

SUPERIOR COURT OF THE VIRGIN ISLANDS
APPELLATE DIVISION OF ST. CROIX

PEOPLE OF THE VIRGIN ISLANDS,	)	CASE NO. SX-16-RV-003
	)	
Plaintiff / Respondent	)	ON PETITION FOR REVIEW FROM
on Review,	)	THE MAGISTRATE DIVISION
	)	
v.	)	Re: Case No. SX-16-MV-1096
	)	
CARLOS MELENDEZ,	)	
	)	
Defendant / Petitioner	)	
on Review.	)	
	)	

Appearances:

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BRADY, DOUGLAS A., Judge

MEMORANDUM OPINION

THIS MATTER is in the Appellate Division on petition for review from the Magistrate Division. Carlos Melendez, the petitioner on review and defendant in the trial court, appeals his conviction of failing to display an operator's license upon demand in violation of section 371(b) of title 20 of the Virgin Islands Code. For the reasons that follow, Melendez's conviction will be reversed because no evidence was admitted to show the location where the infraction occurred or that it occurred on a public road or highway.

Background

Just before 11 o'clock p.m. on March 23, 2016, Virgin Islands Police Officer Robert T. Combie was out on patrol with his partner, police officer Noelline Stewart.¹ He “observed a Chevy Cavalier, license plate CDF-983 . . . being operated on the road with one headlight.” (Trial Tr. 9:7-8, May 12, 2016.) Officer Combie stopped the vehicle and “asked the driver to present his insurance, driver’s license and registration.” *Id.* at 9:12-13. The driver, later identified as Carlos Melendez, “had his registration and insurance, but he did not have any driver’s license.” *Id.* at 14-16. Office Combie told Melendez that he stopped him because one of the headlights of his car was out, then gave Melendez a warning and told him to get the headlight fixed, and issued him a citation “for operating a motor vehicle upon the public road and not having a valid driver’s license on his person.” *Id.* at 9:25-10:2.

Citation number 211088, filed in Superior Court of the Virgin Islands on March 30, 2016, charged Melendez with operating a motor vehicle without a license on a public road, specifically Dorsch Beach Road. The Traffic Division of the Clerk’s Office docketed the citation, opened a new case numbered SX-16-MV-1096, and then assigned the case at random to a Superior Court magistrate judge. Trial was initially scheduled for April 28, 2016. However, Melendez filed a motion to strike/dismiss the complaint on April 11, 2016, claiming the Magistrate Court lacked jurisdiction and that the laws requiring him to obtain a driver’s license interfered, unconstitutionally, with his right to travel freely on public roads. The Magistrate Court issued an order on April 26, 2016, giving the People two days to respond to Melendez’s motion. The People responded, but by filing a motion for an extension of time and a request to continue the trial. The Magistrate Court granted that motion and continued trial to May 12, 2016. The People filed their response in opposition to Melendez’s motion on May 3, 2016. Melendez filed his reply on May 9, 2016.

The Magistrate Court heard oral argument on Melendez’s motion on May 12, 2016, before taking the motion under advisement and proceeding with trial. Melendez was present and represented himself. The People appeared through counsel. Officer Combie was the only witness. He identified Melendez and testified that Melendez did not produce his driver’s license upon request. However, Officer Combie did not identify the location or even the road Melendez was driving on when he was stopped. After Office Combie testified, briefly cross-examined by Melendez, the People rested. Following closing arguments, the court took the case under advisement. In a judgment order entered May 17, 2016, the Magistrate Court

¹ Spelled phonetically as per the transcript submitted on June 17, 2016.

denied Melendez's motion to dismiss, found him not guilty of violating section 371(a) of title 20 of the Virgin Islands Code, but guilty of violating section 371(b) of title 20 of the Virgin Islands Code.² The Magistrate Court sentenced him to pay a fine of \$50.00, as the People had not proven that he had previously been convicted of the same offense, and court costs of \$75.00.

Melendez timely filed a petition for review with the Appellate Division on May 25, 2016. He also requested a transcript of the May 12, 2016 trial, which was completed on June 17, 2016. Although the Clerk's Office issued both parties a briefing letter—to Melendez directly, with a copy to counsel for the People—neither party filed a brief on review. However, on the May 25, 2016 Petition, Melendez requested that this Court decide the internal appeal without further briefing. The People have not appeared through counsel on review and nothing further has been filed, except letters Melendez sent to the Court, objecting to what he believes has been a delay in deciding his appeal. None of his letters were served on the People, however.³

Discussion

The Magistrate Division of the Superior Court of the Virgin Islands has original jurisdiction over all non-felony traffic offenses, petty criminal offenses, small claims actions, landlord and tenant actions, probate matters, and civil domestic violence and civil stalking actions. Superior Court magistrates—and Superior Court judges sitting in the Magistrate Division—serve as the trial court. Like a trial court the magistrate court presides over the case from commencement through dismissal or issuance of a judgment. Once a written judgment or dismissal order is entered, the time to appeal the magistrate court's decision starts. The magistrate court's decision is not deemed final and appealable to the Supreme Court of the Virgin Islands until the decision has been reviewed and affirmed by a judge of the Appellate Division of the Superior Court or the time to seek review in the Appellate Division expires.

Judges sitting in the Appellate Division of the Superior Court function like an appellate court. Because cases in the Magistrate Division are decided without a jury, the magistrate court hears the testimony and considers the evidence before finding the facts

² In a footnote, the Magistrate Court pointed out that the People were proceeding under section 371 of title 20 generally, presumably, since neither the prosecutor nor the citation referred to a specific subsection. Because the People did not present any evidence showing that Melendez was never licensed, the court acquitted him of section 371(a).

³ The Rules of the Superior Court require that all papers filed with the court must be served on the other parties to the case. *See, e.g.*, Super. Ct. R. 322.1(k) ("All papers submitted to the Court must also be served on the opposing party/parties and notice evidencing such service submitted to the Court."); *see also Ayala v. Lockheed Martin Corp.*, SX-08-CV-296, 2017 V.I. LEXIS 39, *10 (Super. Ct. Mar. 3, 2017) ("[A]ll papers (except those submitted *ex parte*) should be served on all parties in a case if such papers are to be filed with the court." (citing *People v. St. Omer*, 59 V.I. 89, 87 (Super. Ct. 2012))). Therefore, none of Melendez's letters are properly before the Court. Rather than strike the letters from the record, the Court will just disregard them instead. *Cf. Der Weer v. Hess Oil V.I. Corp.*, 64 V.I. 107, 127 (Super. Ct. 2016) (court disregarded untimely response rather than strike it from record).

and applying the law. And when the law is unsettled, the magistrate court must determine what law should apply before finding what facts are relevant. On review, the appellate court must defer to the magistrate court's findings of fact, reviewing only for clear error. But the appellate court does not defer to the law the magistrate court applies. Instead, questions of law are reviewed under a plenary standard, which means the Appellate Division must provide sufficient analysis to demonstrate that it has truly performed a full review of the record.

Carlos Warehouse v. Thomas, 64 V.I. 173, 179-81 (Super. Ct. App. Div. 2016) (quotation marks, citations, ellipses, and brackets omitted).

Melendez raises three errors on review. Citing *Melo v. United States*, 505 F.2d 1026 (8th Cir. 1974), he first argues that the Magistrate Court failed to establish its own jurisdiction to reach the merits and further that there was no case or cause of action against him. Next, he claims that the People failed to prove that he was engaged in commerce (presumably at the time Officer Combie stopped him). Lastly, Melendez argues that the Magistrate Court conflated his right to travel with the privilege of driving in denying his motion to dismiss. Melendez raised all three arguments in his motion to dismiss and renewed them on review. Accordingly, the error Melendez presents on review is whether the Magistrate Court erred in denying his motion to dismiss. That is, Melendez has not challenged the sufficiency of the evidence the People presented at trial. Rather, his dispute is with the authority the People have to bring a case against him and the jurisdiction of the Magistrate Court to try that case. The Court will, however, consider on its own the sufficiency of the evidence and on that basis, reverse Melendez's conviction. However, because the Appellate Division is required to consider and address each error raised on review, the Court will also address each of the errors Melendez raises. See *Gardiner v. Diaz*, 58 V.I. 199, 205 n.5 (2013) (“[T]he Appellate Division of the Superior Court should . . . address the arguments raised before it in the parties' briefs. If the Appellate Division determines that an appellant has waived any of the arguments raised in the brief, it should so indicate.”) In other words, under *Gardiner*, the Appellate Division lacks the discretion to decide which of the errors raised on review should be addressed, even though a review, like this one, can be resolved on a narrower ground. Cf. *id.* (“[I]t would generally be error for the Appellate Division of the Superior Court to fail to address the arguments raised in the brief on review”).

A. Motion to Dismiss

1. Authority of the People of the Virgin Islands / Jurisdiction of the Magistrate Court

In his motion to dismiss, Melendez claimed that the traffic citation should be dismissed because there was “[n]o case, crime or cause of action” pending in the Magistrate Division. (Def.'s Mot. 2, filed

Apr. 11, 2016, *People v. Melendez*, SX-15-MV-2974 (underscore omitted).⁴) Relying on cases from federal and state courts, Melendez argued that “[t]he basic elements of a case or cause of action are the violation of a legal right and loss or harm. The alleged plaintiff,” namely the People of the Virgin Islands, whom Melendez referred to as “a legal fiction at best, ostensibly acting through Officer Robert Combie, has not pled any violation of a legal right, loss, damage, or harm.” *Id.* at 4. In his reply to the People’s response to his motion to dismiss, Melendez reiterated the grounds for his “jurisdictional” challenge: “‘THE PEOPLE OF THE VIRGIN ISLANDS VS. CARLOS MELENDEZ.’ Who are these people? And where are these people that have a cause of action against me? Let the man, woman or child now stand and proclaim their cause against me. If not the GOVERNMENT has no jurisdiction over me.” (Def.’s Reply 2, filed May 9, 2016, *People v. Melendez*, SX-15-MV-2974.)

In rejecting Melendez’s challenge, the Magistrate Court relied on precedent from the Supreme Court of the United States, which held that “‘a [S]tate may rightfully prescribe uniform regulations necessary for public safety and order in respect to the operation upon its highways of all motor vehicles . . . [.] And to this end, it may require, the registration of such vehicles and the licensing of their drivers.’” (Jgmt Order 3, entered May 17, 2016 (quoting *Hendrick v. Maryland*, 235 U.S. 610, 622 (1915)).) *Hendrick* is still good law, but it did not address directly the jurisdictional challenge Melendez was raising.

Melendez was correct insofar as the People of the Virgin Islands is a “legal fiction” in that, the residents, or the people, of the Virgin Islands do not appear *en masse* and charge individuals with committing crimes. Rather, the duty of enforcing the laws and of prosecuting people who violate those law is entrusted to prosecutors. *Cf. Willover v. State*, 38 S.W.3d 672, 686 (Tex. Ct. Crim. App. 2001) (Jennings, J., dissenting from rehearing *en banc*) (“Criminal actions are brought ‘In the name and by authority of the State of Texas.’ This is no mere legal fiction nor technicality. The prosecutor makes the charging decision, not the crime victim. The prosecutor represents the State, not the crime victim. Criminal cases are brought only after investigation by peace officers, prosecutors, and, in felony cases, grand juries, whose roles are clearly defined by statute.” (citation omitted)).

Melendez was also correct in that, for many offenses, such as the offense he was charged with, there is no victim in the sense that the word is most commonly used. Melendez was accused of failing to display his driver’s license upon request. Officer Combie was not the victim of that alleged crime. Rather, the victim would be the community as a whole. *Cf. United States v. Vigil*, 998 F. Supp. 2d 1121, 1149

⁴ Since Melendez asked this Court, as the appellate court, to decide his review based on the record developed the traffic court without further briefing, the Court relies on the motion papers the parties submitted to the Magistrate Court.

(D.N.M. 2014) (“Both Congress and the Court have recognized that the whole community is the victim of drug-trafficking activities.”); *United States v. Marchan*, 32 F. Supp. 3d 753, 758 n.2 (S.D. Tex. 2013) (“[T]he true victims are the citizens who expect and deserve a bribe-free government.” (citation omitted)); *United States v. Spitler*, 800 F.2d 1267, 1278 (4th Cir. 1986) (“The true victims are the governments and taxpayers of Maryland and the United States whose tax dollars were unjustly depleted by defendants’ fraudulent billing scheme.”); *see also* *People v. Guevara*, 151 Cal. Rptr. 511, 515 (Ct. App. 1979) (“The crime of escape is an offense against the state in its exercise of its lawful authority to punish a person for a crime committed. The victim is the People of the State of California as a whole.”); *State v. Warren*, 712 So. 2d 500, 509 (La. Ct. App. 1996) (“The setting of the case today is one of drugs. The victims are the people of Claiborne Parish, and the victims are the families that are torn apart by the drugs. They are the kids walking in the streets late at night and they are the drug addicts that are searching for any way they can come up with twenty dollars, beg, borrow, or steal.”). To be sure, in many instances where someone is injured or even killed by the actions of another, there is a “true” victim in the sense that word is most commonly used. But victims of crimes are not the parties to criminal cases. Prosecutors are not parties either. Rather, it is the community, collectively, or the People of the Virgin Islands, against whom crimes and offenses occur and on whose behalf such crimes and offenses are prosecuted.

But Melendez was not correct in claiming that People had no case against him. In the Virgin Islands, the Attorney General of the United States Virgin Islands, aided by assistant attorneys general, prosecutes crimes and other petty offenses against the laws of the Virgin Islands. Section 114 of Title 3 of the Virgin Islands Code gives the Attorney General the power and the responsibility “to prosecute in the name of the People of the Virgin Islands, offenses against the laws of the Virgin Islands.” 3 V.I.C. § 114(a)(3). In addition, Section 37 of the Organic Act of 1936 directs that “all penal or criminal prosecutions in the local courts shall be conducted in the name of and by authority of ‘the People of the Virgin Islands of the United States’” Organic Act of 1936 § 13, 48 U.S.C. § 1406f (2011), *reprinted in* Hist. Doc., Const., & Organic Acts preceding V.I. Code Ann, tit. 1 (1995 ed).⁵ Thus, both the Virgin

⁵ Although the United States Court of Appeals for the Third Circuit held that the Organic Act of 1936 was repealed in its entirety when Congress adopted the Revised Organic Act in 1954, *see, e.g., Virgo Corp. v. Paiewonsky*, 6 V.I. 256, 271 (3d Cir. 1967), title 48 of the United States Code directs otherwise. *See* 48 U.S.C. ch. 7, subch. I (2011 ed.) (codification note) (“A new organic act, or basic charter of civil government, for the people of the Virgin Islands of the United States, was passed in 1954. . . . [P]rovisions of the *Organic Act of the Virgin Islands of the United States*, act June 22, 1936, ch. 699, 49 Stat. 1807, section 1405 *et seq.* of this title, in force on July 22, 1954, and not inconsistent with act July 22, 1954, are to *remain in force and effect until otherwise changed.*” (emphasis added)). Section 13 of the 1936 Organic Act was not expressly repealed and no provision of the 1954 Revised Organic Act (as amended) is in direct conflict. Thus, Section 13 should still be in force and effect in the Virgin Islands.

Islands Code and the United States Code direct that penal and criminal prosecutions in this Territory must be brought in the name of the People of the Virgin Islands.

In *Tyson v. People of the Virgin Islands*, 59 V.I. 391, 397 n.1 (2013), the Supreme Court of the Virgin Islands rejected a similar challenge like the challenge Melendez raised, namely that “the Superior Court lacked jurisdiction” because “the People of the Virgin Islands is an entity whose existence is not recognized by law” (quotation marks omitted). While the issue in *Tyson* was different, whether charges should have been brought by the Government of the Virgin Islands and not the People of the Virgin Islands, the Court rejected the challenge, finding it “wholly without merit,” *id.*, based on section 114(a)(3) of title 3 of the Virgin Islands Code. Like *Tyson*, Melendez’s argument is also wholly without merit.

In his reply to the People’s response to his motion to dismiss, Melendez claimed that, “if the ‘PEOPLE OF THE VIRGIN ISLANDS’ have a cause against [him], then let them bring forth the contract that [he] made with them and prove that [he] violated whatever terms therein.” (Def.’s Reply 7.) The “contract” is the social contract. In other words, by being a member of this Territory, Melendez, like every other person who moves here or is born and remains here, agrees or contracts with everyone else in the community to follow the laws our Legislature enacts as well as those the nation enacts through Congress. If Melendez disagrees with any of those laws, he can file a civil action for a declaratory judgment and attempt to have one or more of those laws struck down. *See, e.g., Goodwin v. Fawkes*, SX-11-CV-435, 2016 V.I. LEXIS 198 (Super. Ct. Dec. 12, 2016) (lawsuit challenging the denial of the right to vote for President, Senators, and Representatives). He can file a taxpayer lawsuit to challenge the driver’s license system of the Virgin Islands. *See* 5 V.I.C. § 80. He can seek office as a senator and propose legislation changing the laws he disagrees with. He can vote into office individuals who he believes will further his views of the law. But by being a part of the community, each of us, including Melendez, agrees to abide by the laws of the Virgin Islands until such time as they are amended, struck down, or repealed. Criminal cases are brought in the name of the People of the Virgin Islands. *See* 48 U.S.C. § 1406f; 3 V.I.C. § 114(a)(3). Thus, Melendez’s claim that the People had no authority to file a case against him is incorrect.

Melendez’s other assertion, that the Magistrate Court lacked jurisdiction, is also rejected. The only authority Melendez cited on appeal was *Melo*. (*See* Pet. for Review 1, filed May 25, 2016 (citing *Melo v. United States*, 505 F.2d 1026 (8th Cir. 1974).) That case involved an appeal from the trial court’s dismissal of a complaint in a personal injury action brought against the United States Post Office. *See* 505 F.2d at 1027. Christine Roth Melo got into a car accident with a postal employee and then sued for damages. The United States District Court for the District of Iowa dismissed her complaint because she failed to comply

with the Federal Tort Claims Act. *See id.* at 1028. The jurisdiction of the trial court was only at issue because the plaintiff did not give the United States government notice of her claim first, before she filed a lawsuit. *See id.* at 1028-29. *Melo* is not even remotely relevant here.

The People of the Virgin Islands accused Melendez of committing a crime, the petty offense of failing to produce his driver's license to a police officer upon request. *See* 20 V.I.C. § 371(b). The Virgin Islands Code vests jurisdiction over non-felony offenses of the vehicle and traffic laws of the Virgin Islands in the Magistrate Division of the Superior Court. *See* 4 V.I.C. § 124(b) ("The Magistrate Division of the Superior Court has exclusive jurisdiction over all traffic offenses, except felony traffic offenses."). Superior Court magistrate judges are assigned to the Magistrate Division where they "hear all non-felony traffic offenses." *Id.* § 123(a)(4). Thus, the Magistrate Division had jurisdiction to hear the non-felony traffic case the People filed against Melendez. Melendez's jurisdictional challenge has no merit.

2. Requirement of Engaging in Commerce

Melendez's second argument, the People of the Virgin Islands failed to prove that he was engaged in commerce when he was issued a citation, must also be rejected. In his motion, Melendez argued that

Officer Robert Combie issued one Traffic Citation No. 211088 (operating a motor vehicle without a valid driver's license) to me the sole beneficiary of the corporate or legal fiction, Carlos Melendez. No where on the charging document issued to me indicated that commerce was taking place or any loss, damage or harm took place at the time of commerce.

(Def.'s Mot. 4.) This Court can find no error in the Magistrate Court's decision to reject Melendez's commerce argument. As the Magistrate Court explained,

[c]ontrary to the defendant's arguments contained in his motion, there is no legal requirement [that] he have been engaged in commerce in order for the Virgin Islands Traffic Code to apply to him. The key elements of [Section] 371(a) are that (1) he not operate a motor vehicle; (2) without having obtained a driver's license from the Director of Motor Vehicles. The key elements of [Section] 371(b) are that (1) he have the license in his immediate possession at all times when operating a vehicle; and (2) that he display the license to any peace officer or other person authorized by the Director of Motor Vehicles when asked.

(Jmgt Order 3.) Melendez's claim that the People had to prove that he was engaged in commerce at the time when Officer Combie demanded to see Melendez's license to drive was properly rejected.

3. Conflating the Right to Travel with the Privilege of Driving

Melendez last argument was an attempt, through his motion to dismiss, to draw a connection between the right to travel and the privilege of driving and to claim that the Government of the Virgin

Islands (through its political branches) has unconstitutionally infringed on the individual's right to travel by requiring that we obtain a driver's license. (*Compare* Def's Reply 7 ("[A]ny American is free to travel from state to state and to change his state of residence or employment whenever he desires, unrestricted by unreasonable government interference or regulation."), *with id.* at 9 ("As I have mentioned previously, terms such as 'driver,' 'driving,' 'vehicle,' etc. . . . , are all related to commercial activities, any application of the traffic statute outside of that construct renders it unconstitutional.")) Governments, in furtherance of their taxing powers, can require people and businesses engaged in commerce to obtain licenses, Melendez argued. (*See* Def.'s Mot. 14 ("The confusion of the police power with the power of taxation usually arises in cases where the police power has affixed a penalty to a certain act, or where it requires licenses to be obtained and a certain sum be paid for certain occupations.")) But governments, specifically the Virgin Islands Government, cannot restrict the right to travel, Melendez argued, by forcing people to obtain and then maintain a driver's license. Although "[t]oday we assume that a traveler is a driver, and a driver is an operator. However, this is not the case," Melendez claimed. *Id.* at 6 (quotation marks omitted).

In rejecting Melendez's final argument, the Magistrate Court, again relying on *Hendrick*, held that "the right of travel is different from the privilege granted . . . to operate a motor vehicle on the public roadway." (Jgmt Order 3.)

In no manner, does the requirement that [Melendez] have a driver's license on his person interfere with his ability to move by walking, taking a bus or taxi, or riding in another's car as a passenger. His "right to travel" is restricted/subordinated only by the reasonable means implemented by the Government to aid in the protection of the motoring public and pedestrians against ineligible drivers, which as has been already noted above, [is] constitutional.

Id. at 3-4. Once again, this Court can find no error in the Magistrate Court's decision. That said, Melendez was correct in that, the Virgin Islands Code does refer to operator's licenses generally and not driver's licenses, *per se*. *See* 20 V.I.C. § 371(a) ("Except as provided in this chapter, no person shall operate a motor vehicle upon the public highways without an *operator's license* issued by the Director of Motor Vehicles." (emphasis added)). But this distinction makes no difference to the argument Melendez tried to raise because licenses to operate automobiles for hire and licenses for commercial drivers are governed by other provisions of the Virgin Islands Code. *See, e.g.,* 20 V.I.C. § 401; 20 V.I.C. § ch. 36.

* * *

Having considered the claim Melendez raised on review, that the Magistrate Court erred in denying his motion to dismiss, that claim is rejected. Although the authority the Magistrate Court relied on in

rejecting Melendez’s first argument was not directly on point, the outcome was correct. *Cf. Antilles School v. Lembach*, 64 V.I. 400, 438 n.23 (2016) (“It is well established that, under the ‘right result, wrong reason’ doctrine, where the record otherwise supports the trial court’s judgment, an appellate court may affirm that judgment for reasons other than those relied upon by the trial court, even if the trial court’s reasons are erroneous.” (citations omitted)). Thus, the decision to deny Melendez’s motion to dismiss will be affirmed.

B. Sufficiency of the Evidence

Melendez has not challenged the sufficiency of the evidence the People presented to convict him of violating section 371(b) of title 20 of the Virgin Islands Code. But Melendez did challenge the charge itself and has renewed that challenge on appeal. He is also proceeding *pro se*. Ordinarily, an appellate court does not raise errors *sua sponte*, unless the error is plain. Plain error requires “an error, which was plain, that affected [the defendant’s] substantial rights.” *Fahie v. People of the V.I.*, 59 V.I. 505, 511 (2013) (citation omitted)). But plain error analysis also places “the burden . . . on the appellant to show how the error prejudiced him.” *Id.*

Here, Melendez did not challenge the evidence, only the charge itself. Nonetheless, whether referred to as plain error or as fundamental error, appellate courts may, on their own, notice the prosecution’s failure to prove an essential element of a crime. *See Stevens v. People of the V.I.*, 52 V.I. 294, 309 (2009) (“[F]ailure to prove one of the essential elements of a crime is the type of fundamental error which may be noticed by an appellate court notwithstanding the defendant’s failure to raise it in the trial court.” (quotation marks, brackets, and citations omitted)); *accord United States v. Santistevan*, 39 F.3d 250, 256-57 (10th Cir. 1994) (“[T]he prosecution’s failure to prove an essential element of the crimes charged beyond a reasonable doubt in this case offends our most fundamental sense of due process. Accordingly, it is appropriate for us to exercise our power to raise the sufficiency of the evidence *sua sponte* as plain error.” (internal citation omitted)); *United States v. Zolicoffer*, 869 F.2d 771, 774 (3d Cir. 1989) (“[T]he failure to prove one of the essential elements of a crime is the type of fundamental error which may be noticed by an appellate court notwithstanding the defendant’s failure to raise it in the district court.” (citation omitted)); *see also In re Winship*, 397 U.S. 358, 364 (1970) (“Lest there remain any doubt about the constitutional stature of the reasonable-doubt standard, we explicitly hold that the Due Process Clause protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged.”). Notwithstanding that Melendez has not raised sufficiency of the evidence on review, this Court will notice the issue *sua sponte*.

The People of the Virgin Islands charged Melendez with failing to display his driver's license upon demand, a violation of section 371 of title 20 of the Virgin Islands Code. The statute provides as follows:

(a) Except as provided in this chapter, no person shall operate a motor vehicle upon the public highways without an operator's license issued by the Director of Motor Vehicles.

(b) The licensee shall have such license in his immediate possession at all times when operating a motor vehicle and shall display the license upon demand of any peace officer or other person authorized by the Director of Motor Vehicles. It shall be a defense to any charge under this subsection if the person so charged produces in court an operator's license theretofore issued to such person and valid at the time of his arrest.

20 V.I.C. § 371.

No court has yet addressed what the elements are for a violation of section 371. "Display" has been construed to mean show, not necessarily surrender or physically hand over to a police officer, so long as the officer can clearly see the license. *See Gov't of the V.I. v. Dudley*, 8 V.I. 215, 218-20 (Mun. Ct. 1971). And at least one court has held that probable cause is not necessary before a police office can stop a driver and ask her or him to display his or her license. *See, e.g., Gov't of the V.I. v. Flemming*, 10 V.I. 129, 131 (Mun. Ct. 1972). The Magistrate Court held that two the "key elements" of section 371(a) are that the defendant (1) "not operate a motor vehicle; (2) without having obtained a driver's license from the Director of Motor Vehicles," whereas the "key elements" of section 371(b) are that the driver "(1) have the license in his immediate possession at all times when operating a vehicle; and (2) that he display the license to any peace officer or other person authorized by the Director of Motor Vehicles when asked." (Jmgt Order 3.) This Court agrees with the elements the Magistrate Court listed for section 371(b), but notes two further elements, both of which were missing here, that are also required: (3) that the vehicle was operated on a public road or highway, and (4) that the offense occurred within the Territory of the Virgin Islands.

The citation Officer Combie issued to Melendez alleged that Melendez was driving in the area of "Dorsch Beach Road" on March 23, 2016. At trial, Officer Combie testified that he works as a police officer with the Virgin Islands Police Department. He also testified that he was on patrol on March 23, 2016 when he stopped a vehicle with one of its headlights out. Melendez was driving the vehicle. Office Combie asked Melendez for his driver's license, but Melendez told him "he did not have a license, neither a permit." (Trial Tr. 11:2-3.) As a result, Officer Combie issued Melendez a citation. But during trial, Office Combie did not say where this offense occurred. He said that he observed Melendez driving on a road, but he did not testify as to which road or even that it occurred on a public road or that the offense occurred in the Virgin Islands at all.

Roads in the Virgin Islands can be public or private. *See* 20 V.I.C. § 1(a) (“The duty of keeping the public highways, bridges, courses, breastwalls, handrails, and private roads dedicated to public use, in good serviceable condition is incumbent upon the government of the Virgin Islands.”); *id.* § 7(c) (“No private road or driveway that intersects with a public road shall be constructed or surfaced in such a manner as to reduce the width of any public road or to prevent proper drainage along public road . . .”); *see also id.* § 552 (“[A]ll parking areas open to the public . . . shall be considered for the purposes of this chapter to be public highways.”). Public roads and highways are defined to “include[] all roads, highways, and parking areas open for use by the public.” *Id.* § 101. Clearly, an element of a violation of section 371(b) of title 20 must also be that the operator be “operating a motor vehicle” “upon the public highways” at the time a police officer asks to see his license.

Additionally, the offense of failing to produce a license upon request—like all offenses—must have occurred within the Territory of the Virgin Islands. While no court in the Virgin Islands has expressly held that location is an element of every crime or offense under Virgin Islands law, courts regularly charge juries that they must find—in addition to the elements specific of that crime—that the events alleged occurred within the judicial district of St. Croix or the judicial district of St. Thomas/St. John. *See, e.g., Galloway v. People*, 57 V.I. 693, 708 (2012) (quoting jury instructions) (“Before you may find the defendant guilty of operating a motor vehicle in a reckless manner, you must find that the People have proven each and every one of the following elements beyond a reasonable doubt . . . four, the act occurred on or about July 2, 2010 in the Judicial District of St. Croix, United States Virgin Islands.”); *Ramirez v. People of the V.I.*, 56 V.I. 409, 427 (2012) (same); *Gov’t of the V.I. v. Albert*, 42 V.I. 184, 195 (D.V.I. App. Div. 2000) (same); *accord Gov’t of the V.I. v. Gonzalves*, 47 V.I. 149, 152 n.3 & n.4 (Super. Ct. 2005) (listing location among elements of crimes), *rev’d on other grounds, Gonzalves v. People of the V.I.*, D.C. Crim. App. No. 2005/042, 2011 U.S. Dist. LEXIS 106333, *4-5 (D.V.I. App. Div. Sept. 20, 2011) (defendant died before appeal decided); *Gov’t of the V.I. v. Motta*, Crim. No. 260/2001, 2002 V.I. LEXIS 49, *9-11 n.1 (Terr. Ct. Sept. 30, 2002) (location included as element of jury instructions), *aff’d Motta v. Gov’t of the V.I.*, D.C. Crim. App. No. 2002/163, 2004 U.S. Dist. LEXIS 25112 (D.V.I. App. Div. Nov. 30, 2004). Prosecutors also routinely include the location of the crime within the charging document. *See, e.g., Gov’t of the V.I. v. Knight*, 26 V.I. 280, 282 (D.V.I. 1991) (information charged where crime allegedly occurred); *People v. Boodoosingh*, SX-13-CR-165, 2013 V.I. LEXIS 99, *4 (Super. Ct. Aug. 23, 2013) (“People charged Defendant as follows: On or about April 15, 2013, in the vicinity of #65 Estate Humbug, while in the Judicial District of St. Croix, United States Virgin Islands, the following acts

occurred.” (citation and paragraph break omitted)); *People of the V.I. v. Yarwood*, SX-10-CR-734, 2012 V.I. LEXIS 72, *1-2 (Super. Ct. Apr. 17, 2012) (same).⁶

Courts in other jurisdictions have held that the location, or the *situs* or *locus*, of a crime must be shown by the evidence and found by the trier of fact. As the Court of Appeals of Maryland explained,

[t]erritorial jurisdiction describes the concept that only when an offense is committed within the boundaries of the court's jurisdictional geographic territory, which generally is within the boundaries of the respective states, may the case be tried in that state. The roots of the territorial jurisdiction requirement lie in the Sixth Amendment: The Sixth Amendment to the Constitution of the United States, made applicable to state judicial proceedings by the Fourteenth Amendment, requires that 'in all criminal prosecutions, the accused shall enjoy the right to a trial, by an impartial jury of the State wherein the crime shall have been committed. We said in *Bowen v. State*, 206 Md. 368, 375, 111 A.2d 844, 847 (1955), that an offense against the laws of the State of Maryland is punishable only when committed within its territory. A person cannot be convicted here for crimes committed in another state.

State v. Butler, 724 A.2d 657, 660 (Md. 1999) (ellipses, quotation marks, and other citations omitted)). See also *id.* at 661-62 (“The majority of other state and federal courts . . . are in accord with the rule that, generally speaking, when facts regarding a court’s territorial jurisdiction are in dispute, the resolution of those facts should be left for the trier of fact, not the court.”) (collecting cases). But cf. *State v. Johnson*, 727 P.2d 693, 694 (Wash. Ct. App. 1986) (“The situs is not an element of the crime, but relates to venue. Although it must be proved, direct evidence is not required. Inferences from circumstantial evidence are sufficient.” (citations and footnote omitted)).

Only one case in the Virgin Islands has addressed whether location is an element of a crime that must be proven at trial. In *Motta*, the defendant argued on appeal that “the trial court committed reversible error in failing to charge the jury that the crime of unauthorized possession of a firearm must have been proven to have occurred in the judicial district of St. Croix.” 2004 U.S. Dist. LEXIS 25112 at *24-25. The Appellate Division of the District Court rejected Motta’s claim, concluding that

viewed in totality, the jury instructions informed the jury that the charged crimes must have occurred on St. Croix. That element was included throughout the instructions on the other offenses and during the court's reading of the Information both in *voir dire* and in the final instructions. Moreover, the testimony of all of the witnesses established that all of the charged crimes occurred in Estate Mary's Fancy, St. Croix. Given this evidence and the

⁶ In fact, location was even alleged when one person filed a misdemeanor criminal complaint against another person on his own behalf. See, e.g., *People v. Thompson*, 1 V.I. 443, 443 (St. Croix Police Ct. 1931) (“John C. Thompson is accused by B. Nelthropp by this Complaint, of the crime of Petty Larceny committed as follows: ‘The said John C. Thompson on the 1st day of August A.D. 1931, in the sub-judicial district of Christiansted did unlawfully cut, take, steal and carry away Three (3) bundles of Grass, from the road side of Estate Boetzberg.” (paragraph break omitted)).

absence of any real dispute regarding the location of the crime, there is no basis for finding the jury instruction plainly erroneous.

Id. at *25. Thus, the court in *Motta* concluded that the evidence was sufficient to show location.

Here, however, the Magistrate Court was both judge and jury. *Cf. Carlos Warehouse*, 64 V.I. at 180. And in its judgment order, the Magistrate Court did not include where the offense occurred as an element or whether the road on which Officer Combie stopped Melendez was a public road or highway. And even if it had, there was no evidence in support. The citation in a traffic case is the criminal complaint. Although the location, Dorsch Beach Road, was alleged in the citation, it was not proven at trial. And the citation, like any information or a criminal complaint, is not evidence.

Here, the People did prove that Melendez was (1) operating a motor vehicle, and (2) failed to display his operator's, or driver's, license upon request. But there was no testimony that Melendez was operating a motor vehicle (3) upon a public road at the time that the police officer stopped him to request him to display his license or (4) that the failure to display his license occurred within the Virgin Islands. Ordinarily, evidence showing that the motor vehicle was being operated on a public road would also show that the offense occurred within the Virgin Islands. But the former is an element specific to this offense, while the latter is an element of every offense. Since the only evidence the People presented was the testimony of Officer Combie and since Officer Combie did not testify to the location where he stopped Melendez, the evidence of Melendez's guilt is insufficient. His conviction must be vacated.

Conclusion

The People of the Virgin Islands have the authority to charge individuals with violations and offenses of Virgin Islands law. Likewise, the Magistrate Division of the Superior Court has exclusive jurisdiction to hear non-felony traffic offenses. Thus, the Magistrate Court had jurisdiction to hear the traffic case the People filed against Melendez. Melendez's claim that he must be engaged in commerce before the Government can require him to obtain a driver's license and that the driving license scheme of Virgin Islands violates his right to travel are rejected. Accordingly, the Magistrate Court was correct in denying Melendez's motion to dismiss.

However, the Magistrate Court nonetheless erred in finding Melendez guilty of failing to display his driver's license upon demand, in violation of section 371(b) of title 20 of the Virgin Islands Code. The People did not prove that Melendez was operating his vehicle on a public road at the time he was stopped or that the offense occurred within the Territory of the Virgin Islands. Thus, Melendez's conviction and

sentence must be vacated and this matter remanded to the Magistrate Court for it to enter a judgment of acquittal.

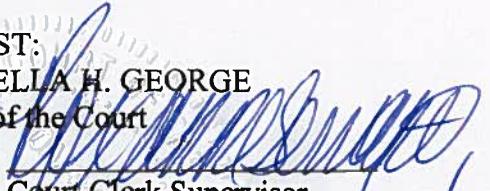
Dated: March 22, 2017



DOUGLAS A. BRADY
Judge of the Superior Court

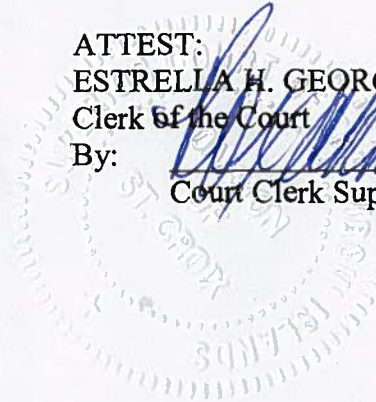
ATTEST:
ESTRELLA H. GEORGE
Clerk of the Court

By:



Court Clerk Supervisor

3/22/17



SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX

IN RE:)
) MISC NO. DAB 011/2018
ORDER DESIGNATING CERTAIN)
OPINIONS FOR PUBLICATION.)

**TO: Clerk of the Court
Counsel of Record
Law Library / LexisNexis / Westlaw**

ORDER

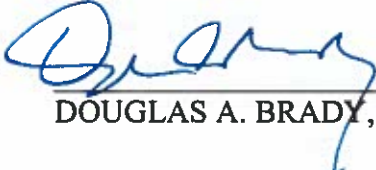
THE PREMISES considered, it is hereby

ORDERED that the following memorandum opinions issued in the below listed cases are hereby designated FOR PUBLICATION.

Pappas v. Hotel on the Cay Time-Sharing Ass'n, Inc., opinion dated April 27, 2015;
Estate of Burnett v. Kazi Foods of the V.I., SX-12-CV-139; opinion dated May 24, 2016;
FirstBank of Puerto Rico v. Prosser, SX-09-CV-520, opinion dated June 22, 2015;
James v. Guardian Insurance Company, SX-10-CV-435, opinion dated July 14, 2015;
Nurse v. Parris, SX-14-CV-011, opinion dated May 3, 2016;
Charles v. Arcos Dorados USVI, Inc., SX-13-CV-336, opinion dated August 18, 2016;
McGary v. J.S. Carambola, LLP, SX-13-CV-289, opinion dated October 7, 2016;
Whyte v. Bockino, SX-15-CV-083, opinion dated January 26, 2017;
Chiverton v. World Fresh Market, LLC, SX-10-CV-575, opinions dated March 10 & 28, 2017;
People v. Melendez, SX-16-RV-003, opinion dated March 22, 2017;
Edwards v. Hess Oil V.I. Corp., SX-15-CV-382, opinion dated June 28, 2017;
In re: Red Dust Claims, SX-15-CV-620, *et seq.*, opinion dated July 7, 2017;
Hamed v. Yusuf, SX-12-CV-370, *et seq.*, opinions dated July 21, 2017 and March 14, 2018;
Toutouyoute v. St. Croix Trading Co., Inc., SX-16-CV-457, opinion dated May 31, 2018.

Finally, it is ORDERED that a copy of this Order be served on counsel for the parties in the above-captioned cases (or the party if proceeding *pro se*), be filed in each of above-captioned matters, and forwarded to the Law Library for distribution to LexisNexis and Westlaw, FORTHWITH.

Dated: October 1, 2018.

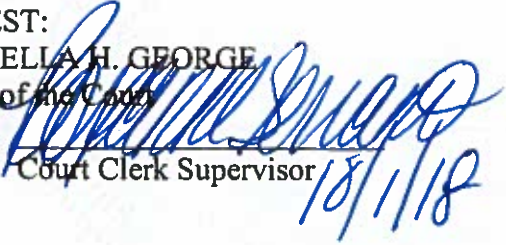

DOUGLAS A. BRADY, JUDGE

ATTEST:

ESTRELLA H. GEORGE

Clerk of the Court

By:


Court Clerk Supervisor 10/1/18