

FOR OFFICIAL PUBLICATION

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

PEOPLE OF THE VIRGIN ISLANDS,
Plaintiff,

v.

JOHN NOEL,
Defendant,

) **CASE NO. SX-16-CR-046**
)

) **CHARGES:**
) **DRIVING UNDER THE INFLUENCE;**
) **NEGLIGENT DRIVING; and OPERATING**
) **MOTOR VEHICLE WITHOUT A LICENSE**
)

Appearances:

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For Plaintiff People of the Virgin Islands

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For Defendant John Noel

MEMORANDUM OPINION

MOLLOY, Robert A., Judge.

THIS MATTER came before the Court for a change of plea hearing when the question arose, whether the schedule of fines listed in section 512 of title 20 of the Virgin Islands Code (hereinafter "section 512") governs to the exclusion of section 544(f) of title 20 of the Virgin Islands Code (hereinafter "section 544(f)") for a person convicted or pleading guilty to negligent driving in violation of section 503 of title 20 of the Virgin Islands Code. The defendant, John Noel, agreed to plead guilty to negligent driving. Section 512 specifies a \$75.00 fine for the first offense whereas section 544(f) gives courts discretion to impose up to a \$200.00 fine, a term of six months or less in prison, or both. Having considered the arguments of the parties, the Court holds that,

notwithstanding the Legislature's enactment of section 512, courts retain the discretion under section 544(f) to impose a term of imprisonment for those vehicle and traffic offenses listed in section 512.

I. BACKGROUND

On Friday evening, February 12, 2016, Virgin Islands police officer Raheem Benjamin observed a grey pick-up truck almost hit a pedestrian on Northside Road near the La Reine Chicken Shack bar and grill on St. Croix. Officer Benjamin approached the truck, stopped on the side of the road, and smelled a strong odor of alcohol. He asked the driver, identified later as John Noel, if he had been drinking. Noel admitted that he had had a few beers. Officer Benjamin administered three standardized field sobriety tests to Noel – the horizontal gaze nystagmus test, the walk and turn test, and the one leg stand test. Benjamin concluded that Noel failed all three tests. Noel was placed under arrest and transported to the Ann Schrader Command precinct. He was mirandized and asked to consent to a chemical test of his breath. But Noel refused. Per section 493c(b) of title 20 of the Virgin Islands Code, Noel's driving privileges were automatically suspended because of his refusal to submit to the test. He was later booked at a different precinct and, because he could not post bail, detained pending an initial appearance in court.

The following morning, February 13, 2016, Noel appeared before a magistrate judge for an advice-of-rights hearing. The People of the Virgin Islands accused Noel of driving under the influence of an intoxicating liquor, a violation of section 493(a)(1) of title 20 of the Virgin Islands Code; operating a vehicle in a negligent manner, a violation of section 503 of title 20 of the Virgin Islands Code; and operating a motor vehicle without having his operator's license on his person, a violation of section 371(b) of title 20 of the Virgin Islands. The magistrate judge found probable

cause, advised Noel of his rights, and granted Noel's oral motion for release. The People formally charged Noel by criminal complaint filed on February 26, 2016. Noel was arraigned on March 2, 2016. He pleaded not guilty to the charges and asserted his right to a trial by jury.

Once Noel demanded a jury trial, the Clerk's office assigned the case at random to the undersigned judicial officer. *See* 20 V.I.C. § 493(b)(1) (first offense of driving under the influence carries a maximum penalty of a year imprisonment); *cf. Murrell v. People*, 54 V.I. 327, 356-56 (V.I. 2010) (“[A]ll offenses carrying a maximum prison term in excess of six months are serious offenses to which a right to a jury trial attaches.” (quotation marks and citations omitted)). Approximately a week later, on March 10, 2016, this Court issued a case management order and scheduled a pre-trial hearing for June 2, 2016. At the June 2, 2016 hearing, counsel for the parties appeared and announced their readiness for trial. Accordingly, the Court scheduled jury selection and trial to begin on June 5, 2017 and scheduled a final pre-trial conference for April 4, 2017.¹ At the April 4, 2017 conference, counsel announced that the parties had reached a plea agreement. Noel agreed to plead guilty to negligent driving and in exchange, the People agreed to dismiss the remaining counts with prejudice. The parties further agreed that Noel should be placed on supervised probation for six months and evaluated by the Virgin Islands Department of Health and, if warranted, seek treatment for alcohol abuse. A written plea agreement was signed by Noel, his counsel, and counsel for the People and filed with the court on May 2, 2017. Based on counsel's representations in court, the Court converted the June 5, 2017 trial date into a change of plea hearing.

During the June 5, 2017 hearing, a question arose as to the maximum penalty Noel could face for negligent driving. Although not cited in the plea agreement, the document tracked the language

¹ The pre-trial conference was initially scheduled for April 6, 2017.

of section 544(f) and recited that negligent driving carries a maximum punishment “of no more than six months imprisonment, a fine of not more than \$200, or both.” (Plea Agmt ¶ 1, filed May 2, 2017); *cf.* 20 V.I.C. § 544(f) (“Unless another penalty is specifically provided, whoever violates any provision of this part, or any law or regulation relating to the operation and use of motor vehicles, shall be fined not more than \$200 or imprisoned not more than six months, or both.”). The People agreed to recommend a \$200 fine plus supervised probation. However, another statute, section 512, specifies the fine amount for certain vehicle and traffic offenses. Fines range from thirty dollars for a first offense of operating a vehicle with bald tires, *see* 20 V.I.C. § 461, to five hundred dollars for a third offense for having tinted glass windows not in compliance with Virgin Islands law. *See* 20 V.I.C. § 800. The charge Noel agreed to plead guilty to, negligent driving, carries a fine of seventy-five dollars for a first offense, according to section 512. Section 512 does not provide for a term of imprisonment for any of the listed offenses.

Because of the apparent conflict between these two statutes, section 544(f) and section 512, the Court questioned whether the Legislature had specifically provided another penalty when it enacted section 512. Counsel for the People disagreed.

Section . . . 544(f), Your Honor, talks about two penalties. It talks about a fine, which it specifically says here: Unless another penalty is specifically provided, whoever violates any provision of this part or any law or regulation relating to the operation and use of a motor vehicle shall be fined, which is the first penalty, not more than two hundred dollars or imprisoned, which is the second penalty, not more than six months, or both penalties, a fine and imprisonment.

So it's and/or, both. Section 512, now that says two hundred dollars. Section 512 specifically says: Schedule of fines for traffic offenses. And it gives a fine of seventy-five dollars for a first offense of negligent driving.

So I would agree that the fine phase of the penalty has been amended. It is no longer two hundred dollars as specifically stated in “F.” It is seventy-five dollars. However, it's still -- it doesn't talk about imprisonment, which is the other penalty under

Subsection F. So the imprisonment, Your Honor, still stands. The fine changes.

(Hr’g Tr. 6:9-7:5, June 5, 2017.) Counsel for Noel disagreed with the People’s position.

The language is clear, statutory construction unless another penalty is provided. That’s the end. Right there it says it all. Everything that comes after the word provided is for those issues when there is not another penalty provided. That is only for – it limits it. If there is another penalty provided we would have to go to statutory construction to see what the word penalty means. Your Honor, I can’t tell you off the top of my head but I know in the Virgin Islands Code there is a section that deals with headings, that if the heading says one thing you look at the body.^[2]

Id. at 15:21-16:7. Noel’s counsel became less certain, however, when the Court questioned why Noel would have “agree[d] to serve six months incarceration and have it suspended and . . . placed on six months probation?” *Id.* at 16:18-20. Noel could only be placed on supervised probation, the Court reasoned, if Noel were sentenced to a term of incarceration that was then suspended. *See id.* at 16:15-20 (“So if the Public Defender’s Office took the position that he’s not subject to incarceration for a violation of Section 503, why would the Defendant agree to serve six months incarceration and have it suspended and he would be placed on six months probation?”). Counsel for Noel explained that only after hearing argument earlier that morning in another case, *People of the Virgin Islands v. Charles Hay*, case number SX-16-CR-235, did she “realize[] that this 503 changes everything.” (Hr’g Tr. 16:23-24.) After hearing further from the parties and acknowledging that both the People of the Virgin Islands and the Office of the Territorial Public Defender had taken conflicting positions in different cases concerning the same statutes,³ the Court continued Noel’s sentencing without a date, directed counsel to submit additional arguments in writing, and took the matter under advisement.

² *See* 1 V.I.C. § 45(a).

³ *See* Hr’g Tr. 8:23-9:1 (“THE COURT: We just had a situation with Charles Hay and the People took the position that the incarceration component of 544(f) does not apply to Section 503.”); *see also id.* at 13:10-12 (“THE COURT: Okay. The problem I have with that is, the People in an earlier case just today took a different position.”).

Noel filed his brief on July 11, 2017. The People filed their brief on July 14, 2017.

II. DISCUSSION

The question raised here is straight-forward: which statute governs. That is, does section 512 govern exclusively or in addition to section 544(f), specifically for the offense of negligent driving. Noel argues that plain language should control. “It is well settled,” he notes, “that when the statutory language is plain and unambiguous, no further interpretation is required.” (Def.’s Br. 2, filed July 11, 2017 (citing *Robinson v. Shell Oil Co.*, 519 U.S. 337, 340 (1997)).) Section “544(f) provides: Unless another penalty is specifically provided, whoever violates any provision of this part, or any law or regulation relating to the operation and use of motor vehicles, shall be fined not more than \$200 or imprisoned not more than six months, or both.” *Id.* at 1. “The words of ‘Unless another penalty is specifically provided . . .’ mean their plain meaning,” Noel proffers. *Id.* at 2. “When the words of a statute are unambiguous, then, the first canon is also the last: judicial inquiry is complete.” *Id.* (quoting *Conn. Nat’l Bank v. Germain*, 503 U.S. 249, 254 (1992)).⁴ Consequently, “[i]f

⁴ The Court had intended to question why Noel, in his brief, relied so heavily on federal case law for the canons of statutory construction. (See Def.’s Br. 2 (citing *Robinson*, 519 U.S. at 340, quoting *Germain*, 503 U.S. at 253-54; *Markovski v. Gonzales*, 486 F.3d 108, 110 (4th Cir. 2007); *Lowery v. Ala. Power Co.*, 483 F.3d 1184, 1199 (11th Cir. 2007); *Dahl v. R.J. Reynolds Tobacco Co.*, 478 F.3d 965, 969 (8th Cir. 2007)).) Canons of statutory construction arose from the common law, not federal law—and certainly not the Constitution of the United States. *E.g. Goodwin v. Fawkes*, SX-11-CV-435, 2016 V.I. LEXIS 198, *18 (Super. Ct. Dec. 12, 2016) (“Through their common law rule-making authority, courts developed the canons of construction, many of which have since been codified by legislatures.” (citing 1 V.I.C. §§ 41-52) (footnote omitted)). Federal law would be persuasive authority at best here. But more importantly, the Supreme Court of the Virgin Islands has implicitly adopted the plain meaning canon. *See, e.g., Rohn v. People*, 57 V.I. 637, 643 (V.I. 2012) (“One of the cardinal principles of statutory interpretation requires this Court to apply ‘the plain meaning’ of the statute whenever it can be ascertained.” (citing *Codrington v. People*, 57 V.I. 176, 185 (V.I. 2012)); *see also People v. Baxter*, 49 V.I. 384, 388 (V.I. 2008) (“It is well settled that when the statutory language is plain and unambiguous, no further interpretation is required.” (citing *Robinson*, 519 U.S. at 340)). Since canons of statutory construction are governed by local law, not federal law, and since local precedent exists on the issue, there was no reason for Noel to look elsewhere. However, in considering this issue—the continued dependency of attorneys on non-binding authority to the detriment of the development of Virgin Islands jurisprudence, *cf. Cacciamani & Rover Corp. v. Banco Popular de P.R.*, 61 V.I. 247, 251 n.2 (V.I. 2014) (approving of a Superior Court decision that warned litigants that citing persuasive and other non-binding authority instead of following binding precedent “may result in sanctions.” (citing *Benjamin v. Coral World V.I., Inc.*, ST-13-CV-294, 2014 V.I. LEXIS 35, *13 n.38 (Super. Ct. June 12, 2014); V.I. Rules of Prof’l Conduct R. 211.3.1)); *accord In re: Moorhead*, 27 V.I. 74, 85 (Terr. Ct. 1992)—the Court discovered a different concern. Rather than rely on non-binding federal case law as it had appeared initially, counsel instead copied two paragraphs from the Virgin Islands

a penalty exists under the Virgin Islands code for a violation of Title 20 V.I.C. § 503 then Title 20 V.I.C. § 544 does not apply,” Noel argues. *Id.* “The plain and unambiguous language of the word ‘unless’ requires that Title 20 V.I.C. § 512 determine the penalty for a violation of Title 20 V.I.C. § 503.” *Id.* at 3 (emphasis added).

The People take the opposite position. They support harmonizing the statutes. (See People’s Br. 4, filed July 14, 2017 (“Wherever possible, the provisions of two seemingly contradictory statutes must be harmonized.” (citing *McIntosh v. People*, 57 V.I. 669, 686 (V.I. 2012)).) The People acknowledge that section 512 could be read as having implicitly repealed section 544—the position Noel took, though without framing it in that way. But the People reject that position, countering that section 512 did not repeal section 544(f) because section 512 only “regulates the *amount* of the fine imposed.” *Id.* at 2 (emphasis added); see also *id.* at 3 (“[T]he intention of the statute [sic] is to regulate the amount of the fine charged to each defendant found guilty of any of the offenses listed in the statute.”). “Negligent driving”—and presumably all other offenses listed in section 512—are “still punishable by imprisonment under 544(f).” *Id.* at 4. While “the amount of the fine is now regulated by the more specific provisions of § 512,” *id.*, the term of imprisonment a defendant would face if convicted remains “not more than six months.” 20 V.I.C. § 503. In other words, the amount of the fine is set by section 512, the People contend, but whether a term of imprisonment is still available is determined still by section 544(f). Consequently, “the two statutes are in fact reconcilable.”

Supreme Court’s opinion in *Baxter* and pasted them into her brief, but without attribution. (Compare Def.’s Br. 2, with *Baxter*, 49 V.I. at 388.) “Imitation may be the highest form of flattery, but plagiarism is no compliment because the essence of plagiarism is deceit.” *Ayala v. Lockheed Martin Corp.*, SX-08-CV-296, 2017 V.I. LEXIS 39, *38 (Super. Ct. Mar. 3, 2017) (brackets, quotation marks, and citation omitted). “[C]ourts around the country resoundingly denounce plagiarism whether occasioned by counsel in their papers or even judges in their opinions.” *Id.* at *36 (citations omitted). Not citing *Baxter* may have been inadvertent – possibly from drafting the brief in haste. The Court cautions counsel to take care in the future.

(People's Br. 4.) Furthermore, "[t]he plain language" of section 512 "shows that the statute's [sic] apparent primary purpose is to increase fines and eliminate arbitrariness by making a fine mandatory," the People argue. *Id.* at 2.

The People are correct, but only in part. Citing the revision note to section 544, the People correctly point out that the statute

has been in existence at least since 1969.⁵ Originally the maximum penalty for violation of § 544(f) was a fine of \$100 or imprisonment for up to six months, or both a fine and imprisonment. In 1976, the statute was amended to increase the amount of the maximum possible fine from \$100 to \$200. In all other respects, § 544(f) remained unchanged up to the present day.

(People's Br. 2 (citation omitted).) But the People gloss over the change that occurred in 2011 when section 512 of title 20 of the Virgin Islands Code became law. The Governor of the Virgin Islands signed bill number 11-0046 on July 12, 2011. Once signed, the bill became Act 7266. Act 7266 "amend[ed] title 20 of the Virgin Islands Code to set forth new fines for traffic violations, [and] to increase existing penalties for [other] traffic violations." Act 7266, 2011 V.I. Sess. L. 114, 114 (July 12, 2011). Section 512 was a new law that established a "[s]chedule of fines for traffic violations." *Id.* § 1. Hence, the legislation itself supports one point the People make: that the intent of the Legislature was to increase penalties for certain vehicle and traffic offenses. But nowhere in the bill did the Legislature state that its intent was to curb "arbitrariness" in the sentences judges imposed. In truth, the opposite conclusion could be reached, namely that the Legislature intended to codify,

⁵ The history note following section 544 indicates the following: "—Amended Apr. 1, 1969." V.I. Code Ann., tit. 20, § 544 (19__ ed.). By contrast, the history note following section 512 states "—Added July 12, 2011." V.I. Code Ann. tit. 20, § 512 (19__ ed. & 2017 Supp.). When the historical note to a statute is silent or provides only an amendment date, rather than a date the statute was added, it most likely means the statute was enacted in 1957 as part of the first Virgin Islands Code. Here, because the first historical note to section 544 says amended in 1969, the statute presumably has been in force since 1957, not 1969 as the People argue. In fact, the history source annotation explains that a similar version was enacted in 1930 by the Colonial Council of St. Thomas and St. John and later in 1940 by the Municipal Council of St. Croix. Hence both ordinances, as amended from time to time, appear to have been merged in 1957 into what would become section 544 of title 20 of the Virgin Islands Code.

not to curb, judicial practice.

Before section 512 was enacted, the punishments for many vehicle and traffic offenses, including negligent driving, were set by order of the presiding judge of the Territorial and later Superior Courts of the Virgin Islands. *See, e.g., Amended Order Appointing Violations Clerk & Designating Traffic Offenses within His Auth.*, no case number, 1977 V.I. LEXIS 49 (V.I. Terr. Ct. Feb. 11, 1977) (schedule of fines for certain offenses); *accord In re: Establishment of Fine Sch. for Vehicle Tint Infraction in Accord. with Tit. 20 of the V.I. Code*, Misc. No. SX-05-MC-25, 2005 V.I. LEXIS 35 (V.I. Super. Ct. Sept. 14, 2005); *In re: Establishment of Fine Sch. For Use of Handheld Mobile Tels. While Driving in Accord. with Tit. 20 of V.I. Code*, ST-06-MC-028, 2006 V.I. LEXIS 34 (V.I. Super. Ct. Feb. 2, 2006). Negligent driving was not listed among the schedule of fines promulgated in 1977. But the most recent version in effect in 2011, before section 512 was enacted, did enumerate fines for negligent driving. *See*, for example, Court Exhibit A, a spreadsheet prepared by the Clerk's office, dated July 29, 2003, and titled "Territorial Court of the Virgin Islands, A Listing of Infractions and Fines," in which the fines for negligent driving were listed as \$25.00, \$50.00, and \$100.00, respectively, for the first, second, and third offenses. *See also*, for example, Court Exhibit B: a chart generated by the Clerk's office, with "REVISED 03/12/2009" noted on the bottom of the second page, which retained the same amounts for negligent driving as the July 29, 2003 schedule of fines.⁶ The Legislature increased these fines in 2011 and now the fine amount for the first offense of negligent driving is \$75.00, \$150.00 for the second offense, and \$250.00 for the third offense. *See* 20 V.I.C. § 512. Contrary to the People's claim—that the intent of the Legislature was to curb judicial

⁶ By separate order, both documents are being added to the record as official court exhibits. *Accord Smith v. Henley*, 65 V.I. 179, 195 n.15 (Super. Ct. 2016) (legislative hearing added as judicial exhibit) ("The transcripts referenced are included via Order entered on even date as a Judicial Exhibit filed with this Opinion."), *aff'd on other grounds*, S. Ct. Civ. No. 2017-0066, __ V.I. __, 2017 V.I. Supreme LEXIS 66 (V.I. Oct. 27, 2017).

practice—the Legislature appears instead to have codified the system put in place by the presiding judges over the years because the Legislature retained the differentiation between first, second, and third offenses. Said differently, a judicial custom dating back at least to 1977⁷ appears to have been codified in 2011, not overridden. *Cf. In re: Alumina Dust Claims*, SX-09-MC-031, 2017 V.I. LEXIS 2, *37 n.15 (Super. Ct. Jan. 10, 2017) (“Over time and if practiced consistently, ‘the usage of a court becomes somewhat the law of the court,’” (quoting *Donnell v. Wright*, 97 S.W. 928, 931-32 (Mo. 1906))). In fact, except for the fine amount, section 512 and Court Exhibit B closely track each other. Both have three columns, one each for the “1st FEE,” the “2nd FEE,” and “3rd FEE.” The offenses listed on each schedule largely parallel the other. For example, the first five offenses listed on court exhibit B are “Allowing Unlicensed Driver to Operate Vehicle,” “Bald Tires,” Broken Windshield,” “Carrying Person on Cycle without Helmet,” and Carrying more than 1 person on a motorcycle.” (Ct. Ex. B, p.1.) Similarly, the first five offenses enumerated under section 512 are “Allowing unlicensed driver to operate vehicle,” Operating vehicles with bald tires,” Operating vehicles with broken windshield, “Operating or carrying person on motorcycle without wearing helmet,” and “Carrying more than 1 person on a motorcycle designed to carry on [sic] person.” 20 V.I.C. § 512. Stylistic changes were made, and the amounts were increased, but overall the schedules closely parallel each other.

Identifying the historical origins of section 512 is illuminating. But it does not settle the underlying question here, whether the adoption of section 512 means that section 544(f) no longer applies to the offense of negligent driving. The Court is not convinced that it does. “When construing

⁷ The order issued in 1977 by then-Presiding Judge Verne A. Hodge was titled “amended order.” *See* 1977 V.I. LEXIS 49 at *1 (“Amended Order Appointing Violations Clerk and Designating Traffic Offenses within His Authority.”). What the amended order amended is not known. The Territorial Court of the Virgin Islands was established effective January 1, 1977. *See, e.g., Joseph v. Gov’t of the V.I.*, 576 F. Supp. 1335, 1336 (D.V.I. 1983) (“An important change . . . took place effective on January 1, 1977, when the Territorial Court of the Virgin Islands replaced the Municipal Court”).

a statute courts typically consider the plain language first. If reading the statute as it was written yields a result that is not absurd or contrary to its intent, the plain language controls.” *Der Weer v. Hess Oil V.I. Corp.*, 64 V.I. 160, 170 (Super Ct. 2016) (citing *Rohn v. People*, 57 V.I. 637, 646 n.6 (V.I. 2012)). However, “when two statutes cover the same situation, the more specific statute takes precedence over the more general one, unless it appears that the Legislature intended for the more general to control.” *Id.* (quoting *Rohn*, 57 V.I. at 647). The plain language of section 512 does not shed any light here because there is no language to construe. The statute is largely a chart. But the plain language of section 544(f) does shed some light. As Noel argues, the prefatory clause “unless another penalty is specifically provided” does give the Court pause because the Legislature did provide another penalty in 2011—the schedule of fines enacted in section 512. But as the People point out, “implicit repeal is generally disfavored, and will only be found where there is irreconcilable conflict between to [sic] enactments.” (People’s Br. 3-4 (citing *McIntosh*, 57 V.I. 669).)

The People concede that, because section 512 provides another penalty now, the language “shall be fined not more than \$200” in section 544(f) does not apply any longer. Before section 512 was enacted, a person sentenced for negligent driving could face a fine of up to \$200.00, regardless whether the offense was the first or fifth. *Cf. Gov’t of the V.I. v. Smith*, 45 V.I. 293, 302-03 (Terr. Ct. 2003) (“The maximum penalty for negligent driving is six (6) months imprisonment and a Two Hundred Dollar (\$200.00) fine.”). Before section 512 was enacted, the distinction between first, second, and third offenses of the vehicle and traffic laws largely existed only in the schedule of fines promulgated by the presiding judges of the Territorial and Superior Courts, not in the Virgin Islands Code. *But see, e.g.*, 20 V.I.C. § 509b. Whether the judges adhered to the court-promulgated schedule of fines is unclear. Compare Court Exhibits A and B, both of which show that the fine amounts

established for negligent driving remained the same since at least 2003 (\$25,00, \$50,00, and \$100.00, respectively, for the first, second, and third offense), with *Smith*, which was decided after July 29, 2003 (the date listed on Court Exhibit A), where the court stated that \$200.00 was the maximum fine amount, not \$100.00, assuming it were Smith's third offense. *See Smith*, 45 V.I. at 302-03 ("The maximum penalty for negligent driving is six (6) months imprisonment and a Two Hundred Dollar (\$200.00) fine.").

In a sense, the People may be correct, that "the intention of the statue [sic] [wa]s to *regulate* the amount of the fine charged to each defendant found guilty of any of the offenses listed in the statute." (People's Br. 3 (emphasis added).) Now, when a fine is imposed, section 512 controls what amount is imposed as a fine. Courts do not have any discretion to increase or decrease the amount. But the People further argue that the language "or imprisoned not more than six months, or both" in section 544(f) still governs, notwithstanding section 512's enactment in 2011. According to the People's interpretation, for the first offense of negligent driving, the trial court can either impose a \$75.00 fine, a term of imprisonment of six months or less, or both a \$75.00 fine and a term of imprisonment. For the second offense, the punishment is either a \$150 fine, six months or less in prison, or both. Similarly, for the third offense, the punishment is a \$250 fine, six months or less in prison, or both.

To bolster their argument, the People point to another offense listed in section 512, reckless driving. Operating a vehicle in a reckless manner is a violation of the law. *See* 20 V.I.C. § 492 ("It shall be unlawful for any person to operate a motor vehicle in a reckless manner over and along the public highways of this Territory."). Section 544(a) provides that the maximum punishment for reckless driving is a fine of \$1,000, six months imprisonment, or both. *See id.* § 544(a) ("Whoever violates

any provision of section 492 of this title, concerning reckless driving, shall be fined not more than \$1,000 or imprisoned not more than six (6) months, or both.”). The same conflict exists with section 512, however, because under section 512, a first offense of reckless driving carries a \$300 fine. *See id.* § 512. But for the second or third offense of reckless driving, the “fine” listed by statute is “Must Appear in Court.” *Id.* “One could interpret the statute to mean that a defendant who faces a second or third conviction for reckless driving faces neither a fine nor imprisonment. Such an interpretation,” the People argue, “would be obviously absurd. A more reasonable interpretation is that upon a second or third conviction for reckless driving the [c]ourt may impose a fine of up to \$1000 and imprisonment as authorized by § 544(a).” (People’s Br. 3.)

The People make a compelling point. If section 512 governs to the exclusion of section 544—for negligent driving as well as reckless driving—then a defendant convicted of either offense cannot be sentenced to a term of imprisonment. But the same would also have to hold for all other offenses listed in section 512, including, for example, leaving the scene of an accident in violation of section 541 of title 20 of the Virgin Islands Code. Section 512 sets the punishment at \$500.00 for a first offense of leaving the scene of an accident. While that amount exceeds the maximum authorized under section 544(f), which could present a complication in a different case, *cf. People v. Rosario*, 62 V.I. 429, 450 (Super. Ct. 2015) (“Under the rule of lenity, when the Court must interpret an ambiguous statute or court rule, the rule dictates that ambiguity should be resolved in favor of lenity to the defendant. The rule applies to criminal statutes and the penalties they impose.” (quotation marks, ellipsis, parenthetical clauses, citations, and footnote omitted)), the point here to be made is that, under Noel’s reading of the law, imprisonment would never be available even if the first offense of “hit and run” caused injury to a person or damage to property. According to Noel, section 512’s

plain language would govern even then and the only punishment a court could impose is a \$500.00 fine. The Court cannot agree with this interpretation of the relevant statutes.

But perhaps the most compelling point is one neither side made – that section 544 further provides that “[n]one of the provisions of this part shall be construed as preventing conviction and punishment under any other provision of law.” 20 V.I.C. § 544(g). The words “conviction and punishment” could be read as “conviction *and* punishment” or as “conviction *or* punishment.” *Cf. United States v. Fisk*, 70 U.S. (3 Wall) 445, 447 (1866) (“In the construction of statutes, it is the duty of the court to ascertain the clear intention of the legislature. In order to do this, courts are often compelled to construe ‘or’ as meaning ‘and,’ and again ‘and’ as meaning ‘or.’”). If “and” were construed as “and” and not as “or,” then section 544(g) could be read as an exception to section 104 of title 14 of the Virgin Islands Code for vehicle and traffic offenses that might also constitute another violation of Virgin Islands law, notwithstanding the prohibition in the Virgin Islands on multiple punishments for the same act. *See* 14 V.I.C. § 104 (“An act or omission which is made punishable in different ways by different provisions of this Code may be punished under any of such provisions, but in no case may it be punished under more than one.”). One who drives a car directly at another, but stops short of hitting her, would commit both simple assault and reckless driving. Section 544(g) could be construed to allow conviction and punishment for both offenses, notwithstanding that conviction *and* punishment for the same action—driving a vehicle at another person—would have been barred by section 104 if not for section 544(g). But if “conviction and punishment” were construed as “conviction *or* punishment,” then section 544(g) could support the People’s position here: “None of the provisions of this part shall be construed as preventing conviction [or] punishment under any other provision of law.” 20 V.I.C. § 544(g). Section 544(g)

could allow the court to impose a fine (\$75.00, \$150.00, or \$250.00) for negligent driving, as permitted by section 512, or a term of imprisonment of six months or less as permitted by section 544(f), or both a term of imprisonment and a fine as permitted by sections 512 and 544(f). It is this construction that the Court finds most persuasive here.

The issues raised in this case do not lend themselves to easy resolution. The enactment of section 512 in 2011 without reference either to the past practice of the courts or to what impact section 512 should have on section 544(f) leaves perhaps too much room for interpretation.⁸ “However, the rule of lenity will be used only where a criminal statute is ambiguous such that th[e] Court is unable to discern the Legislature’s intent.” *Francis v. People*, 63 V.I. 724, 739 (V.I. 2015) (citing *Ward v. People*, 58 V.I. 277, 286 (V.I. 2013)). In this instance, the Legislature’s intent can be discerned. If a fine is imposed, section 512 governs. If a term of incarceration is imposed, section 544(f) governs. If both a fine and a term of incarceration are imposed, then both section 512 and 544(f) govern. It is not ideal having to cobble various statutes together to harmonize the law, but enacting, revising, and amending legislation is not the province of the judiciary. *Cf. In re: Joseph*, 65

⁸ The practice questioned in *Galloway v. People*, 57 V.I. 693, 705 n.6 (V.I. 2013), whereby “a court clerk — a non-judicial officer — accept[s], on an *ex parte* basis and without the input of the government, a guilty plea for a criminal offense that carries a potential incarcerative penalty, but . . . [can] impose only a fine as the sentence,” remains in place. The ancillary questions raised here also implicate this practice, but more so that the judicial officer assigned to the traffic case has no input in deciding what penalty to impose. The more important question, however, that neither party has raised concerns the enactment of section 512 and the establishment of the Magistrate Division of the Superior Court, which “has exclusive jurisdiction over all traffic offenses, except felony traffic offenses.” 4 V.I.C. § 124(b). What’s more, section 512’s impact on section 544(f) was not addressed in *Galloway*. See 57 V.I. at 701 n.4 (noting that section 512 was not in effect when the acts in question occurred). If Noel is correct, and section 512 does supersede section 544(f), then it might also be the case that traffic offenses are no longer crimes under Virgin Islands law. Section 544(f) is the authority that the Supreme Court of the Virgin Islands relied on in *Galloway* to declare that violations of are criminal offenses. See *Galloway*, 57 V.I. at 702-03 (“[S]ection 544 of title 20 — by providing for six months imprisonment as a penalty for the violation of any traffic regulation for which a different penalty is not codified — rendered the conduct criminal.” (citing 14 V.I.C. § 1(1)); see also 14 V.I.C. § 1 (“A ‘crime’ or ‘offense’ is an act committed or omitted in violation of a law of the Virgin Islands and punishable by – (1) imprisonment; or (2) fine . . .”). Because the Court holds that section 544(f) was not superseded by section 512, and because Noel did not challenge the charges brought against him, the Court notes, but declines to address, this issue.

V.I. 217, 228 (V.I. 2016) (“[Courts] are not authorized to rewrite, revise, modify, or amend statutory language in the guise of interpreting it.” (quotation marks and citation omitted)). Accordingly, the Court holds that the enactment of section 512 did not supersede section 544(f) for the offense of negligent driving. Before section 512 was enacted, the penalty for negligent driving was a fine, a term of imprisonment, or both. After section 512 was enacted, the penalty for negligent driving remains a fine, a term of imprisonment, or both. Only the amount of the fine has changed.

III. CONCLUSION

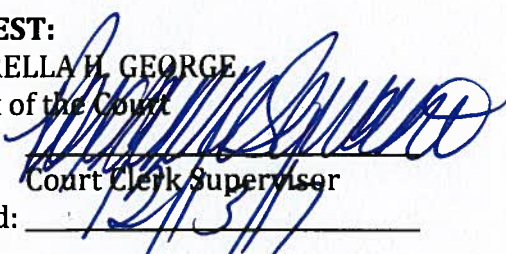
For the reasons stated above, the Court holds that the penalty provision of section 544(f), for a person pleading guilty to or convicted of negligent driving in violation of section 503 of title 20 of the Virgin Islands Code, was not superseded in 2011 when the Legislature of the Virgin Islands enacted section 512. Section 512 governs the amount of the fine to be imposed. Section 544(f) governs the term of incarceration. Thus, a person who pleads guilty or is convicted of negligent driving faces a term of incarceration of up to six months or a fine of \$75.00, \$150.00, or \$250.00 for a first, second, or third offense, respectively, or both.

An appropriate order follows memorializing this holding and scheduling this matter for a change of plea hearing.

Date: December 13, 2017.

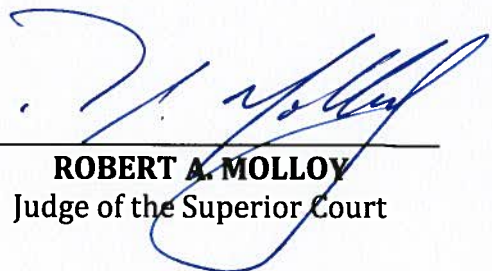
ATTEST:

ESTRELLA H. GEORGE
Clerk of the Court

By: 

Court Clerk Supervisor

Dated: _____



ROBERT A. MOLLOY
Judge of the Superior Court

07/29/03 09:34:54

TERRITORIAL COURT OF THE VIRGIN ISLANDS ST. THOMAS
A LISTING OF INFRACTIONS AND FINES

PAGE 1

ENTRY DATA

	VLFEF1	VLFEF2	VLFEF3
100 DRIVING WITHOUT A LICENSE	25.00	50.00	100.00
110 FAILING TO REPORT AN ACCIDENT	25.00	50.00	100.00
120 FAILING TO YIELD THE RIGHT OF WAY	25.00	50.00	100.00
130 IMPEDING TRAFFIC	50.00	50.00	100.00
140 IMPROPER LIGHTS	25.00	50.00	100.00
150 IMPROPER MUFFLER	10.00	20.00	30.00
160 IMPROPER PLATES	10.00	20.00	30.00
170 IMPROPER TURNS	10.00	20.00	30.00
180 LEAVING KEYS IN IGNITION	25.00	50.00	100.00
190 LEAVING THE SCENE OF AN ACCIDENT	10.00	20.00	30.00
191 LEAVING THE SCENE (PERSONAL INJURY)	200.00	200.00	200.00
192 LEAVING THE SCENE (PROPERTY DAMAGE)	200.00	200.00	200.00
193 LEAVING THE SCENE (PROPERTY/PERSONAL)	200.00	200.00	200.00
200 NEGLIGENCE DRIVING	25.00	50.00	100.00
201 NEGLIGENCE DRIVING (PERSONAL INJURY)	25.00	50.00	100.00
202 NEGLIGENCE DRIVING (PROPERTY DAMAGE)	25.00	50.00	100.00
203 NEGLIGENCE DRIVING (PROPERTY/PERSONAL)	25.00	50.00	100.00
210 NO LICENSE ON PERSON	25.00	50.00	100.00
220 NO LICENSE PLATE LIGHTS	10.00	20.00	30.00
230 NO REGISTRATION ON PERSON OR IN VEHICLE	10.00	20.00	30.00
235 FAILURE TO DISPLAY REGISTRATION STICKER	10.00	20.00	30.00

6886-103-008 (REVISED)

EXHIBIT

A

160	IMPROPER PLATES	10.00	20.00	30.00
170	IMPROPER TURNS	25.00	50.00	100.00
180	LEAVING KEYS IN IGNITION	10.00	20.00	30.00
190	LEAVING THE SCENE OF AN ACCIDENT	200.00	1.00	1.00
191	LEAVING THE SCENE (PERSONAL INJURY)	200.00	1.00	1.00
192	LEAVING THE SCENE (PROPERTY DAMAGE)	200.00	1.00	1.00
193	LEAVING THE SCENE (PROPERTY/PERSONAL)	200.00	1.00	1.00
200	NEGLIGENT DRIVING	25.00	50.00	100.00
201	NEGLIGENT DRIVING (PERSONAL INJURY)	25.00	50.00	100.00
202	NEGLIGENT DRIVING (PROPERTY DAMAGE)	25.00	50.00	100.00
203	NEGLIGENT DRIVING (PROPERTY/PERSONAL)	25.00	50.00	100.00
210	NO LICENSE ON PERSON	25.00	50.00	100.00
220	NO LICENSE PLATE LIGHTS	10.00	20.00	30.00
230	NO REGISTRATION ON PERSON OR IN VEHICLE	10.00	20.00	30.00
235	FAILURE TO DISPLAY REGISTRATION STICKER	10.00	20.00	30.00
240	FAILURE TO DRIVE AT MINIMUM SPEED	20.00	40.00	60.00
240	OBSTRUCTING TRAFFIC	20.00	40.00	60.00
250	TRAVELLING WRONG WAY ON A ONE-WAY STREET	20.00	40.00	60.00
260	OPERATING VEHICLE FOR HIRE WITHOUT V. LICENSE	10.00	20.00	30.00
270	OPERATING VEHICLE WHILE LICENSE IS SUSPENDED	25.00	50.00	100.00
280	ALLOWING UNLICENSED DRIVER TO OPERATE VEHICLE	25.00	50.00	100.00
280	OPERATING VEHICLE WITH BALD TIRES	10.00	20.00	30.00
280	OPERATING VEHICLE WITH BROKEN WINDSHIELD	10.00	20.00	30.00
280	CARRYING PASSENGER ON A MOTORCYCLE WITHOUT HELMUT	10.00	20.00	30.00
280	FAILURE TO DIM HEADLIGHTS	10.00	20.00	30.00
280	FAILURE TO STOP FOR SIREN	10.00	20.00	30.00
280	OPERATING VEHICLE WITH FOREIGN PLATES	10.00	20.00	30.00
280	OPERATING A VEHICLE WITHOUT A BUMPER	10.00	20.00	30.00
280	OPERATING VEHICLE WITHOUT COVERING ON LIGHTS	10.00	20.00	30.00
280	OPERATING VEHICLE WITHOUT A FENDER	10.00	20.00	30.00
280	NO TAXI BADGE OR CARD	10.00	20.00	30.00
280	NO TAXI DOME LIGHT	10.00	20.00	30.00
280	NO TAXI TARIFF	10.00	20.00	30.00
280	OPERATING A VEHICLE WITH OVERSIZED TIRES	10.00	20.00	30.00
280	PARKING IN A PROHIBITED AREA	10.00	20.00	30.00
280	PARKING ON A CURB	10.00	20.00	30.00
280	PASSING ON A CURVE	10.00	20.00	30.00
280	UNATTENDED TAXI	10.00	20.00	30.00
280	PASSING ON DOUBLE YELLOW LINE	10.00	20.00	30.00
280	OVERTIME PARKING	25.00	50.00	100.00
280	FAILING TO STOP WHEN ORDERED	25.00	50.00	100.00
280	FAILING TO TRANSFER REGISTRATION	25.00	50.00	100.00
280	PARKING IN A HANDICAPPED PARKED ZONE	25.00	50.00	100.00
280	CARRY MORE THAN ONE ON A CYCLE DESIGNATED FOR ONE	1,000.00	1,000.00	1,000.00

ENTRYDATA	VLFEEL	VLFEEL2	VLFEEL3
280 MISCELLANEOUS	10.00	20.00	30.00
290 PASSING A "DO NOT ENTER" SIGN	25.00	50.00	100.00
300 PASSING A RED LIGHT	25.00	50.00	100.00
310 PASSING A STOP SIGN	25.00	50.00	100.00
320 RECKLESS DRIVING	200.00	.00	.00
33A SPEEDING (BETWEEN 15 MPH AND 30 MPH)	50.00	75.00	100.00
33B SPEEDING (BY NOT MORE THAN 14 MPH)	50.00	75.00	100.00
33C SPEEDING (BY 30 MPH OR MORE)	.00	.00	.00
33D RECKLESS DRIVING	.00	.00	.00
330 EXCEEDING SPEED LIMIT BY 30 MPS OR MORE	50.00	75.00	100.00
340 TINTED GLASS ON VEHICLE	25.00	50.00	100.00
350 OPERATING AN UNINSURED VEHICLE	250.00	.00	.00
351 UNINSURED VEHICLE	.00	.00	.00
360 OPERATING AN UNREGISTERED VEHICLE	25.00	50.00	100.00
361 PASSING A SCHOOL BUS	50.00	75.00	100.00
370 ILLEGAL LANE CHANGE	25.00	50.00	100.00
380 FAILURE TO SIGNAL	25.00	50.00	100.00
390 FAILURE TO MOVE WHEN ORDERED	25.00	50.00	100.00
400 ILLEGAL TRANSFER OF PLATES	25.00	50.00	100.00
410 SOLICITING PASSENGERS	25.00	50.00	100.00
420 FAILURE TO OBEY OFFICER	25.00	50.00	100.00
430 DISREGARD CROSSWALK	25.00	50.00	100.00
440 RIDING MOTORCYCLE WITHOUT A HELMET	25.00	50.00	100.00
45A FAILURE TO RESTRAIN AN INFANT UNDER THE AGE OF 5	.00	.00	.00
450 NO SAFETY BELTS/SAFETY SEAT	50.00	100.00	300.00
460 IMPROPER PASS AT AN INTERSECTION	25.00	50.00	100.00
470 OPERATING A VEHICLE WITH EXCESS # OF PASSENGERS	.00	.00	.00
480 FAILURE TO MEET LOAD, HEIGHT, AND WIDTH REQUIRE	.00	.00	.00
490 FAILURE TO DISPLAY INSURANCE STICKER	.00	.00	.00
500 DISPLAY OF COUNTERFEIT STICKER	.00	.00	.00

*** END OF REPORT ***

CODE	DESCRIPTION	1 st FEE	2 nd FEE	3 rd FEE
28A	Allowing Unlicensed Driver to Operate Vehicle	25.00	50.00	100.00
28B	Bald Tires	10.00	20.00	30.00
28C	Broken Windshield	10.00	20.00	30.00
28D	Carrying Person on Cycle without Helmet	10.00	20.00	30.00
28X	Carrying more than 1 person on a motorcycle	TO BE	DETERMINED	BY CO
28OU	Driving an Unsafe Vehicle	10.00	20.00	30.00
100	Driving without a License (Never had License)	25.00	50.00	100.00
280W	Driving while using Cell Phone (Mobile Phone)	50.00	100.00	300.00
130	Disregarding Crosswalk	25.00	50.00	100.00
500	Displaying of Counterfeit Sticker	250.00	Appear In	Court
110	Failing to Report an Accident	25.00	50.00	100.00
120	Failing to Yield the Right of Way	25.00	50.00	100.00
28E	Failing to Dim Lights	10.00	20.00	30.00
28F	Failure to Stop for Siren	25.00	50.00	100.00
28G	Foreign Plates	25.00	50.00	100.00
28U	Failure to Stop when Ordered	25.00	50.00	100.00
28V	Fail to Transfer Registration	25.00	50.00	100.00
380	Failure to Signal	25.00	50.00	100.00
390	Failure to Move When Ordered	25.00	50.00	100.00
420	Failure to Obey an Officer	25.00	50.00	100.00
480	Failure of a Vehicle to Meet Load, Height, Width requirements	TO BE	DETERMINED	BY CO
45A	Failure to Restrain Infant or toddler under age 5 by use of seat	50.00	100.00	300.00
24A	Failure to Drive at Minimum Speed	20.00	40.00	60.00
235	Failure to Display Registration Sticker	10.00	20.00	30.00
490	Failure to Display Insurance Sticker	10.00	20.00	30.00
130	Impeding Traffic	50.00	75.00	100.00
140	Improper Lights	25.00	50.00	100.00
150	Improper Muffler	10.00	20.00	30.00
160	Improper Plates	10.00	20.00	30.00
170	Improper Turn	25.00	50.00	100.00
370	Illegal Lane Change	25.00	50.00	100.00
400	Illegal Transfer of Plates	25.00	50.00	100.00
460	Improper Passing at Intersection	25.00	50.00	100.00
280AA	Improper Passing	25.00	50.00	100.00
180	Leaving Keys in Ignition	10.00	20.00	30.00
190	Leaving the Scene of an Accident	200.00	Appear in	Court
191	Leaving the Scene of an Accident Personal Injury	200.00	Appear in	Court
192	Leaving the Scene of an Accident Property Damage	200.00	Appear in	Court
193	Leaving the Scene of an Accident Personal/Property	200.00	Appear in	Court
280AAA	Miscellaneous Driving (Burn Out Tires)	10.00	20.00	30.00
280BB	Misc- Improper Reversing	10.00	20.00	30.00
280D	Misc- Failure to Remain on Left Side of Street / Highway	10.00	20.00	30.00
280FFF	Misc- Failure to Maintain Control (When Negligent, Property or Personal Injury is not checked)	10.00	20.00	30.00
280KK	Misc- Operating an Overloaded Vehicle	10.00	20.00	30.00
280U	Misc- Operating an Unsafe Vehicle	10.00	20.00	30.00
200	Negligent Driving	25.00	50.00	100.00
201	Negligent Driving Personal Injury	25.00	50.00	100.00
202	Negligent Driving Property Damage	25.00	50.00	100.00
203	Negligent Driving Personal / Property	25.00	50.00	100.00

210	No License on Person	25.00	50.00	100.00
220	No License Plate Lights	10.00	20.00	30.00
230	No Registration on Person or in Car	10.00	20.00	30.00
28H	No Bumper on Vehicle	10.00	20.00	30.00
28I	No Covering on Lights	10.00	20.00	30.00
28J	No Fender	10.00	20.00	30.00
28K	No Taxi Badge or Card	10.00	20.00	30.00
28L	No Taxi Dome Light	10.00	20.00	30.00
28M	No Taxi Tariff	10.00	20.00	30.00
450	No Safety Belt / Safety Seat	50.00	100.00	300.00
240	Obstructing Traffic	20.00	40.00	60.00
250	One Way Street <i>(Traveling wrong way on a one way street)</i>	10.00	20.00	30.00
260	Operating Vehicle for Hire without License	25.00	50.00	100.00
270	Operating Vehicle While License is Suspended	Must	Appear In	Court
470	Operating a Motor Vehicle with an Excess number of passengers	TO BE	DETERMINED	BY COL
281	Misc- Litter	1,000.00	Appear In	Court
28T	Overtime Parking	25.00	50.00	100.00
28O	Parking in Prohibited Area	25.00	50.00	100.00
28P	Parking on a curb	10.00	20.00	30.00
28Q	Passing on a Curve	25.00	50.00	100.00
28S	Passing on a Double Yellow Line	25.00	50.00	100.00
290	Passing a "Do Not Enter" sign	25.00	50.00	100.00
300	Passing a Red Light	25.00	50.00	100.00
310	Passing a Stop Sign	25.00	50.00	100.00
361	Passing a School Bus	50.00	75.00	100.00
45B	Passenger without Seatbelt	50.00	100.00	300.00
28W	Parking in Handicapped Zone	1,000.00	Appear In	Court
320	Reckless Driving	200.00	Appear In	Court
440	Riding without Helmet	25.00	50.00	100.00
33F	Speeding <i>(Not specify)</i>	50.00	75.00	100.00
330	Exceeding the Speed Limit by 30 miles or more <i>(Title 20, Section 494, V.I.C)</i>	50.00	100.00	300.00
33A	Exceeding the Speed Limit by 15 miles but not more than 29 mile	50.00	100.00	300.00
33B	Exceeding the Speed Limit by 14 miles per hour	50.00	100.00	300.00
410	Soliciting Passengers	25.00	50.00	100.00
340	Tinted Glass on Vehicle	100.00	200.00	300.00
28R	Unattended Taxi	10.00	20.00	30.00
350	Uninsured Vehicle	250.00	Appear In	Court
360	Unregistered Vehicle	25.00	50.00	100.00

TCRX

TIC2.

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REVISED 03/12/2009