

DIVISION OF ST. THOMAS AND ST. JOHN

Plaintiff/Respondent on Review.

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) **CASE NO. ST-18-RV-09**
) **(appeal of ST-18-MV-2103)**
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) *Cite as: 2019 VI SUPER 1U*

Pending before the Court is Petitioners' appeal of a Judgment signed by the Magistrate Judge on December 31, 2018, and entered by the Clerk on January 2, 2019, finding Petitioner John Kitchener Bell guilty of improper passing and imposing a fine of \$75.00 and court costs of \$75.00. Because the findings of fact of the Magistrate Judge were supported by substantial evidence and because the record reveals that the Magistrate Judge did not improperly apply Virgin Islands law, the Magistrate Judge's judgment will be affirmed.

At approximately 5:15 p.m. on Friday, April 20, 2018, Petitioner John Kitchener Bell was operating a two door Chevrolet truck in a generally westerly direction on Harwood Highway, a public highway, in the area of Banco Popular, St. Thomas, Virgin Islands. Officer Shakeel Mike testified at the trial conducted on November 20, 2018, before the Hon. Magistrate Judge Henry V. Carr, III, that the Officer was travelling directly behind and about five feet from Bell when Bell pulled to the right, crossing a double yellow line on the roadway, and passed the vehicle directly in front of Bell, whose driver had stopped because

the vehicle it followed was turning left at an intersection. Officer Mike stopped Bell near Adelita Cancryn School, informed Bell that it was an illegal traffic maneuver to cross the double yellow line, and ticketed Bell. The People offered into evidence three photographs taken by Officer Mike that demonstrated that the highway was so narrow at the point of the infraction that only one vehicle could occupy a lane of travel.

On cross examination, Bell offered into evidence a photograph that Bell said showed a red vehicle passing another vehicle on the left in the area where Bell claimed the incident occurred. In response to questioning by the Magistrate Judge, Bell indicated that he did not know Officer Mike before the citation was issued and that he had no confrontations or disputes with Officer Mike in the past.

On redirect examination, the People elicited testimony from Officer Mike that traffic was heavy at the time of the incident and that Bell overtook the vehicle that had stopped in front of his truck before entering the intersection.

Once the People rested, Bell also testified, indicating that he did not cross the double yellow line or pass a vehicle on the right, stating instead that he went around the left side of the vehicle that stopped in front of his truck. Bell stated that before the traffic stop Officer Mike was not behind his truck but was in front of Bell by Banco Popular instead. Bell stated that he did not feel he did anything wrong.

On rebuttal, Officer Mike testified that Defendant's Exhibit 1 did not show where the incident occurred and reiterated that Bell had crossed the double yellow line. In response to questioning by the Court, Officer Mike confirmed that there had been no previous contact between himself and Bell before the date the citation was issued.

After hearing the testimony and reviewing the evidence Magistrate Judge Carr made oral findings of fact and drew oral conclusions of law, finding Bell guilty of improper

passing by crossing a double yellow line. The Magistrate Judge indicated that he was confronted with two diametrically opposed versions of the events of April 20, 2018, noted that traffic would likely have been heavy in the area at 5:15 p.m. on a Friday, and indicated he had no basis for discrediting Officer Mike's testimony that Bell had crossed over the double yellow line and driven into the lane of traffic reserved for eastbound traffic. Magistrate Judge Carr also found the Bell's testimony was not credible, and that Officer Mike's version of events was supported by the notations the officer made on the traffic citation. Magistrate Judge Carr then found Bell guilty as charged.

STANDARD

The Superior Court "has jurisdiction to review judgments and orders issued by a Magistrate [Judge], as a result of the Magistrate [Judge]'s exercising their original jurisdiction as provided for at 4 V.I.C. § 123."¹ The Superior Court reviews a Magistrate Judge's factual determinations for "clear error" and legal findings are "afforded plenary review."² "[A]n appellant is bound to submit arguments in support of the issues presented, supported by legal authorities and applied to the facts reflected on the record."³

On an appeal, after examining the entire record, the Court is to determine whether the facts found by the Magistrate Judge are "supported by substantial evidence in the record."⁴ "Substantial evidence" refers to relevant evidence that a reasonable mind would

¹ *Payne v. Lehtonen*, 55 V.I. 286, 289 (Super. Ct. 2011).

² "Plenary review means applying the same legal standard as the trial court to the same record." *Henry v. Dennery*, 55 V.I. 986, 991 (V.I. 2011).

³ *Davis v. Varlack Ventures, Inc.*, 59 V.I. 229, 239, 2013 V.I. Supreme LEXIS 36, *18, 2013 WL 3367302 (VI. 2013) (quoting *Ibrahim v. Gov't of the V.I.*, 47 V.I. 589, 594 (D.V.I. App. Div. 2005).

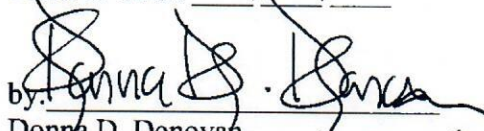
⁴ *Fredericks v. Govt. Employees Service Commission*, 21 V.I. 65 (D.V.I. 1984).

The Magistrate Judge found that he was convinced by the evidence that the People had proven beyond a reasonable doubt that Bell crossed a double yellow line while overtaking a vehicle. Because Petitioner has failed to demonstrate that the findings of fact of the Magistrate Judge were not supported by substantial evidence or that the Magistrate Judge committed error in drawing his conclusions of law, the Judgment below must be affirmed.

An Order consistent with this Opinion shall follow.

Dated: January 18, 2019.

ATTEST: Estrella George
Clerk of Court

by: 
Donna D. Donovan
Court Clerk Supervisor 1/22/2019


HON. MICHAEL C. DUNSTON
JUDGE OF THE SUPERIOR COURT
OF THE VIRGIN ISLANDS