

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

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| <b>PEOPLE OF THE VIRGIN ISLANDS,</b> | ) | CASE NO. ST-2016-CR-0000397 ✓                 |
|                                      | ) |                                               |
| Plaintiff,                           | ) | V.I. Code Ann. tit. 14, §§ 2253(b), 11(a);    |
| vs.                                  | ) | tit. 23, § 481(b), tit. 14, § 11(a); tit. 14, |
|                                      | ) | §§ 2253(a) (3 Counts); 2256(a), 11(a)         |
| <b>KISHO A. GUMBS,</b>               | ) |                                               |
| <b>(D.O.B.: 04-24-92)</b>            | ) |                                               |
| Defendant.                           | ) |                                               |
| <hr/>                                |   |                                               |
| <b>PEOPLE OF THE VIRGIN ISLANDS,</b> | ) | CASE NO. ST-2016-CR-0000398                   |
|                                      | ) |                                               |
| Plaintiff,                           | ) | V.I. Code Ann. tit. 14, §§ 2253(b), 11(a);    |
| vs.                                  | ) | tit. 23, § 481(b), tit. 14, § 11(a); tit. 14, |
|                                      | ) | §§ 2253(a), 11(a) (3 Counts); 2256(a), 11(a)  |
| <b>AKIL SMITH,</b>                   | ) |                                               |
| <b>(D.O.B.: 10-21-92)</b>            | ) |                                               |
| Defendant.                           | ) |                                               |
| <hr/>                                |   |                                               |
| <b>PEOPLE OF THE VIRGIN ISLANDS,</b> | ) | CASE NO. ST-2016-CR-0000399                   |
|                                      | ) |                                               |
| Plaintiff,                           | ) | V.I. Code Ann. tit. 14, §§ 2253(a), 11(a);    |
| vs.                                  | ) | tit. 23, § 481(b), tit. 14, § 11(a); tit. 14, |
|                                      | ) | §§ 2253(a), 11(a) (3 Counts); 2256(a), 11(a)  |
| <b>JALEEM A. CHARLES,</b>            | ) |                                               |
| <b>(D.O.B.: 04-19-98)</b>            | ) |                                               |
| Defendant.                           | ) |                                               |
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**MEMORANDUM OPINION AND ORDER**

Pending before this Court are the following:

1. Defendant Kisho Gumbs's Motion to Suppress, which was filed April 3, 2017;
2. Defendant Akil Smith's Motion to Suppress, which was filed on May 1, 2017;
3. Defendant Jaleem A. Charles's Notice of Joinder in Motion to Suppress, which was filed on May 2, 2017;
4. Defendant Jaleem A. Charles's Notice of Joinder in Motion to Suppress, which was filed on May 11, 2017;
5. People's Opposition to Defendants' Motions to Suppress, which was filed on May 15, 2017;

6. Defendant Jaleem A. Charles's Reply to Opposition to Defendants' Motion to Suppress, which was filed on May 19, 2017; and
7. Defendant Akil Smith's Reply to People's Opposition to Defendant's Motion to Suppress, which was filed on May 24, 2017.

The arguments considered, this Court will grant Defendants' motions because the People failed to meet their burden of showing that the traffic checkpoint satisfied the requirements of the Fourth Amendment.

## **I. FACTUAL BACKGROUND**

On December 26, 2016, in accordance with an initiative issued by the Virgin Islands Police Commissioner, the Special Operations Bureau commenced Operation Make It Safe II.<sup>1</sup> As a part of this initiative, the Special Operations Bureau set up a traffic checkpoint along the Krum Bay road, which is contiguous to the Pueblo Supermarket in Subbase, St. Thomas.<sup>2</sup> The checkpoint operated from approximately 3:30 a.m. until the last patron departed from the nearby Krush Nightclub.<sup>3</sup> The officers blocked off the westerly exits of the roadway, which meant that any traffic traveling along that road was required to pass through the checkpoint.<sup>4</sup> Officers placed a sign that stated "Traffic Checkpoint Ahead" on the sidewalk near the Pueblo.<sup>5</sup> Marked police vehicles with their emergency lights engaged sat along the sidewalk in front of the Bureau of Motor Vehicles and in the roadway itself.<sup>6</sup> Orange cones were also placed along the roadway to guide motorists towards the checkpoint.<sup>7</sup> The officers present wore green cargo pants, black shirts, and bullet proof vests with the word "POLICE" printed on the front and back in white, reflective material.<sup>8</sup>

The officers operated the checkpoint in accordance with the operation plan that was explained to them during a "roll call" held at Zone B Command.<sup>9</sup> Vehicles were stopped at the checkpoint for one of two reasons: (1) an officer spotted a visible traffic violation, i.e., a covered license plate, no front license plate, a tint violation, etc., or (2) the vehicle was the fifth one to

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<sup>1</sup> Probable Cause Fact Sheet, Case No. ST-16-CR-397 (Dec. 27, 2016).

<sup>2</sup> Probable Cause Fact Sheet, Case No. ST-16-CR-397 (Dec. 27, 2016); Suppression Hr'g Tr. 12-13 (Test. of Sgt. William Denley).

<sup>3</sup> Probable Cause Fact Sheet, Case No. ST-16-CR-397 (Dec. 27, 2016); Suppression Hr'g Tr. 12 (Test. of Sgt. William Denley).

<sup>4</sup> Suppression Hr'g Tr. 13 (Test. of Sgt. William Denley).

<sup>5</sup> Suppression Hr'g Tr. 18 (Test. of Sgt. William Denley). The language on the sign is not exactly clear based on the People's Opposition to Motion to Suppress and later testimony. The People state in their brief that the sign said, "Police Checkpoint Ahead" while Sgt. Denley testified later that the sign said, "traffic checkpoint." Opp'n to Mot. to Suppress 2; Suppression Hr'g Tr. 20 (Test. of Sgt. William Denley).

<sup>6</sup> Suppression Hr'g Tr. 12, 14, 16-17 (Test. of Sgt. William Denley).

<sup>7</sup> Suppression Hr'g Tr. 17 (Test. of Sgt. William Denley).

<sup>8</sup> Suppression Hr'g Tr. 20 (Test. of Sgt. William Denley).

<sup>9</sup> Suppression Hr'g Tr. 125-26 (Test. of Ofc. Gideon Garfield).

pass.<sup>10</sup> Auxiliary Officer Gideon Garfield was charged with indicating which vehicles required additional inspection and noted every passing vehicle's license plate number along with whether each vehicle had a violation, was the fifth vehicle, or was allowed to pass.<sup>11</sup> If a vehicle was tagged as having a violation, the officers would request the motorist's driver's license, vehicle registration, and proof of insurance, and would issue a citation as necessary.<sup>12</sup> If a vehicle was tagged as being the fifth vehicle, the officers would request the same documentation and, if satisfactory, would allow the vehicle to proceed without further inquiry.<sup>13</sup> During all of these interactions, one officer was responsible for conducting a visual inspection of the vehicle and its occupants with a flashlight to check for weapons or anything that could have harmed the officers.<sup>14</sup> Another officer would simply hover near the vehicle to help aid in keeping the officers safe during the interactions.<sup>15</sup>

At around 3:45 a.m., Officer Garfield directed a 2006 black Suzuki XL7 occupied by Defendants toward the checkpoint as being the fifth vehicle.<sup>16</sup> When at the checkpoint, Officer Jason Magras requested the driver's license, vehicle registration, and proof of insurance of Defendant Kisho Gumbs, who was the driver.<sup>17</sup> While Defendant Gumbs searched for the documents, Sergeant Denley Williams performed a visual inspection of the vehicle with a flashlight for officer safety purposes and noticed a firearm holster located in the driver's seat rear pouch.<sup>18</sup> At that point, Sergeant Williams alerted Officer Magras to what he saw, and Officer Magras confirmed such with his flashlight.<sup>19</sup> Sergeant Williams then proceeded to ask Defendants Gumbs, Akil Smith, and Jaleem Charles if any of them held a license to carry a firearm in the Virgin Islands; all three answered no.<sup>20</sup> As Sergeant Williams inquired about the holster, Officer Richard Velasquez, who was acting as the additional lookout for the stop, noticed that Defendant Smith was making furtive movements and demanded that he stop; Defendant Smith continued to make the movements.<sup>21</sup> Simultaneously, Defendant Gumbs attempted to place the keys in the ignition and start the car, and Sergeant Williams demanded that he stop.<sup>22</sup> Eventually, the officers instructed all Defendants to exit the vehicle for officer safety purposes. Each was separately interviewed.<sup>23</sup>

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<sup>10</sup> Probable Cause Fact Sheet, Case No. ST-16-CR-397 (Dec. 27, 2016).

<sup>11</sup> Suppression Hr'g Tr. 98 (Test. of Ofc. Gideon Garfield).

<sup>12</sup> Suppression Hr'g Tr. 193-94 (Test. of Ofc. Jason Magras).

<sup>13</sup> Suppression Hr'g Tr. 23 (Test. of Sgt. William Denley).

<sup>14</sup> Suppression Hr'g Tr. 23-24 (Test. of Sgt. William Denley).

<sup>15</sup> Suppression Hr'g Tr. 168-70 (Test. of Ofc. Richard Velazquez).

<sup>16</sup> Probable Cause Fact Sheet, Case No. ST-16-CR-397 (Dec. 27, 2016).

<sup>17</sup> Probable Cause Fact Sheet, Case No. ST-16-CR-397 (Dec. 27, 2016).

<sup>18</sup> Probable Cause Fact Sheet, Case No. ST-16-CR-397 (Dec. 27, 2016).

<sup>19</sup> Probable Cause Fact Sheet, Case No. ST-16-CR-397 (Dec. 27, 2016).

<sup>20</sup> Probable Cause Fact Sheet, Case No. ST-16-CR-397 (Dec. 27, 2016).

<sup>21</sup> Probable Cause Fact Sheet, Case No. ST-16-CR-397 (Dec. 27, 2016).

<sup>22</sup> Probable Cause Fact Sheet, Case No. ST-16-CR-397 (Dec. 27, 2016).

<sup>23</sup> Probable Cause Fact Sheet, Case No. ST-16-CR-397 (Dec. 27, 2016).

After the Defendants exited the vehicle, Officer Velasquez noticed a black handgun located on the floor to the rear of the passenger front seat in the general area that Defendant Smith was making the furtive movements.<sup>24</sup> Upon discovery, Officer Velasquez yelled “gun!”<sup>25</sup> The officers arrested Defendant Smith and detained the remaining Defendants.<sup>26</sup> A vehicle inspection revealed a multitude of weapons: a loaded AK-47 with a destroyed serial number with fourteen rounds of ammunition, a black handgun with fourteen rounds of ammunition, and four other firearms.<sup>27</sup> Once the officers confirmed that Defendants Gumbs and Charles did not have a license to carry a firearm, the officers arrested them.<sup>28</sup>

## II. STANDARD

The Fourth Amendment specifically protects individuals from “unreasonable searches and seizures” effectuated by the government.<sup>29</sup> When seeking to suppress evidence obtained through an allegedly unconstitutional search or seizure, the defendant bears the burden of showing that his or her Fourth Amendment rights were violated.<sup>30</sup> However, once the defendant shows that the evidence was obtained without a warrant, the government then bears the burden of showing that the act of the warrantless search or seizure was reasonable under the Fourth Amendment.<sup>31</sup>

## III. DISCUSSION

Several issues are before this Court: (1) Whether the traffic checkpoint was constitutionally sufficient; (2) whether the officers had the reasonable, articulable suspicion to conduct a stop-and-frisk under *Terry v. Ohio*;<sup>32</sup> and (3) whether the firearm discovered in the floorboard was in the “plain view” of Officer Velasquez.

### A. “Special Needs” Checkpoint Jurisprudence

All Defendants essentially argue that the traffic checkpoint was constitutionally flawed due to general law enforcement being the primary programmatic purpose of the checkpoint. The People conversely assert that the checkpoint was a valid traffic initiative and was operated as such.

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<sup>24</sup> Probable Cause Fact Sheet, Case No. ST-16-CR-397 (Dec. 27, 2016).

<sup>25</sup> Probable Cause Fact Sheet, Case No. ST-16-CR-397 (Dec. 27, 2016).

<sup>26</sup> Probable Cause Fact Sheet, Case No. ST-16-CR-397 (Dec. 27, 2016).

<sup>27</sup> Probable Cause Fact Sheet, Case No. ST-16-CR-397 (Dec. 27, 2016).

<sup>28</sup> Probable Cause Fact Sheet, Case No. ST-16-CR-397 (Dec. 27, 2016).

<sup>29</sup> U.S. Const. amend. IV.

<sup>30</sup> See *United States v. Acosta*, 965 F.2d 1248, 1256, n.9 (3d Cir. 1992).

<sup>31</sup> See *United States v. Johnson*, 63 F.3d 242, 245 (3d Cir. 1995); *People of the V.I. v. Lloyd*, 2015 V.I. LEXIS 122, at \*6 (Super. Ct. Sept. 29, 2015).

<sup>32</sup> 392 U.S. 1 (1968).

At the outset, this Court notes that Officer Garfield directed Defendants' vehicle to the checkpoint for being counted as the fifth car, and the officers had no individualized suspicion that any criminal activity was occurring within the vehicle. Since the checkpoint stop is considered a seizure for Fourth Amendment purposes and was conducted without a warrant, the burden falls on the People to show that the officers reasonably conducted the checkpoint.

The Supreme Court of the United States has consistently held that the lynchpin of Fourth Amendment analysis is reasonableness.<sup>33</sup> A reasonable search or seizure generally requires that police officers have, at a minimum, individualized suspicion that criminal activity has occurred or is occurring.<sup>34</sup> However, the Supreme Court has delineated limited circumstances where a seizure conducted without individualized suspicion is permissible: "special needs" searches and administrative searches.<sup>35</sup> Incorporated in the "special needs" jurisprudence are police checkpoints and roadblocks. Several courts, both state and federal, have approached the analysis of checkpoints in a multitude of ways. Therefore, this Court must first determine the appropriate legal standard for the matter at hand.

### **1. Checkpoint Cases Before *City of Indianapolis v. Edmond***

The outcome of previous checkpoint cases has hinged on, in large part, a fact-sensitive inquiry. For instance, in the 1976 decision in *United States v. Martinez-Fuerte*, the Supreme Court determined that a Border Patrol checkpoint established to interdict undocumented persons passed constitutional muster.<sup>36</sup> Border Patrol instituted the checkpoint in San Clemente, California, which sat about 66 miles from the border of Mexico. Border Patrol erected several signs to warn motorists of the upcoming checkpoint.<sup>37</sup> About a mile outside of the checkpoint, two signs stated "ALL VEHICLES, STOP AHEAD, 1 MILE" in black-on-yellow with flashing lights.<sup>38</sup> About 0.25 miles outside of the checkpoint, two similarly formatted signs stated "WATCH FOR BRAKE LIGHTS."<sup>39</sup> Orange cones funneled traffic into two lanes, and Border Patrol vehicles were parked in the unused lanes with their emergency lights flashing.<sup>40</sup> A "point" agent stood between the two traffic lanes to visually screen the passing traffic.<sup>41</sup> Most vehicles were allowed to pass through without any type of inquiry by the agent; a few, however, were directed to a secondary inspection

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<sup>33</sup> See *Delaware v. Prouse*, 440 U.S. 648, 653-54 (1979).

<sup>34</sup> See *City of Indianapolis v. Edmond*, 531 U.S. 32, 37 (2000).

<sup>35</sup> *Id.* at 37.

<sup>36</sup> 428 U.S. 543, 545 (1976).

<sup>37</sup> *Id.* at 545-46.

<sup>38</sup> *Id.*

<sup>39</sup> *Id.* at 546.

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

area where a patrol officer questioned motorists about their citizenship and immigration status.<sup>42</sup> These secondary inspections ranged from 3 to 5 minutes on average.<sup>43</sup> The specific inspections at issue were not based on any articulable, individualized suspicion.<sup>44</sup>

In determining that a permanent checkpoint did not constitutionally require individualized suspicion, the *Martinez-Fuerte* Court weighed the interest of law enforcement's ability to deter illegal border crossings against the interest of individual motorists' right to free passage without interruption.<sup>45</sup> The Court recognized the importance of traffic-checking programs in combating the flow of undocumented persons and noted the fact that most undocumented persons preferred traveling on major highways, which is where the checkpoints were located.<sup>46</sup> The Court concluded that requiring officers to have reasonable suspicion before conducting a vehicle stop on major highways would be impractical given the flow of traffic and would essentially eliminate the deterring aspect of checkpoints.<sup>47</sup> For motorists, the Court considered the invasion minimal: each stop was brief; no search took place; most motorists were not frightened or taken by surprise by the checkpoint; the checkpoint location was not chosen by officers in the field and left little room for officers to harass motorists; and the inquiry at the secondary inspections was minimal and not arbitrarily initiated.<sup>48</sup> Given that the law enforcement's interest outweighed the motorists', the Court held the checkpoint to be constitutionally valid.

In 1979, *Delaware v. Prouse* built upon the Supreme Court's checkpoint jurisprudence despite dealing with a sole random, suspicionless stop. A Delaware officer stopped a random vehicle while on patrol for the purpose of checking the motorist's driver's license and registration; the officer testified that he did not observe any traffic or equipment violations, nor did he have any articulable suspicion that criminal activity was occurring in the vehicle.<sup>49</sup> The officer described the stop as "routine" but did not act "pursuant to any standards, guidelines, or procedures pertaining to document spot checks, promulgated by either his department or the State Attorney General."<sup>50</sup>

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<sup>42</sup> *Id.*

<sup>43</sup> *Id.* at 547.

<sup>44</sup> *Id.*

<sup>45</sup> *Id.* at 556-60.

<sup>46</sup> *Id.* at 551-52, 556-57. In describing the seriousness of undocumented immigration, the Court cited to several statistics to portray a clearer picture: "A conservative estimate in 1972 produced a figure of about one million [undocumented immigrants], but the Immigration and Naturalization Service now suggests there may be as many as 10 or 12 million aliens illegally in the country. It is estimated that 85% of the illegal immigrants are from Mexico . . . ." *Id.* at 551.

<sup>47</sup> *Id.* at 556-57. This conclusion was supported by the substantial numbers of passing vehicles that passed during the checkpoints. The Court noted that about 10 million vehicles passed the checkpoint location each year and about 146,000 vehicles passed through the checkpoint here during an 8-day operation. *Id.* at 554.

<sup>48</sup> *Id.* at 557-560.

<sup>49</sup> *Prouse*, 440 U.S. at 650-51.

<sup>50</sup> *Id.*

The Court ultimately held that, unless an officer has some indicia of reasonable suspicion that a vehicle was violating the law, stopping a random vehicle for the purpose of checking the motorist's driver's license and vehicle registration was unconstitutional. Utilizing the balancing test from *Martinez-Fuerte*, the Court determined that "stopping or detaining a vehicle on an ordinary city street is [no] less intrusive than a roving-patrol stop on a major highway . . . [nor does] it bear . . . greater resemblance to a permissible stop and secondary detention at a checkpoint near the border."<sup>51</sup> Unlike traffic checkpoints similar to those upheld in *Martinez-Fuerte*, random roving-patrol stops cause fear and surprise among unsuspecting motorists.<sup>52</sup> Though ensuring that motorists abide by traffic and safety regulations, such as maintaining an up-to-date driver's license and vehicle registration, is a vital interest, the Court did not find that government interest compelling enough to outweigh motorists' interest in being free from random, suspicionless highway stops at the sole discretion of individual officers, especially given that "[m]any violations of minimum vehicle-safety requirements are observable, and something can be done about them by the observing officer, directly and immediately."<sup>53</sup> The Court noted that "[t]his kind of standardless and unconstrained discretion is the evil the Court has discerned when in previous cases it has insisted that the discretion of the official in the field be circumscribed, at least to some extent."<sup>54</sup> Nonetheless, the Court in *dicta* suggested an appropriate format for states to check for such traffic violations: "This holding does not preclude the State of Delaware or other States from developing methods for spot checks that involve less intrusion or that do not involve the unconstrained exercise of discretion. Questioning of all oncoming traffic at roadblock-type stops is one possible alternative."<sup>55</sup>

In 1990, the Supreme Court in *Michigan Department of State Police v. Sitz* considered a sobriety checkpoint.<sup>56</sup> The Director of the Michigan Department of State Police appointed a Sobriety Checkpoint Advisory Committee to establish guidelines that created procedures governing sobriety checkpoint operations, site selection, and publicity.<sup>57</sup> According to those guidelines, the checkpoints would operate on selected sites on state roads, and an officer would briefly stop all vehicles that drove through a checkpoint and examine for signs of intoxication.<sup>58</sup> Where an officer witnessed signs of intoxication, that officer would direct the motorist to a separate location away from the traffic flow so that another officer could check his or her driver's license, vehicle registration, and proof of insurance, as well as conduct a sobriety test, if warranted.<sup>59</sup> All

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<sup>51</sup> *Id.* 657.

<sup>52</sup> *Id.*

<sup>53</sup> *Id.* at 658-660.

<sup>54</sup> *Id.* at 661.

<sup>55</sup> *Id.* at 663.

<sup>56</sup> 496 U.S. 444, 447 (1990).

<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

other vehicles were allowed to continue through the checkpoint.<sup>60</sup> The average delay for the passing vehicles was about 25 seconds.<sup>61</sup>

Upon weighing the balancing factors articulated in *Brown v. Texas*,<sup>62</sup> the Court held that the sobriety checkpoints were constitutional because Michigan's interest in curbing drunk driving far outweighed the intrusion upon the motorists and the checkpoint was narrowly confined in terms of procedure and guidelines.<sup>63</sup>

Looking to the government's interest, the Court recognized the "magnitude of the drunken driving problem [and] the States' interest in eradicating it," which was supported by statistics.<sup>64</sup> Considering the motorists' interest, the Court found that the only difference between the intrusion at hand and that in *Martinez-Fuerte*, where the intrusion was determined to be slight and constitutional, was the type of inquiries performed by the officers.<sup>65</sup> Further, the Court concluded that the lower court misgauged the "subjective intrusion" of the checkpoint by misapplying the "fear and surprise" aspect considered in *Martinez-Fuerte*; the Court iterated that the "'fear and surprise' to be considered . . . [is that] engendered in law abiding motorists by the nature of the stop," and the stop at hand caused minimum "fear and surprise" on motorists because the checkpoint operated pursuant to specific guidelines and uniformed officers stopped *every* approaching vehicle.<sup>66</sup> Lastly, the Court determined that the Michigan Court of Appeals misunderstood the *Brown* factor dealing with the "advance[ment] of the public interest" by looking at the "effectiveness" of the sobriety checkpoint specifically, and the Court noted that its checkpoint precedent did not support a detailed finding of checkpoint effectiveness.<sup>67</sup>

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<sup>60</sup> *Id.*

<sup>61</sup> *Id.* at 448.

<sup>62</sup> The standard articulated in *Brown* involves a three-pronged balancing test: (1) the gravity of the public concerns served by the seizure; (2) the degree to which the seizure advances the public interest; and (3) the severity of the interference with individual liberty. 443 U.S. 47, 50-51 (1979).

<sup>63</sup> 496 U.S. at 450-52.

<sup>64</sup> *Id.* at 451.

<sup>65</sup> *Id.* at 451-52.

<sup>66</sup> *Id.* at 452-53 (emphasis added). Roving-patrol stops conversely occur at random times, often without guidelines, and are targeted at isolated vehicle rather than every passing vehicle. *Id.* at 453.

<sup>67</sup> *Id.* at 453-54. More specifically, the Court said:

"[F]or purposes of Fourth Amendment analysis, the choice among such reasonable alternatives remains with the governmental officials who have a unique understanding of, and a responsibility for, limited public resources, . . . . *Brown*'s rather general reference to 'the degree to which the seizure advances the public interest' was derived, as the opinion makes clear, from the line of cases culminating in *Martinez-Fuerte*. Neither *Martinez-Fuerte* nor *Delaware v. Prouse*, 440 U.S. 648 (1979), . . . supports the searching examination of 'effectiveness' . . . ."

## 2. Checkpoint Cases After *City of Indianapolis v. Edmond*

The Supreme Court generally approached checkpoint cases in an analytically consistent format by weighing the interests at hand and considering the factual sensitivities in each case, i.e., border control, deterring drunk driving, etc. However, the Supreme Court added an additional caveat in *City of Indianapolis v. Edmond*.

In *Edmond*, the Indianapolis Police Department operated multiple vehicle checkpoints for the purpose of interdicting unlawful drugs.<sup>68</sup> The location of each checkpoint was chosen weeks in advance based on considerations like area crime statistics and traffic flow.<sup>69</sup> The operations generally occurred within daylight hours and each checkpoint was identified with lighted signs that stated, "NARCOTICS CHECKPOINT \_ MILE AHEAD, NARCOTICS K-9 IN USE, BE PREPARED TO STOP."<sup>70</sup> A predetermined number of vehicles were stopped at each checkpoint.<sup>71</sup> Around 30 officers were located at each checkpoint.<sup>72</sup> Written directives from the police chief provided the procedure for each checkpoint; at least one officer would approach each vehicle and advise the motorist that he or she was being stopped at a drug checkpoint, and the officer would then request the motorist's driver's license and vehicle registration.<sup>73</sup> Simultaneously, the officer checked for signs of impairment and conducted an open-view examination of the vehicle.<sup>74</sup> A narcotics canine also walked around each stopped vehicle.<sup>75</sup> Only where an officer obtained the consent of the motorist or obtained some basis of particularized suspicion could the officer search the vehicle.<sup>76</sup> No officer had any discretion to stop any vehicle out of sequence.<sup>77</sup> As the stopped vehicles were processed, traffic proceeded without interruption until the stopped cars completed processing or were diverted for further processing.<sup>78</sup> The average stop lasted about 2 to 3 minutes.<sup>79</sup>

The Court held that the narcotics checkpoint was unconstitutional because it had the primary purpose of searching for evidence of ordinary criminal wrongdoing without any

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*Id.* Although the Court clarified that a "searching examination for effectiveness" was not inappropriate, it noted that "approximately 1.5 percent of the drivers passing through the checkpoint were arrested for alcohol impairment." *Id.*

<sup>68</sup> 531 U.S. at 34-35.

<sup>69</sup> *Id.* at 35.

<sup>70</sup> *Id.* at 35-36.

<sup>71</sup> *Id.* at 35.

<sup>72</sup> *Id.*

<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

<sup>77</sup> *Id.*

<sup>78</sup> *Id.* at 36.

<sup>79</sup> *Id.*

individualized suspicion.<sup>80</sup>

At the outset of its opinion, the Supreme Court stated that it had never “indicate[d] approval of a checkpoint program whose primary purpose was to detect evidence of ordinary criminal wrongdoing.”<sup>81</sup> Revisiting its three major checkpoint cases, *Martinez-Fuerte*, *Sitz*, and *Prouse*, the Court recognized that each of those cases dealt with factual scenarios that were removed from the general interest in crime control: in *Martinez-Fuerte*, the substantial need to police the border; in *Sitz*, the immediate danger of drunk driving; in *Prouse*, the stopping of random motorists by the suspicionless, unconstrained, and discretionary decisionmaking of police officers.<sup>82</sup> The Court further rejected the petitioners’ attempt to draw resemblances between the checkpoint at hand to that in *Sitz* and *Martinez-Fuerte*:

“Petitioners state that the checkpoints in those cases had the same ultimate purpose of arresting those suspected of committing crimes. Securing the border and apprehending drunk drivers are, of course, law enforcement activities, and law enforcement officers employ arrests and criminal prosecutions in pursuit of these goals. If we were to rest the case at this high level of generality, there would be little check on the ability of the authorities to construct roadblocks for almost any conceivable law enforcement purpose. Without drawing the line at roadblocks designed primarily to serve the general interest in crime control, the Fourth Amendment would do little to prevent such intrusions from becoming a routine part of American life.”<sup>83</sup>

Because the primary purpose of the narcotics checkpoint was to advance “the general interest in crime control,” the Court concluded that the checkpoint could not constitutionally stand absent a basis of individualized suspicion.<sup>84</sup>

Relying on *Whren v. United States*<sup>85</sup> and *Bond v. United States*,<sup>86</sup> the petitioners in *Edmond* also asserted that prior cases precluded a searching examination into the purpose of the checkpoint program.<sup>87</sup> However, the Court stated that, while an inquiry into the subjective nature of officers’ actions or a program’s operation is inappropriate where probable cause or reasonable suspicion are

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<sup>80</sup> *Id.* at 47-48.

<sup>81</sup> *Id.* at 38.

<sup>82</sup> *Id.* at 38-40.

<sup>83</sup> *Id.* at 42.

<sup>84</sup> *Id.* at 44.

<sup>85</sup> 517 U.S. 806 (1996).

<sup>86</sup> 529 U.S. 334 (2000).

<sup>87</sup> 531 U.S. at 45.

present, “programmatic purposes may be relevant to the validity of Fourth Amendment intrusions undertaken pursuant to a general scheme without individualized suspicion.”<sup>88</sup> Further, in rejecting the argument that the drug checkpoint was constitutional due to its secondary purposes of removing impaired motorists off the road and verifying vehicle documentation, the Court clarified that allowing law enforcement agencies to base checkpoints on those secondary purposes would permit “checkpoints for virtually any purpose so long as they also included a license or sobriety check.”<sup>89</sup> In conclusion, the Court reiterated that “the purpose inquiry in this context is to be conducted only at the programmatic level and is not an invitation to probe the minds of individual officers acting at the scene.”<sup>90</sup>

Since *Edmond*, the Supreme Court has considered its application in only one checkpoint case: *Illinois v. Lidster*.<sup>91</sup> In response to a hit-and-run, the local Illinois police set up a highway checkpoint designed to obtain more information about the incident.<sup>92</sup> Police vehicles with engaged emergency lights parked and blocked the eastern part of the highway, which caused traffic to slow down and led to lines of 15 cars in the remaining lanes.<sup>93</sup> An officer asked each passing vehicle whether its occupants knew anything about the hit-and-run accident and handed each vehicle a flyer.<sup>94</sup> Upon approaching the checkpoint, the respondent, Robert Lidster, swerved and nearly hit one of the officers.<sup>95</sup> Lidster was ultimately arrested for driving under the influence, and he challenged the lawfulness of his arrest based on the constitutionality of the checkpoint.<sup>96</sup>

Ruling the checkpoint constitutional, the Court distinguished the checkpoint from that in *Edmond*, which the Illinois Supreme Court solely relied upon.<sup>97</sup> The Court noted that the law enforcement purpose of the information-seeking checkpoint was different than the purpose in *Edmond* because the latter’s purpose was to seek incriminating information about the vehicle’s occupants while the former’s purpose was to seek information about someone other than the vehicle’s occupants.<sup>98</sup> The Court also recognized that individualized suspicion plays essentially no role in the context of information-seeking checkpoints and that such checkpoints “are less likely to provoke anxiety or to prove intrusive” due to their brevity and the public’s often positive

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<sup>88</sup> *Id.* at 45-46.

<sup>89</sup> *Id.* at 46-47.

<sup>90</sup> *Id.* at 48.

<sup>91</sup> 540 U.S. 419 (2004).

<sup>92</sup> *Id.* at 422.

<sup>93</sup> *Id.*

<sup>94</sup> *Id.* The flyer stated, “ALERT . . . FATAL HIT & RUN ACCIDENT” AND REQUESTED “ASSISTANCE IN IDENTIFYING THE VEHICLE AND DRIVER IN THIS ACCIDENT WHICH KILLED A 70 YEAR OLD BICYCLIST.” *Id.*

<sup>95</sup> *Id.*

<sup>96</sup> *Id.*

<sup>97</sup> *Id.* at 423.

<sup>98</sup> *Id.*

reaction to officers seeking the help of “responsible citizens.”<sup>99</sup> The Court further stated that the law has ordinarily allowed officers to approach citizens for investigative purposes, and though the checkpoint here implicates the Fourth Amendment as being a “seizure,” the *Edmond* rule should not preclude such investigation simply because the person is in a vehicle.<sup>100</sup> Upon concluding that an *Edmond*-type presumptive rule of unconstitutionality did not apply and weighing the interests at stake under the *Brown* factors, the Court determined that the information-seeking checkpoint was constitutional.<sup>101</sup>

### 3. The Applicable Legal Standard

The progression of traffic checkpoint analysis has caused some courts to take different approaches when determining the constitutionality of checkpoints. The Court of Appeals for the Ninth Circuit in *United States v. Fraire*, for instance, described the analysis for checkpoint cases as being two-fold: (1) whether the primary purpose of the checkpoint was to advance the general interest in crime control, and, if so, then the stop is *per se* unconstitutional; (2) if the stop is not *per se* unconstitutional, then the *Brown* balancing test applies.<sup>102</sup> Upon considering a preliminary injunction against a traffic checkpoint, the Court of Appeals for the District of Columbia in *Mills v. District of Columbia* relied primarily on *Edmond*: “Although we doubt that the checkpoint in this case would have survived constitutional scrutiny under the *Brown* analysis . . . [m]ost plainly controlling of the case before us is the Supreme Court decision in [*Edmond*].”<sup>103</sup> In *Singleton v. Commonwealth*, the Kentucky Supreme Court, in assessing the constitutionality of a traffic checkpoint to enforce a “sticker ordinance,” did not apply the *Brown* balancing factors because it determined that the checkpoint had an invalid primary purpose.<sup>104</sup> Further, the North Carolina Court of Appeals in *State v. Veazey* similarly explained the test as first requiring an initial inquiry into the primary programmatic purpose of the checkpoint and secondly requiring a *Brown* analysis where the primary purpose was valid.<sup>105</sup>

Considering both the Supreme Court’s checkpoint jurisprudence and the approach taken by other courts, this Court concludes that the proper test to determine the constitutionality of traffic checkpoints is a two-step inquiry. First, a court must determine whether the primary programmatic purpose of the checkpoint at hand is to detect evidence of ordinary criminal wrongdoing. If so, then the checkpoint is unconstitutional.<sup>106</sup> If not unconstitutional, i.e., if the primary programmatic

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<sup>99</sup> *Id.* at 424-25.

<sup>100</sup> *Id.* at 425-26.

<sup>101</sup> *Id.* at 427-28.

<sup>102</sup> 575 F.3d 929, 932 (9th Cir. 2009).

<sup>103</sup> 571 F.3d 1304, 1309-10 (D.C. Cir. 2009).

<sup>104</sup> 364 S.W.3d 97, 103 (Ky. 2012).

<sup>105</sup> 662 S.E.2d 683, 686-87 (N.C. Ct. App. 2008).

<sup>106</sup> This does not mean that officers cannot conduct stops within checkpoint programs to search for evidence of ordinary criminal wrongdoing where individualized, articulable suspicion exists.

purpose is a valid one, then the court must employ the balancing test in *Brown* to determine whether the checkpoint was reasonable under the Fourth Amendment. This type of inquiry is logical given the Supreme Court's consistent warning against checkpoints erected for the primary programmatic purpose of detecting evidence of ordinary criminal wrongdoing without any individualized suspicion.<sup>107</sup>

Although some courts would consider *Lidster*'s ruling as eradicating a presumptive *Edmond* rule, *Lidster* made clear that "the constitutionality of this . . . information-seeking kind of stop was not then before the Court" and narrowly concluded that "[we do not believe that] the Fourth Amendment would have us apply an *Edmond*-type rule of automatic unconstitutionality to brief, information-seeking highway stops of the kind before us."<sup>108</sup>

## **B. The "Operation Make It Safe, II" Checkpoint**

Having established the appropriate legal standard, this Court now turns to the facts of the case at hand. Based on the factual record before it, this Court concludes that the primary programmatic purpose of the checkpoint was to discover evidence of ordinary criminal wrongdoing, i.e., carrying illegal weapons, carrying a weapon without a proper license, etc.

The crux of the factual record before this Court is based on the officer testimony derived from the suppression hearing. When questioned about the purpose and reason for the "Operation Make It Safe II" initiative, some of the officers indicated that the initiative was a reaction to recent violent incidents at Krush Nightclub in Subbase, St. Thomas. Sergeant Williams testified to such on direct:

Q: Now, can you explain how ["Operation Make It Safe Part II"] came about.

A: The initiative came about when we had like a series of violence whereas people been shot after the nightclub, which is Krush, had been closed down and, you know,

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<sup>107</sup> See *Edmond*, 531 U.S. at 38 ("[Neither in *Martinez-Fuerte*, *Sitz*, nor *Prouse*], however, did we indicate approval of a checkpoint program whose primary purpose was to detect evidence of ordinary criminal wrongdoing."); *Id.* at 40 ("The fact that officers walk a narcotics-detection dog around the exterior of each car at the Indianapolis checkpoints [similar to what officers did in *United States v. Place*, 462 U.S. 696 (1983)] does not transform the seizure into a search. . . . Rather, what principally distinguishes these checkpoints from those we have previously approved is *their primary purpose*." (emphasis added)); *Id.* at 41 ("[O]ur checkpoint cases have recognized only limited exceptions to the general rule that a seizure must be accompanied by some measure of individualized suspicion."); *Id.* at 44 ("We decline to suspend the usual requirement of individualized suspicion where the police seek to employ a checkpoint primarily for the ordinary enterprise of investigating crimes.").

<sup>108</sup> 540 U.S. 419, 424 (2004) (emphasis added); see also *id.* at 426 ("[T]he Fourth Amendment's normal insistence that the stop be reasonable in context will still provide an important legal limitation on police use of *this kind of information-seeking checkpoint*." (emphasis added)).

a lot of gun incidents.

Q: And when you say "a lot of gun incidents," can you be a little bit more specific, can you give us examples.

A: Well, the exchange of gunfire, gunfire whereas people have gotten killed. A young lady visiting from college just recently lost her life; another patron to the club left in a fight and was shot just outside. I myself have removed a gun off somebody leaving the club after an altercation. He did not possess a license for that firearm either, so he was arrested.<sup>109</sup>

On cross-examination, Sergeant Williams discussed what the objective of the traffic initiative was:

Q: And taken what happened then, that you explained to us into consideration, you're telling me you were just simply looking for traffic infractions? You want us to believe that?

A: For the traffic initiatives, yes.

Q: What was your objective?

A: For the traffic initiative, our objective was to find cars with visible violations, or weapons, or anything that's illegal.

Q: Okay. You were looking for weapons?

The Court: That was the third item he mentioned.

Q: One of the items you were looking [sic] for, weapons?

A: Anything criminal in nature.<sup>110</sup>

Officer Garfield on cross-examination also testified as to the reasoning behind the checkpoint and its location:

Q: Well, it was explained to you during roll call, sir, that the roadblock would be set up outside the nightclub, outside of Krush Nightclub, because of previous criminal activities that had occurred there; is that right?

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<sup>109</sup> Suppression Hr'g Tr. 10-11 (Test. of Sgt. William Denley).

<sup>110</sup> Suppression Hr'g Tr. 63-64 (Test. of Sgt. William Denley).

A: It was mentioned that we want to deter the criminal activities, correct, around that club, deter it to ensure that the patrons would be safe.

Q: But specifically Krush Nightclub is indicated because of the criminal activities that had occurred there before?

A: Yes.<sup>111</sup>

Officer Velazquez similarly testified that the location of the checkpoint was not coincidental:

Q: Okay. It's not mere coincidence that the roadblock was by Krush Nightclub?

A: No, it was not.

Q: Okay. And it was by Krush Nightclub because a series of serious crimes happening at Krush Nightclub; am I correct?

A: That is correct.

Q: And on that particular night the objective for the roadblock, along with minor traffic violations, you were also looking for evidence of other crimes?

A: I would say that's a fair assessment, sir.

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Q: Okay. And the primary objective of that initiative on that particular night, you were looking for serious crimes?

A: Yes, that's correct.<sup>112</sup>

Based on this testimony, it seems fairly clear that the initiative was created in direct response to the violent firearm incidents at Krush Nightclub. The initiative mostly targeted, if not solely targeted, patrons from Krush due, in part, to the officers blocking off the western exit of the nightclub, which essentially ensured that no vehicles from outside of the vicinity of Krush could travel along Krum Road.<sup>113</sup> The officers erected the checkpoint at approximately 3:00 a.m. because

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<sup>111</sup> Suppression Hr'g Tr. 156-58 (Test. of Ofc. Gideon Garfield).

<sup>112</sup> Suppression Hr'g Tr. 178, 180 (Test. of Ofc. Richard Velazquez).

<sup>113</sup> Suppression Hr'g Tr. 156-57 (Test. of Ofc. Gideon Garfield).

Krush closed operations at around 4:00 a.m.<sup>114</sup> The checkpoint itself operated in a dimly lit area.<sup>115</sup> The People have produced no other evidence supporting the assertion that this initiative was set up for the primary purpose of checking for traffic violations; such evidence might include statistics as to an uptick in traffic violations or accidents in that area during the early hours of the morning, a copy of the initiative handed down by the Governor of the Virgin Islands and Commission of the V.I.P.D., which would likely detail the purpose of “Operation Make It Safe,” a copy of the operational plan that would likely detail specifics about the checkpoint operations, etc.<sup>116</sup>

The People assert that the checkpoint in *Edmond* is distinguishable because the checkpoint in *Edmond* was very clearly a drug checkpoint while the checkpoint here operated as a traffic initiative.<sup>117</sup> The People note that oncoming traffic was notified of an upcoming checkpoint, that vehicles were only stopped if officers observed a visible traffic violation or if the vehicle was the fifth vehicle, that Officer Magras merely asked stopped motorists for “license, registration, and proof of insurance,” and that no field test or interview was conducted.<sup>118</sup> The People further iterate that, as with any traffic stop, officers must take precaution to ensure the safety of all officers, which was why a cursory inspection was conducted at every stop.<sup>119</sup>

The People are correct in that the checkpoint in *Edmond* was clearly a drug checkpoint.<sup>120</sup> However, simply because the checkpoint at hand was not obviously one established to search for criminal wrongdoing does not mean that the underlying, primary programmatic purpose of the traffic checkpoint was not to, in fact, discover evidence of such. In other words, referring to a checkpoint as a “traffic initiative” does not, on its own bearing, constitutionally legitimize the checkpoint.<sup>121</sup> The *Edmond* Court warned against allowing an otherwise impermissibly purposed checkpoint to escape scrutiny “so long as [it] also included a license or sobriety check,” and “[f]or

<sup>114</sup> Suppression Hr’g Tr. 156 (Test. of Sgt. William Denley).

<sup>115</sup> Suppression Hr’g Tr. 186-87 (Test. of Ofc. Richard Velazquez).

<sup>116</sup> These suggestions are not meant to imply that the V.I.P.D. needs to become statisticians to properly initiate a constitutional checkpoint. This Court appreciates the realities of maintaining a fully funded, fully manned police force. However, the record before this Court regarding the checkpoint includes the testimony from the May 10, 2017, suppression hearing, the exhibits introduced therein, and the Advice of Rights Complaint for each Defendant. Put frankly, the testimony is the sole piece of evidence that grants this Court a view into the reasoning and purpose behind “Operation Make It Safe II.”

<sup>117</sup> Opp’n To Mot. To Suppress 8-9.

<sup>118</sup> Opp’n To Mot. To Suppress 9.

<sup>119</sup> Opp’n To Mot. To Suppress 9-10.

<sup>120</sup> See *Edmond*, 531 U.S. at 40-41 (noting that “the Indianapolis checkpoint program unquestionably ha[d] the primary purpose of interdicting illegal narcotics.”).

<sup>121</sup> See *United States v. Morales-Zamora*, 974 F.2d 149, 150 (10th Cir. 1992) (“In our view, the roadblock stop of Zamora’s vehicle [to check for driver’s license, vehicle registration, and proof of insurance] was a pretextual stop made for the purpose of detaining Zamora for a few minutes while a canine sniffed the vehicle for drugs.”); *State v. Morgan*, 600 S.E.2d 767, 769-70 (Ga. App. 2004) (“Although two permissible programmatic purposes of a roadblock are verifying drivers’ licenses and vehicle registrations, and sobriety enforcement, just mentioning a license or sobriety checkpoint is not sufficient to legitimize a plan that has its aim [at] ordinary criminal wrongdoing.”).

this reason, we examine the available evidence to determine the primary purpose of the checkpoint.”<sup>122</sup> Here, the available evidence indicates that the Commissioner issued the initiative to the SOB of the VIPD to enact “Operation Make It Safe II” near Krush Nightclub due to the recent violent firearm incidents that occurred there to put officers in a position to discover evidence of ordinary criminal wrongdoing.<sup>123</sup>

The checkpoint here is also quite distinguishable from those in *Martinez-Fuerte* and *Sitz* where the underlying purpose of the checkpoints was directly aimed at addressing the “special need” at hand. The checkpoint in *Martinez-Fuerte* was designed as a border checkpoint and operated to interdict undocumented persons attempting to cross the border.<sup>124</sup> The secondary inspection involved officers inquiring as to the citizenship and immigration status of the vehicle occupants.<sup>125</sup> Further, the Supreme Court noted the substantial issue of undocumented immigration and the difficulty of law enforcement agents being able to efficiently control and maintain such immigration flow.<sup>126</sup> In *Sitz*, the checkpoint was designed specifically for the purpose of taking intoxicated drivers off the road.<sup>127</sup> The officers only directed people out of the traffic flow if they had suspicions that the motorist was inebriated.<sup>128</sup> In recognizing the substantial need, the Supreme Court pointed to the large number of deaths and injuries caused by drunk drivers across the country.<sup>129</sup> Conversely, the checkpoint here was purportedly designed to check for visible traffic violations, such as tint violations and license plate covers, yet the checkpoint operated in a dimly lit area, started at 3:30 a.m., and was located where a series of serious gun-related incidents recently occurred.<sup>130</sup> When asked if the primary objective of the initiative was to look for serious crimes, Officer Velazquez answered affirmatively: “Yes, that’s correct.”<sup>131</sup> The circumstances in their

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<sup>122</sup> *Edmond*, 531 U.S. at 46.

<sup>123</sup> This Court is well aware of *Edmond*’s warning against conducting a searching examination into the individual minds of each officer on scene at the checkpoint. However, that is not the case here. This Court is not utilizing the officers’ testimony to determine the mindset of each officer during the moments leading up to each search and during each search. Rather, this Court is relying on the officers’ testimony to discern the primary purpose of the “Operation Make It Safe II” initiative.

<sup>124</sup> *Martinez-Fuerte*, 428 U.S. at 545, 552-53.

<sup>125</sup> *Id.* at 546.

<sup>126</sup> *Id.* at 552-54, 556-57.

<sup>127</sup> *Sitz*, 496 U.S. at 447.

<sup>128</sup> *Id.*

<sup>129</sup> *Id.* at 451.

<sup>130</sup> Though, as stated above, this Court appreciates the difficulty of operating a police department with finite resources, it is suspect that the Special Operations Bureau spearheaded this traffic initiative instead of the Traffic Bureau, especially given that the Traffic Bureau is statutorily authorized to “outline, develop and carry out programs, campaigns and activities for the purpose of preventing and reducing traffic accidents, and facilitating traffic control on the streets and roads of the Territory.” See 20 V.I.C. § 475(b). This fact alone does not cause the checkpoint to be unconstitutional, but it does lend persuasive weight to the conclusion that the primary purpose of the checkpoint was not to scope out traffic violations. See *Ferguson v. City of Charleston*, 532 U.S. 67, 81 (2001) (“In looking to the programmatic purpose, we consider all the available evidence in order to determine the relevant primary purpose.”).

<sup>131</sup> Suppression Hr’g Tr. 180 (Test. of Ofc. Richard Velazquez).

entirety simply do not lead to a conclusion that this checkpoint was established and operated primarily to catch perpetrators of the Virgin Islands traffic code.

In contrast to the checkpoint at hand, *Prouse* suggests that suspicionless spot checks could be constitutional if performed systematically; specifically, *Prouse* posited “[q]uestioning all oncoming traffic at a roadblock-type stop.”<sup>132</sup> Given the Supreme Court’s warnings against unconstrained discretion, suggesting a checkpoint stop that targets all vehicles is logical because it essentially reduces officer discretion to zero. When checkpoints begin targeting vehicles in groups, such as every fifth car, the chances of mistake and utilization of discretion increases.<sup>133</sup> For instance, if vehicles are moving too fast and the officer in charge of counting the vehicles loses count, the officer, in his discretion, could either continue counting where he believes he left off or direct traffic to stop completely so as to get the count correct.<sup>134</sup> If the officer chooses the former, and does so multiple times, then the checkpoint’s systemic effect is reduced. The chance of this occurring increases where, as here, the officer in charge of counting vehicles for suspicionless stops is also in charge of writing down each vehicle’s license plate number and scanning for visible traffic violations. At that point, the checkpoint becomes more attenuated from that suggested as constitutional in *Prouse*.

In sum, based on the record before this Court, the checkpoint’s primary programmatic purpose was to discover evidence of ordinary criminal wrongdoing. Certainly, the V.I.P.D. could establish a checkpoint that strictly stops every passing vehicle to check driving credentials; *Edmond* states that such checkpoints are permissible so long as they are reasonable.<sup>135</sup> However, nothing in the record suggests that the “Operation Make It Safe, II” initiative was established for the primary purpose of enforcing traffic laws.

#### IV. CONCLUSION

Because the primary programmatic purpose of the checkpoint was impermissible, it contravenes the Fourth Amendment. Since the initial stop was unconstitutional, any evidence

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<sup>132</sup> 440 U.S. at 663.

<sup>133</sup> See *Gov’t of the Virgin Islands v. Ali*, 2003 LEXIS 4, at \*11 (Terr. Ct. Jan. 23, 2003) (“Both testified to the fact that not all cars or persons encountering the roadblock were stopped, thereby bringing into question the officer’s use of discretion. It is that same use of “unbridled discretion” that the *Prouse* Court sought to deter in its holding.”).

<sup>134</sup> See *People of the Virgin Islands v. Stimac*, 2012 V.I. LEXIS 22, at \*10 (Super. Ct. June 8, 2012) (noting that even though intended operation of sobriety checkpoint was to stop every third vehicle, officer operated checkpoint in an unconstitutionally arbitrary and random manner by only stopping about one in twenty vehicles).

<sup>135</sup> See *Edmond*, 531 U.S. at 47 (“It goes without saying that our holding today does nothing to alter the constitutional status of . . . the type of traffic checkpoint that we suggested would be lawful in *Prouse*. The constitutionality of such checkpoint programs still depends on a balancing of the competing interests at stake and the effectiveness of the program.”).

obtained as a result of that stop must be suppressed.<sup>136</sup> Lastly, since the checkpoint itself is unconstitutional, this Court does not need to address the remaining arguments at hand.

Accordingly, it is hereby:

**ORDERED** that Defendant Kisho Gumbs's Motion to Suppress is **GRANTED**; it is further

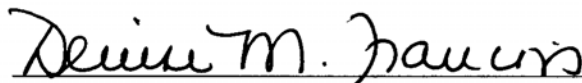
**ORDERED** that Defendant Akil Smith's Motion to Suppress is **GRANTED**; it is further

**ORDERED** that Defendant Jaleem A. Charles's Motion to Suppress is **GRANTED**; it is further

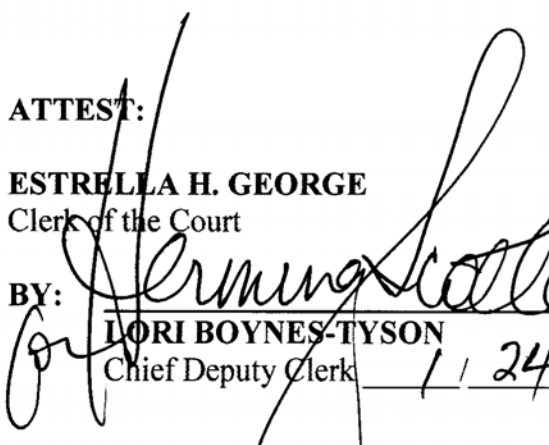
**ORDERED** that the People are **PROHIBITED** from introducing at trial any evidence of the firearms and ammunition seized from the search of the 2006 black Suzuki XL7 on December 26, 2016; and it is further

**ORDERED** that a copy of this Memorandum Opinion and Order shall be directed to Assistant Attorney General Natasha Baker, Attorney Robert A. Leycock, Attorney (Law Office of Robert Leycock), Attorney Renee M. Andre (Marjorie Rawls Roberts, P.C.), and Attorney Carl R. Williams (Smith Williams, P.L.L.C.).

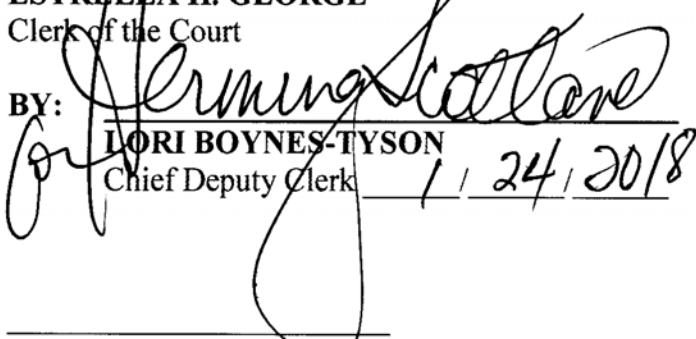
DATED: January 23, 2018

  
**DENISE M. FRANCOIS**  
Judge of the Superior Court of the Virgin Islands

ATTEST:

  
**ESTRELLA H. GEORGE**  
Clerk of the Court

BY:

  
**LORI BOYNES-TYSON**  
Chief Deputy Clerk

1 / 24 / 2018

<sup>136</sup> See *Castillo v. People of the Virgin Islands*, 59 V.I. 240, 255-56 (V.I. 2013).