

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

EUGENE B. IRISH,

APPELLANT,

v.

PEOPLE OF THE VIRGIN ISLANDS,

APPELLEE.

SX-14-RV-020¹

On Appeal from the Magistrate Division

Re: Case No. SX-14-MV-2950

Cite as: 2019 VI Super 41

Appearances:

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For Appellant

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For Appellee

MEMORANDUM OPINION

WILLOCKS, Administrative Judge

¶1 **THIS MATTER** is in the Appellate Division on appeal from the Magistrate Division. Eugene B. Irish was cited for negligent driving – causing an accident by failing to yield the right of way. He was tried by the Magistrate Court, convicted, and sentenced to pay a fine and court costs. On appeal, he argues that his conviction should be reversed for two reasons. He first argues, the Magistrate Court misinterpreted the statute that declares “the streets running east and west in Christiansted, and those

¹ The Court has restyled the caption to correct the parties’ roles, their placement within the caption, and a newly-assigned case number. *Cf. David v. People*, SX-15-RV-007, 2016 V.I. LEXIS 15, *13 n.2, & *8 n.1 (V.I. Super. Ct. App. Div. Feb. 22, 2016). *See also In re: Amendments to the Rules Gov. Appeals from the Magis. Div.*, S. Ct. Prom. No. 2018-005, 2018 V.I. Supreme LEXIS 45, *2-4 (V.I. Nov. 15, 2018) (clarifying that appeals proceed by notice).

² Counsel of record in the trial court. The Court takes judicial notice that counsel subsequently left the Virgin Islands Department of Justice. Substitute counsel has not appeared on appeal.

running north and south in Frederiksted . . . [to be] the main streets and main roads.” 20 V.I.C. § 295(e). He also argues that Virgin Islands law is unclear who has the right of way at uncontrolled intersections. Irish urges the Court to adopt the local equivalent of the majority rule, that motorists approaching from the left have the right of way at uncontrolled intersections. For the reasons stated below, the Court agrees with Irish that the Magistrate Court erred in its interpretation of the law. But the Court cannot agree that the soundest rule for the Virgin Island is to hold that a motorist approaching from the left has the right of way at an uncontrolled intersection. Instead, the soundest rule for the Territory is to adopt the common law rule of the road that the first person to reach an intersection has the right of way. Since Irish did not reach the intersection first, and because Irish did not “sound the warning device, and reduce the speed of the motor vehicle” before “approaching [the] cross road,” 20 V.I.C. § 495(b), his conviction must be affirmed.

BACKGROUND

¶2 Precilla Roldan (hereinafter “Roldan”) and Eugene Irish (hereinafter “Irish”) got into an accident one afternoon in August in Estate Barren Spot on St. Croix. Roldan was driving east on Hummingbird Road. Irish was driving south on an unnamed road. Hummingbird Road and the other, unnamed road meet at a four-way intersection. None of the street corners had stop signs or other markings. Roldan slowed her car before reaching the intersection. Irish veered his truck into the middle of the road to avoid potholes and then proceeded through the intersection without stopping. The two vehicles collided. Roldan’s car sustained damages to the front left side. Irish’s truck was damaged on the front right side.

¶3 Virgin Islands police officer Melford A.L. Murray (hereinafter “Officer Murray”) was dispatched to the scene. Initially, Officer Murray issued a citation to Roldan after she told him that she had slowed down, but did not stop, before reaching the intersection. However, upon further investigation, specifically Roldan’s claim that all the other roads running north and south in Barron

Spot had stop signs, Officer Murray then retracted the citation he issued to Roldan and issued a citation to Irish instead.

¶4 At trial, the People of the Virgin Islands called Roldan and Officer Murray as witnesses. Roldan testified that she slowed down, but did not stop, before reaching the intersection because she believed she had the right of way. She said she lived in Barren Spot for years and knows that the streets running north and south in the area have stop signs. Roldan recalled that, at some point in the past, the street Irish was driving down also had a stop sign. On cross-examination, Irish showed Roldan a photograph of the intersection, which was later admitted into evidence. Roldan conceded, after viewing the photograph, that it did not depict “a line or a pole or anything there that would indicate that there was ever a stop sign there.” (Trial Tr. 15:8-9, Sept. 25, 2014.)

¶5 On cross-examination, Irish also questioned Officer Murray why he changed his mind and concluded that Roldan had the right of way. Officer Murray explained that, based upon his observations of the other streets in the same area, he believed that Irish had to stop. When Officer Murray could not point to a specific law or regulation to support his conclusion, Irish quoted from Section 495(e) of Title 20 of the Virgin Islands Code, which provides that “[i]n St. Croix the streets running east and west in Christiansted, and those running north and south in Frederiksted; and the Centerline Road, and the North and Southside roads, are the main streets and main roads for purpose of this section.” *Id.* at 38:14-18 (quoting 20 V.I.C. § 495(e)). He then asked Officer Murray whether the accident occurred in Christiansted and Officer Murray said, yes. “In Barren Spot.” *Id.* at 39:5. Irish countered that “the law speaks about Christiansted the town and not the district.” *Id.* at 39:6-7. The following exchange then occurred:

THE COURT: It doesn’t say Christiansted town.

MR. IRISH: It doesn’t say district either, Your Honor.

THE COURT: It doesn’t say Christiansted town.

MR. IRISH: It doesn’t say district either. So how are we to determine that Barren Spot, for the purpose of the law, is being spoken [of] as part of Christiansted? That’s what I want to know, from here. *Id.* at 39:9-17.

The Magistrate Court then took “judicial notice that Barren Spot is in Christiansted. Not Christiansted town but in Christiansted.” *Id.* at 40:5-7.

¶6 In his defense, Irish gave a statement, testifying that, he he had stopped and swerved to avoid children playing in the road and then swerved again to avoid potholes before reaching the intersection at Hummingbird Road. At the intersection, he looked both ways but did not see any oncoming vehicles, so he proceeded forward. He looked again and saw Roldan approaching from the right. He swerved to get out of the way, but her car collided with his truck.

¶7 The People did not make a closing argument. Irish, in his closing argument, referred the court to *Baumann v. Canton*, 7 V.I. 60 (D.V.I 1968), specifically the holding that “there is no absolute right-of-way” under Virgin Islands law. (Trial Tr. 55:7-8.) Irish further argued that he was “not sure what else [he] could have done to avoid this accident” since neither street corner had a stop sign. *Id.* at 56:9-10. The Magistrate Court issued its ruling from the bench:

Title 20 of the Virgin Islands Code, Section 495, Subsection (e) . . . indicates that in St. Croix the streets running east and west in Christiansted, and those running north and South in Frederiksted, and the Centerline Road and the North and Southside roads are the main streets and main roads for the purpose of this section.

A main street and a main road would be the roads that have the right-of-way. So that if, in fact the road that Ms. Roldan was on is . . . a[n] east to west direction road, and is in the town – is in Christiansted, then she would have the right-of-way. And this court finds that Ms. Roldan did, in fact, have the right-of-way in this situation. *Id.* at 65:12-66:1.

The Magistrate Court found Irish guilty of negligent driving, imposed a \$75.00 fine, and assessed court costs of \$75.00. The ruling was later reduced to writing on April 1, 2016.

¶8 In the interim, Irish, now through counsel, filed a motion for review on October 3, 2014, which the Clerk’s Office construed as a petition for review by the Appellate Division. *See* Super Ct. R. 322.1(b)(1)(B). Irish requested a transcript and filed a brief, while awaiting the written judgment. Once the transcript had been submitted and Irish had filed his brief, but before the written judgment was

entered, this Court *sua sponte* granted the People additional time to file a brief. The People failed to respond and have not participated in this appeal.

JURISDICTION AND STANDARD OF REVIEW

¶9 “The Virgin Islands Legislature created a Magistrate Division within the Superior Court of the Virgin Islands,” *Wild Orchid Floral & Event Design v. Banco Popular de P.R.*, 62 V.I. 240, 246 (Super. Ct. App. Div. 2015), and vested “the Magistrate Division [with] . . . original jurisdiction to hear certain kinds of cases.” *In re Estate of Small*, 57 V.I. 416, 428 (2012) (citing 4 V.I.C. § 123(a)). Among the cases in which original jurisdiction was vested in the Magistrate Division are non-felony traffic offenses. *See* 4 V.I.C. § 123(a)(4). Accordingly, the Magistrate Division had jurisdiction to hear and determine the traffic citation.

¶10 Appeals from final orders of Magistrate Division cases “must be filed in the Superior Court.” 4 V.I.C. § 125. “The Appellate Division of the Superior Court functions ‘as an intermediate appellate court,’ and appellate courts are limited by the final judgment rule.” *Valerino v. Manning*, 68 V.I. 276, 279 (Super. Ct. App. Div. 2018) (quoting *Browne v. Gore*, 57 V.I. 445, 453 n.5 (2012)). A final order in traffic cases is the written order of dismissal or judgment embodying a verdict and sentence. Here, Irish appealed before the Magistrate Court reduced its judgment and sentence to writing. Superior Court Rule 322.1 provides that an appeal “filed after an oral decision but before entry of a written order or judgment . . . is deemed filed as of the date of the written order or judgment appealed from.” Super. Ct. R. 322.1(b)(2)(C); *see also People v. Reyes*, 68 V.I. 432, 457 (Super. Ct. App. Div. 2018) (“Although the filing of an appeal divests the Magistrate Division of jurisdiction over a case, the Magistrate Division is not divested when the appeal is a protective appeal filed after an oral decision and before a written judgment.”). Once the Magistrate Court reduced its oral ruling to writing on April

1, 2016, Irish’s appeal was deemed filed.³ Consequently, the Appellate Division has jurisdiction to hear Irish’s appeal.

¶11 As an appellate court, “the Appellate Division must address each of the errors the parties address in their briefs, except any errors that have been waived.” *Dennie v. People*, 66 V.I. 143, 149 (Super. Ct. App. Div. 2017). “Superior Court magistrates—and Superior Court judges sitting in the Magistrate Division—serve as the trial court in an original jurisdiction case, presiding over the case from commencement through dismissal or issuance of a judgment.” *David v. People*, SX-15-RV-007, 2016 V.I. LEXIS 15, *9 (V.I. Super. Ct. App. Div. Feb. 22, 2016) (internal citation omitted). Consequently, the appellate court “defers to the facts found by the magistrate court, including which witnesses’ testimony to credit and how much weight to give such testimony.” *Dennie*, 66 V.I. at 149 (quotation marks and citations omitted). But “the appellate court does not defer to the law the magistrate court applied.” *Id.* (quotation marks and citation omitted). Instead, the Magistrate Court’s application of the law is “afforded plenary review.” Super. Ct. R. 322.3(b)(2). *See also Gonsalves v. People*, 2019 VI 4, ¶ 40 (“[P]lenary means full, complete, entire, and with the power to conduct plenary review goes the responsibility to fully and completely consider the issue – both legally and, when required, factually.” (citing *Brown v. Gore*, 54 V.I. 195, 202-03 (Super. Ct. App. Div. 2011))).

DISCUSSION

¶12 Irish raises two issues on appeal. First, the Magistrate Court erred when it declared that all east-west roads on one half of the island of St. Croix are main roads as used by Section 495 of Title 20 of the Virgin Islands Code. Second, the Magistrate Court erred by relying on testimony about the past location of a stop sign to determine who had the right of way. Each issue will be considered below. *Cf.*

³ On May 2, 2016, Irish filed a document titled “Motion to Recognize Timely Appeal After Written Order,” asking “the Appellate Division to deem the appellant’s December 5, 2014 appeal as being filed as of the date of the written order April 1, 2016.” (Mot. 2, filed May 2, 2016.) Superior Court Rule 322.1 *automatically* deems an appeal from a bench ruling as “filed” once the written judgment or order is entered. Consequently, the Court construes Irish’s “motion” as a notice.

Gardiner v. Diaz, 58 V.I. 199, 205 n.5 (2013) (recognizing that the Appellate Division of the Superior Court, like an appellate court, must address all errors that are not waived).

A. Main Roads and Main Streets on St. Croix

¶13 Irish argues that the Magistrate Court’s “interpretation of 20 V.I.C. § 495(e) goes against the plain meaning of the statute.” (Appellant Br. 6.) Irish is correct. Section 495 of Title 20 of the Virgin Islands Code declares that in the Virgin Islands, “[t]raffic on main streets or main roads shall have the right of way.” 20 V.I.C. § 495(b). On St. Croix, the main streets are defined as “the streets running east and west in Christiansted, and those running north and south in Frederiksted” and the main roads are defined as “the Centerline road, and the North and Southside road.”⁴ *Id.* § 495(e). The Magistrate Court concluded that Barren Spot is in Christiansted and therefore Roldan had the right of way because the road she was driving along runs east and west. That was incorrect.

¶14 When construing a statute, courts must first question whether the statute is clear and unambiguous. Clear and unambiguous statutes must be applied as written. *See Smith v. Henley*, 67 V.I. 965, 974 (2017). If a statute is not clear, or if terms can be read differently, then courts “must consider whether applying the statute’s literal language leads to absurd consequences or is otherwise inconsistent with the Legislature’s intent.” *In re: Adoption of L.O.F.*, 62 V.I., 655, 661 (2015) (quotation marks, ellipsis, and citations omitted). In considering legislative intent, courts can also look for guidance to the placement of punctuation and the location of clauses. *Cf. Gov’t of the V.I. v. Thomas*, 9 V.I. 17, 24 (St. Croix Mun. Ct. 1971) (“In lieu of other means of determining legislative intent, it is proper, if not necessary, to refer to the original punctuation of a statute as an aid in interpreting doubtful provisions. Cases have held that the presence of a comma separating a modifying clause in a statute from the clause immediately preceding is an indication that the modifying clause

⁴ “[T]he North and Southside road[s],” 20 V.I.C. § 495(e), are more commonly called Northshore Road and Southshore Road, respectively.

was intended to modify all the preceding clauses and not only the last antecedent one.” (citations omitted)).

¶15 Section 495 of Title 20 of the Virgin Islands Code is based largely on an ordinance the Municipal Council of St. Croix adopted on November 13, 1939, which Governor Lawrence W. Cramer signed into law on November 24, 1939. *See* V.I. Code Ann. tit. 20, § 495 (2015 ed.) (historical source note).⁵ The provision at issue here, Section 495(e), declares that “the streets running east and west in Christiansted, and those running north and south in Frederiksted; and the Centerline road, and the North and Southside roads, are the main streets and the main roads for the purpose of this section.” 20 V.I.C. § 495(e). None of the terms used in the statute, e.g., Christiansted, Frederiksted, road, or street, are defined. But that does not render the statute ambiguous because the Legislature of the Virgin

⁵ Sections 15 through 18 of the November 24, 1939 Ordinance provided as follows:

Sec. 15. Before entering or crossing main roads beyond the city limits, every driver shall bring his motor vehicle to a full stop, change to low gear, sound the warning device, and then proceed with due caution. Traffic on main streets or main roads hereinafter designated shall have the right of way. When approaching any cross road or curve, every driver shall exercise due caution, sound the warning device, and reduce the speed of the motor vehicle. On turning to the left into another road, he shall keep as close to the left as safety permits; on turning to the right into another road, he shall pass, when possible, to the left of the center point of intersection of the said roads before turning.

Sec. 16. Vehicles meeting one another shall keep as far to the left as practicable. When a vehicle overtakes another, it shall pass it on the right side. It shall be unlawful to overtake and pass another motor vehicle on a curve, at the intersection of another road or when approaching the top of a hill; and no motor vehicle shall overtake and pass another one unless the road ahead is clear of other vehicles, pedestains [sic] or any other traffic, for a reasonable distance, say 200 feet.

Sec. 17. The streets running East and West in Christiansted, and those running North and South in Frederiksted; the Centerline road, the North and Southside roads, are the main streets and main roads for the purpose of this Ordinance.

Sec. 18. Every driver of a motor vehicle shall indicate, by hand or in some other unmistakable manner, his intention of starting, stopping, turning or backing. Before leaving the vehicle, the driver must stop the motor and put on the brake. Parking of motor vehicles shall be controlled by regulations issued by the Director of Police. A vehicle shall be considered parked when the vehicle and its motor have been stopped and the driver has left the vehicle.

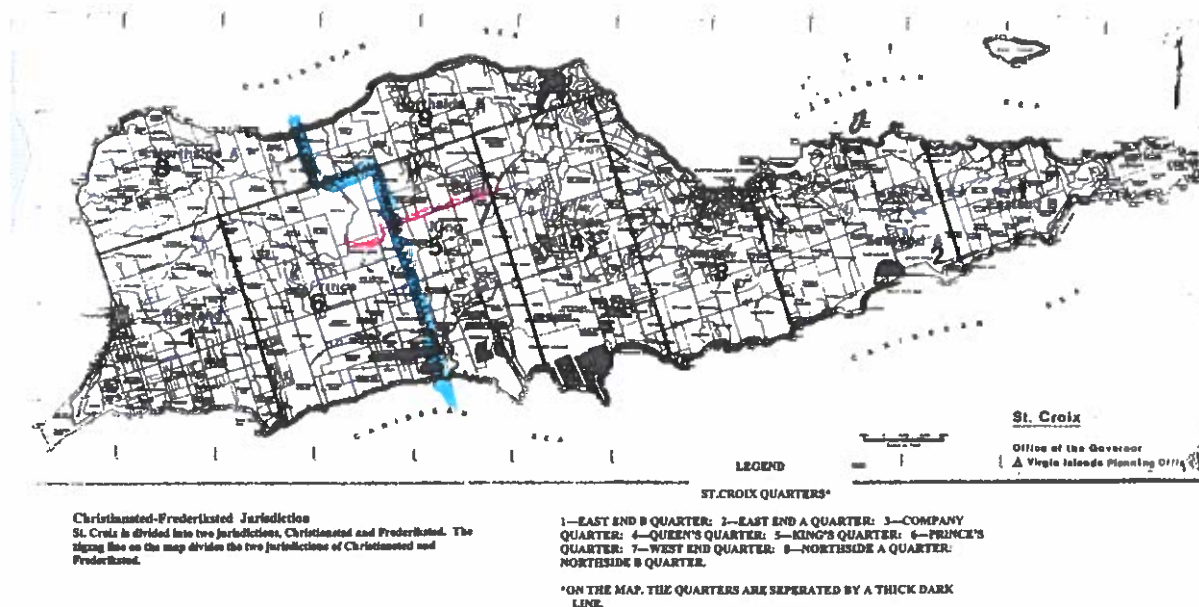
Ordinance Concerning Motor Vehicular Traffic and Taxes thereon, §§ 15-18, Mun. Council of St. Croix, Second Council, First Session (Nov. 24, 1939). The Legislature of the Virgin Islands retained the 1939 St. Croix Ordinance when the Virgin Islands Code was adopted in 1957. Since then, only minor stylistic changes have been made to the statute.

Islands has also declared that “[w]ords and phrases shall be read with their context and shall be construed according to the common and approved usage of the English language.” 1 V.I.C. § 42.

¶16 Reading the statute as a whole and giving effect to all words in the statute, and considering the various clauses and how they are placed, the only construction that gives effect to the entire statute is if the words “the main streets” refer back to the clause that begins with “the streets running” and likewise if the words “the main roads” refer back to the clause following after the semi-colon. Construed in this way the statute would provide that “the streets running east and west in Christiansted, and those running north and south in Frederiksted . . . are the main streets . . . for the purpose of this section” and “the Centerline road, and the North and Southside roads are . . . the main roads for the purpose of this section.” 20 V.I.C. § 459(e). The second use of the word “streets” refers back to the first use of the same word and defines what are the “main streets,” while the second use of the word “roads” refers back to the first use of the same word and defines what are the “main roads.” Any other reading conflates “roads” and “streets” and renders the difference between them superfluous.

¶17 Ignoring the distinction between streets within towns and roads outside of towns also renders another provision of the same statute superfluous. Section 495(b) of Title 20 of the Virgin Islands Code directs that “every driver” “[b]efore entering or crossing *main roads beyond the town limits* . . . shall bring his motor vehicle to a full stop, change to low gear, sound the warning device, and then proceed with due caution.” *Id.* § 495(b) (emphasis added). Section 495(b) clearly refers to “main roads” as being “beyond the town limits” and “‘town limits’ means the territorial limits of the towns of Charlotte Amalie, Christiansted, and Frederiksted, fixed in sections 81, 82 and 83 of Title 1.” 20 V.I.C. § 101. By referring to main roads as “roads beyond the town limits,” Section 495(b) clarifies that main streets are located within the town limits whereas main roads are those located outside the town limits. The Magistrate Court’s construction of Section 495(e) would render these distinctions superfluous.

¶18 The topography of St. Croix also supports this conclusion. Many roads on St. Croix beyond the town limits do not course along an east-west or north-south path. As Irish argues on appeal, “[l]ooking at a map of St. Croix confirms that in ‘the town’ of Christiansted, the main roads do indeed travel from east to west; and likewise, in ‘the town’ of Frederiksted, the main roads travel north to south.” (Appellant Br. 7.) “Thus a plain reading of the statute is supported by a plain viewing of a map of the towns on St. Croix.” *Id.* A map of St. Croix illustrates Irish’s concern. For example, a driver travelling along Midland Road (Route 72)—a road not defined as a “main road” by Section 495(e)—would not have the right of way when driving from Frederiksted until he crossed over into Christiansted.⁶ Instead, “[b]efore entering or crossing” any of the streets that bisect Midland Road, “every driver” would have to “bring his motor vehicle to a full stop, change to low gear, sound the warning device, and then proceed with due caution,” 20 V.I.C. § 495(b), until he crossed over into Christiansted.



⁶ The vertical line depicts the border between the Frederiksted and Christiansted jurisdictions while the horizontal line depicts Midland Road. Each is depicted in a different color.

¶19 Other examples highlight how the Magistrate Court’s interpretation of Section 495 would lead to absurd results because the

definition of Christiansted . . . would encompass all of the Estates east of a certain axis that runs from North to South, dissecting the island in two sections. . . . [I]f Barren Spot is in Christiansted, so is Judith’s Fancy, Salt River, La Reine, Sion Farm, Mount Welcome, Cotton Valley, Seven Hills, and Queens Quarter, to name a few. Anyone familiar with these communities, or a quick look on a map, will refute the reasonableness of applying the east/west rule. Each of these communities has a distinct layout and topography that do not support the notion that all east/west roads are main roads. Likewise if you apply the rule that all north/south roads are main roads, in all of the estates west of a certain axis (as the Court defines “Frederiksted”), then suddenly confusion and uncertainty will ensue to motorists driving in La Grange, Enfield Green, Grove Place, Estate White Lady, *the entirety of the Rain Forest*, and Castle Burke, among others. (Appellant’s Br. 7-8 (paragraph break omitted).)

¶20 The Court acknowledges that, anecdotally, people sometimes refer to the eastern half of St. Croix as Christiansted and the western half as Frederiksted. But for judicial purposes, the district of St. Croix

is subdivided into two jurisdictions: the Christiansted jurisdiction comprising the town of Christiansted and the North Side B, King’s, Queen’s, Company’s, East End A and East End B quarters of Saint Croix, Buck Island, and adjacent islets and cays, and the Frederiksted jurisdiction comprising the town of Frederiksted, and the North Side A, West End and Prince’s quarters of Saint Croix and adjacent islets and cays.

4 V.I.C. § 1; *accord* 1 V.I.C. § 84 (“That portion of the island of St. Croix outside the limits of the towns of Christiansted and Frederiksted is divided into the Company’s, East End A, East End B, King’s, North Side A, North Side B, Prince’s, Queen’s and West End quarters, with limits as now established.”). Estate Barron Spot is situated within Queen’s Quarter and King’s Quarter and both quarters are situated within the jurisdiction of Christiansted. But neither quarters are within the town limits of Christiansted.

¶21 The Magistrate Court ignored the distinction between roads and streets and broadened the definition of the towns. Its “broad interpretation of ‘Christiansted’ and ‘Frederiksted’ . . . [would] result in more accidents, uncertainty and confusion in those center island communities,” particularly because

“all motorists would need a keen awareness of which side of the divide” they are driving on. (Appellant Br. 8.)

B. Right of Way at Uncontrolled Intersections

¶22 Irish next argues that the Magistrate Court erred in concluding that he did not have the right of way. He concedes that, at some point in the past, there may have been a stop sign at the intersection where the collision occurred.⁷ He does not dispute “the truth of the statements of Ms. Roldan.” (Appellate Br. 10.) “But there is nothing of the kind there now,” he argues, “nor has there been throughout the time of [his] residence in the neighborhood.” *Id.* Herein lies the problem.

¶23 Irish is correct in that “nobody testified, gave evidence, nor did the Court find that markings and signage were present at the intersection on the day of the accident.” *Id.* Hence, the record does in fact support Irish’s contention that the evidence failed to show any stop signs or traffic markings at the intersection of Hummingbird Road and the street Irish was driving on the day when the collision occurred. Stop signs and other markings determine the right of way. *See* 20 V.I. R. & Reg. 491-51 (“All traffic and parking signs . . . on buildings, roads, streets, etc. (including traffic signal lights), one-way signs, stop signs, no-parking signs, left and right turn signs, and all other signs giving traffic or parking directions, shall have the force and effect of law.”). Since there were no markings, the question, which Irish correctly frames on appeal, becomes “who has the right of way in a four-way uncontrolled intersection of two roads that are not designated as ‘main roads’”? (Appellant Br. 5.)

⁷ Traffic and parking signs can be damaged or blown away by hurricanes and other natural disasters and, hence, an act of God (or man) may have damaged or destroyed the stop sign Roland recalled seeing. On appeal, Irish expresses understandable frustration at the prospect that he may have been found guilty of a crime he had no notice he was about to commit. Ultimately, Irish’s concerns are put to rest by this Court overruling the Magistrate Court’s interpretation of Section 459(e). However, the Government is under a duty to continuing duty to maintain and replace stop signs and other signs that regulate traffic. *Cf. Fink v. Kasler Corp.*, 649 P.2d 1173, 1174 (Haw. Ct. App. 1982) (“Because it had erected a stop sign, the State had a duty to properly maintain the sign for the safety of the traveling public who has the right to rely on its continued presence. The case law is plain that once having elected to erect devices to guide, direct or illuminate traffic, a city then has a duty to maintain those devices in a condition conducive to the safe flow of traffic.” (citations and paragraph breaks omitted)).

¶24 Section 495 of Title 20 of the Virgin Islands Code does not address which vehicle has the right of way at an uncontrolled intersection. Not all vehicle and traffic laws are found in Section 495, however, “[S]ection 491 of title 20 . . . provides that motor vehicle operators must follow the provisions of chapter 43 of title 20, the general traffic regulations contained in the Police Regulations of title 23, ‘and such traffic and parking regulations as may from time to time be published by the Police Commissioner.’” *Galloway v. People*, 57 V.I. 693, 702 (2012) (quoting 20 V.I.C. § 491). But neither Title 20 or Title 23 speaks to who has the right of way at an uncontrolled intersection.⁸

¶25 Traffic regulations are also silent on this issue. Regulation 491-52(c) directs that “[v]ehicles are not permitted to stop in a traffic intersection, and, once in it, must proceed with dispatch though with caution to clear the intersection.” 20 V.I. Rules & Reg. 491-52(c). Regulation 495-1 directs that

[n]o person shall turn a vehicle from a direct course or move right or left upon a roadway until such movement can be made with reasonable safety and then only after the giving of an appropriate signal . . . in the event any other vehicle may be affected by the movement. 20 V.I. Rules & Reg. 495-1.

Neither regulation speaks to uncontrolled intersections. Additionally, so far as the Court can discern, no police commissioner has ever exercised the statutory authority to declare who has the right of way at an uncontrolled intersection.⁹ *Cf.* 20 V.I.C. § 491(a) (“[O]perators of motor vehicles shall observe . . . such traffic and parking regulations as may from time to time be published by the Police

⁸ Section 163 of Title 23 of the Virgin Islands Code comes close to addressing the issue, but it too falls short. *See generally* 23 V.I.C. § 163 (“All drivers and riders shall keep to their left on the road, or street, where they meet; when passing those moving in the same direction, they shall do so on the right side. At street corners, or crossings, persons riding or driving shall not pass others travelling by similar means, and in the same direction. Persons driving around corners leading to the right shall make a wide turn, entering the street or road on the left side. Accordingly, those driving around corners leading to the left, shall make a short turn. At such time all shall drive slowly.”). Other statutes do speak directly to the right of way, but as between pedestrians and motorists, not between motorists at uncontrolled intersections. *Cf.* 23 V.I.C. § 411 (“The driver of a vehicle shall yield the right of way to a pedestrian crossing a roadway within a marked crosswalk, or within any unmarked crosswalk of an intersection.”); *id.* § 415 (“In the absence of traffic control devices and police officers or school crossing guards, operators of motor vehicles shall yield the right of way by stopping or slowing down to a pedestrian in a marked crosswalk or any crosswalk at an intersection when the pedestrian is upon the half of the roadway which the vehicle is traveling, or when the pedestrian is approaching so closely from the opposite half of the roadway so as to be in danger.”).

⁹ The Court did an exhaustive search and did not find any document in which a police commissioner exercised her/his statutory authority to decide who has the right of way at an uncontrolled intersection.

Commissioner.”). *Ergo*, Virgin Islands law is silent on the question Irish presents. It is an issue of first impression.

¶26 Since the Virgin Islands Code and the Virgin Islands Rules and Regulations are silent, the Court must turn to the common law. *See Carlos Warehouse v. Thomas*, 64 V.I. 173, 183 (Super. Ct. App. Div. 2016) (“When statutes are silent, the common law governs.” (citations omitted)); *see also Cascen v. People*, 60 V.I. 392, 404 (2014) (applying common law in criminal cases); *accord O’Donnell v. Johnson*, 90 A. 165, 167 (R.I. 1917) (“In the absence of reliable evidence of any statutory rule of the road in Massachusetts we must presume that travel with vehicles on the highways in Massachusetts is regulated by the common law as it is generally recognized.”). “It is well established that in the Virgin Islands, the common law is not applicable without first determining whether it is soundest rule for the Virgin Islands.” *Prosser v. Nissman*, 67 V.I. 96, 102 (Super. Ct. 2016) (citing *Banks v. Int’l Rental & Leasing Corp.*, 55 V.I. 967 (2011); *Gov’t of the V.I. v. Connor*, 60 V.I. 597 (2014) (*per curiam*)). “To determine the common law, the Court must ascertain: (1) whether any Virgin Islands courts have previously adopted a particular rule; (2) the position taken by a majority of courts from other jurisdictions; and (3) most importantly, which approach represents the soundest rule for the Virgin Islands.” *Tutein v. Ford Motor Co.*, 67 V.I. 34, 42 n.16 (Super. Ct. 2016) (quotation marks, citation, and parentheses omitted). This three-factor test is referred to as “a *Banks* analysis.” *Davis v. HOVENSA, LLC*, 63 V.I. 475, 486 (Super. Ct. 2015). *Accord People v. Rivera*, 68 V.I. 552, 559-60 & n.2 (Super. Ct. 2018) (undertaking a *Banks* analysis in a criminal case); *see also Rogers v. Tennessee*, 532 U.S. 451, 461 (2001) (“Strict application of *ex post facto* principles . . . would unduly impair the incremental and reasoned development of precedent that is the foundation of the common law system. The common law, in short, presupposes a measure of evolution that is incompatible with stringent application of *ex post facto* principles.”).

¶27 Before undertaking a *Banks* analysis, the Court must put the issue Irish is raising in its proper context because traffic offenses are quasi-criminal, *cf. Galloway*, 57 V.I. at 702-03, and announcing a new rule and applying it retroactively could raise Due Process or *Ex Post Facto* concerns.¹⁰ *See Rogers v. Tennessee*, 532 U.S. 451, 457 (2001) (“Deprivation of the right to fair warning . . . can result both from vague statutory language and from an unforeseeable and retroactive judicial expansion of statutory language that appears narrow and precise on its face.” (citing *Bouie v. City of Columbia*, 378 U.S. 347, 352 (1964))). However, “a judicial alteration of a common law doctrine of criminal law” only implicates Due Process or *Ex Post Facto* concern when “it is ‘unexpected and indefensible by reference to the law which had been expressed prior to the conduct in issue.’” *Rogers*, 532 U.S. at 461 (quoting *Bouie*, 378 U.S. at 354). Here Irish is not urging the Court to alter an established common law doctrine. Rather, he asks the Court to announce a new doctrine and apply it retroactively to exonerate him. As explained further below, the Court will announce a narrower version of the common that the version Irish urges. But applying it retroactively does not exonerate Irish.

¶28 The first factor to be considered in a *Banks* analysis is the “past practices of courts in this jurisdiction.” *Davis*, 63 V.I. at 486 A review of Virgin Islands jurisprudence reveals no written

¹⁰ Whether the *Ex Post Facto* clause applies to judicial decision-making is unsettled. The Supreme Court of the United States in *Bouie* held that, “[i]f a state legislature is barred by the *Ex Post Facto* Clause from passing such a law, it must follow that a State Supreme Court is barred by the Due Process Clause from achieving precisely the same result by judicial construction.” *Bouie*, 378 U.S. at 353-54 (citation omitted)). *Rogers* later backpedaled from this language in *Bouie*. *See Rogers*, 532 U.S. at 459 (“Our decision in *Bouie* was rooted firmly in well established notions of *due process*. Its rationale rested on core due process concepts of notice, foreseeability, and, in particular, the right to fair warning as those concepts bear on the constitutionality of attaching criminal penalties to what previously had been innocent conduct. And we couched its holding squarely in terms of that established due process right, and not in terms of the *ex post facto*-related dicta to which petitioner points.” (citations omitted)); *see also id.* at 462 (“the *Ex Post Facto* Clause does not apply to judicial decisionmaking.”). Justice Scalia took issue with the majority’s re-reading of *Bouie*. *See id.* at 469 (Scalia, J., dissenting) (“The Court seeks to avoid the obvious import of this language by characterizing it as mere dicta. Only a concept of dictum that includes the very reasoning of the opinion could support this characterization. The *ratio decidendi* of *Bouie* was that the principle applied to the legislature though the *Ex Post Facto* Clause was contained in the Due Process Clause insofar as judicial action is concerned. I cannot understand why the Court derives such comfort from the fact that later opinions applying *Bouie* have referred to the Due Process Clause rather than the *Ex Post Facto* Clause; that is entirely in accord with the rationale of the case, which I follow and which the Court discards.” (citation omitted)); *see also id.* at 481 (“But what a court cannot do, consistent with due process, is what the Tennessee Supreme Court did here: avowedly change (to the defendant’s disadvantage) the criminal law governing past acts.”).

decisions addressing the specific question of who has the right of way at an uncontrolled intersection.

However, one of the earliest cases, *Baumann v. Canton*, which Irish cited at trial, did recognize the

well established rule that a motorist must operate his vehicle always with due regard for the safety of all others on the highway. He is charged with the duty of keeping his automobile under such control that he can stop within the distance on the road head which he can clearly see. The law exacts of him constant care and attention and imposes upon him certain positive duties. 7 V.I. at 67 (footnote omitted).

In that case, Eric Canton had collided into Elwyn Baumann as Baumann was exiting his own driveway, turning right onto West Street in Christiansted. *See id.* at 64. Emmanuel Turner saw Baumann pulling out of the driveway and stopped to let him exit. Randolph Julien was behind Turner; he too stopped. *See id.* Canton was behind both but did not stop. Instead, Canton drove around the two stopped cars and collided into Baumann as he exited his driveway. Baumann’s father sued Canton for damages, but the Municipal Court entered judgment for Canton on his counterclaim. *See id.* at 65-66. Baumann appealed to the District Court sitting as an appellate court, and the District Court vacated the judgment and remanded the case to the Municipal Court for it to dismiss both the complaint and the counterclaim. *See id.* at 72.

¶29 The appellate court concluded that both drivers were negligent. Canton was negligent because “he passed the other automobiles on a curve and . . . was on the wrong side of the street when the accident occurred.” *Id.* at 70. Baumann’s son was negligent because he “failed to obey the statutory requirement that he yield the right of way to the defendant. . . . The signal to go ahead which he received from the driver of the first vehicle which had stopped on the street did not relieve him of the duty of care imposed upon him,” *id.* at 72, as a “driver of a vehicle emerging from a driveway [to] yield the right of way to all vehicles approaching on a public street or highway.” *Id.* at 71 (citing 20 V.I.C. § 506). Since Baumann’s “claim was barred by the contributory negligence of his driver, the complaint was rightly dismissed,” the appellate court concluded. *Id.* at 72.

[T]he statutory requirement that one traveling on a public highway has the right of way over one entering the highway from a private road is but a reaffirmation of the rule of

the road. However, notwithstanding the possession of the right of way by the operator of a vehicle on a public road over a person entering it from a private roadway, the former must exercise his right of way in a reasonable manner. In other words, it is the duty of both parties continuously to use such care as may be required by the situation to avoid a collision. The statutory right of way is not an absolute one – the driver holding it is not relieved of his duty of using reasonable care. *Id.* at 68 (footnote omitted).

¶30 *Baumann* was a civil case, not a traffic or quasi-criminal offense. Nevertheless, two points are relevant here. First, the authority to regulate traffic on public roads derives in part from common law rules of the road. *Cf. id.* at 67-68 (“These statutory provisions are not innovations in the law.” (collecting sources in footnote)); *accord Dane Cnty v. McGrew*, 699 N.W.2d 890, 905 (Wis. 2005) (Bradley, J., concurring) (“The ‘laws of the road’ violations recognized at common law in 1848 are the predecessors to the ‘rules of the road’ violations recognized today.”). Second, the right of way is not absolute, whether by statute or common law. *Cf. Pettaway v. Washington*, 257 A.2d 214, 218 (Md. 1969) (“Although the common-law rule of the road to the effect that a motorist who first enters an intersection is entitled to the right of way has been qualified by Section 231, it has not been completely abolished by it.” (quoting *Ghiradello v. Malina*, 209 A.2d 564, 569 (Md. 1965))).

¶31 Turning to the second *Banks* factor, the courts in other jurisdictions that have considered who has the right of way at an uncontrolled intersection have all held that the vehicle that reaches the intersection first has the right of way. *E.g., Shields v. Succession of Hodge*, 128 So. 530, 532 (La. Ct. App. 1930) (“In the absence of a statute or ordinance regulating the matter, it is a general rule that the vehicle entering an intersection of streets first is entitled to the right of way, and it is the duty of the driver of another vehicle approaching the crossing to proceed with sufficient care to permit the exercise of such right without danger of collision.” (quoting J.T.W. *Right of Way at Street or Highway Intersections*, 21 A.L.R. 974 (1922)) (other citations omitted)); *see also* Patrick D. Kelly, *Blashfield Automobile Law & Practice* § 114.2 (4th ed. 2001) (“With respect to intersections, the term ‘right of way’ has been described as the right of one driver to cross before another.” (footnote omitted)). For example, in *Rupp v. Keebler*, 175 Ill. App. 619 (Ct. App. 1912), an automobile and a horse-drawn

wagon collided at a crossing. The Illinois appellate court held that “[t]he first to reach the crossing in the exercise of ordinary care should have the right of way, and the others should approach with sufficient care to permit the exercise of such right without danger of collision” because “wagons and other vehicles have an equal right of way over public crossings with automobiles.” *Id.* at 620.

¶32 This was the general common law rule at the time when automobiles were first invented: “the first driver to enter an intersection has the right of way.” *Wlodkowski v. Yerkaitis*, 57 A.2d 792, 794 (Md. 1948); accord *W. Union Teleg. Co. v. Dickson*, 27 Tenn. App. 752, 762 (1941) (collision involving pedestrian and bicycle) (“[T]he plaintiff had the right-of-way over any vehicle approaching the intersection for, in the absence of an applicable regulatory statute or ordinance . . . the common law governed the rights of those using, or about to use, the intersection, and the rule there is, that the one first entering an intersection is entitled to the right-of-way.” (citing *Maxwell v. Kirkpatrick*, 116 S.W.2d 340 (Tenn. Ct. App. 1937)); see also Kelly, *Blashfield Automobile Law & Practice* at § 114.2 (“In the absence of statutory alterations or modifications, rights of vehicles at street intersections are correlative and equal; the duties of vehicles meeting at intersections are mutual; and each has an equal right to the use of the street. However, for the sake of convenience, order, and safety, rules of conduct and priorities of right of way at street intersections have been formulated.” (footnotes omitted)).

¶33 The common law is limited in this area, however, because city and state governments were quick to act. In other words, before a body of case law could develop around the respective duties of drivers meeting at uncontrolled intersection, city and state governments had enacted ordinances and statutes. See, e.g., *Ray v. Brennan*, 72 So. 16, 17 (Ala. 1916) (discussing Mobile city ordinance in force). At present, most jurisdictions have enacted legislation declaring that “the driver *to the right* at an uncontrolled intersection” has the right of way. *Civalier by Civalier v. Estate of Trancucci*, 648 A.2d 705, 709 (N.J. 1994) (emphasis added) (citing N.J. Stat. Ann. § 39:4:90); accord *Vaughn v. Porter*, 95 P.3d 88, 91 (Idaho 2004) (“When two (2) vehicles approach or enter an unmarked or

uncontrolled intersection from different highways at approximately the same time, the driver of the vehicle on the left shall yield the right of way to the vehicle on the right.” (quoting Idaho Code § 49-640(1)); *Wasson v. Shoffner*, 149 P.3d 1085, 1087 (Okla. Ct. Civ. App. 2006) (“Uncontrolled intersections on rural county roads in Oklahoma are common place. . . . [T]he legislature has prescribed the measure of care to deal with the danger When two vehicles enter or approach an intersection from different highways at approximately the same time, the driver of the vehicle on the left shall yield to the driver of the vehicle on the right.” (paragraph breaks and ellipsis omitted)); *Whitchurch v. McBride*, 818 P.2d 622, 623 (Wash. Ct. App. 1991) (“At an uncontrolled intersection, the driver on the right has the right of way, and the driver on the left must yield.” (citing Wash. Rev. Code § 46.61.180(1)), review denied 828 P.2d 564 (Wash. 1992); see also *Edmond v. Roberson*, 427 S.E.2d 74, 75 (Ga. Ct. App. 1993) (same); *Pugh v. Ludwig*, 186 A.2d 911, 912 (Pa. 1963) (same); *Perkins v. Carr*, 313 S.E.2d 372, 373 (Va. 1984) (same).

¶34 The third *Banks* factor to consider—the soundest rule for the Virgin Islands—is the most important and in this instance, the most difficult. On the one hand, there is no Virgin Islands rule or custom found in reported decisions that people have grown to rely on. *Cf. Rogers*, 532 U.S. at 463 (officially reported decisions inform whether common law has a foothold) (“And while the Supreme Court of Tennessee concluded that the rule persisted at common law, it also pointedly observed that the rule had never once served as a ground of decision in any prosecution for murder in the State. Indeed, in all the reported Tennessee cases, the rule has been mentioned only three times, and each time in dicta.”). On the other hand, a uniform body of national precedent has developed, which recognizes that at uncontrolled intersections, vehicles coming from the right have the right of way. The Court cannot rely on this body of law, however, because it was not derived from judicially-created precedent. *E.g., Gerald v. R.J. Reynolds Tobacco Co.*, 67 V.I. 441, 472 n.102 (Super. Ct. 2017) (“The Superior Court should consider ‘non-statutory law created by judicial precedent’ and ‘exclude case

law relying on state statutes from a *Banks* analysis.” (brackets omitted) (quoting *In re: L.O.F.*, 62 V.I. 655, 661 n.6 (2015)).

¶35 For guidance in deciding the soundest rule for the Virgin Islands, the Court will look to *Madir v. Daniel*, 53 V.I. 623 (2010), and *James v. Faust*, 65 V.I. 349 (2016). In *Madir*, the Virgin Islands Supreme Court recognized that “several states have statutorily defined the factors that a court should consider” “in determining the best interests of a child,” *Madir*, 53 V.I. at 634 (citations omitted), but “the Virgin Islands Code is silent on the matter.” *Id.* But the Court concluded that it was “not in a position as an appellate court to mandate that all such factors, or even additional factors, must be considered in every case.” Rather than exercise its common-law rule making authority to adopt criteria courts must use to determine the best interests of the child in parental custody disputes, the Court instead concluded that “the task . . . is best left to the Legislature.” *Id.* at 634 n.7. The Court reaffirmed its *Madir* stance in *Jung v. Ruiz*, 59 V.I. 1050, 1058 n.4 (2013) (“[W]e decline to deviate from the spirit of our stance in *Madir*—that the designation of particular criteria to govern this set of circumstances is a matter that is best left to the Legislature.”), and in *Tutein v. Arteaga*, 60 V.I. 709, 721-22 (2014) (“[W]e note that ‘we are in no position as an appellate court to mandate that all such factors, or even additional factors, must be considered in every case.’ Rather, this Court evaluates a Superior Court’s custody award to determine whether the court based its decision on relevant factors related to the best interests of the child.” (brackets omitted) (quoting *Madir*, 53 V.I. at 634).

¶36 But the Virgin Islands Supreme Court later qualified its *Madir* stance in *James v. Faust*, 62 V.I. 554, 559 (2015), recognizing that “‘the Legislature has not defined which factors a court should or must consider in determining the best interests of a child,’” (quoting *Madir*, 53 V.I. at 634 n.7), but also for the first time allowing that it might “provide a comprehensive set of factors that must be considered in every custody proceeding.” *Id.* at 599-60. In a later appeal, the Supreme Court abandoned its *Madir* stance in favor of adopting best-interest factors because, “[i]n the more than six years since

Madir was decided . . . the Legislature has provided no further guidance to the Superior Court on what to consider as part of the best-interests analysis.” *James*, 65 V.I. at 358 (quotation marks and citation omitted). The Supreme Court concluded that it could no longer defer to the Legislature, reasoning that by not having “conduct[ed] the appropriate analysis,” *Id.* at 359 (citing *Banks*, 55 V.I. at 981-84, the Court had unintentionally contributed to “unnecessary litigation that, by its very nature, harms the interests” courts should be protecting. *Id.* at 358.

¶37 The lesson of *Madir* and *James* is that courts should not refrain from resolving legal disputes because the legislature has not acted yet. In that sense, *James* is in accordance with the decisions of many other courts across the nation. *Cf. Giuliani v. Guiler*, 961 S.W.2d 318, 321 (Ky. 1997) (“It is beyond challenge that public policy is determined by the constitution and the legislature through the enactment of statutes. However, when those organs of public policy are silent, the decision can be made by the courts. In the absence of a legislative decree, courts may adopt and apply public policy principles. There is no conflict between the legitimate development of the common law by the courts which takes proper recognition of the primary role of the legislature in the expression of public policy. The common law and public policy are compatible legal principles, they complement each other.” (internal citations omitted)); *Flo & Eddie, Inc. v. Sirius XM Radio, Inc.*, 70 N.E.3d 936, 968 (N.Y. 2016) (“[T]he Court has long recognized its power to develop the common law when the legislature has failed to act but justice demands a change.” (citation omitted)); *see also Burkhart v. Harrod*, 755 P.2d 759, 768-69 (Wash. 1988) (Utter, J., concurring) (“The majority would be correct in deferring to the Legislature if the Legislature had in fact spoken on the issue of social host liability or immunity. However, our Legislature has not determined whether to grant immunity to social hosts for injuries caused by providing alcohol to intoxicated guests and then failing to take reasonable measures to deter their guests from driving. Because it is the traditional role of the courts to develop the common law of tort liability, the Legislature’s inaction in this area is no deterrent to this court.”); *Fish v. Amsted Indus.*,

Inc., 376 N.W.2d 820, 832 (Wis. 1985) (Abrahamson, J., dissenting) (“In ‘passing the buck’ to the legislature in this case, the court abdicates its responsibility to develop the common law of this state.”).

¶38 The Superior Court of the Virgin Islands has “concurrent authority with th[e Supreme Court of the Virgin Islands] to shape Virgin Islands common law.” *Connor*, 60 V.I. at 604 (citing *Banks*, 55 V.I. at 977-78). Even though the Legislature and the Police Commissioner are vested with primary and secondary responsibility, respectively, for the vehicle and traffic laws for the Territory, courts also have common law rule-making authority. When the organs of government entrusted with primary responsibility—here the Legislature and the Police Commissioner—have failed to act, courts should not. *Cf. James*, 65 V.I. at 358-59; accord *Rogers*, 532 U.S. at 461 (“In the context of common law doctrines . . . there often arises a need to clarify or even to reevaluate prior opinions as new circumstances and fact patterns present themselves. Such judicial acts, whether they be characterized as ‘making’ or ‘finding’ the law, are a necessary part of the judicial business in States in which the criminal law retains some of its common law elements.”).

¶39 This Court concludes that announcing a rule that, at uncontrolled intersections, drivers approaching from the left presumptively have the right of way and drivers approaching from the right must yield is not the soundest rule for the Virgin Islands. Such a rule might work in theory. But in practice, it could yield unforeseen consequences. The Virgin Islands is comprised of several small islands. Unlike the mainland, the topography of our islands often do not lend themselves to a grid-like layout of roads and streets because our roads wind and curve and many do not meet at four-way intersections. If the Court were to hold that drivers approaching from the left have the right of way at uncontrolled intersections, the public may very well rely on that holding. (*Cf. Trial Tr: 55:3-16 (pro se defendant citing Baumann v. Canton*, 7 V.I. 60 (D.V.I 1968), to trial court in his defense).) But that reliance might not be justified if an approaching-from-the left rule is unworkable across the Territory.

¶40 Although “[c]ourts issue decisions . . . not for the ages, but for the parties,” *Willie v. Amerada Hess Corp.*, 66 V.I. 23, 90 (Super. Ct. 2017) (citations omitted), courts are also mindful that, in a common law system, decisions of courts “followed consistently over time . . . become[] part of the law common to that community.” *Id.* at 91 (citation omitted). And generally, “[c]hanges in the common law are done in an incremental fashion, on a case-by-case basis.” *Hedges v. Hedges*, 66 P.3d 364, 369 n.19 (Okla. 2002). Yet, even on an incremental basis, the common law cannot be so narrowly-tailored that it only applies to circumstance, here the roads in one neighborhood on St. Croix. Holding that motorists approaching from the left have the right of way may be the soundest rule for the roads in Barron Spot, but this Court must consider what rule is the soundest for the Virgin Islands and the Court cannot agree with Irish that the soundest for the Territory is to hold that motorists approaching from the left have the right of way. Instead, this Court holds that the soundest rule for the Virgin Islands, in the absence of legislation or regulation to the contrary, is to adopt the common law rule that the first driver who reaches an uncontrolled intersection has the right of way.

¶41 Nevertheless, the Court does agree with Irish in one regard – that motorists “cannot be expected to look into the past, and to apprehend how previous signage may have directed traffic at a particular location.” (Appellant Br. 10.) Instead, “a motorist approaching an intersection is limited to the visual markings and signage that are put in place for the very purpose of directing traffic.” *Id.* at 9. There was no signage at the intersection where Irish and Roldan collided and, for this reason, Irish claims that he lacked notice that he had to stop. But Irish did have notice that he had to slow down. Section 495(b) of Title 20 of the Virgin Islands Code directs that “every driver shall” “[w]hen approaching any cross road or curve” “exercise due caution, sound the warning device, and reduce the speed of the motor vehicle.” The Court’s holding today recognizes that the first driver to reach the intersection has the right of way, but both drivers must slow down, honk their horns, and exercise due caution.

¶42 Here, the evidence established that Roldan had the right of way, not because she was driving east-to-west in Barren Spot and Barren Spot is in Christiansted, but because she reached the intersection first and slowed down. By contrast Irish

was in his truck heading from north to south and when he was close to the intersection he saw some children playing in the road. He swerved not only to avoid the children but eventually to avoid some potholes. He stated that he stopped before swerving away from the children and that he stopped a second time when he got to the intersection. He added that he was always looking from left to right and when he did not see any vehicles approaching he proceeded through the intersection. That is when Ms. Roldan came from the right and impacted his vehicle. (Jgmt 1.)

From these facts the court concluded that Irish

should have had sufficient time, if in fact, he was only going 15 to 20 mile[s] per hour, and if in fact, he had made two stops prior to the intersection, to see Ms. Roldan's vehicle. Given his testimony, it is unreasonable to believe that he did not see Ms. Roldan's vehicle coming from the west. Given his testimony, it is unreasonable to believe that he did not have enough time to stop at the intersection . . . *Id.* at 2.

¶43 Clearly, the Magistrate Court found Roldan more credible and that finding cannot be disturbed on appeal. *See, e.g., Gumbs v. People*, 64 V.I. 491, 499-500 (2016). Roldan had the right of way – not because she was travelling in an east/west direction or because at some time in the past there were stop signs in the area, but because she reached the intersection first.

CONCLUSION

¶44 For the reasons stated above, the Magistrate Court's interpretation of Section 495(e) of Title 20 of the Virgin Islands Code is overruled. However, the Magistrate Court's finding that Irish is guilty of negligent driving is affirmed. Roldan had the right of way, not because she was driving from west to east within Christiansted or because there were stop signs present at some point in the past, but because Roldan arrived at the intersection first and this Court holds that the first driver to reach an uncontrolled intersection has the right of way. The Magistrate Court reached the right result. Accordingly, the Judgment and Sentence will be affirmed. *Cf. Antilles School, Inc. v. Lembach*, 64 V.I. 400, 438 n.23 (2016). An appropriate order follows.

DONE this 27 day of March, 2019.


ATTEST:

Estrella H. George
Clerk of the Court

By: Cheryl R

Court Clerk III

Dated: 3/27/2019


HAROLD W.L. WILLOCKS
Administrative Judge of the Superior Court