

PLYMOUTH, SS.

COMMONWEALTH OF MASSACHUSETTS
HINGHAM DISTRICT COURT
DOCKET NO. 11/1335

2012 MAR 15 AM 8:39
CLERK OF COURT
DISTRICT COURT

COMMONWEALTH

V.

GERALD L

FINDINGS OF FACT:

Based on the credible evidence presented at the motion hearing at the Hingham District Court on January 13, 2012, and the reasonable inferences to be drawn therefrom, I find the following facts:

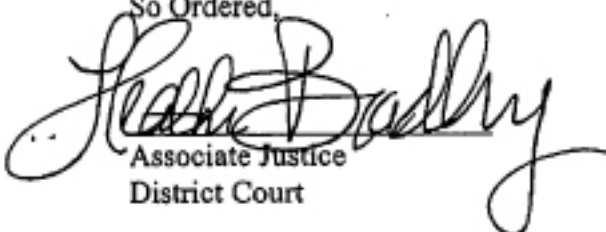
On July 22, 2011, Sergeant Robert Akin, a fourteen-year veteran of the Massachusetts Environmental Police, was working coastal patrol in a 31 foot boat when he received a call around 8:01 p.m. from the Hingham Harbor Master regarding a vessel in the area of Grape Island outside of Hewitt's Cove. The information he received from the Harbor Master was that a boat was stopped in the middle of a narrow channel and a male and female on the boat were arguing. The boat was described as a 17 foot metal boat. Sergeant Akin responded to the area within five minutes and the Deputy Harbor Master guided him by radio to the boat in question. At that time, he noticed that there were two people onboard the boat, a male and female, and that the boat was under way, headed toward Quincy. Because it was an open boat, he was able to see the occupants as he traveled behind them. He did not observe either party to be in distress and did not witness any argument or physical struggle. He also did not witness any safety violation or any driving violation by the operator of the boat. While traveling behind the boat, he activated his blue lights which he stated were bright and lit up the area. He noticed it took the defendant, the operator, two minutes to notice him and that when he did, he turned the boat towards the Sergeant's boat which was traveling close to his. The Sergeant indicated that his boat was not in a safe position because he had pulled next to the defendant's boat in order to get both occupants to notice him. The boat was then stopped and after further investigation, the defendant was arrested for Operating under the Influence.

RULINGS OF LAW:

The defendant moves to suppress all evidence in the case arguing that the stop of the vessel was invalid. The Commonwealth argues that the stop was valid pursuant to M.G.L. c.90B s.12. This section is the enforcement provision of the statute which designates the agencies, including the Environmental Police, who can enforce the provisions of the statute. This section also states that in their enforcement of the laws, the Environmental Police have the authority to

board and inspect motorboats. The Commonwealth has argued that this section gave the Environmental Police the authority to board the defendant's boat. In the present case, however, the facts presented do not establish a basis for stopping the motorboat. While the Commonwealth argued that the Sergeant stopped the vessel to check on the safety of the occupants, the facts do not give rise to a reasonable belief that a party was in need of immediate assistance at the time of the stop. Commonwealth v. Leonard, 422 Mass. 504(1996). Also, there was no evidence that the Sergeant was stopping the boat because of an observed civil boating infraction or to perform a permissible warrantless administrative inspection. Commonwealth v. Tart, 408 Mass. 249(1990). Furthermore, where the stop constituted a seizure in this case, the Sergeant lacked reasonable suspicion based on specific and articulable facts that the defendant was engaged in criminal activity to justify the stop of the vessel. Commonwealth v. Smigliano, 427 Mass. 490(1998); Commonwealth v. Stoute, 422 Mass. 782(1996).

For all of the above-stated reasons, the Court finds that the stop of the defendant was invalid and the defendant's motion to suppress all evidence flowing from that stop is hereby ALLOWED.

So Ordered,

Associate Justice
District Court

Dated: March 14, 2012