

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

PEOPLE OF THE VIRGIN ISLANDS,	)		
	)	<u>Case No.</u>	<u>Ticket No.</u>
	)		
vs.	)	ST-12-MV-8913	948003T
	)		
GREG A. HARGUS,	)		
	)		
Defendant.	)		
_____	)		

MEMORANDUM OPINION

SUMMARY

Defendant Greg A. Hargus (hereinafter "Defendant") is charged with a traffic violation of operating a vehicle with one head light on or about October 27, 2012. Defendant, by and through his counsel Johanna Harrington, Esq., filed a Motion for Suppression Hearing and supporting memorandum of law on December 12, 2012. The People filed an opposition. Defendant claims that he was subject to an unconstitutional police road block and therefore the traffic citation that he received should be suppressed. The Court will deny Defendant's Motion.

FACTS

This matter came on for a suppression hearing on April 4, 2013.¹ The People were represented by Brenda Scales, Assistant Attorney General. Defendant appeared and was represented by Johanna Harrington, Esq. The Defendant did not call any witnesses.

The only witness called for the People was Officer Kent Hodge. Officer Hodge has served as a police officer for over 25 years. He testified that on October 27, 2012 he was working at a "traffic initiative" on Long Bay Road. According to Officer Hodge's testimony, police were set up on both sides of the street and the officers only stopped vehicles with "visible traffic violations". At approximately 11:30 p.m. Defendant was driving along Long Bay Road in the vicinity of Lucinda Millin Home. Officers observed that the Defendant's front headlight was out. The Defendant was stopped by Officer Hodge, asked for documents and given a citation for improper lights. Officer Hodge denied that the officers were conducting a road block. He denied that they were stopped or tried to stop every third, fourth or fifth car. His testified that they only stopped vehicles with traffic violations they could observe.

¹ The People argued that a suppression hearing was improper as there is no evidence to suppress. The Defendant countered with an oral motion to dismiss the charge. The Defendant, however, has the right to move to suppress the testimony of any officers or evidence that a traffic violation existed.

DISCUSSION

According to the Supreme Court decision in *Terry v. Ohio*, police may briefly detain an individual without running afoul of the Fourth Amendment if the officer has reasonable suspicion that the individual has committed, is committing, or is about to commit a crime.² The officer may “conduct a brief, investigatory stop when the Officer has a reasonable, articulable suspicion that [such] criminal activity is afoot.”³ In evaluating the constitutionality of a traffic stop, the Court considers the sufficiency of reasons for the stop as well as the credibility of the officer.⁴

The Defense has argued that the traffic initiative in place on the night of October 27, 2012 violates the Fourth Amendment because it does not comport with the Constitutional safeguards required for police traffic checkpoints.⁵ The Defense is correct in stating that traffic checkpoints have to pass the test outlined by the Supreme Court in *Brown v. Texas* and upheld in recent decisions. However, the *Brown* test is not applicable because it only applies to traffic stops that are *not* based on reasonable suspicion of a traffic violation.⁶

In *Delaware v. Prouse*, the Supreme Court held that stopping and detaining a driver is unreasonable under the Fourth Amendment, *except* in situations where the officers have at least reasonable suspicion that a law is being violated.⁷ In the instant case, Officer Hodge testified that he stopped the Defendant because he personally saw that his front headlight was out giving him more than reasonable suspicion that an infraction was taking place.

The instant case is distinguishable from similar cases of police roadblocks because Officer Hodge had reasonable suspicion of a traffic violation before he made the stop. In *People of the Virgin Islands v. Stimac*, a police checkpoint was found invalid for being capricious and failing to comport with constitutional standards.⁸ The officers in *Stimac* conducted a traffic checkpoint where every third car passing through the checkpoint was stopped and questioned. The Defendant was stopped and failed a sobriety test. There is nothing to indicate that the police had

² 392 U.S. 1, 30 (1968).

³ *Id.*

⁴ *Virgin Islands v. Samuel*, 2010 WL 7746081 at 4 (2012).

⁵ Defendant's Memorandum in Support of Motion for Suppression Hearing (December 12, 2012).

⁶ 443 U.S. 47, 99 (1979)(in evaluating a sobriety checkpoint the court implemented a three-prong balancing test which considers the state interest, the effectiveness of the program in achieving that goal, and the level of intrusion on individual's privacy); *Michigan Dept. of State Police v. Sitz*, 496 U.S. 444, 455 (1990)(checkpoint upheld because it met the *Brown* factors).

⁷ 440 U.S. 648, 663 (1979)(“we hold that except in those situations in which there is at least articulable and reasonable suspicion that a motorist is unlicensed or that an automobile is not registered, or that either the vehicle or an occupant is otherwise subject to seizure for violation of law, stopping an automobile and detaining the driver in order to check his driver's license and the registration of the automobile are unreasonable under the Fourth Amendment.”).

⁸ 2012 V.I. LEXIS 22 (2012).

any articulable reason to stop the Defendant's vehicle other than as part of the traffic initiative.⁹ These facts are distinguishable from the case at hand. In *Stimac*, the police officers involved had no knowledge that the Defendant violated a law until *after* they stopped him, whereas Defendant Hargus was stopped *because of* an obvious traffic violation. The stop of Hargus was not random and was based on police observation of illegality taking place on a public roadway.

CONCLUSION

The Court finds that Officer Kent Hodge had more than a reasonable suspicion to stop the Defendant and issue him a citation. This Court finds that the Defendant was stopped by Officer Hodge because he had a reasonable suspicion to believe that Defendant's front headlight was out. Therefore the Court need not decide the validity of the traffic initiative. The motion to suppress will be denied.

DATED: June 5, 2013


KATHLEEN MACKAY
Judge of the Superior Court
of the Virgin Islands

ATTEST:
VENETIA H. VELAZQUEZ, ESQ.
Clerk of the Court

BY:


ELIZABETH DAVID
Court Clerk Supervisor

6/6/2013

⁹ *Id.*