a Reply to the Motion to Dismiss on July 24, 2013.

FACTS¹

On or about April 15, 2013, the Defendant's four-year-old grandchild was brought to his house because she was ill and did not attend school that day. Apparently, Defendant and his wife were in their bedroom with the minor child, while the minors father Joshua Boodoosingh (hereinafter "J. Boodoosingh") was in another room watching television. J. Boodoosingh reported to the Police that while he was watching television, he heard his daughter cry out, so he went to Defendant's room to see what had happened. J. Boodoosingh stated that the Defendant told him his daughter was jumping on the bed and she was told to stop because she was sick and needed to take a nap. J. Boodoosingh also stated that as he was taking his daughter out of the room, Defendant told him to leave her because she needed to be disciplined. At that time,

¹ The factual record considered for purposes of this Memorandum Opinion, consists of the information presented in the briefs submitted by the parties.

Defendant told the minor to stay and when she responded with a temper tantrum, Defendant slapped her with his open palm on the left side of her face. Although Defendant had permission to discipline the minor, J. Boodoosingh told Defendant that he had hit his daughter too hard, and took his daughter out of the room. Pictures taken by the Virgin Islands Police Department showed bruising on the minor's face where she was allegedly hit by Defendant. As a result of this incident, and statements provided to the police by J. Boodoosingh, Defendant was arrested and subsequently charged with Aggravated Assault and Battery, an act of Domestic Violence, in violation of 14 V.I.C. § 298(5) and 16 V.I.C. § 91(b)(1) and (2); Child Abuse, in violation of 14 V.I.C. § 505; and Disturbance of the Peace, in violation of 14 V.I.C. § 622(1).

DISCUSSION

It is axiomatic that "to satisfy due process, a penal statute must define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement." *Leblanc v. People*, 2012 V.I. Supreme LEXIS 31; 56 V.I. 536 (V.I. April 4, 2012) (citing *Skilling v. United States*, 561 U.S. ___, 130 S.Ct. 2896, 2927-28 (2010)). Before reaching to the issue of whether Title 14 V.I.C. § 505 is constitutionally vague, we must first determine whether Defendant has standing to challenge the statute. *See Government v. John*, 159 F. Supp. 2d 201 (D.V.I. App. Div. 1999).

Standing

In *Government v. John*, 159 F. Supp. 2d 201, 204-05 (D.V.I. App. Div. 1999), the Court stated that "before a defendant may mount a vagueness challenge to a statute which does not involve the First Amendment, [he] must first establish [his] standing to do so, namely, demonstrate that the statute is vague as applied to the facts of the particular charge against [him]." *See United States v. Mazurie*, 419 U.S. 544, 550, 42 L. Ed. 2d 706, 95 S. Ct. 710 (1975) ("It is

well established that vagueness challenges to statutes which do not involve First Amendment freedoms must be examined in the light of the facts of the case at hand.”). Therefore, the Court will analyze the particular facts of the present case against Defendant to determine whether he has standing to challenge Title 14. V.I.C. § 505 for vagueness.

Courts in this jurisdiction have recognized that Title 14. V.I.C. § 505 contains three charging provisions. The three charging provisions of Title 14 V.I.C. § 505 are as follows:

(1) “Any person who abuses a child or” (2) “who knowingly or recklessly causes a child to suffer physical, mental or emotional injury, or” (3) “who knowingly or recklessly causes a child to be placed in a situation where it is reasonably foreseeable that a child may suffer physical, mental or emotional injury or be deprived of any of the basic necessities of life...”

To determine whether Defendant has standing, it is pertinent to begin by identifying which provision of Title 14.V.I.C. § 505 that Defendant is charged with. In Count II of the Information, the People charged Defendant as follows:

On or about April 15, 2013, in the vicinity of #65 Estate Humbug, while in the Judicial District of St. Croix, United States Virgin Islands, the following acts occurred: that Vasadave Boodoosingh, an adult male, did knowingly or recklessly cause J.B., a minor child, to suffer physical, mental, or emotional injury, to wit: by slapping said minor J.B., on the left side of the face, causing bruising, in, in violation of Title 14. V.I.C. § 505, (CHILD ABUSE).

In this case, the second charging provision of Section 505 is at issue. It charges a person with Child Abuse if they knowingly or recklessly cause a child to suffer physical, mental or emotional injury. To get a complete understanding of what Defendant is charged with, the second charging provision of Section 505 must be read in conjunction with Title 14 V.I.C. § 503 Definitions, which defines “physical injury” as:

“the impairment of physical condition and includes, but is not limited to, any skin bruising, bleeding, failure to thrive, malnutrition, burn, bone fracture, soft tissue swelling, subdural hematoma, injury to any internal organ, or any physical condition that threatens a child’s health or welfare.” *Emphasis Added.*

Turning to the facts of this matter, Defendant is alleged to have stuck his granddaughter in her face because she was disobedient. The minors father who is also Defendant's son provided a statement to the police stating that he saw Defendant strike his daughter in her face. Even more telling, pictures of the bruises on the minors face support the allegations that Defendant struck the minor, causing injury to her face. There is no question that the second charging provision of Section 505 when read in conjunction with the definition of "physical injury" in Section 503, puts Defendant on notice that causing physical injury to a minor which results in bruising is proscribed by the statute. When an individual's conduct falls within the bounds of what is clearly proscribed by statute, that individual does not have standing to challenge the vagueness of the statute, whether or not it may turn out to be vague as applied in other situations. *Government v. John*, 159 F. Supp. 2d 201, 205 (D.V.I. App. Div. 1999) (citing *Village of Hoffman Estates v. Flipside*, 455 U.S. 489, 495, 71 L. Ed. 2d 362, 102 S. Ct. 1186 (1982) ("A plaintiff who engages in some conduct that is clearly proscribed cannot complain of the vagueness of the law as applied to the conduct of others.")). Therefore, regardless of whether the second charging provision of Section 505 may be found vague in other situations, under the set of facts presented in this case, the Court finds that the statute is not vague as applied to Defendant.

CONCLUSION

After considering the premises, the Court finds that Defendant does not have standing to challenge the Constitutionality of Title 14 V.I.C. § 505. Therefore, the Court will deny Defendant's Motion to Dismiss.

ATTEST:

Venetia Harvey-Velazquez
Clerk of the Court

By: Janeen Maranda
Court Clerk Supervisor

Harold W. L. Willocks
Honorable Harold W.L. Willocks
Judge of the Superior Court

Dated: 8/23/13