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

PEOPLE OF THE VIRGIN ISLANDS,	) CASE NO. ST-2016-CR-0000220
Plaintiff,	) V.I. Code Ann. tit. 14, § 1223(1)
vs.	)
MARIANELA DE ROSARIO DE MARTINEZ, (D.O.B.: 09-06-69)	)
Defendant.	)
PEOPLE OF THE VIRGIN ISLANDS,	) CASE NO. ST-2016-CR-0000221
Plaintiff,	) V.I. Code Ann. tit. 14, § 1223(1)
vs.	)
ANIBELKI ADAMES DISLA, (D.O.B.: 01-13-71)	)
Defendant.	)

MEMORANDUM OPINION

THIS MATTER is before the Court on Defendant Marianela De Rosario De Martinez's Motion to Dismiss Complaint with Points and Authority, which was filed on August 11, 2016. On August 17, 2016, Defendant Anibelki Adames Disla filed a motion adopting the arguments raised in Defendant Martinez's Motion.[1] On August 26, 2016, the People filed an Opposition to Motion to Dismiss Complaint. On August 31, 2016, the People filed an Opposition to Motion to Adopt Defendant, Marianela De Rosario De Martinez Motion to Dismiss Complaint.[2]

In their Motions to Dismiss, Defendants argue that V.I. CODE ANN. tit. 14, § 1223 violates the void-for-vagueness doctrine.[3] Given that section 1223 provides fair notice of the prohibited activity and does not create arbitrary and capricious enforcement, the Court finds that section 1223 is not void-for-vagueness and will deny Defendants' motions to dismiss.

On or about July 12, 2016 in St. Thomas, U.S. Virgin Islands, Defendant Marianela De Rosario De Martinez and Defendant Anibelki Adames Disla (collectively, "Defendants") were

[1] *See* Defendant Anibelki Adames Disla, Motion to Adopt Defendant, Marinela [sic] De Rosario De Martinez Motion to Dismiss Compalint [sic] with Poitns [sic] and Authority, August 17, 2016. In the Motion, Defendant Anibelki Adames Disla joined in and adopted Defendant Marianela De Rosario De Martinez's Motion to Dismiss. Therefore, the Court will construe the motion to adopt as a motion to dismiss.

[2] Plaintiff is represented by Assistant Attorney General Natasha Baker. Defendant Marianela De Rosario De Martinez is represented by Attorney George Hodge, Jr. Defendant Anibelki Adames Disla is represented by Attorney Clive Rivers.

[3] Mot. to Dismiss Compl. with Points and Authority, 1-4, August 11, 2016.

arrested for selling Puerto Rico lottery tickets in violation of 14 V.I.C. § 1223. The question presented is whether section 1223 is void-for-vagueness as applied to the particular charges against both Defendants.

"The void-for-vagueness doctrine reflects the fundamental principle that, in order to comply with the requirements of due process, a statute must give fair warning of the conduct that it prohibits."[4] A statute "is unconstitutionally vague if it 'fails to provide a person of ordinary intelligence fair notice of what is prohibited, or is so standardless that it authorizes or encourages seriously discriminatory enforcement.' "[5] If a reasonable person "would know that their conduct puts them at risk of punishment under the statute" then a challenge for vagueness can be overcome.[6] Therefore, "[t]he focus of [the Court's] inquiry is the meaning of the statute in light of common understanding and practice." [7] A determination of vagueness is based on whether a statute is vague as specifically applied to the defendant.[8]

Ultimately, 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."[9] Although the void-for-vagueness doctrine incorporates two distinct elements, the two are not accorded equal weight.[10] The arbitrary enforcement element is viewed as the more essential in light of the inherent harms posed by "a standardless sweep [that] allows policemen, prosecutors, and juries to pursue their personal predilections."[11] "A vague law impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory application."[12]

Therefore, the two issues before the Court are the following: 1) whether section 1223 provides fair notice of the prohibited activity; and 2) whether section 1223 allows for arbitrary and capricious enforcement. The Court will consider each argument herein.

---

[4] *United States v. Fontaine*, 697 F.3d 221, 226, 57 V.I. 914 (3d Cir. 2012).
[5] *LeBlanc v. People*, 56 V.I. 536, 541 (V.I. 2012) (quoting *United States v. Williams*, 553 U.S. 285, 304, 128 S. Ct. 1830, 170 L. Ed. 2d 650 (2008)); *see also Brathwaite v. Virgin Islands*, 60 V.I. 419, 434 (V.I. 2014) ("To comply with the requirements of due process a statute must give fair warning as to the conduct that is prohibited.").
[6] *Brathwaite*, 60 V.I. at 434.
[7] *United States v. Moyer*, 674 F.3d 192, 211 (3d Cir. 2012).
[8] *Id.*
[9] *Gov't of the V.I. v. Ayala*, 853 F. Supp. 160, 161, 29 V.I. 123, 124-125 (D.V.I. 1993).
[10] *Id* at. 162.
[11] *Id.*
[12] *Grayned v. Rockford,* 408 U.S. 104, 108-09, 33 L. Ed. 2d 222, 92 S. Ct. 2294 (1972).

I. 14 V.I.C. § 1223 Provides Fair Notice of the Prohibited Activity.

As a preliminary matter, the person raising a void-for-vagueness challenge is required to show that he or she has been injured by the overly broad language.[13] The "vagueness" doctrine, in no uncertain terms, indicates that "if the challenged regulation clearly applies to the challenger's conduct, he cannot challenge the regulation for facial vagueness."[14] Here, Defendants have satisfied the standing requirements as articulated by the Supreme Court of the Virgin Islands because they both allege that they have been personally injured by the overly broad language of the statute.

With respect to notice, Defendants assert four main arguments. First, Defendants argue that the official name of the Virgin Islands Lottery is ambiguously defined as "official lottery."[15] Second, Defendants argue that "nowhere in Chapter 61 of that statute regulating 'lotteries, gambling, and betting' has the V.I. Legislature provided a list of tickets or games to be known as the 'official lottery of the Virgin Islands of the United States.'"[16] In support of this argument, Defendants note that in the Virgin Islands Casino and Resort Control Act of 1995, the Legislature clearly defines what games are authorized.[17] Similarly, Defendants argue that under the Controlled Substances Law, the Legislature defines the term "controlled substance" and provides a list of schedules identifying what controlled substances are proscribed.[18] Third, Defendants argue that after creating the Virgin Islands Lottery and the Virgin Islands Lottery Commission, the Legislature vaguely indicates "[t]he types of lottery conducted shall include: (i) the official lottery in effect on January 1, 1985."[19] Further, Defendants argue that the Legislature did not restrict the sale of any types of lottery, foreign, or domestic, then in effect on January 1, 1985.[20]

In Opposition, the People conduct a textual analysis of section 1223 and argue that the Puerto Rico Lottery is by name alone, an "event *other* than an official Lottery of the Virgin Islands."[21] Further, the People argue that V.I. CODE ANN. tit. 32, § 242 defines the Virgin Islands Lottery and sets out the powers and duties of the Lottery Commission, which includes the licensing of agents to sell tickets.[22] Finally, the People argue that licensed agents have fair and adequate notice of what constitutes the official lottery of the Virgin Islands because as licensed agents, they would either receive official tickets from the Virgin Islands Lottery Office or have permission from that office to sell tickets "upon the event of any lottery other than an official lottery of the Virgin Islands."[23]

---

[13] *People of the Virgin Islands v. Thomas*, 53 V.I. 319, 331 (V.I. Super. Ct. 2010).
[14] *Id.*
[15] Def. Mot. to Dismiss Compl. with Points and Authority, 3, August 11, 2016.
[16] *Id.*
[17] Def. Mot to Dismiss with Points and Authority, 3-4, August 11, 2016.
[18] *Id.* at 4.
[19] *Id.*
[20] *Id.*
[21] Pl. Opp. to Mot. to Dismiss Compl., 2, August 26, 2016.
[22] *Id.*
[23] *Id.* at 3.

The Supreme Court of the United States has indicated that the notice requirement exists "because we assume that man is free to steer between lawful and unlawful conduct, we insist that laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly."[24] "No one may be required at peril of life, liberty or property to speculate as to the meaning of a penal statute; all are entitled to be informed as to what the statute commands or forbids."[25]

For example, in *LeBlanc*, the Supreme Court of the Virgin Islands found that V.I. CODE ANN. tit. 14, § 505 was unconstitutionally vague. Defendant Lennox M. LeBlanc ("LeBlanc") was charged with engaging in sexual conduct, in violation of section 505[26], by touching a child's genital area through her pants.[27] Under the specific facts of this case, the Court could not find that LeBlanc's conduct fell within the bounds of what was clearly proscribed by section 505.[28] Moreover, the Court noted that the Child Abuse Act does not define sexual conduct, and the term does not have a "plain and ordinary meaning that does not need further technical explanation."[29] For example, "some jurisdictions broadly defined sexual conduct to include an array of conduct, including physical contact with a person's clothed genitals."[30] Therefore, the Court held that the portion of section 505 under which LeBlanc was convicted is unconstitutionally vague and LeBlanc's conviction for child abuse violated due process.[31]

When interpreting the meaning of a statute, the Court must first look to its plain text.[32] This is because courts, as a general rule, should not adopt an interpretation of a statute that contradicts its plain text.[33] Therefore, the "literal interpretation of a statute is strongly favored."[34] The language of section 1223 provides:

> Whoever sells, gives or in any manner whatsoever furnishes or transfers to or for any other person—
> (1) any ticket, chance, share or interest; or
> (2) any paper, certificate or instrument purporting or understood to be or represent any ticket, chance, share or interest—

---

[24] *Grayned v. City of Rockford*, 408 U.S. 104, 109 (1972).
[25] *Lanzetta v. New Jersey*, 306 U.S. 451, 452 (1939).
[26] 14 V.I.C. § 505 ("Any person who abuses a child, or who knowingly or recklessly causes a child to suffer physical, mental or emotional injury, or 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, shall be punished by a fine of not less than $500, or by imprisonment of not more than 20 years, or both.").
[27] *LeBlanc v. People of the Virgin Islands*, 56 V.I. 536, 544-45 (V.I. 2012).
[28] *Id.* at 544.
[29] *Id.*
[30] *Id.* at 543.
[31] *Id.* at 544.
[32] *Haynes v. Ottley*, 61 V.I. 547, 561 (V.I. 2014) (citing *Murrell v. People*, 54 V.I. 338, 352 (V.I. 2010)).
[33] *Id.*
[34] *Id.*

> in or depending upon the event of any lottery, other than an *official lottery of the Virgin Islands of the United States*, shall be fined not more than $200 or imprisoned not more than 1 year, or both.[35]

Unlike in *LeBlanc*, the language "official lottery of the Virgin Islands of the United States" is not vague. The term "official" has a plain and ordinary meaning and is defined as "authorized by a proper authority: authoritative."[36] In this case, the proper authority is the Virgin Islands Lottery Commission (the "Commission"). The Commission is authorized by statute to determine the types of lotteries and the sizes of prizes to be awarded. The Commission also serves as an instrumentality of the government that among other duties establishes the rules and regulations for the sale of lottery tickets by licensed agents.[37] Specifically, V.I. CODE ANN. tit. 32, § 246(a) lists the "Powers and Duties of the Commission" and states that the Commission shall have the power to establish: "the types of lottery to be conducted may be classified as video lottery gaming machines or devices . . . in the St. Thomas/St. John district of the Virgin Islands, and the other types of lottery conducted shall include: (i) the official lottery in effect on January 1, 1985; (ii) instant lottery, which shall be a manual scratch-off type lottery; and (iii) such additional lotteries as approved pursuant to section 246a of this chapter."[38]

Contrary to the arguments raised by Defendants, the language prohibiting the sale of lottery tickets "other than an official lottery of the Virgin Islands of the United States" can only reasonably be construed as allowing the sale of lottery tickets authorized by the United States Virgin Islands and not any other Territory or State. To assume that the Virgin Islands Legislature intended to allow the sale of tickets in a lottery authorized by another Territory or State, is an "impeachment of the discernment and foresight of the Legislature of the Virgin Islands and cannot be admitted."[39] It appears that the purpose of the Virgin Islands Lottery is to increase revenues for the benefit of the Virgin Islands economy. For example, the Virgin Islands Lottery has purportedly generated "more than 12 million annually" and the agency serves "among the top revenue producers for the treasury of the territory."[40] To allow the sale of unofficial lottery tickets would only serve to undermine the intent of the Virgin Islands Legislature. Therefore, the Court finds that the language prohibiting the sale of lottery tickets other than tickets from the "official lottery of the Virgin Islands" provides fair notice to a person of ordinary intelligence that such an activity is prohibited.

---

[35] 14 V.I.C. § 1223.
[36] MERRIAM WEBSTER'S DICTIONARY 816 (1988).
[37] 32 V.I.C. § 246(a)(9).
[38] 32 V.I.C. § 246(a)(1).
[39] *Commonwealth v. Dana*, 43 Mass. 329, 338-39 (Mass. 1841) (When interpreting the language of a statute "not authorized by law" the Court intended "to refer to the municipal law of this Commonwealth; the law of the land; or, in other words, any law having force in this Commonwealth, either by a statute of its legislature, or by a law of the United States.").
[40] VI LOTTERY, http://www.winusvilottery.com/vi-lottery-game/about-the-virgin-islands-lottery (last visited Sept. 23, 2016).

II. 14 V.I.C. § 1223 Does Not Allow for Arbitrary and Capricious Enforcement by Law Enforcement Officers.

Defendants also argue that the statute does not provide a *scienter* or *mens rea* element.[41] Defendants argue that its application is subject to arbitrary and capricious enforcement depending on how a police officer decides to interpret the law and any person with numerous Puerto Rico lottery tickets can be arrested under suspicion of possession with intent to sell.[42] In addition, Defendants argue that any person giving in any manner whatsoever, furnishing or transferring Puerto Rico lottery tickets for any other person whether knowingly or not is subject to arrest and prosecution as a strict liability offense.[43]

The People counter that the statute "clearly defines the prohibited activity."[44] Based on the language used in the statute, the Legislature explicitly prohibited any exchange of unofficial lottery tickets[45] and that the language of the statute does not become "void-for-vagueness" simply because Defendants disagree with its application or finds its application to be unfair.[46] Furthermore, the People argue that there is nothing confusing about the language and the statute is sufficiently definitive for "ordinary people" to understand.[47]

The Supreme Court of the United States has held that while statutes imposing strict criminal liability without a *scienter* requirement are generally disfavored,[48] it is equally well-established that a criminal statute is not necessarily rendered unconstitutional because the legislature chose not to include the intent to violate the statute or regulation as an element of the crime.[49] In fact, the Supreme Court has recognized the propriety of strict liability without any element of *scienter* in statutes that are "regulatory" in nature or designed to protect the "public welfare."[50] In *Morissette*, the Supreme Court explained the rationale for the imposition of strict civil or criminal liability in cases involving public welfare or regulatory offenses:

> Many violations of such regulations result in no direct or immediate injury to person or property but merely create the danger or probability of it which the law seeks to minimize. ... [L]egislation applicable to such offenses, as a matter

---

[41] Def. Mot. to Dismiss Compl. with Points and Authority, 4, August 11, 2016.
[42] *Id.*
[43] *Id.*
[44] People's Opp. to Mot. to Dismiss Compl., 4, August 26, 2016.
[45] *Id.*
[46] *Id.*
[47] *Id.*
[48] *Staples v. United States*, 511 U.S. 600, 608-09 (1994).
[49] *See Lambert v. California*, 355 U.S. 225, 228, 2 L. Ed. 2d 228, 78 S. Ct. 240 (1957) ("We do not go with Blackstone in saying that 'a vicious will' is necessary to constitute a crime . . . for conduct alone without regard to the intent of the doer is often sufficient. There is wide latitude in the lawmakers to declare an offense and to exclude elements of knowledge and diligence from its definition.") (citations omitted); *Williams v. North Carolina*, 325 U.S. 226, 238 (1945) ("The objection that punishment of a person for an act as a crime when ignorant of the facts making it so, involves a denial of due process of law has more than once been overruled."); *United States v. Greenbaum*, 138 F.2d 437, 438 (3d Cir. 1943); *United States v. Balint*, 258 U.S. 250 (1922); and *Shevlin-Carpenter Co. v. Minnesota*, 218 U.S. 57 (1910).
[50] *Morissette v. United States*, 342 U.S. 246, 255-60, 96 L. Ed. 288, 72 S. Ct. 240 (1952).

> of policy, does not specify intent as a necessary element. The accused, if he does not will the violation, usually is in a position to prevent it with no more care than society might reasonably expect and no more exertion that it might reasonably extract from one who has assumed his responsibilities. Also, penalties commonly are relatively small, and conviction does [no] grave damage to an offender's reputation." [51]

In *Holdridge v. United States*, the Court of Appeals for the Eighth Circuit formulated a comprehensive statement of relevant criteria with respect to such offenses that is useful for Courts:

> Where a . . . criminal statute omits mention of intent and where it seems to involve what is basically a matter of policy, where the standard imposed is, under the circumstances, reasonable and adherence thereto properly expected of a person, where the penalty is relatively small, where conviction does not gravely besmirch, where the statutory crime is not one taken over from the common law, and where congressional purpose is supporting, the statute can be construed as one not requiring criminal intent. The elimination of this element is then not violative of the due process clause.[52]

Section 1223 is a misdemeanor offense to which the minimum penalty is less than a year of imprisonment and a maximum fine of $200. Such an offense would likely be considered a public welfare offense or what is referred to as a regulatory offense that need not include a *scienter* element. Unlike a child abuse statute, where the Court may need to delineate the level of injury that amounts to the prohibited conduct, *i.e.* "substantial" or "serious,"[53] a prohibition on the sale of unauthorized lottery tickets by an unlicensed agent is not vague, ambiguous, or unclear in any way. Therefore, the Court is unpersuaded by Defendants' argument that section 1223 is unconstitutional because it fails to provide a *scienter* element. Nor is the Court persuaded that section 1223 would lead to arbitrary and capricious enforcement.

An Order consistent with this Memorandum Opinion will follow.

DATED: September 30, 2016

Denise M. Francois
DENISE M. FRANCOIS
Judge of the Superior Court of the Virgin Islands

ATTEST:
Estrella H. George
Acting Clerk of the Court

By:
Lori Boynes-Tyson
Acting Chief Deputy Clerk 9/30/16

[51] *Id.; See also Tart v. Massachusetts*, 949 F.2d 490, 502 (1st Cir. 1991).
[52] *Holdridge v. United States*, 282 F.2d 302, 310 (8th Cir. 1960).
[53] *Gov't of the V.I. v. John*, 32 V.I. 108, 111 (V.I. Super. Ct. 1995).