

IT

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX

THE PEOPLE OF THE VIRGIN ISLANDS **Plaintiff**)
)
 Vs.)
)
LEE J. ROHN, ESQ. **Defendant**)

CASE NO. SX-03-CR-0000113

ACTION FOR: 19 V.I.C. 604

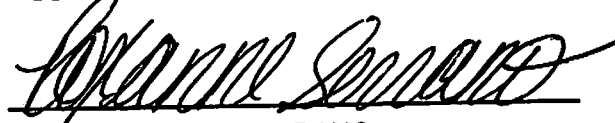
**NOTICE OF ENTRY OF
MEMORANDUM OF
OPINION AND ORDER**

TO: RYAN GREENE, ESQ.
ORDER BOOK/ LAW CLERKS
MELISSA ORTIZ, ESQ.
LIBRARIAN/ IT
JUDGES AND MAGISTRATES OF THE SUPERIOR COURT
GORDON RHEA, ESQ.
DUSTIN CALHOUN, ESQ.

Please take notice that on April 20, 2011 a(n) MEMORANDUM OF OPINION
AND ORDER dated April 20, 2011 was entered by the Clerk in the above-entitled
matter.

Dated: April 20, 2011

Venetia H. Velazquez. Esq.
CLERK OF THE SUPERIOR COURT


ROXANNE SERRANO
COURT CLERK SUPERVISOR

thousand dollar fine, or both. If Rohn were eligible as a first-time offender, she could be placed on probation for up to one year. Finally, the Court informed Rohn that her license to drive would be revoked for two years, pursuant to Section 378 of Title 20 of the Virgin Islands Code.

Upon learning of the license revocation, Rohn objected, claiming she was unaware of that penalty and had not been alerted to it by the People during their discussions. Counsel for the People also indicated that they believed Section 378 did not apply to first-time offenses of Section 607(a). The Court allowed the parties to argue the question discussed below. When it appeared that the parties were unprepared to discuss the intersection of Section 607 with Section 378, the Court then reserved ruling on the question and asked the parties to submit further arguments in writing. The Court continued with the change of plea and advised Rohn that she could withdraw her guilty plea if she disagreed with the decision below.

Both parties subsequently filed briefs. (Def. Br., filed Dec. 21, 2010; People's Br., filed Dec. 21, 2010.) Rohn challenges mandatory driver's license revocations for first-time offenders pleading guilty to simple possession of a controlled substance. She argues (1) that the statutes irreconcilably conflict resulting in an ambiguity the Court must resolve in her favor; (2) that subsequent amendments to the statutes at issue here reflect legislative intent to exclude first-time offenders from mandatory license revocations; (3) that the two-year revocation is a harsh penalty for a first-time offender; and (4) that the public lacks fair warning of all consequences of pleading guilty to simple possession of a controlled substance. (Def. Br. 3-9.) Below the Court will address each argument.

II. STATUTORY AMBIGUITY

Rohn argues that Section 607 and Section 378 are irreconcilable and result in ambiguity when read in tandem. "The statutes clearly conflict: one provision mandates a particular

sentence while the other provision gives the Court discretion to place the defendant on probation and defer sentence.” (Def. Br. 4.) The People concur regarding a conflict between Section 607 and Section 378. (People’s Br. 1.) Particularly, the People note that

the maximum time that a defendant can be placed upon probation under Section 607(b) is one year. However, the license suspension under Section 378 is for two years. These sections are in direct conflict as Section 607(b) requires the dismissal of the proceedings without an adjudication of guilt if the terms of probation are not violated. At that time the Court would no longer have jurisdiction over the Defendant to maintain a license suspension or a revocation of driving privileges.

Id. at 2. The People then “defer[red] to the Court and its interpretation of 607(b) alone to impose sentence.” *Id.* Rohn, however, argues that “the irreconcilable conflict . . . creates an ambiguity concerning which statute applies, and in light of the rule of lenity, the Court must proceed under Section 607 with its discretionary probationary provisions.” (Def. Br. 5.)

“Ambiguity exists when a statute is capable of being understood by reasonably well-informed persons in two or more different senses.” 2A Norman J. Singer & J.D. Shambie Singer, Sutherland Statutory Construction § 45:2 (2007). *Accord Ladner v. United States*, 358 U.S. 169, 177-78 (1958). As the statutes in question here are penal, any ambiguities must be resolved in favor of the criminal defendant. *Gilbert v. People of the V.I.*, No. 2008-034, 2009 WL 3297267, at *3 (V.I. Sup. Ct. Oct. 6, 2009) (citing *Gov’t of the V.I. v. Knight*, 989 F.2d 619 (3d Cir. 1993)). This is known as the rule of lenity and “applies not only to substantive criminal prohibitions, but also to the penalties they impose.” *Knight*, 989 F.2d at 633 (citations omitted). “[T]he ‘touchstone’ of the rule of lenity ‘is statutory ambiguity.’” *Moskal v. United States*, 498 U.S. 103, 107 (1990) (quoting *Bifulco v. United States*, 447 U.S. 381, 387 (1980)). Before the Court may invoke the rule of lenity, it first “must conclude that there is a grievous ambiguity or uncertainty in the statute.” *Muscarello v. United States*, 524 U.S. 125, 138-39

(1998) (citation and internal quotations omitted). “When . . . a statute is ambiguous in terms or because of doubtful language it would seem to have two meanings, courts are called upon to construe it by finding which meaning reflects the intention of the Legislature that enacted it.” *Braffith v. People of the V.I.*, 26 F.2d 646, 648 (3d Cir. 1928). However, more than a possibility of a narrower construction is necessary to create ambiguity. *Moskal*, 447 U.S. at 108. Lenity is limited to “situations in which a reasonable doubt persists about a statute’s intended scope even *after* resort to ‘the language and structure, legislative history, and motivating policies’ of the statute.” *Id.* (emphasis in original) (quoting *Bifulco v. United States*, 447 U.S. 381, 387 (1980)).

All “statutory interpretation begins with the language of the statute itself.” *Knight*, 989 F.2d at 633 (citing *Pa. Dep’t of Pub. Welfare v. Davenport*, 495 U.S. 552, 557-58 (1990)). Literal interpretation of statutes is strongly favored. *Murrell v. People of the V.I.*, No. 2009-0064, 2010 WL 4961795, *5 (V.I. Sup. Ct. Sept. 13, 2010). Thus, “the plain meaning of the words ordinarily is regarded as conclusive.” *Knight*, 989 F.2d at 633 (citation omitted). “The plain meaning rule, however, is not absolute. A court may consider persuasive legislative history that [the Legislature] did not intend the words they selected to be accorded their common meaning. [But a] construction inconsistent with a statute’s plain meaning . . . is justifiable only when clear indications of a contrary legislative intent exist.” *Id.* (citations omitted). As with any legislative body, the Legislature of the Virgin Islands “is presumed to enact legislation with knowledge of the law.” *Murrell*, 2010 WL 4961795 at *5. Thus, legislative intent prevails over literal interpretation only when a literal reading yields a result contrary to the statute’s objective. *Gilbert*, 2009 WL 3297267 at *3 (citation omitted). If the

person, defer further proceedings and place [the defendant] on probation upon such reasonable conditions as it may require and for such period, not to exceed one year, as the court may proscribe.” *Id.* § 607(b)(1) (1995 & Supp. 2010). Discharge and dismissal from probation “may occur only once with respect to any person.” *Id.* Successful completion of probation entitles the defendant to dismissal of criminal proceedings without court adjudication of guilt. *Id.* Discharge from probation and dismissal of the criminal proceedings may not be “deemed a conviction for purposes of disqualifications or disabilities imposed by law upon conviction of a crime . . . or for any other purpose.” *Id.*

In addition to the penalties imposed by Section 607(a) or probation as provided by Section 607(b), “[a]ny person who pleads guilty to, or is convicted of, possession of a controlled substance . . . shall . . . have [her] driver’s license or driving privileges revoked for a period of two years” V.I. Code Ann. tit. 20, § 378 (1995 & Supp. 2010) (emphasis added). Both the People and Rohn found ambiguity in the juxtaposition of Section 607 with Section 378, despite the clarity of the text of both statutes. Rohn and the People interpret Section 378 as a further criminal proceeding that Section 607(b) would defer for defendants placed on probation. (See Def. Br. 2 (“The issue is whether the court could exercise its discretion to defer further proceedings pursuant to Section 607 and the parties’ Plea Agreement, or whether it must instead revoke Rohn’s driving privileges for a period of two years pursuant to Section 378.”).) Upon consideration of the overall scope and application of Section 378, including the statute’s history, placement, title, and text, the Court finds that driver’s license revocations pursuant to Section 378 is a civil, and not criminal, penalty.

The Legislature of the U.S. Virgin Islands enacted Section 378 “to provide for revocation of driver’s license for narcotics conviction” Act No. 5649, 1990 V.I. Sess.

Laws 397 (capitalizations omitted). *See also id.* at 439-40. As explained further below, Section 378 was enacted as part of a nationwide attempt at curbing illegal drug use. Section 378 was adopted in tandem with related legislation aimed “to provide for liability for drug-induced deaths, to provide penalties for employing juveniles in the distribution of drugs . . . [and] to provide for enhanced penalties for operating controlled substance production facilities . . .” *Id.* (capitalizations omitted). The Legislature placed Section 378 within Title 20: Highways and Motor Vehicles, and then situated it within Chapter 35: Operators’ Licenses. What’s more, the Legislature titled Section 378 “Drug offenses; license revocation.” That same chapter also lists qualifications and requirements for obtaining driver’s licenses. *See, e.g.,* V.I. Code Ann. tit. 20, §§ 373-375 (1995 & Supp. 2010). *See also, e.g., Gilbert*, 2009 WL 3297267 at *4 (giving consideration to legislative labeling of statutes). *But cf.* V.I. Code Ann. tit. 1, § 45(a) (1995). Additionally, the Legislature enacted Section 378 nineteen years after the Controlled Substances Law, including Section 607(b), had already been in force. Thus, this Court must assume that the Legislature enacted Section 378 with knowledge of Section 607(b). A review of the text of Section 607(b) also supports that conclusion.

Section 378 applies to “*any person who pleads guilty to . . . possession of a controlled substance . . .*” V.I. Code Ann. tit. 20, § 378(a) (1995 & Supp. 2010) (emphasis added). The language is clear and unambiguous. All simple possession offenses, including first-time offenses, require “*in addition to any and all other penalties provided by law*” revocation of driver’s licenses for a period of two years. *Id.* (emphasis added). Moreover, the Legislature specifically included the phrases “pleads guilty to” and “is convicted of” within the statute. Had the Legislature intended that Section 378 be deferred as a “further proceeding,” as Rohn argues, the Legislature could have conditioned revocation of driver’s licenses on the court

entering a judgment of guilt pursuant to Section 607. Phrased that way, Section 378 would never apply to defendants placed on probation under Section 607(b) because successful completion of probation avoids entry of judgment. Instead, the Legislature drafted Section 378 to apply upon plea of guilt or conviction of guilt. What's more, the Legislature did carve out an exception in enacting Section 378. Instead of a five-year driver's license revocation as with all other controlled substance offenses, simple possession carries only a two-year license revocation. *Id.* § 378(b).

Section 378's civil scope also stands out when juxtaposed with license revocations for offenses involving driving under the influence of drugs or alcohol. *See generally* V.I. Code Ann. tit. 20, § 493 (1995 & Supp. 2010). In criminalizing driving under the influence, the Legislature required within the penal statute itself that courts revoke driver's licenses as part of the overall criminal penalty. *Id.* § 493(c) (six-month license revocation for first-offense). Section 493, for example, requires that "*the court shall* suspend or revoke, for a period of six months" the defendant's driver's license. *Id.* § 493(c)(1) (emphasis added). Section 378, however, contains no such language. In fact, Section 378 operates independently of the courts. The statute requires only that "Judges . . . *take possession* of any driver's license . . . *and forthwith forward* same to the Director of Motor Vehicles."³ *Id.* § 378(c) (emphasis added). Courts do not revoke driver's licenses pursuant to Section 378 and therefore lack discretion to waive the revocation.

³ In 2005, the Legislature amended the Virgin Islands Code to substitute "Director of Motor Vehicles" for "Commissioner of Police." *See generally* Act No. 6761, 2005 V.I. Sess. Laws 245. The publishers of the Virgin Islands Code Annotated reflected that amendment for all sections within Chapter 35 except Section 378. Nevertheless, the Court quoted above Section 378(c) as it should read. *See id.* at 247 ("Title 20 Virgin Islands Code, chapter 31, section 301, chapters 33, 35, 37, 41, 45, and 39, section 435 (a) are amended by striking "Police Commissioner" . . . *in each instance* . . . and by inserting in their stead: "Director of Motor Vehicles") (emphasis added).

procedural due process.⁴ As “due process clearly guarantees all defendants the right to be sentenced under an accurate understanding of the law,” the Court will examine Rohn’s constitutional challenges below. *United States v. Eakman*, 378 F.3d 294, 302 (3d Cir. 2004) (citation omitted).

a. Substantive Due Process

Rohn claims that “a two-year revocation of a driver’s license is a harsh consequence for a first-time offender who pleads guilty to simple possession of a controlled substance, particularly in light of the discretionary probation contained in Section 607.” (Def. Br. 5.) Rohn also attacks license revocations, particularly where, as here, no motor vehicle was involved. *Id.* at 9. In essence, Rohn is arguing Section 378 lacks a rational basis.

Obtaining a license to drive is a privilege. *See Bell v. Burson*, 402 U.S. 535, 539 (1971) (“relevant constitutional restraints limit state power to terminate an entitlement whether the entitlement is denominated a ‘right’ or a ‘privilege.’”). Once granted, however, licenses may not be suspended or revoked without due process. *Dixon v. Love*, 431 U.S. 105, 110 (1977). “[S]uspension of a driver’s license for statutorily defined cause implicates a protectible property interest.” *Mackey v. Montrym*, 443 U.S. 1, 10 (1979). Here, Section 378 revokes the driver’s licenses of all persons convicted of, or pleading guilty to, simple possession of a controlled substance. As a license revocation statute, Section 378 must satisfy the due process clause. Section 378 will satisfy substantive due process protections only if it is rationally-related to a legitimate government interest. *Thomas v. Gov’t of the V.I.*, No. 2003-151, 2007 WL 2900298,

⁴ The protections of the Fourteenth Amendment to the United States Constitution, including the Due Process Clause, are applicable in the U.S. Virgin Islands by operation of Section 3 of the Revised Organic Act of 1954. 48 U.S.C.A. § 1561 (2011). *See also United States v. Liburd*, 607 F.3d 399 (3d Cir. 2010).

*5 (V.I. App. Div. Sept. 4, 2007) (quoting *Sunken Treasure, Inc. v. Unidentified Vessel*, 857 F. Supp. 1129, 1138 (D.V.I. 1994)).

Driver's license suspensions for offenses involving controlled substances date back at least three decades. *See generally* Aaron J. Marcus, Are the Roads a Safer Place Because Drug Offenders Aren't on Them?: An Analysis of Punishing Drug Offenders with License Suspensions, 13 Kan J.L. & Pub. Pol'y 557, 558-61 (2004) (discussing efforts at federal level to condition state receipt of federal highway funding on enactment of license suspensions as part of strategy on war on drugs). Commonly referred to as "Use and Lose" laws, license suspensions for offenses involving controlled substances "began to appear during the mid-1980s. The basic premise of these laws was that teens highly value obtaining a driver's license and that the threat of losing their license, or delaying when one could be obtained, would deter many from substance abuse." U.S. Dep't of Transp., Evaluation of Use and Lose Laws 2 (2001), *available at* <http://ntl.bts.gov/lib/26000/26000/26032/DOT-HS-809-285.pdf> (last visited April 20, 2011). "In 1994, Congress moved to expand the Use and Lose approach to drug offenses by persons of all ages." *Id.* at 3. Congress conditioned federal highway funding on states enacting and enforcing laws for "the revocation, or suspension for at least 6 months, of the driver's license of *any individual* who is convicted . . . of . . . *any drug offense* . . ." 23 U.S.C.A. § 159(a)(3) (2010) (emphasis added). States that failed to enact license suspension laws—or certify their opposition—forfeited federal highway funding. *Id.* § 159(b)(4).

To date, at least seventeen States,⁵ the District of Columbia,⁶ and two United States Territories⁷ mandate suspension of driver's licenses in all offenses involving controlled

⁵ Ala. Code § 13A-12-290 (West 2010) (six-month suspension); Ark. Code Ann. § 27-16-917 (West 2011) (six-month suspension); Del. Code Ann. tit. 21, § 4177K(a) (West 2011) (two-year suspension); Fla. Stat. Ann. § 322.055 (1) (West 2011) (two-year suspension unless shortened through completion of drug rehabilitation

this Court also finds that our Legislature may have believed that individuals in possession of controlled substances may attempt to distribute them. Revoking driver's licenses of individuals who choose to possess controlled substances is one method of reducing the movement of controlled substances throughout our Territory. Section 378 is rationally-related to that legitimate government goal.

In addition to reducing the movement of controlled substances, revoking driver's licenses may also reduce the number of impaired drivers on our roads. As in *Mitchell* and *Quiller*, this Court also finds that our Legislature could have determined that possession of a controlled substance may lead to use of that controlled substance and that users may later attempt to operate motor vehicles. Moreover, the Legislature may also have taken into account the driving and weather conditions here in the Territory. Public transportation is limited. Many residents drive. Traffic can be heavy. Roads and highways can be steep or winding. From time to time, brush or shrubbery may reduce visibility around sharp corners or bends. Six months out of every year hurricanes and tropical storms threaten our islands. Rainfall often comes in intense bursts. Floodwaters can peak very rapidly and the soil cannot always absorb the rainwater fast enough. Flash-flooding can occur within minutes during an intense storm. Motorist must be ever vigilant to all of these conditions when driving on our roads. The Legislature could have enacted Section 378 in order to prevent persons involved in controlled substances from driving, and thus threatening the safety of our drivers.

Based on the discussion above, the Court finds that Section 378 is rationally-related to the legitimate government interests in restricting the transportation of controlled substances and reducing the number of impaired drivers on our roads. Section 378 comports with substantive due process and is, therefore, constitutional.

b. Procedural Due Process

Lastly, Rohn challenges the procedure for license revocations, claiming that “the public is not given fair warning about the legal consequences of pleading guilty to possession of a controlled substance. Both [Section 607 and Section 378] address the same plea but contain very different results.” (Def. Br. 4.) Rohn’s argument challenges the procedural due process accorded by Section 378. Three factors are weighed in evaluating the procedural due process afforded by a statute: (1) the private interest; (2) the risk of erroneous deprivation from the procedures in place and any probable value of alternative procedural safeguards; and (3) the government’s interest. *Mackey*, 443 U.S. at 10 (quoting *Matthews v. Eldridge*, 424 U.S. 319, 335 (1976)).

“The first step in the balancing process . . . is identification of the nature and weight of the private interest affected by the official action challenged.” *Id.* at 11. “Once licenses are issued . . . their continued possession may become essential in the pursuit of a livelihood.” *Bell*, 402 U.S. at 539. “In such cases the licenses are not to be taken away without that procedural due process required by the Fourteenth Amendment.” *Id.* Here Rohn expressed her interest in retaining her license, noting that “[o]perating a motor vehicle is an integral part of her career and livelihood. . . . Rohn employs some thirty employees, all of who [sic] would lose their employment should Rohn be unable to work, and some of whom would lose their employment if Rohn had to restrict her ability to work.” (Def. Br. 5.) Therefore, the Court finds that the private interest at stake is Rohn’s ability to retain her license to operate a motor vehicle.

The second factor examines “the likelihood of an erroneous deprivation of the private interest involved as a consequence of the procedures used.” In this case, Rohn elected to

resolve the charge against her by entering into a plea agreement. While the People recommended treatment as a first-time offender and placement on probation pursuant to Section 607(b)(1), the People also noted that sentencing was entirely within the Court's discretion. During the change of plea hearing, the Court advised Rohn of the consequences of pleading guilty to Section 607(a) and its concomitant penalties. When Rohn expressed surprise at the mandatory license revocation, the Court granted the parties time to argue the question now before the Court. (*See* Order, entered Dec. 14, 2010.) *Accord Fuentes v. Shevin*, 407 U.S. 67, 80, (1972) (quoting *Baldwin v. Hale*, 68 U.S. (1 Wall.) 223, 233 (1864)) ("For more than a century the central meaning of procedural due process has been clear: 'Parties whose rights are to be affected are entitled to be heard; and in order that they may enjoy that right they must first be notified.'"). Rohn's license was not suspended at the change of plea hearing. Therefore, the Court finds zero likelihood of erroneous deprivation of Rohn's driver's licenses, particularly because Rohn retained her license to drive pending resolution of this matter.

Lastly, the third factor identifies the governmental interest involved. *Mackey*, 443 U.S. at 17. The Legislature classified certain substances as controlled substances and then criminalized their possession. Subsequently, the Legislature imposed a driver's license revocation for persons convicted of, or pleading guilty to, simple possession of a controlled substance. As discussed above, the Court finds that the government interest here is the restriction in movement of controlled substances and the safety of the roads and highways of the Territory.

A balancing of the three factors yields the conclusion that the license suspension procedure comports with procedural due process. Rohn's license to drive is a property interest of which she cannot be deprived without due process of law. Government interest here is

motorist safety and restriction of controlled substances. There is no risk of erroneous deprivation of a driver's license under Section 378. Rohn's claim that she and the public lack fair warning of the consequences of pleading guilty to Section 607(a) is unpersuasive. First, ignorance of the law provides no defense, particularly when the defendant is an officer of the court. Second, Section 378 is triggered only upon a conviction of, or plea of guilty to, Section 607(a). Third, the plain language of Section 378 states that "any person" convicted or pleading guilty to Section 607(a) shall have their license revoked. As with any statute, Section 378 is enforceable unless and until it is amended, repealed, or struck down by a court of law. Accordingly, the Court finds that Section 378 satisfies procedural due process.

V. CONCLUSION

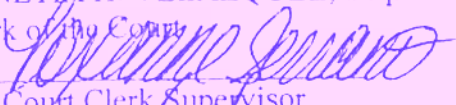
Based on the discussion above, the Court finds that Section 378 of Title 20 of the Virgin Islands Code "was not a slip of the legislative pen, nor the result of inartful draftsmanship, but was a conscious and not irrational legislative choice." *Bifulco*, 447 U.S. at 400. Any person who pleads guilty to or is convicted of simple possession of a controlled substance must have their license to drive revoked for two-years. Section 378 is unambiguous and comports with substantive and procedural due process requirements.


DARRYL DEAN DONOHUE, SR.
Presiding Judge of the Superior Court

ATTEST:

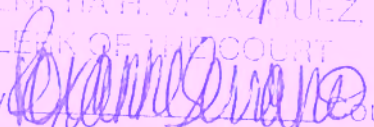
VENETIA H. VELAZQUEZ, Esq.

Clerk of the Court

By: 
Court Clerk Supervisor

Dated: 4/26/11

CERTIFIED TO BE A TRUE COPY
This 26th day of April 2011
VENETIA H. VELAZQUEZ, ESQ.
CLERK OF THE COURT

By:  Court Clerk 