VERMONT SUPERIOR COURT
Orleans Unit
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CRIMINAL DIVISION
Case No. 24-CR-12710

State of Vermont v. Gerald Letourneau	DOB: 4/5/1961

ENTRY REGARDING MOTION

Title: Motion to Dismiss (Motion: 1)
Filer: Corby A. Gary
Filed Date: January 09, 2025

I. Procedural Posture & Facts

The Defendant is presently charged with driving under the influence – third offense, in violation of 23 V.S.A. § 1201(a)(2), and driving over the legal limit – third offense, in violation of 23 V.S.A. § 1201(a)(1). The Defendant, through counsel, requests that the court reconsider probable cause or, in the alternative, dismiss the charges for failure to state an offense.

For purposes of this motion the facts are undisputed, and the court is relying upon consideration of the affidavit of probable cause. The only contested issue is whether the prior driving under the influence convictions, occurring on January 15, 1996 and January 6, 2005 may be used to enhance the punishment for the offenses.

II. Discussion

The sufficiency of an information may be challenged at any time, even on appeal. V.R.Cr.P. 12(b)(2); *see also State v. Stell,* 182 Vt. 368 (2007). The clarity and sufficiency of a criminal information is assessed under V.R.Cr.P. 7(b) standard, which requires a "plain, concise, and definite written statement of the essential facts constituting the offense charged."

The sufficiency and notice of a pleading is rooted in "constitutional imperative." *State v. Neisner*, 189 Vt. 160, 177 (2010) (citing *State v. Bradley,* 145 Vt. 492, 495 (1985) ("Compliance with [Rule 7(b)] satisfies the defendant's right under Chap. I, Art. 10 of the Vermont Constitution and the Sixth Amendment of the United States Constitution ...."). The language in a charge must contain the elements of the offense in order to satisfy the constitutional demands. *Neisner*, *supra* (citing S*tate v. Kreth,* 150 Vt. 406, 407–08 (1988).

In this matter, the challenge to probable cause is raised on legal, not factual grounds. Thus, the inquiry is premised on statutory interpretation of 23 V.S.A. § 1210(d). *State v. Wainwright* provides, in pertinent part:

> [I]n interpreting statutes our goal is to implement the intent of the Legislature. Therefore, we first look to the plain and ordinary meaning of the statutory language. "We interpret penal statutes strictly, but not so strictly as to defeat the legislative purpose in enacting the law or to produce irrational and absurd results." Although we generally apply a rule of lenity, it does not apply if the statutory language is unambiguous.

195 Vt. 370, 374 (2013) (internal citations omitted). "In construing statutes, our goal is to effect the legislative intent." *Holmberg v. Brent*, 161 Vt. 153, 155 (1993). Further,

> To serve this goal, "we first look at the plain, ordinary meaning of the statute." "If the plain language is clear and unambiguous, we enforce the statute according to its terms." "We look also to other relevant or related statutes for guidance, because a proper interpretation must further the entire statutory scheme." …
>
> We have also noted that "[i]n order to interpret [a] statute, we must determine its intent by analyzing not only its language, but also its purpose, effects and consequences." "To that end, laws relating to a particular subject 'should be construed together and in harmony if possible.' " We will not interpret a single word or phrase in isolation from the entire statutory scheme. Individual statutes ... are to be construed with others in pari materia as parts of one system."

State v. Blake, 205 Vt. 265, 271 (2017) (internal citations omitted).

In this matter, the Defendant's charges read:

> Gerald Letourneau, in the County of Orleans, at Derby on or about December 5, 2024, operated, attempted to operate, or was in actual physical control of a motor vehicle on a public highway while under the influence of alcohol, in violation of 23 V.S.A. §1201(a)(2), and has previously been convicted twice of violating 23 V.S.A. §1201. [and]
>
> Gerald Letourneau, in the County of Orleans, at Derby on or about December 5, 2024, operated, attempted to operate, or was in actual physical control of a motor vehicle on a public highway with an alcohol concentration is 0.08 or more, in violation of 23 V.S.A. §1201(a)(1), and has previously been convicted two times for violating 23 V.S.A. §1201, including at least one violation within the last 20 years.

Notably, Count 2 provides more detailed language that to arrive at the enhanced penalty for a third offense there must be "at least one violation within the last 20 years" For both offenses, however, the State's charging language clearly and unambiguously asserts a date of offense of December 5, 2024 – which is one month shy of the 20-year anniversary of the Defendant's most recent conviction. A plain reading of the charged offenses provides "on or about December 5, 2024 … has previously been convicted twice…". As charged, the State's burden is to prove that on December 5, 2024 the Defendant had at least two qualifying convictions on his record.

Nevertheless, the Defendant's motion invites further analysis of whether, notwithstanding the charging language, the statutory language mandates a third *conviction* to occur within 20-years of the most recent prior conviction. 23 V.S.A. § 1210(d) states:

> A person convicted of violating section 1201 of this title who has previously been convicted two times of a violation of that section, including at least one violation within the last 20 years, shall be fined not more than $2,500.00 or imprisoned not more than five years, or both.

A new conviction is premised upon sufficient proof that an offense occurred on a specific date, here, December 5, 2024. The relevant factual inquiry and burden of proof for the prosecution is necessarily tied to the facts and circumstances as they were on the date of the allegation. Considering 23 V.S.A. § 1210(d) in the context of the Legislature's policy goals concerning driving under the influence and respond to repeat offenders supports this interpretation.

For example, 23 V.S.A. § 1205 provides for timely adjudication of civil suspension proceedings relating to driving under the influence offenses. The Vermont Supreme Court has:

> observed that "[t]he summary [civil license] suspension scheme serves the ... purpose of protecting public safety by quickly removing potentially dangerous drivers from the roads." *State v. Anderson*, 2005 VT 80, ¶ 3, 179 Vt. 43, 890 A.2d 68 (citation omitted). The Legislature created the summary suspension procedure because it recognized that "criminal cases can be protracted and slow to resolve" and because it wished to "facilitate a speedy and summary procedure to get drunk drivers off the roads through license suspension." *Id.*

State v. Amler, 183 Vt. 552, 554 (2008). Notably, 23 V.S.A. § 1205(e)(2) mirrors the 20-year look back period as such relates to the accelerated effective date for a suspension. The Legislature has also precluded the expungement of prior driving under the influence offenses and instead has provided for limited means to seal first convictions, exclusively. *See* 13 V.S.A. § 7602. The court views that the body of law concerning driving under the influence as indicative of a Legislative intent to discourage repeat offenses and counter to the intent to narrow the language as to the look-back period.

To that end, the State has provided a series of compelling policy considerations that would disfavor a look back from the date of *conviction* in lieu of the date of the *offense*. The Defendant's interpretation of 23 V.S.A. § 1210(d) would create the peril of dilatory tactics and could permit a Defendant to escape an enhanced penalty by failing to appear for hearings, requesting frivolous continuances, or engaging in other tactics to slow case progression when the 20-year look back period was proximate to an offense date.

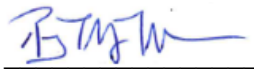
In sum, the court views the plain and logical meaning of the statute to require the most recent predicate conviction to have occurred within 20-years of the date of offense.

III. Order of the Court

Based on the foregoing, the motion is DENIED.

So ordered.

Electronically signed on Monday, January 27, 2025 pursuant to V.R.E.F. 9(d)



Rory T. Thibault
Superior Court Judge