

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

<b>PEOPLE OF THE VIRGIN ISLANDS,</b>	)	<b>CRIMINAL NO. ST-09-CR-141</b>
	)	
	Plaintiff,	V.I. Code Ann. tit. 19, § 607(a)
	)	
vs.	)	
	)	
<b>ADAM LAWRENCE EICHENAUER,</b>	)	
<b>(D.O.B. 10-17-79)</b>	)	
	Defendant.	

**MEMORANDUM OPINION AND ORDER**

**THIS MATTER** came on for a suppression hearing on July 6, 2009. The People were represented by Courtney Reese, Esq., Assistant Attorney General, and the Defendant was represented by Sharon Schoenleben, Esq.<sup>1</sup> Having heard and considered the testimony during the suppression hearing, this Court will grant Defendant's Motion to Suppress.

**STATEMENT OF THE FACTS**

The People called as witnesses, Officer Derek Callwood and Detective Cassandra Vincent. Officer Callwood testified that on March 18, 2009, the police had commenced a traffic enforcement initiative in the area of Centerline Road at the intersection in Coral Bay, St. John. The initiative was commenced for the purpose of discovering traffic violations such as driving without seat belts or persons driving without licenses. Five police officers participated in the initiative on this date including Officers Callwood, Hendricks and Hodge along with Detective Cassandra Vincent and Sergeant Angelo Hill. Although the officers attempted to stop every vehicle at the intersection, Officer Callwood testified that they were not able to stop every

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<sup>1</sup> At the beginning of the hearing it was brought to the Court's attention that the Defendant was, in fact, the son of defense Attorney Sharon Schoenleben. The Court is not aware of any ethical problem with a parent representing his or her child in a criminal proceeding, and for that reason, defense counsel was allowed to continue in her representation of the Defendant.

vehicle because of manpower considerations, and he estimated that about twenty (20) percent of the vehicle passing by were not stopped by the police.

At approximately 5:30 p.m., Detective Vincent stopped the vehicle driven by the Defendant, Adam Eichenauer ("Eichenauer" or "the Defendant"), a green Suzuki. She testified that the vehicle was stopped because it was speeding. Both Detective Vincent and Officer Callwood testified that when they approached the vehicle to give the Defendant a warning about speeding, the officers smelled marijuana coming from the vehicle. Detective Vincent asked Eichenauer if he was smoking in the vehicle, and he replied that he did not have a drivers' license on him. Detective Vincent repeated the question about whether or not he was smoking, and Eichenauer stated that there was a roach in the ashtray of the vehicle, and he showed it to the officer. Eichenauer also advised Detective Vincent that he was running late for his yoga class.

Eichenauer was then advised of his constitutional rights, and was told to exit the vehicle. After he was outside of the vehicle, Detective Vincent asked if there was anything else in the vehicle, and Eichenauer stated that there was some "weed" behind the passenger seat on the ground. A search of the vehicle was then conducted, and a quantity of marijuana was retrieved from behind the passenger seat on the floor of the vehicle. After finding the marijuana, Eichenauer was placed under arrest.

The defense called two witnesses. The first witness, Paul Humble ("Humble"), stated that the attorney for the Defendant was advised on the night of Defendant's arrest that no bail had been set for the Defendant. He also testified that in his opinion, one could not speed on the stretch of road in Coral Bay where the Defendant was stopped because there were potholes in the area and the road was not straight.

Eichenauer also testified during the suppression hearing. He testified that he was late for yoga class on the day when he was stopped, and that he was wearing short pants and a white tee

shirt. He denied speeding and agreed with Humble that it was not possible to speed in the area, because of the potholes and the fact that the road curved, and that he came to a slow stop when he was told to stop by Detective Vincent. He stated that while he was stopped, several other automobiles passed by and were not stopped by the officers. At one point, he heard one of the officers say that they should not stop what they were doing, and that they should wait to see if they could get one more, apparently referring to another motorist.

On rebuttal, Detective Vincent stated that the Defendant was in fact speeding and that the roadway was straight for at least one hundred feet from the intersection and that there were no potholes.

### **DISCUSSION**

The Court must determine whether or not the marijuana that was seized from the automobile was seized in violation of the Fourth Amendment to the U.S. Constitution. The provisions of the Fourth Amendment are made applicable to the Virgin Islands by Section 3 of the Revised Organic Act. If the marijuana was illegally seized in violation of the U.S. Constitution and the Revised Organic Act, it must be suppressed. *Terry v. Ohio*, 392 U.S. 1, 30 (1968), provides that the police may briefly detain a person without violating the Fourth Amendment if they have a reasonable suspicion that the person has committed, is committing, or is about to commit a crime and that they may "conduct a brief, investigatory stop when the Officer has a reasonable, articulable suspicion that [such] criminal activity is afoot." *Id.* Brief detentions which result from stops to enforce traffic laws are also usually considered reasonable under the Fourth Amendment. *Pennsylvania v. Mimms*, 434 U.S. 106, 109 (1977) (there was no question about the reasonableness of the initial stop of the automobile where it was being driven in violation of the traffic laws of the state).

In this case, one must determine whether the original traffic stop was reasonable. If the stop was based upon the alleged traffic initiative, the Court will have to determine whether or not this procedure passes muster under the Fourth Amendment. To make this determination, the Court refers to cases interpreting the constitutionality of such traffic actions. The Supreme Court has frowned upon random traffic stops of motorists to check licenses and registrations, and such stops are considered unreasonable under the Fourth Amendment unless they are strictly limited in time and place to prevent them from being arbitrary interferences. In *Delaware v. Prouse*, 440 U.S. 648, 663 (1979), the Court held that “except in those situations in which there is at least articulable and reasonable suspicion that a motorist is unlicensed or that an automobile is not registered, or that either the vehicle or an occupant is otherwise subject to seizure for violation of law, stopping an automobile and detaining the driver in order to check his driver’s license and the registration of the automobile are unreasonable under the Fourth Amendment.” The Supreme Court further elaborated that its holding did not prevent states “from developing methods for spot checks that involve less intrusion” than random traffic stops or “that do not involve the unconstrained exercise of discretion.” *Id.* Questioning motorists in roadblocks which apply to all motorists would be considered reasonable, but in *Prouse*, the Supreme Court frowned upon the practice of stopping and questioning motorists based upon the “unbridled discretion” of law enforcement. *Id.*

In *Government of the Virgin Islands v. Ali*, 45 V.I. 164 (Terr. Ct. 2003), this Court applied the principles espoused in *Prouse* to determine the constitutionality of a traffic stop based upon a verbal command of a supervisory officer conducted in St. Croix pursuant to a roadblock in which every motorist in a defined area was to have been stopped and questioned about drivers’ license, registration and insurance. As the Court states in *Ali*, the plan to stop all motorists at the checkpoint, “did not happen” and “Officers permitted cars to pass through the

roadblock while they were engaged in checking” the credentials of the drivers of other cars that had previously been stopped. *Id.* at 166. Since there was no reason for stopping the motorist in *Ali*, other than the verbal command of the supervisory officer, and since the checkpoint procedure was only sporadically enforced, the Court found that the stop of *Ali* did not comport with the Constitution and granted the motion to suppress. *Id.* at 171-72.

In the instant case, there was no evidence presented that the traffic initiative was supported by a written directive, and that the officers had to follow any particular procedures in following the initiative. Indeed from the evidence submitted in Court, there did not seem to be any particular protocol for how the initiative was to be conducted, and it appears that the decision to check for the licenses and registrations of motorists in Coral Bay, St. John, was simply an impromptu decision made by law enforcement officers in St. John. Indeed, although the so-called “initiative” was dressed up nicely in Court, the Court takes judicial notice of the probable cause fact sheet in which it was described simply as the conducting of random traffic stops by the police. The fact that the police made no attempt to stop every car that passed them in Coral Bay adds to this Court's assessment that the police were simply conducting random stops of automobiles in Coral Bay on the date of this incident and that the stop and search of *Eichenauer's* car may have been in violation of the principles of *Prouse* and *Ali*.

The police, however, stated that *Eichenauer's* vehicle was stopped because he was traveling at a high rate of speed. Although there is admittedly some evidence to support the fact that *Eichenauer* may have had reason to speed,<sup>2</sup> the Court finds it difficult if not impossible to dissociate the fact that the primary reason that the police were at the location at the time in

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<sup>2</sup> The fact that *Eichenauer* was late for a class at the time gives him a reason to exceed the speed limit. However, Detective Vincent had never given a motorist a speeding ticket, did not give *Eichenauer* a ticket for speeding on the date in question, and did not know how to estimate speed. These facts lead the Court to believe that the primary reason that *Eichenauer* was stopped was because of the traffic initiative, and not because he was speeding.

question was to set up a roadblock which was arbitrarily enforced. The Court finds, under these facts, that Eichenauer was not stopped for speeding, but because of the traffic initiative. Since this initiative was enforced in an arbitrary manner, it was subject to the unfettered discretion of the police and not reasonable under the dictates of the Fourth Amendment.

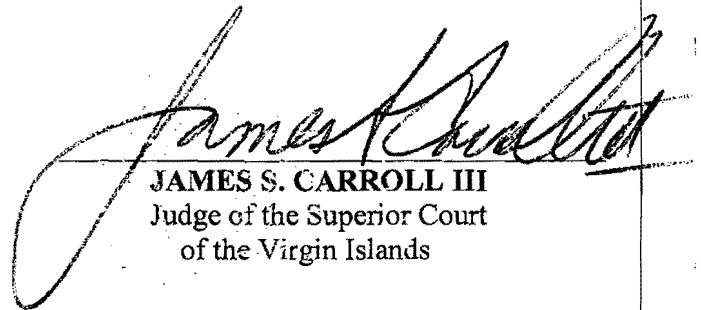
Since the stop of Eichenauer's vehicle was not reasonable, the physical evidence and statements will have to be suppressed as violative of the Fourth Amendment and the Revised Organic Act. Therefore, they will be excluded from evidence.

Accordingly, it is hereby

**ORDERED** that the Defendant's Motion to Suppress tangible evidence and statements is **GRANTED**; and it is further


**ORDERED** that a copy of this Memorandum Opinion and Order shall be served personally upon the Defendant; and a copy thereof shall be directed to counsel of record.

DATED: August 31, 2009

  
JAMES S. CARROLL III  
Judge of the Superior Court  
of the Virgin Islands

**ATTEST:**

**VENETIA H. VELAZQUEZ, ESQUIRE**  
Clerk of the Court

BY:   
**ROSALIE J. GRIFFITH**  
Court Clerk Supervisor 8/31/09