VERMONT SUPERIOR COURT
Bennington Unit

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Case No. 24-CR-11885

CORRECTED

ENTRY REGARDING MOTION

Title: Motion to Dismiss (Motion: 3)
Filer: Mark E. Furlan
Filed Date: July 14, 2025

This matter arises from the State charging Anya Lincks (Defendant) with DUI #2 for having previously been convicted of violating 23 V.S.A. § 1201 within the last twenty years. Defendant filed a Motion to Dismiss for Lack of *Prima Facie* case on July 14, 2025. In the Motion, Defendant argues that this Court should dismiss the charge since her previous conviction occurred more than twenty years before her possible conviction for the present charge. The State responded with a Memorandum in Opposition on July 16, 2025. The State contends that the date of the offense is when the twenty-year lookback period begins from, not the date of conviction of the subsequent offense. Moreover, the State asserts that a future date of conviction cannot be an essential element proven at trial and offers several policy arguments in support of its position as well.

For the reasons stated below, Defendant's Motion to Dismiss is GRANTED IN PART.

Facts

Viewing the facts in a light most favorable to the State, the Court finds:

Defendant was convicted of DUI #1 on April 4, 2005. On October 24, 2024, Defendant was arrested in the current matter. The State issued a citation on October 31, 2024, for the Defendant to appear in court to answer to the charge. On November 18, 2024, Defendant was arraigned on the Information for the current matter.

Standard

Under V.R.Cr.P. 12(d)(1), a "defendant may move for dismissal of the indictment or information on the ground that the prosecution is unable to make out a prima facie case against him." "The motion must specify the factual elements of the offense which the defendant contends

cannot be proven at trial." *Id.* The Court's task is twofold: First, determine whether the State has met its burden in demonstrating that it has "substantial, admissible evidence as to the elements of the offense challenged by the defendant's motion;" second, viewing the evidence in the light most favorable to the State, and excluding modifying evidence, determine "if the evidence can fairly and reasonably establish defendant's guilt beyond a reasonable doubt." *State v. Schenk*, 2018 VT 45, ¶ 33, 207 Vt. 423.

Analysis

1. Statutory Construction

In construing a statute, the Court's "principal goal is to effectuate the intent of the Legislature." *Concord Gen. Mut. Ins. Co. v. Sumner*, 171 Vt. 572, 573 (2000) (mem.). Indeed:

> We begin by examining the plain language of the statute and presume the Legislature intended its ordinary meaning. *Burlington Elec. Dep't v. Vt. Dep't of Taxes*, 154 Vt. 332, 335, 576 A.2d 450, 452 (1990). If the plain meaning of the statute conflicts with the intent of the Legislature, we may look beyond the statutory language to give effect to legislative intent. *Burr & Burton Seminary v. Town of Manchester*, 172 Vt. 433, 436, 782 A.2d 1149, 1152 (2001). However, "[w]e will not read an implied condition into a statute unless it is *necessary* in order to make the statute effective." *Brennan v. Town of Colchester*, 169 Vt. 175, 177, 730 A.2d 601, 603 (1999) (quotation omitted).

Zlotoff Found., Inc. v. Town of S. Hero, 2020 VT 25, ¶ 18, 212 Vt. 63.

Relevant here, 23 V.S.A. § 1201(a)(1)(A) provides that a person shall not operate, attempt to operate, or be in actual physical control of any vehicle on a highway when the person's alcohol concentration is 0.08 or more. Additionally, 23 V.S.A. § 1210, titled "Penalties," states that, for a second DUI offense:

> A person *convicted* of violating section 1201 of this title who has been *convicted* of another violation of that section within the last 20 years shall be fined not more than $1,500.00 or imprisoned not more than two years, or both.

(emphasis added). The State proffers that the statute should be interpreted as a person who violates section 1201 of this title and who has been convicted of another violation in the last twenty years be subject to the enhancement. In support of this, the State cites to *State v. Day*, No. 2012-222, 2012 WL 6633576 (Vt. Dec. 13, 2012) (unpub. mem.) and *State v. Delisle*, 171 Vt. 128 (2000). The Court disagrees.

In *Day*, the Court recognized that, in *Delisle*, it found that for the charged offense to be considered a second offense under that scheme, a prior conviction had to have occurred within five

years of the current offense; and to be considered a third offense both prior convictions had to have occurred within the last fifteen years. *Day*, 2012 WL 6633576, at *1 (Vt. Dec. 13, 2012) (citing *State v. Delisle*, 171 Vt. 128, 133 (2000)). The Court noted that the *Delisle* Court ruled that the fifteen-year forgiveness period applied only if both prior convictions occurred before July 1991 and were unavailable to the defendant. *Id.* *Delisle* dealt with a prior iteration of § 1210 that contained a forgiveness period if both prior convictions occurred before 1991. However, *Delisle* stands for following the enhancement statute by its text.

In *Delisle*, the defendant argued that since he was convicted prior to 1991, and because more than fifteen years elapsed between his 1983 and 1998 convictions, the fifteen year forgiveness period should apply. *Delisle*, 171 Vt. at 134. Noting that the Court follows the plain and ordinary text of statues when interpreting them, the Court concluded that:

> Here, under the plain language of the savings clause, the fifteen-year forgiveness period applies if *both* prior *convictions* occurred before 1991. If the Legislature intended for the fifteen-year forgiveness period to apply when only one prior conviction occurred before 1991, "it knew how to so specify." Indeed, the savings clause retained the five-year forgiveness period to determine second offenses if the *first conviction* occurred prior to 1991. Consequently, because only one of defendant's prior convictions occurred before 1991, he has no right to the fifteen-year forgiveness period. As we stated in *LeBlanc:* "after the 1991 amendment, defendants who had *two DUI convictions* before 1991 may seek to avail themselves of the fifteen-year forgiveness period to determine the penalty when convicted of a third offense. With that limited exception, there is no longer any forgiveness period for third or subsequent DUI convictions." (emphasis added).

Id. (cleaned up). *Delisle* did not measure the date of the offense. Instead, the Court precisely and strictly followed the plain text of the statute. Here, following the plain text of the current statute, the law clearly provides that the measuring dates are the dates of conviction, not the subsequent charge's arrest or offense date. More than fifteen years have passed since Defendant's DUI #1 conviction on April 4, 2025, and the Defendant has not yet been convicted on the pending DUI #2 charge.

2. The date of conviction can be an essential element proven at trial.

The State further argues that the twenty-year lookback period cannot be an essential element proven at trial since the model jury instructions define conviction as "to be found guilty and sentenced." State's Mem. in Opp. at 5 (filed Jul. 16, 2025).

The State correctly points out that the instructions define conviction as "to be found guilty and sentenced." *Vermont Model Criminal Jury Instructions SEQ Chapter \h \r 1CR30-171 04/22/03: Driving While Under the Influence (Previous Conviction)*, vtjuryinstructions.org/criminal/MS30-171.htm (last visited Aug. 4, 2025). The instructions provide this as the definition for determining the date of the previous conviction being used for enhancement, but not for the current conviction before the jury that would have occurred during phase I deliberations.

The definition of conviction for a portion of the instructions is not binding on this Court and does not override statute. "In charging the jury, the trial court 'has a duty to avoid confusing the issues by "over definition," particularly when the word in question is one of plain meaning and may well be understood by its context.' " *State v. Dow*, 2016 VT 91, ¶ 16, 202 Vt. 616 (quoting *State v. Audette*, 128 Vt. 374, 378 (1970)). "Therefore, the court 'may decline to enlarge upon or redefine a phrase or a term whose meaning may be taken to be plain and of common understanding.' " *Id.* (quoting *Audette*, 128 Vt. at 379).

Title 23 defines conviction as:

> … an unvacated final adjudication of guilt, or a final determination that a person has violated or failed to comply with the law in a court of original jurisdiction or an authorized administrative tribunal, an unvacated forfeiture of bail or collateral deposited to secure the person's appearance in court, the payment of a fine or court cost, or violation of a condition of release without bail, regardless of whether or not the penalty is rebated, suspended, or probated. Conviction shall also mean a plea of guilty or nolo contendere that has been accepted by the court.

23 V.S.A. § 4(60). The definition does not require a sentence for there to be a conviction. Accordingly, this Court finds that the current conviction can be an essential element of the phase II jury instructions because the defendant is convicted of the current offense when the jury reaches a unanimous verdict that the defendant is guilty during phase I of the jury instructions.

3. The text of the statute overrides the State's policy arguments.

Lastly, the State advances several policy considerations for this Court to consider. These policy considerations include administrative burdens, harm to defendants, and incentivizing defendants to engage in delay tactics. These concerns do not control the analysis. As the Vermont Supreme Court has stated:

> "Our role is to interpret the law to give effect to the Legislature's intent, not to impose our policy preferences on the public." *McGoff v.*

> *Acadia Ins. Co.*, 2011 VT 102, ¶ 13, 190 Vt. 612, 30 A.3d 680 (mem.); see also *Rousso v. State*, 170 Wash.2d 70, 239 P.3d 1084, 1095 (2010) (en banc) ("It is the role of the legislature, not the judiciary, to balance public policy interests and enact law."). "[W]e must accord deference to the policy choices made by the Legislature," *Badgley v. Walton*, 2010 VT 68, ¶ 38, 188 Vt. 367, 10 A.3d 469, and "enforce [the statute] according to its terms," *State v. Richland*, 2015 VT 126, ¶ 6, 200 Vt. 401, 132 A.3d 702. See also *Sirloin Saloon of Shelburne, Rutland, & Manchester, Inc. v. Dep't of Emp't & Training*, 151 Vt. 123, 129, 558 A.2d 226, 229-30 (1989) ("[T]he policy issue is for the Legislature, not this Court, where as here the statute is plain on its face.").

Doyle v. City of Burlington Police Dep't, 2019 VT 66, ¶ 12, 211 Vt. 10. Moreover, the Court has recognized a "rule not to pass upon the validity of the concerns expressed or the wisdom of the means that have been chosen to deal with them, but merely to determine whether the action has been responsive to such concerns and whether such action is within constitutional bounds." *Aronstam v. Cashman*, 132 Vt. 538, 545–46 (1974).

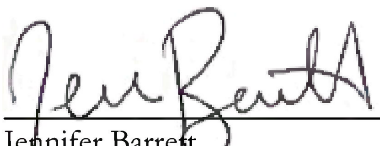
Here, the statute is not being challenged for its constitutionality. Consequently, this Court will not input its judgment on the decisions of the Legislature and will interpret the statute based on its plain and unambiguous language.

Order

For the reasons stated, the Defendant's Motion to Dismiss is GRANTED IN PART. The Court maintains a finding of probable cause for the lesser included DUI 1 Legal Limit. The State shall file an amended Information to comply with the Court's ruling within 14 days.

So Ordered.

Electronically signed: 8/21/25 pursuant to V.R.E.F. 9(d)



Jennifer Barrett
Vermont Superior Court Judge