STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

(FILED: April 22, 2013)

STATE OF RHODE ISLAND	:	
	:	
V.	:	**C.A. No. P2-2010-3033 A**
	:	
NAYQUAN GADSON	:	

DECISION

CARNES, J. The above-captioned matter came before the Court pursuant to G.L. 1956 §§ 8-2-39, 8-2-39.1, and Rule 2.9 of the Superior Court Rules of Practice. Specifically, Nayquan Gadson (Defendant) appeals from the decision of a Magistrate of this Court. The Magistrate denied the Defendant's Motion to Dismiss (Motion) his section 11-25-2 charge of "Assault or Escape by a Custodial Inmate," pursuant to Rule 9.1 of the Superior Court Rules of Criminal Procedure.[1]

I

Facts and Travel

The Defendant is accused of illegally leaving the Rhode Island Adult Correctional Institution (the "ACI") in July 2010, while being held at the Intake Service Center awaiting trial on a separate matter. It is alleged that the Defendant either paid or promised to pay another inmate who was scheduled to be released to exchange identification cards. It is further alleged that the Defendant used the other inmate's identification card to leave the ACI illegally, using the ID to pass various checkpoints on his way out of the ACI. The Defendant was arrested approximately a month later in New

[1] See discussion infra Part II.A.

York. He is charged by information with "Assault or Escape by a Custodial Inmate" in violation of section 11-25-2.

Pursuant to Rule 9.1 of the Superior Court Rules of Criminal Procedure, the Defendant brought a Motion to Dismiss the charge for lack of probable cause, arguing that section 11-25-2 required an assault as well as an escape. Thus, according to the Defendant, he should have been charged under section 11-25-1, which requires only an escape and carries a much more lenient punishment. On November 19, 2012, a Special Magistrate of this Court denied the Defendant's Motion, finding that the decision regarding which statute to charge the Defendant under was a matter of prosecutorial discretion. This timely appeal was taken.

II

Standard of Review

A

Construing Defendant's Motion

The Defendant moved to dismiss the charge against him pursuant to Rule 9.1 of the Superior Court Rules of Criminal Procedure. That particular rule allows a defendant, who has been charged by information, to "move to dismiss on the ground that the information and exhibits appended thereto do not demonstrate the existence of probable cause to believe that the offense charged has been committed or that the defendant committed it." Super. R. Crim. P. 9.1. In the instant case, the Defendant is charged by information with one count of escape from the ACI in violation of section 11-25-2. The information charging document has thirty-eight exhibits appended to it and appears to be supported by an abundance of probable cause. See, e.g., (Criminal Information Ex. 5—

Narrative of Trooper Sean McGerhearty) (documenting a report of an escape and identifying the defendant by Department of Corrections authorities, confirming it was the Defendant who effectuated the escape). To the extent that the Defendant suggests that the additional element of assault is necessary under the statute charging the Defendant with said escape, this Court declines the invitation to construe section 11-25-2 as including an additional element of assault. See discussion infra Part III.A. However, this Court is unsure if the Defendant is also moving to dismiss under Rule 12(b)(2) of the Superior Court Rules of Criminal Procedure. Rule 12(b)(2) provides in pertinent part:

> Defenses and Objections Which Must Be Raised. The defense of double jeopardy and all other defenses and objections based on defects in the institution of the prosecution or in the . . . information . . . may be raised only by motion before trial. The motion shall include all such defenses and objections then available to the defendant. Failure to present any such defense or objection as herein provided constitutes a waiver thereof, but the court for cause shown may grant relief from the waiver. (Emphasis added.)

This Court is aware, however, that Rule 12(b)(3) of the Superior Court Rules of Criminal Procedure controls the timing of a Rule 12(b)(2) motion. The timing contemplated for presenting a Rule 12(b)(2) motion may be contingent on this Court's ruling on the Defendant's Rule 9.1 motion. Rule 12(b)(3) specifically provides:

> Time of Making Motion. The motion shall be made no later than thirty (30) days after the plea is entered, except that if the defendant has moved pursuant to Rule 9.1 to dismiss, it shall be made within thirty (30) days after entry of an order disposing of that motion; but in any event the Court may permit the motion to be made within a reasonable time after the plea is entered or a Rule 9.1 motion has been determined. (Emphasis added.)

After reading the Defendant's Motion and supporting memorandum, as well as the transcript of the proceedings before the Magistrate, this Court finds the Defendant's Motion could be fairly construed as having its basis in an allegation that the prosecution was objectionable due to a defect in the institution of the prosecution or in the charge itself. See Sch. Comm. of City of Cranston v. Bergin-Andrews, 984 A.2d 629, 649 (R.I. 2009) (stating that a liberal interpretation of the rules is appropriate and should "look to substance, not labels") (quoting Sarni v. Meloccaro, 113 R.I. 630, 636, 324 A.2d 648, 651 (1974)). Given that the Defendant's intentions regarding Rule 12(b)(2) grounds are unclear, the Court will also discuss those grounds in the interest of judicial economy and treat the instant Motion as one made under Rule 12(b)(2).

B

Timing of Defendant's Rule 9.1 Motion

This Court now looks to the Defendant's timing of the Rule 9.1 Motion. A review of the docket sheet in the instant case indicates that the offense date is July 27, 2010. The charge was filed on October 7, 2010 at 3:46 PM and contains the stamp of the Superior Court Clerk. Defendant was formally arraigned on October 25, 2010 and entered a "not guilty" plea at that time. After a number of events in the Superior Court, including motions to release counsel and at least six entries stating "representation problem," the Defendant, through his most recently appointed attorney, filed the instant Motion on October 25, 2012, some two years after entering his plea of "not guilty" at arraignment. Rule 9.1 provides that a defendant who has been charged by information "may, within thirty days after he or she has been served with a copy of the information, or at such later time as the court may permit," move to dismiss. The timing of the Motion has not been

discussed in the instant Motion, the supporting memoranda, or on the record before the Magistrate. However, given the difficulties regarding the Defendant's representation, which are evident from the docket sheet, this Court expressly permits the filing of the Rule 9.1 motion at this juncture. Super. R. Crim. P. 9.1. As such, this Court will review the Defendant's Motion as if it were brought under either Rule 9.1, alleging a lack of probable cause, or Rule 12(b)(2), alleging a defect in the charge or prosecution.

C

Review of a Special Magistrate's Decision

The particular standard of review to be applied by a Justice of the Superior Court when considering appeals from the decisions of a Superior Court Magistrate begins with an analysis of the different statutes applicable to the specific Superior Court Magistrate whose ruling is being appealed. The analysis next proceeds to the Rules of Practice of the Superior Court and the Administrative Orders of the Superior Court.

The instant matter involves an appeal from a decision of a Special Magistrate. Section 8-2-39(e) of the Rhode Island General Laws enables the Superior Court to appoint both General and Special Magistrates. With respect to an appeal of a decision of a General Magistrate, section 8-2-39(e) specifically provides:

> (e) A party aggrieved by an order entered by the general magistrate shall be entitled to a review of the order by a justice of the relevant court. Unless otherwise provided in the rules of procedure of the court, such review shall be on the record and appellate in nature. The court shall, by rules of procedure, establish procedures for review of orders entered by a general magistrate, and for enforcement of contempt adjudications of a general magistrate.

The relevant section of law relative to an appeal of a decision of a Special Magistrate refers to the same section of law set forth above and is identical to that of a General

Magistrate, pursuant to section 8-2-39.1, which provides, in pertinent part, "the special magistrate shall have the duties, responsibilities, powers and benefits as authorized in § 8-2-39."

The rule presently providing the standard of review to be applied is governed by Rule 2.9(h) of the Superior Court Rules of Practice. It provides:

> The Superior Court Justice shall make a de novo determination of those portions to which the appeal is directed and may accept, reject or modify, in whole or in part, the judgment, order or decree of the Master. The justice, however, need not formally conduct a new hearing and may consider the record developed before the Master, making his or her own determination based on that record whether there is competent evidence upon which the Master's judgment, order or decree rests. The justice may also receive further evidence, recall witnesses or recommit the matter with instructions.

The language of the rule had its origins in Superior Court Administrative Order 94-12. Our Supreme Court said the Administrative Order accords the Superior Court Justice "broad discretion in his or her review of a master's decision." Paradis v. Heritage Loan and Investment Co., 678 A.2d 440, 445 (R.I. 1996).

Such a conclusion comports with federal case law interpreting substantially similar provisions to Rule 2.9(h) of the Superior Court Rules of Practice and Superior Court Administrative Order No. 94-12. See Ruggia v. Kozak, No. 9:05-CV-0217 (LEK/GHL), 2008 WL 541290, at *1 (N.D.N.Y. Feb. 25, 2008) (interpreting 28 U.S.C. § 636(b)(1)(C)). In reviewing a decision of a United States Magistrate Judge, the District Court must "make a de novo determination of those portions of the report or specified proposed findings or recommendation to which the objection is made." 28 U.S.C. § 636(b)(1)(C). Further, "A [district] judge . . . may accept, reject, or modify in whole or

in part, the findings or recommendations made by the magistrate judge." Id. Applying this provision, federal courts have conducted de novo review of magistrates' reports and recommendations. See Ruggia, 2008 WL 541290, at *1 ("This Court has considered the objections and has undertaken a de novo review of the record and has determined that the Report-Recommendation should be approved for reasons stated therein."); Richter v. Jeffreys, No. 1: 05-CV-2465, 2007 WL 2572250, at *1 (N.D. Ohio Aug. 31, 2007) ("The Court has reviewed the report and recommendation of the Magistrate Judge, de novo . . . [and] finds that the report and recommendation is well-supported and that the petitioner's objections are without merit."); Schumacher v. Hopkins, 83 F.3d 1034, 1036 n.1 (8th Cir. 1996) (acknowledging that "[a]fter de novo review, the . . . United States District Judge . . . adopted the report and recommendation of the United States Magistrate . . .").

Thus, this Court will conduct a de novo review of the Special Magistrate's decision in the instant case. It will either accept, reject, or modify the decision as this Court, in its discretion, deems appropriate in light of its review of the entire record. R.P. 2.9(h).

III

Analysis

A

Defendant's Contentions

The crux of the Defendant's arguments in this case revolves around two Rhode Island statutes, both of which deal with escape from prison. The Defendant has been charged under section 11-25-2 which states:

> Every prisoner confined in any custodial unit of the adult correctional institutions or in the custody of the warden or other correctional employee while outside the confines of the institutions or in the custody of the director of mental health, retardation and hospitals pursuant to the provisions of § 40.1-5.3-1, who shall assault the warden, or other correctional employee of the institution, or shall escape, or attempt to effect an escape, shall be sentenced by the court to a term of imprisonment in the adult correctional institutions for not less than one year nor more than twenty (20) years, that term to commence from the expiration of the original term of the prisoner.

The Defendant claims he should be charged, not under section 11-25-2, but under a similar statute with a lower penalty—section 11-25-1. Section 11-25-1 provides:

> Every prisoner who shall attempt to escape, or who shall escape, from the lawful custody of the warden of the adult correctional institutions, or from the custody of the director of mental health, retardation and hospitals pursuant to the provisions of § 40.1-5.3-1, shall, upon conviction, be imprisoned not more than three (3) years or be fined not more than five hundred dollars ($500). However, nothing in this section shall be construed to include the offense of breaking jail.

The Defendant argues that these statutes are ambiguous and require the Court's interpretation in order to determine under which statute the Defendant should be charged. He further postulates that the existence of these two statutes, which seem to proscribe similar behavior, but carry very different penalties, shows that the Rhode Island General Assembly intended section 11-25-2 to be used only when a defendant carries out an assault as a part of his escape. According to the Defendant, because both statutes punish the same act and they have not been merged into one statute, section 11-25-2 must require the additional element of assault.

When interpreting a statute, it is the goal of this Court to "'give effect to the purpose of the act as intended by the Legislature.'" Ryan v. City of Providence, 11 A.3d

68, 70-71 (R.I. 2011) (quoting D'Amico v. Johnston Partners, 866 A.2d 1222, 1224 (R.I. 2005)); Such v. State, 950 A.2d 1150, 1158 (R.I. 2008). The Court must consider the entire statute scheme as a whole and not "as if each section were independent of all other sections." Sorenson v. Colibri Corp., 650 A.2d 125, 128 (R.I. 1994). Nonetheless, "[i]t is well settled that when the language of a statute is clear and unambiguous, this Court must interpret the statute literally and must give the words of the statute their plain and ordinary meanings." Accent Store Design, Inc. v. Marathon House, Inc., 674 A.2d 1223, 1226 (R.I. 1996).

Section 11-25-2 states that every prisoner who "shall assault the warden, . . . or shall escape" (emphasis added) is punishable under the statute. There is no ambiguity in the use of the word "or." "Or" is used to "indicate an alternative"—in this case charging a prisoner for one of two proscribed acts, but not both. Merriam-Webster's Dictionary and Thesaurus (2006); see 2A Norman J. Singer, Sutherland Statutory Construction § 47:27 at 449 (2007) ("It is possible to use a dictionary to determine the common and ordinary meaning of words."). In order to interpret section 11-25-2, as the Defendant suggests, this Court would have to read "or" as if it said "and." The Court declines to do so. See Heritage Healthcare Servs., Inc. v. Marquez, 14 A.3d 932, 938 n.13 (R.I. 2011) (Vigilance against "interstitial lawmaking . . . must be omnipresent."); 2A Norman J. Singer, Sutherland Statutory Construction § 47:28 at 455 (2007) ("words in a statute are to be given their common meaning"). The Defendant's argument that section 11-25-2 must be construed to require an assault as part of an escape cannot prevail when the language of the statute is given its plain and ordinary meaning. Accent Store Design, Inc., 674 A.2d at 1226.

Moreover, our Rhode Island Supreme Court has expressly rejected the Defendant's argument. State v. Camerlin, 116 R.I. 726, 733-34, 360 A.2d 862, 866-67 (1976). In Camerlin, the defendant argued that the word "assault" in Section 11-25-2 should be interpreted to mean only an assault connected with an escape or an assault which results in the same threat to penal discipline as an escape or attempted escape. Id. at 733, 360 A.2d at 866. The defendant supported his argument about the intended meaning of "assault" in section 11-25-2 by pointing out that another statute, section 11-5-8, also punished escape and proscribed a lesser penalty. Id. at 733-34, 360 A.2d at 866-67. The Supreme Court held that "assault" had a plain and ordinary meaning in criminal law. Id. at 734, 360 A.2d at 867. According to the Court, nothing in section 11-25-2 "import[ed any] ambiguity" or warranted the defendant's interpretation. Id. Consequently, the Court rejected the defendant's argument and determined that "severity of punishment authorized by [a] provision . . . is [an] insufficient reason for according a strained construction to a word whose meaning is otherwise clear." Id. As our Supreme Court did in Camerlin, this Court declines the Defendant's invitation to reinterpret section 11-25-2 when the statutory language is clear and unambiguous.

The Defendant next argues that the Court must analyze these two statutes using the Rule of Lenity. The Rule of Lenity is a principle of statutory construction which requires that the Court "'adopt the less harsh of two possible meanings when faced with an ambiguous criminal statute.'" Such, 950 A.2d at 1158 (quoting State v. Day, 911 A.2d 1042, 1047-48 n.6 (R.I. 2006)). The Defendant avers that the Rule of Lenity requires this Court to find that he may only be charged under section 11-25-1, the less harsh statute.

However, the Defendant misapplies the Rule of Lenity. The Rule applies only when the meaning of a statute is ambiguous—it is inapplicable where "'the legislative intent is clear.'" Id. (quoting State v. Robalewski, 418 A.2d 817, 826 (R.I. 1980)); U.S. v. Hayes, 555 U.S. 415, 417 (2009). Our Supreme Court has explored the use of the Rule of Lenity in relation to section 11-25-2, specifically. See Robalewski, 418 A.2d at 826. In Robalewski, the defendant argued that one count charging him with assault on a corrections officer under section 11-25-2 should have merged with a count charging him with escape under section 11-25-2. Id. at 819, 826. The Court rejected the contention that an assault punishable under section 11-25-2, when perpetrated in the course of an escape punishable under section 11-25-2, necessarily merges with the escape. Id. at 826. The Court also held that 11-25-2 admits no ambiguity, and therefore, an invocation of the Rule of Lenity was inappropriate. Id.

This Court similarly finds that an invocation of the Rule of Lenity by the Defendant in this case is inapplicable because section 11-25-2 is unambiguous. Such, 950 A.2d at 1158. Though sections 11-25-1 and 11-25-2 do punish the same act of escape, neither statute, when read on its own, affords any ambiguity. It is clear that section 11-25-1 is intended to punish an escape from the ACI and that section 11-25-2 is intended to punish either an escape from the ACI or an assault on a correctional employee. In U.S. v. Batchelder, the United States Supreme Court held that two statutes punishing the same crime were unambiguous because it was clear what act was intended to be punished under each statute and the possible punishment laid out by each. 442 U.S. 114, 121-22 (1979). According to the Supreme Court, when two identical statutes are unambiguous in their language and it is clear from both the language and the legislative

history that Congress intended them to be given their plain and ordinary meaning, then either statute may be applied. Id. at 119-25. It is then within the prosecutor's discretion to choose the statute under which to charge. Id. at 124; see discussion infra Part III.C.

In the instant case, there is no ambiguity within the statutes themselves when their words are given their plain and ordinary meanings. See Batchelder, 442 U.S. at 122 ("'[W]e decline to manufacture ambiguity where none exists.'") (quoting U.S. v. Culbert, 435 U.S. 371, 379 (1978)); Such, 950 A.2d at 1158-59 ("'When the language of a statute expresses a clear and sensible meaning [the] [C]ourt will not look beyond it.'") (quoting First Republic Corp. of America v. Norberg, 116 R.I. 414, 418, 358 A.2d 38, 41 (1976)). It is clear to this Court exactly what acts are punishable, and therefore, the statutes are unambiguous and adequate to give a defendant notice of what acts could result in a prosecution under either statute. Batchelder, 442 U.S. at 123 (finding that the fact that two statutes punished the same conduct did not "detract from the notice afforded by each"). Thus, the Defendant cannot prevail on his argument that the Rule of Lenity requires he be charged under section 11-25-1 because it contains the more lenient penalty. This Court finds the Rule of Lenity to be inapplicable because the statutes at issue are unambiguous.[2]

[2] The Defendant also references Blockburger v. U.S. in his memorandum before the Court. 284 U.S. 299 (1932). Blockburger lays out a test for determining whether charging a defendant under two separate statutes for the same crime is appropriate or whether the two crimes merge: "where the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one, is whether each provision requires proof of a fact which the other does not." Id. at 304. Our Supreme Court has adopted and consistently followed Blockburger. Robalewski, 418 A.2d at 826. However, Blockburger's test is inapplicable to this case given that the State is not attempting to charge the Defendant with violation of two separate statutes or for two separate crimes. The Defendant is being charged for

B

Legislative History and Codification

As discussed, the Court finds that the statutes at issue are not ambiguous on their faces—the plain and ordinary meaning of the language is clear—illustrating that the General Assembly intended both statutes to co-exist and requiring the Court to go no deeper to determine legislative intent. See Norberg, 116 R.I. at 418, 358 A.2d at 41 (stating that when statutory language has a clear, sensible meaning the court will not look beyond it); 2A Norman J. Singer, Sutherland Statutory Construction § 46:4 at 185 (2007) (stating that the "plain language of [a] statute is the most reliable indicator of congressional intent"). However, in the event the Court was in error and the language of the statutes is ambiguous, it would cause some doubt as to whether it was the intention of the Legislature to have both statutes in effect. Nonetheless, a further analysis of the history of the statutes and the legislative intent would still lead the Court to ultimately find that both statutes are still operative and the Defendant's charge under section 11-25-2 was proper.

The Court's role in interpreting statutes is to determine the intent of the Legislature. Such, 950 A.2d at 1158. When the plain language does not make the legislative intent clear, the Court turns to the legislative history to determine the reason and spirit of the law. In re Advisory to the Governor, 668 A.2d 1246, 1249 (R.I. 1996) (citing 1 Sharswood's Blackstone's Commentaries, Laws of England 58 (1860)); Nugent ex rel. Manning v. La France, 91 R.I. 398, 400, 164 A.2d 230, 231 (1960) ("To find the legislative intent we must look at the language of the statute and examine its legislative

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his alleged escape under only one statute, section 11-25-2. He is not being charged with multiple crimes for the same act.

history"). In Rhode Island, there is no recorded legislative history. However, this Court's examination of the history of enactments and amendments of the statutes at question provides further insight. Sections 11-25-1 and 11-25-2 were originally enacted in 1896. G.L. 1896 ch. 276, §§ 13-14. Section 11-25-1 applied to individuals in the custody of the jailer in any county jail. Id. § 13. On the other hand, section 11-25-2 applied to escape from a prison, a more restrictive form of imprisonment than a jail. Id. § 14. This distinction persisted until the State codified the Rhode Island General Laws in 1956.

In 1956, the General Assembly passed a bill which restructured the state correctional system, abolishing the distinction between jails and prisons and establishing the ACI as we know it today. P.L. 1956, ch. 3721. However, this bill did not specifically change the language of the statutes at issue. Id. In 1957, the General Assembly passed a bill ratifying and enacting the new 1956 codification of the Rhode Island General Laws. P.L. 1957, ch. 34. As a part of the codification, the Consolidation Committee amended the language of sections 11-25-1 and 11-25-2 by implication, due to the 1956 bill reorganizing the state corrections system. G.L. 1956 §§ 11-25-1 to -2. The term "adult correctional institution" was inserted where "jail" or "prison" used to be in sections 11-25-1 and 11-25-2, respectively. Id. Thus, after the codification of the 1956 General Laws, section 11-25-1 punished escape from the "custody of the warden of the adult correctional institutions," and section 11-25-2 punished escape by a prisoner "confined in the maximum custodial unit of the adult correctional institutions." Id. In 1984, section 11-25-2 was further amended to remove the reference to the maximum custodial unit and to simply refer to any custodial unit of the ACI, as it still does today. G.L. 1956 § 11-25-2, as amended by P.L. 1984, ch. 65, § 1.

A further examination of the effect of the amendment by implication in 1956 is instructive on the intentions of the General Assembly. When "the function of a code is principally to reorganize the law and to state it in a simpler form, the presumption is that change in language is for purposes of clarity rather than a change in meaning." 1A Norman J. Singer, Sutherland Statutory Construction § 28.11 at 657-60 (2007) (emphasis added). Any intent to change the meaning of a law must be clear since it is presumed that the legislature intended the law to have the same meaning after the codification as it had before. Id.; see also Viola v. Cahir, 70 R.I. 394, 400, 40 A.2d 733, 736-37 (1944) (stating that the presumption is that a general revision of the statutes of a state does not change the existing law unless an intention to change the law is clear).

In U.S. v. Cass, the United States Supreme Court reiterated this rule when it held that a statute dealing with the rounding of readjustment pay to armed forces reservists had the same intended meaning after the military laws were recodified as it had before the recodification. 417 U.S. 72, 72-82 (1974). The Supreme Court's decision was enforced by committee reports, which expressly stated that Congress intended no substantive change. Id. at 81. Furthermore, the Rhode Island Supreme Court has also held that it is presumed that a commission on revision, which is similar to a consolidation committee, did not intend to act beyond the authority granted to it, and therefore, any changes to statutory language were not intended to change the substantive meaning of the statute. Viola, 70 R.I. at 398, 400, 40 A.2d at 736-37.

The 1956 Consolidation Committee was not empowered to make substantive changes to the law, and the Legislature had to take much on faith in adopting a general revision of the laws because the level of consideration generally given to bills in the

Legislature simply cannot be given to a general revision bill.[3] In Viola, our Supreme Court remarked:

> The truth of the matter is that much must be taken on faith by the legislature in adopting . . . a general revision of the laws. That errors therein may pass undetected by it at such time is not surprising to those who have any knowledge of the legislative practice in the consideration of such a revision. The consideration which is given to bills in the ordinary course of the legislative procedure, . . . cannot in the very nature of things be given to a revision of the entire body of the general laws of the state. A whole legislative session devoted solely to such a revision would not suffice for adequate consideration of it, if the assumption was that changes of phraseology therein could be construed to be new legislation. 70 R.I. at 400, 40 A.2d at 737.

Thus, the Court presumes that the General Assembly did not intend to effect a change in the meaning of the statutes at issue when they changed the language in the 1956 codification of the General Laws, since the Consolidation Commission was not empowered to change the substantive meaning of the law in the codification it presented to the General Assembly. Therefore, section 11-25-2 was still intended to punish escape from a higher, more restrictive form of custody than section 11-25-1, even after the

[3] The codification of the General Laws based on the recommendation of the Consolidation Committee is very similar to a law revision bill, which is recommended by the Law Revision Office and passed by the General Assembly. The Law Revision Office is responsible for "editing and modernizing Rhode Island's laws." Law Revision Office, State of Rhode Island General Assembly, http://www.rilin.state.ri.us/Pages/LawRevision.aspx (last visited Apr. 10, 2013). The Office may rearrange, rephrase and consolidate the laws. See secs. 22-11-3.4 (granting the law revision director power to rearrange, rephrase, and consolidate the general laws to avoid redundancies, remove obsolete enactments, reconcile contradictions, fix omissions, and correct imperfections); 22-11-3.5 (granting the law revision director the power to amend statutes to make the language gender neutral). However, similar to the Consolidation Committee in 1956, the Law Revision Office does not have the power to make law. Sec. 22-11-3.4 ("The law revision director has no authority to either change the law or to alter the substance of the statutes."). Thus, any changes made by a Consolidation Committee, like any changes made by a Law Revision Bill, are presumed not to be substantive changes in the law. See Viola, 70 R.I. at 400, 40 A.2d at 737.

change in language in the 1956 codification. If we apply that to the instant case, the Defendant's charge under section 11-25-2 is appropriate. The Defendant escaped from the Intake Service Center at the ACI. The ACI is the most restrictive form of custody available in Rhode Island and, as such, the Defendant can properly be charged for his alleged escape under section 11-25-2. Consequently, even if the Court were required to go beyond the plain language of the statutes to determine the legislative intent, the charge in the instant case would still be proper.

Moreover, when the examination of the history of both statutes is continued until their present day form, it shows that both statutes were amended subsequent to their codification in 1956. See G.L. 1956 § 11-25-1, as amended by P.L. 1979, ch. 244, § 1; § 11-25-2 as amended by P.L. 1979, ch. 244, § 1; P.L. 1984, ch. 65, § 1; P.L. 1991, ch. 56, § 1. Thus, if the Court were to apply the rule of statutory construction that presumes that the legislature knows the state of the law when amending it, we can presume that it was the intention of the General Assembly to leave both laws intact and operational. Barrett v. Barrett, 894 A.2d 891, 898 (2006); Shelter Harbor Fire Dist. v. Vacca, 835 A.2d 446, 449 (R.I. 2003). Therefore, regardless of which method of construing the intent of the General Assembly is employed, this Court would still find that the two statutes at issue were intended to co-exist.

C

Prosecutorial Discretion

This Court must next address how sections 11-25-1 and 11-25-2 should be interpreted together. It begins by reiterating that the two statutes at issue in this case are

both unambiguous on their face. See discussion supra Parts III.A, III.B. When the words are given their plain and ordinary meanings, it is very clear what each statutes punishes.

The only obstacle in interpreting the statutes is the fact that when read in relation to one another, they both punish the same act and allow for inconsistent penalties. Horn v. Southern Union Co., 927 A.2d 292, 294 n.5 (R.I. 2007) (stating that statutes relating to the same subject should be read in relation to each other). The Court must consider them together in order to harmonize the statutes and allow them both to be operative, as intended by the General Assembly. Vacca, 835 A.2d at 449; State ex rel. Webb v. Cianci, 591 A.2d 1193, 1203 (R.I. 1991). When the language of the statutes at issue in this case is considered, both statutes clearly lay out a punishment for escape from the ACI, though the punishments vary in severity. See secs. 11-25-1 to -2.

This inconsistency cannot be rectified by finding one statute repealed by implication. Repeals by implication are heavily disfavored and there is no evidence in this case to suggest that is what the General Assembly intended, despite the fact that the statutes punish the same act. Such, 950 A.2d at 1156. "Only when the two statutory provisions are irreconcilably repugnant will a repeal be implied . . ." McKenna v. Williams, 874 A.2d 217, 241 (R.I. 2005). Furthermore, the General Assembly is presumed to know the state of the law when they amend or enact legislation. Barrett, 894 A.2d at 898; Vacca, 835 A.2d at 449. Thus, it is presumed that the General Assembly was aware of the language of both statutes at the time of each amendment, subsequent to the 1956 codification of the General Laws, up to the present day. See G.L. 1956 § 11-25-1, as amended by P.L. 1979, ch. 244, § 1; § 11-25-2 as amended by P.L. 1979, ch. 244, § 1; P.L. 1984, ch. 65, § 1; P.L. 1991, ch. 56, § 1. Consequently, neither section 11-25-2

nor section 11-25-1 was repealed by implication by the General Assembly. Thus, this Court cannot harmonize the statutes by finding that either was repealed by implication.

However, the statutes can be reconciled by the fact that the prosecutor has discretion to determine under which statute the Defendant is to be charged. State v. Padula, 551 A.2d 687, 690 (R.I. 1988) (holding that when an act violates two statutes, the prosecutor has discretion to charge under the statute carrying a lesser offense or the statue carrying a higher offense). The United States Supreme Court addressed this concept in Batchelder, a case very similar to the case before this Court. In Batchelder, two provisions of the Omnibus Crime Control and Safe Streets Act of 1968 prohibited convicted felons from receiving firearms, but authorized different penalties. 442 U.S. at 115-16. The substantive elements of the provisions were identical. Id. at 116-17. The first provision, section 922(h) of Title IV, prohibited convicted felons from receiving "'any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.'" Id. at 118 (quoting 18 U.S.C. § 922(h)). The penalty for violating this section was a maximum fine of $5000 and imprisonment for up to five years. Id. The second provision, section 1202(a) of Title VII, forbid convicted felons from receiving, possessing, or transporting "'in commerce or affecting commerce . . . any firearm.'" Id. (quoting 18 U.S.C. app. § 1202(a)). The penalty for violating this provision was a maximum fine of $10,000 and imprisonment for not more than two years. Id. at 118-19.

The defendant in Batchelder was convicted under section 922(h) and sentenced by the District Court to five years in prison. Id. at 116. The Seventh Circuit Court of Appeals affirmed the conviction but remanded for re-sentencing, interpreting the two

statutory provisions to allow no more than a maximum of two years in prison, as proscribed in section 1202(a). Id. at 116-17. The Court of Appeals based the remand on its determination that the two different penalties made the statutes ambiguous and, under the Rule of Lenity, ambiguities in criminal legislation are to be construed in favor of the defendant. Id. at 117. It also reasoned that section 1202(a) may have implicitly repealed section 922(h) and its penalty provision. Id. The United States Supreme Court overturned the Court of Appeals and upheld the five year sentence. Id. at 126.

As an initial matter, the Supreme Court found that the Rule of Lenity did not apply because there was no ambiguity to resolve: it was clear that the Legislature intended both statutes to be in effect, and the language of the provisions created no ambiguity. Id. at 121-22 (the fact that section "1202(a) provides different penalties for essentially the same conduct is no justification for taking liberties with unequivocal statutory language . . ."). Next, the Court held that section 1202(a) could not be interpreted as implicitly repealing any portion of Title IV, reasoning that it was not enough to simply show that two statutes produce different results when applied to the same factual situation; rather, the legislative intent to repeal must be evident from the repugnancy between the provisions. Id. at 122. Moving to the defendant's due process argument, the Court found that no due process issue is created when two statutes punish the same act, so long as the statutes unambiguously specify the activity proscribed and the penalties available upon conviction. Id. at 123. The Court reasoned that the uncertainty about which crime would be charged and what the penalty might be under the two provisions was no different from a single statute authorizing various penalties. Id.

Finally, the Supreme Court held that "when an act violates more than one criminal statute, the Government may prosecutes [sic] under either so long as it does not discriminate against any class of defendants." Id. at 123-24. Whether to prosecute and what charge to file falls within a prosecutor's discretion, according to the Court. Id. at 124. This discretion is not, however, "unfettered." Id. at 124-25. Rather, it is subject to constitutional restraints. Id. at 125. Moreover, the Court noted that a prosecutor's discretion does not allow him or her to choose the ultimate penalty; it only allows the sentencing judge to impose a longer prison sentence. Id. "More importantly, there is no appreciable difference between the discretion a prosecutor exercises when deciding to charge under one of two statutes with different elements and the discretion he exercises when choosing one of two statutes with identical elements." Id.

The Court's conclusion and reasoning in Batchelder are applicable here. Like Batchelder, the instant case involves two statutes which punish the same act but provide separate punishments. Each statute is, in and of itself, unambiguous, and therefore, the Rule of Lenity does not apply. Additionally, there is no evidence to suggest, in this case, that the General Assembly intended to repeal one statute by implication, as the statutes themselves are not repugnant. Therefore, as in Batchelder, both statutes may stand, and it is within the discretion of the prosecutor to determine under which statute to charge the Defendant.

In the instant case, as well as in Batchelder, the punishments given do not allow the prosecutor to choose the ultimate punishment but rather, provide a different maximum sentence for the sentencing judge to consider. See secs. 11-25-1 to -2 (allowing for punishment of less than three years in prison and not less than one year or

more than twenty years in prison, respectively). The only limit placed on the prosecutor's discretion is that he or she not discriminate against a class of defendants. Batchelder, 442 U.S. at 123-24. The Defendant in the instant case maintains that the prosecutor is discriminating against him as a member of a class of defendants based on his criminal background and criminal contacts. However, the Defendant provides no evidence to support this contention, nor can this Court see any reason to believe that the prosecutor is making any such unconstitutional delineation. Thus, if the prosecutor is not abusing his discretion, there is no basis for this Court to find that the Defendant has been improperly charged. See id. at 123-25. Consequently, this Court affirms the decision of the Magistrate that the choice of which statute to charge the Defendant with was within the sound discretion of the prosecutor and charging him under section 11-25-2 was not lacking in probable cause.

IV

Conclusion

In conclusion, this Court rejects the Defendant's contention that section 11-25-2 must be interpreted to require an assault as a part of an escape, as the language of the statute shows it applies to an assault or an escape. This Court finds sections 11-25-1 and 11-25-2, though they both punish escape from the ACI, to be unambiguous and, as such, it is within the sound discretion of the prosecutor to determine under which statute to charge. Consequently, the Magistrate's decision is affirmed and the Defendant's Motion, under either Rule 9.1 or Rule 12(b)(2) or both, is dismissed. Counsel will submit an appropriate order for entry.

RHODE ISLAND SUPERIOR COURT
Decision Addendum Sheet

TITLE OF CASE: State of Rhode Island v. Gadson

CASE NO: P2-2010-3033 A

COURT: Providence Superior Court

DATE DECISION FILED: April 22, 2013

JUSTICE/MAGISTRATE: Carnes, J.

ATTORNEYS:

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For Defendant: Molly Kapstein Cote, Esq.