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

PEOPLE OF THE VIRGIN ISLANDS,
Plaintiff,

Vs.

LOUIS MILTON WILLIS
GEREARD CASTOR

Defendants

CRIMINAL NO. ST-14-CR-74 &

ST-14-CR-75

JURY TRIAL DEMANDED

NOTICE OF ENTRY OF MEMORANDUM OPINION & ORDER

DENISE GEORGE-COUNTS, ESQ., AAG
DARREN JOHN-BAPTISTE, ESQ.
TRESTON MOORE, ESQ.
JUDGES, MAGISTRATES, LAW CLERK OF THE SUPERIOR COURT, IT, LEGAL COUNSEL
OFFICE OF PROBATION FOR DEF.'S
ESTRELLA H. GEOREG, ACTING CLERK OF THE COURT

Please take notice that on **14th DAY OF January** a (n) **MEMORANDUM OPINON & ORDER** dated **January 8, 2015** was entered by this Court in the above-titled matter.

Dated: **14TH DAY OF DECEMBER**

ESTRELLA H. GEORGE
Acting Clerk of the Court

By: CAMEIL A. CLARKE

TITLE: COURT CLERK II

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DIVISION OF ST. THOMAS AND ST. JOHN

PEOPLE OF THE VIRGIN ISLANDS, Plaintiff,	)	
vs.	)	
LOUIS MILTON WILLIS and GERARD CASTOR	)	**Case No. ST-14-CR-074** **Case No. ST-14-CR-075**
Defendants.	)	

MEMORANDUM OPINION

Before the Court is Defendant Gerard Castor's July 28, 2014, Motion to Dismiss. Defendant Louis Milton Willis joined Castor's motion to dismiss on October 24, 2014,[1] and filed an "Informational Motion" dated the same day. Willis is charged with gross receipts tax violations pursuant to 14 V.I.C. § 11 and 33 V.I.C. §§ 1522, 1523 and 1525(2), and Castor is charged with gross receipts tax violations pursuant to 14 V.I.C. § 11 and 33 V.I.C. §§ 1522, 1523 and 1525(1).

Castor seeks to dismiss the charges against him "or alternatively... find that [Castor's] sentencing exposure is limited to the provisions of 33 V.I.C. § 53."[2] Castor contends that "[a]pplying the rules of statutory construction... the more specific statute defining the term and rate of gross receipts taxes and proscribing penalties for its violation... prevails over the more general offenses" with which Castor is charged. The People's September 23, 2014, opposition states that the Rule of Lenity is inapplicable because Castor has not been charged under Section 53, and that Section 53 and the charges in this case "do not necessarily cover the same situation."[3]

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[1] Defendant Willis fails to cite – and this Court is unable to find – authority supporting his contention that criminal "co-defendants are generally included in the motions filed by any defendant, unless a defendant specifically 'opts out'". Defendant Willis's October 24, 2014, Joinder in Co-Defendant's Motion to Dismiss Counts with Points and Authorities, p. 1. Defendants must expressly join motions filed by their co-defendants.

[2] Defendant Gerard Castor's July 28, 2014, Motion to Dismiss Counts 1-4 or Alternatively Rule That Defendant's Sentencing Exposure is Limited by 33 V.I.C. § 53.

[3] People's September 23, 2014, Opposition to Defendant Castor's Motion to Dismiss, p. 2.

Because the Court finds that the Legislature intended for Sections 1523 and 1525(1) to be controlling, and the conspiracy charges under Sections 1522 do not conflict with the substantive crimes charged in Sections 1523 and 1525, the motion to dismiss is denied. Additionally, the Rule of Lenity is inapplicable because the statutes under which Defendants are charged, as well as the section under which they ask to be sentenced, are not ambiguous

RELEVANT FACTUAL AND PROCEDURAL HISTORY

Louis Milton Willis is the former director of the Virgin Islands Bureau of Internal Revenue. In Count I, conspiracy to evade or defeat gross receipts tax, the People allege that Willis provided his codefendant, Gerard Castor, president of Balbo Construction, Inc., with tax clearance letters despite Balbo's failure to pay gross receipts taxes and file gross receipts tax returns, in violation of 33 V.I.C. § 1522. In Count III, aiding and abetting a willful failure to collect or pay over gross receipts tax, in violation of 33 V.I.C. § 1523, and in Count V, aiding or assisting fraud and false statements in violation of 33 V.I.C. § 1525(2), the People assert that, after leaving the VIBIR, Willis intentionally understated the gross receipts tax liability in tax filings he prepared on behalf of Balbo.

In Count I, the People also charge that Castor, while president of Balbo, conspired with Willis and filed or caused to be filed gross receipts tax returns that understated the gross income of the company, in violation of 33 V.I.C. § 1522. In Count II, willful failure to collect or pay over tax, the People claim that Castor failed to collect or truthfully account for and pay over gross receipts taxes by willfully failing to file gross receipts tax returns on behalf of Balbo, in violation of 33 V.I.C. § 1523; and, in Count IV, the People allege that Castor, under the penalty of perjury, willfully misstated information regarding the gross income or payments of the company, in violation of 33 V.I.C. § 1525(1).

STANDARD OF REVIEW – MOTION TO DISMISS – CONFLICTING ENACTMENTS

"Superior Court Rule 128(a), and not Federal Rule of Criminal Procedure 12, governs pre-trial motions in the Superior Court [regarding criminal matters],"[4] and "[a]ll pre-trial motions [are to] be made prior to the motion deadline established by the court."[5]

The Court considers three (3) factors when determining whether statutes are prohibitively incompatible:

1. Do the statutes conflict,
2. If the statutes conflict, which statute is more specific, and
3. If the statutes conflict, did the Legislature intend for the more general statute to control.[6]

DISCUSSION

I. Conflicting Statutes

Defendants argue that they are improperly charged under the more general Sections 1522, 1523, 1525(1) and 1525(2) within Chapter 45 of Title 33 V.I. Code Annot., when they should, instead, be charged under what they argue to be the more specific statute, 33 V.I.C. § 53(a) of Chapter 3.[7] All five (5) of these statutory provisions are contained within Subtitle 1 of Title 33, Taxation and Finance.

"[I]t is a well-established canon of statutory interpretation that when two statutes cover the same situation, the more specific statute takes precedence over the more general one, unless it

[4] *Tindell v. Virgin Islands*, Crim. No. 2009-0107, 2012 WL 78885, at *4 (V.I. Jan. 5, 2012) ("[This is so] even if Superior Court Rule 128(a) provides a less comprehensive framework than Federal Rule of Criminal Procedure 12") (citing *Corraspe v. People*, 53 V.I. 470, 481–82 (V.I. 2010)).
[5] Superior Court Rule 128(a).
[6] *Ward v. People*, Crim. No. 2012-0077, 2013 WL 951712, at *4 (V.I. Mar. 6, 2013) cert. denied sub nom. *Ward v. Territory of Virgin Islands*, 134 S. Ct. 516, 187 L. Ed. 2d 372 (2013) (citations omitted).
[7] Defendant Castor's motion to dismiss, p. 2.

appears the Legislature intended for the more general to control."[8] Statutes cover the same situation when they involve "seemingly conflicting enactments".[9] The Court will now determine whether the statutes are irreconcilable, and, if so, whether Defendants may be charged under the statutes that form the basis for the Information.

A. THE CONSPIRACY CHARGES DO NOT CONFLICT WITH ANY SUBSTANTIVE CHARGES.

Defendants contend that, "although the Government has made it abundantly clear that [Defendants have] committed gross receipts infractions, which is set forth in [Chapter 3], it has chosen to charge under the more general... [l]aws set forth in... Chapter 45".[10] The People respond that "the charges do not necessarily cover the same situation".[11]

Historically, "the conspiracy itself was the whole offense,"[12] and being charged with both a conspiracy and the substantive resulting crime would have involved conflicting and irreconcilable charges. However, this approach has long since been replaced with the "general principle that a conspiracy and the substantive offense that is its immediate end do not merge,"[13] such that a conspiracy and a substantive crime charge involve different elements, making them

[8] *Rohn v. People*, 57 V.I. 637, at *5 (V.I. 2012).
[9] *Ward*, 2013 WL 951712, at *4 (citing *Cabinet for Health & Family Servs. v. Chauvin*, 316 S.W.3d 279, 287 (Ky.2010)). See, for example, *Rohn*, 57 V.I. 637, at *5 ("Here, section 607 represents the more specific statute, in that section 378 establishes a general license revocation scheme for all individuals convicted under the controlled substances law, whereas section 607 adopts a special procedure governing first-time offenders").
[10] Defendant Castor's motion to dismiss, pp. 2-3.
[11] People's opposition, p. 2.
[12] *Iannelli v. United States*, 420 U.S. 770, 777, 95 S. Ct. 1284, 1289, 43 L. Ed. 2d 616 (1975); *Goukler v. United States*, 294 F. 274, 275 (3d Cir. 1923).
[13] *Iannelli*, 420 U.S. at 770. Also note that Wharton's Rule, "[t]he doctrine that an agreement by two or more persons to commit a particular crime cannot be prosecuted as a conspiracy if the crime could not be committed except by the actual number of participants involved," is not applicable here, as conspiracies involving gross receipts tax could be committed by more than two (2) people. WHARTON'S RULE, BLACK'S LAW DICTIONARY (9th ed. 2009); *United States v. Bornman*, 559 F.3d 150, 156 (3d Cir. 2009), as amended (Apr. 24, 2009), as amended (May 5, 2009) (on appeal from D.V.I.) (citations omitted) ("Wharton's Rule is a doctrine of criminal law enunciating an exception to the general principle that a conspiracy and the substantive offense that is its immediate end are discrete crimes for which separate sanctions may be imposed").

separate crimes.[14] Therefore, the conspiracy to evade or defeat tax charges pursuant to 33 V.I.C. §§ 1522 (Count I) do not conflict or merge with a substantive – and statutorily separate – offense of gross receipts tax infractions pursuant to 33 V.I.C. § 53(a).

Additionally, by creating a conspiracy offense separate from any substantive tax crimes, the Legislature expressed an intent that these be separate charges. The Legislature intended one to be potentially punishable even if the conspirators were not successful in their attempt to evade or defeat taxes, and without this option, conspirators would never be guilty of any crime if their ultimate crime was thwarted, despite their intent.

Conspiracy charges have different elements than substantive crimes, and thus conspiracy crimes and substantive crimes do not cover the same situations. Defendants' argument that they cannot be charged with conspiracy and instead must be charged with only a substantive crime is not supported by the Code. Indeed, the Defendants can be charged with either or both of these crimes, and it is irrelevant which substantive offense is the more specific or general statute. Therefore, because Section 53(a) and Section 1522 do not conflict, Defendants' request to dismiss Count I on the grounds that these sections are irreconcilable is denied.[15,16]

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[14] The *Pinkerton* theory, *Pinkerton v. U.S.*, 328 U.S. 640, 646-647 (1946)), which holds that a conspirator can be charged with any substantive offense in furtherance of the conspiracy, even without evidence of participation in the additional acts, is applicable in our Territory. *U.S. v. Lopez*, 271 F. 3d 472 (3d Cir. 2001) (on appeal from D.V.I.) (Conducted a *Banks*-like analysis at 481-482 and held that "the *Pinkerton* doctrine does apply to the Virgin Islands").

[15] Willis joined Castor's July 28, 2014, Motion to Dismiss on October 24, 2014, adopting Castor's own grounds to dismiss – that the statutes under which Defendants are charged cover the same grounds as a more specific statute – and these arguments in relation to Willis have been addressed here. His October 24, 2014, "Informational Motion" offered in support basically realleges and reargues the same grounds for dismissal raised in Willis's March 25, 2014, Motion to Dismiss. These reoffered grounds – that the Court lacks jurisdiction over the charges – were addressed in the Court's November 10, 2014, Order.

[16] Also note that the crime of conspiracy does not merge with aiding and abetting a crime. *United States v. Cerone*, 830 F.2d 938, 946 (8th Cir. 1987). Aiding and abetting a crime involves "real participation" in the substantive crime, while a conspiracy embraces a "more remote plotting". *Nye & Nissen v. United States*, 336 U.S. 613, 630, 69 S. Ct. 766, 775, 93 L. Ed. 919 (1949) (citing *United States v. Peoni*, 100 F.2d 401, 402 (2d Cir. 1938)). A conspiracy may advance to the stage of aiding and abetting and then to the substantive crime, *Pinkerton v. United States*, 328 U.S.

B. THE SUBSTANTIVE CRIMES WITH WHICH DEFENDANTS ARE CHARGED, SECTIONS 1523 AND 1525 OF TITLE 33, ARE MORE SPECIFIC THAN SECTION 53 AND THUS SECTIONS 1523 AND 1525 TAKE PRECEDENCE OVER SECTION 53.

i. Type of Violation

The non-conspiracy substantive charges against Defendants – 33 V.I.C. §§ 1523[17] (Counts II and III), 33 V.I.C. §§ 1525(1) (Count IV) and 1525(2) (Count V) – and the statute under which Defendants allege that they should be charged, 33 V.I.C. § 53(a), are all substantive crimes that deal with violations of gross receipts tax laws. The Court will now determine which is the more specific statute. "The reasoning behind this principle of statutory construction is a simple matter of logic. A general provision, by definition, covers a larger area of the law. A specific provision, on the other hand, acts as an exception to that general provision, carving out a special niche from the general rules to accommodate a specific circumstance."[18]

Here, the substantive statutes under which Defendants are charged, in relevant part, criminalize:

> "[Failing] to collect, account for, and pay over any tax imposed by [Subtitle 1, which includes gross receipts taxes]," 33 V.I.C. § 1523;
>
> "Willifully mak[ing] and subscrib[ing] any return, statement, or other document... [declared] under penalty of perjury, and which he does not believe to be true and correct as to every material matter," 33 V.I.C. § 1525(1); and
>
> "Willfully aid[ing] or assist[ing] in... the preparation or presentation under, or in connection with any matter arising under, the internal revenue laws, of a return, affidavit, claim, or other document, which is fraudulent or is false as to any material matter," 33 V.I.C. § 1525(2).

640, 649, 66 S. Ct. 1180, 1185, 90 L. Ed. 1489 (1946), and "one may be both conspirator and abettor." *Nye & Nissen*, 336 U.S. at 630. Within our jurisdiction, unless otherwise noted, an aider and abettor is equally as liable for the substantive crime as the ultimate perpetrator. 14 V.I.C. § 11(a).

[17] Defendant Willis is charged under 33 V.I.C. § 1523 as an aider and abettor via 14 V.I.C. § 11. Pursuant to 14 V.I.C. § 11(a), one who aids and abets another in the commission of a criminal offense is subject to punishment as a principal.

[18] *Martin*, 27 P.3d at 852.

The statute that Defendants argue conflicts with their charges criminalizes:

> "[F]ail[ing] or refus[ing] to comply with *any* requirement of this law, or ... submit[ting] a fraudulent report to the Bureau of Internal Revenue," 33 V.I.C. § 53(a).

All four (4) sections potentially address violations of gross receipts tax provisions.[19] However, Sections 1523, 1525(1) and 1525(2) are the more specific statutes because they address detailed offenses (willful failure to collect or pay over tax and fraudulent and false declarations), while Section 53(a) could be applied to *any* gross receipt tax violation.

ii. Content of the Statute

While Section 53(a) is more specific as to the *type* of tax involved, Sections 1523, 1525(1) and 1525(2) are the precedential statutes because they are more specific as to content. In 2012, in *Rohn v. People*, the Supreme Court looked at two (2) statutes addressing punishments for simple possession offenses, one which "establishes a general license revocation scheme for all individuals convicted under the controlled substances law" and one which "adopts a special procedure governing first-time offenders."[20] The Supreme Court held that the substance of the statute was particularly decisive as to which statute was more specific and found that the second statute represented the controlling statute for first-time offenders. In support of this proposition, the Supreme Court cited to a Colorado case, *Martin v. People*, which held that a statute that applied to *sexual* felony offenders was more specific than a statute that applied to *all* felony offenders.[21]

Pursuant to binding authority, the Court finds that the content of the statute – the specificity of the offense or procedure – is controlling. While Sections 53(a), 1523, 1525(1) and 1525(2) all

[19] 33 V.I.C. § 53 ("[A]ny requirement of [Chapter 3 of Subtitle 1 of Title 33]"); 33 V.I.C. § 1523 ("[A]ny tax imposed by [Subtitle 1 of Title 33]"); 33 V.I.C. § 1525(1) ("[A]ny return, statement, or other document," clearly including gross receipts tax returns); 33 V.I.C. § 1525(2) ("[A]ny matter arising under, the internal revenue laws, of a return, affidavit, claim, or other document," clearly including gross receipts tax returns).
[20] No. S.CT.CRIM. 2011-0087, 2012 WL 5901924, at *5 (V.I. Oct. 9, 2012).
[21] 27 P.3d 846 (Colo. 2001).

cover violations of gross receipts tax provisions, Sections 1523, 1525(1) and 1525(2) are more specific than section 53 as to the type of gross receipts offense committed. And, regarding procedure, violators of Section 53(a) shall pay a fine and/or be imprisoned; violators of Section 1523 shall, in addition to other penalties provided by law, be fined and/or imprisoned, together with the costs of prosecution; and violators of Sections 1525(1) and 1525(2) shall be fined and/or imprisoned, together with the costs of prosecution. The substantive crimes under which Defendants are charged are more specific as to the procedures for punishment. Because Sections 1523, 1525(1) and 1525(2) are more specific than Section 53 as to content, Sections 1523, 1525(1) and 1525(2) are the more appropriate of the seemingly conflicting enactments to apply.

C. Legislative Intent

Even though the Court has determined that the more specific substantive tax crime statutes, 33 V.I.C. §§ 1523, 1525(1) and 1525(2), take precedence over the more general substantive tax crime statute, 33 V.I.C. § 53(a), the Court must also determine if this application is in line with Legislative intent.

i. NOTES WITHIN THE VIRGIN ISLANDS CODE DO NOT CONSTITUTE THE LAW.

Although Chapter 45 contains the note that indicates that for "[p]enalties for failure or refusal to comply with excise or gross receipts tax law, see section 53 [within Chapter 3] of this title,"[22] notes are not "entitled to recognition as... a part of [the Virgin Islands Code]"[23] and instead "are included for the purpose of convenient reference".[24] Thus this note does not determine Legislative intent.

[22] Chapter 45 of Title 33, Notes.
[23] Certificate of Prima Facie Evidence, Virgin Islands Code.
[24] *Sweeney v. Ombres*, Civ. No. 2013-0068, 2014 WL 93085, n. 2 (V.I. Jan. 10, 2014) ("[T]he Legislature has instructed that '[r]evision notes and other notes set out in this Code are included for the purpose of convenient reference, and do not constitute part of the law'") (quoting 1 V.I.C. § 45(b)).

ii. LEGISLATIVE HISTORY SUPPORTS APPLICATION OF SECTIONS 1523, 1525(1) AND 1525(2) OVER THE GENERAL EXCISE TAX STATUTE, SECTION 53(a).

a. Date of Enactments

Section 53 was added to the Virgin Islands Code on June 11, 1959, and enacted in place of 33 V.I.C. § 1541, which had "[p]rovisions similar to those of subsec[tion] (a) of [Section 53] ... except that there was a substantial difference in penalties".[25] Thus it appears that Sections 1523 1525(1) and 1525(2) predate Section 53(a). However, although Chapter 3 "continues... as a permanent part of the general laws of the Virgin Islands,"[26] on at least two (2) occasions the Legislature gave Section 53 a one (1) year end-date.[27] This suggests that our elected representatives did not intend for Section 53 to permanently, or even solely, address violations of gross receipts tax laws, especially considering that our tax laws are still evolving.[28]

Sections 1523, 1525(1) and 1525(2) predate Section 53(a), and this could potentially weigh in favor of finding that the Legislature intended for Section 53 to take precedence. However, the Supreme Court has made it clear that the date of enactment, alone, is not controlling of the determination of which statute to use. In *Rohn*, the Supreme Court held that although the general statute was enacted nineteen (19) years after the specific statute, the Legislature had amended the specific provision twice after it had adopted the general statute.[29] Thus, the Legislature had

[25] Prior law, Chapter 3 of Title 33.
[26] Revision Note, Chapter 3 of Title 33.
[27] "The provisions of [Chapter 3] shall expire June 30, 1961," 33 V.I.C. § 54(a) (as approved on June 11, 1959, but since amended) and "1979 amendment. Act Oct. 8, 1979, No. 4359, §10, Sess. L. 1979, p. 153, provided that Act No. 4359, which amended this section, shall remain in effect for one year from Oct. 8, 1979, the effective date of that act" (Effective date of amendments, 33 V.I.C. § 53). This list is not exhaustive.
[28] "Changes in the tax laws from year to year are inevitable, expected, and lawful." *Mostowy v. United States*, 966 F.2d 668, 671 (Fed. Cir. 1992) (quoting *Fortune v. United States*, 4 Cl. Ct. 670, 671 (1984)).
[29] Rohn, 2012 WL 5901924, at *5.

reviewed and updated the specific statute more recently, reflecting a more current Legislative intent.

But, twenty-six (26) years after the Legislature adopted Section 53(a), the Stop Tax Evasion Program (STEP) was enacted as part of the Deficit Reduction Act of 1985. STEP, in relevant part:[30]

1. Added Subsection (j) to Section 304 of Title 27, Professions and Occupations, prohibiting the Commissioner from issuing or renewing a business license to any person who fails to present proof of filing and paying all taxes, or that the applicant has made satisfactory arrangements to do so;

2. Added Subsection (k) to Section 304 of Title 27, requiring the Commissioner, after ten (10) days' notice, to revoke any license of a person who fails to file and pay all taxes, absent satisfactory agreement to do so; and

3. Amended Subsection (a) of Section 1051 of Title 33, Levy and distraint, to permit "any authorized representative to collect [any internal revenue tax unpaid within ten (10) days of notice and demand]... by levy upon all property and rights to property... belonging to such person".

And, in 1993, eight (8) years after the last amendment to Section 53, the Legislature extended the "Stop Tax Evasion Program... to all corporations and individuals, trades and professions, licensed to do business in the Virgin Islands."[31] Therefore, "[a]s part of the Virgin Islands Government Stop Tax Evasion Program (STEP), in order to get a new or renewal license, the taxpayer must [request] and receive a favorable tax filing and payment status report letter."[32] "'[I]n the search for legislative intent, courts look to the objective to be attained, the nature of the subject matter

[30] The Stop Tax Evasion Program (1985) also increased the penalty under 27 V.I.C. § 307(a) from $50 to $500 ("Whoever willfully fails or refuses to comply with the provisions of this [Chapter 27, Professions and Occupations,] shall be guilty of a misdemeanor and shall be liable to a fine not to exceed $500 and imprisonment not to exceed 30 days or both").
[31] Act No. 5855 (April 28, 1993).
[32] VIRGIN ISLANDS BUREAU OF INTERNAL REVENUE, TAX STRUCTURE BOOKLET OF THE U.S. VIRGIN ISLANDS (2012), www.vibir.gov (last visited on October 22, 2014).

and the contextual setting. *The statute is construed as a whole with reference to the system of which it is part.*'"[33] Thus, the enactment of the Stop Tax Evasion Program supports a Legislative intent to increase the options available to the Virgin Islands Bureau of Internal Revenue, the Attorney General of the Virgin Islands and the Courts to enforce payment of taxes due to the Territory from both individuals and companies licensed to do business within the Virgin Islands.

Defendants are charged with tax evasion by willfully failing to collect or pay over taxes (Section 1523) by fraud and false statements (Sections 1525(1) and 1525(2)). Tax evasion, unlike the misdemeanor consequences of violating Section 53, is a felony recently affirmed by our Supreme Court to be a crime involving moral turpitude.[34] Such behavior is obviously something our Territory seeks to address and for which it has little tolerance. The Court finds that Sections 1523, 1525(1) and 1525(2) are controlling as against Section 53.

D. Prosecutorial Discretion

Defendants state that "although the government has made it clear that [they have] committed gross receipts infractions, which is set forth in 3 V.I. Code Ann. 43, et. seq.[, which includes Section 53(a),] it has chosen to charge under the more general Virgin Islands Income Tax Laws [in Chapter 45]".[35] The People respond that "[t]he Attorney General is empowered with the discretion to file criminal charges of his choosing so long as the evidence supports the elements of the offense."[36]

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[33] *Duggins v. People*, Crim. No. 2010-0024, 2012 WL 653787, at *4 (V.I. Feb. 27, 2012) (*quoting* 2A NORMAN J. SINGER & J.D. SHAMBIE SINGER, SUTHERLAND STATUTES AND STATUTORY CONSTRUCTION § 45:5, at 35 (7th ed. 2007)) (emphasis added).
[34] *Bryan v. Fawkes*, S. Ct. Civ. No. 2014–0046, 2014 WL 4244046, at *16-17 (V.I. 2014) (citations omitted).
[35] Motion to Dismiss, pp. 2-3.
[36] People's opposition, p. 2.

As discussed, while Chapter 3 of Title 33 is narrower as to the type of tax involved (gross receipts taxes), Chapter 45 *also* addresses crimes involving gross receipts taxes. Chapter 45 is more specific as to the offenses charged. When more than one statute can be applied to the same offense, prosecutorial discretion allows the People leeway as to which, if any, of the charges they elect to pursue. The People's "election of which of the two crimes to charge does not make illegal the election of the crime charged."[37] The Court has found that Sections 1523, 1525(1) and 1525(2) take precedence over Section 53(a) for substantive and specific tax crimes involving gross receipt taxes. However, if the Legislative intent was unclear, the Defendants could have been charged under any or all of these statutes pursuant to the discretion of the prosecutor.

II. The Rule of Lenity is Inapplicable to Conflicting Statutes.

Defendants argue that they should be sentenced under Section 53, even if they are found guilty under Sections 1522, 1523, 1523(1) and/or 1525(2). The Rule of Lenity only applies "when there is a grievous ambiguity"[38] and requires that the uncertainty be resolved in favor of the defendant.[39] The statutes under which Defendants are charged, as well as the section under which they ask to be sentenced, are not ambiguous but, instead, address general or more precise violations of gross receipts tax laws. Therefore, considerations of lenity are inapplicable here.

[37] *Gilbert v. People of Virgin Islands*, No. 2008-034, 2009 WL 3297267, at *12 (V.I. Oct. 6, 2009) (dissent).
[38] *Ward*, 2013 WL 951712, at *4 (citation omitted).
[39] *In Matter of Motylinski*, No. S.CT.BA 2009-0220, 2014 WL 714252, at *9 (V.I. Feb. 25, 2014) (citations omitted).

CONCLUSION

The Court finds that the Legislature did not intend for the more general statute addressing gross receipts tax violations to be controlling, the conspiracy charges do not conflict with the substantive crimes charged, and the Rule of Lenity is inapplicable. Therefore, Defendants' July 28, 2014, Motion to Dismiss is denied. An appropriate Order is issued simultaneously herewith.

Dated: January 8, 2015

HON. MICHAEL C. DUNSTON
JUDGE OF THE SUPERIOR COURT
OF THE VIRGIN ISLANDS

ATTEST: Estrella George
Acting Clerk of Court ___/___/___

by: for
Donna D. Donovan
Court Clerk Supervisor 1/14/15

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. THOMAS AND ST. JOHN

PEOPLE OF THE VIRGIN ISLANDS, Plaintiff,	)	
vs.	)	
LOUIS MILTON WILLIS and GERARD CASTOR	)	**Case No. ST-14-CR-074** **Case No. ST-14-CR-075**
Defendants.	)	

ORDER

The Court having reviewed Defendants Gerard Castor's July 28, 2014, Motion to Dismiss, joined by Defendant Louis Milton Willis on October 24, 2014, it is

ORDERED that the Motion to Dismiss is **DENIED**; and it is

ORDERED that copies of this Order and accompanying Memorandum of Law shall be directed to counsel of record and the IT Division of the Superior Court of the Virgin Islands.

Dated: January 8, 2015

ATTEST: Estrella George
Acting Clerk of Court ___/___/___

by: Lori B Tyson
Lori Boynes-Tyson
Court Clerk Supervisor 1/14/15

HON. MICHAEL C. DUNSTON
JUDGE OF THE SUPERIOR COURT
OF THE VIRGIN ISLANDS