

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

PEOPLE OF THE VIRGIN ISLANDS,)	
)	CASE NO. SX-14-MV-190
Plaintiff / Respondent)	
on Review,)	ON PETITION FOR REVIEW FROM THE
)	MAGISTRATE DIVISION
v.)	
)	CHARGES: NEGLIGENT DRIVING
STEVEN MAYERS,)	
)	
Defendant / Petitioner)	
on Review.)	
_____)	

MEMORANDUM OPINION AND ORDER

THIS MATTER is in the Appellate Division on petition for review from the Magistrate Division. Steven Mayers, the defendant before the trial court and the petitioner on appeal, challenges his conviction for negligent driving. For the reasons stated below, the Court affirms Mayers's traffic conviction.

BACKGROUND

On the evening of December 22, 2013, around eight o'clock in the evening, a motor vehicle accident occurred on Melvin H. Evans Highway on St. Croix in the vicinity of Estate Paradise. Walton Jack, Andres Robles, and Steven Mayers were all driving west on the Highway. Jack was driving a red 2005 Toyota 4Runner with Marilyn Arroyo, the owner of the vehicle, in the front passenger seat next to him. Robles was driving in front of the 4Runner in a white 1997 Ford Ranger pick-up truck. Mayers was behind both cars, driving a silver 2014 Hyundai Genesis. Jack and Robles were both in the left lane. Mayers was approaching on the right in the passing lane. *See* 23 V.I.C. § 163. The speed limit on the Evans highway is 55 miles per hour. *See* 20 V.I.C. § 494(b).

Because Robles was driving slowly, Jack signaled to move into the right lane to pass him. Jack recalled the condition of the road as being "a little wet." (Trial Tr. 7:20, Feb. 6, 2014.) He estimated his

own speed to be about 30 to 40 miles per hour because Robles was driving slow. Arroyo too recalled that they had been following behind Robles for some time before Jack decided to try to pass him. As Jack moved into the right lane, he saw “a light [that] just came from nowhere” in the rearview mirror. *Id.* at 8:20. A vehicle was approaching from behind “at a high rate of speed.” *Id.* at 8:22. Mayers was driving that vehicle, traveling between 55 to 60 miles per hour “in the fast lane.” *Id.* at 60:17. Mayers saw Jack put on the turn signal. Because Mayers was “close to the vehicle”—approximately “two car lengths behind” when Jack signaled to move into the passing lane—Mayers honked his horn “in case [he] was in [Jack’s] blind spot.” *Id.* at 60:18-19, 61:6. Jack saw Mayers coming and signaled to move back into the left lane. Jack told Arroyo he was moving back over into the left lane because it looked like Mayers might hit them.

The two cars collided and also caused the 4Runner to hit Robles’s pick-up truck. The 4Runner then went into a spin before it crashed into the median and came to a stop. Mayers did not apply his breaks at the moment the cars collided because he believed that it would have caused him to lose control of his vehicle. Mayers said that he had been driving in the right lane for some time “because the other lane had slow traffic.” *Id.* at 76:23-24. The 4Runner sustained damage along the passenger side where it collided with Mayers’s car and also sustained damage to the front left side where it collided into Robles’s truck.

After the collision, Jack phoned 911. Officer Moses President responded. Mayers gave a statement to President after President advised him of his rights. President took measurements of the roadway, including the distance from where the impact occurred to where the vehicles came to a stop. Based on his observations, he concluded that Mayers tried but was unable to stop. Officer President then issued a citation (# 198726) to Mayers, charging him with failure to maintain control of his vehicle. No provision of the Virgin Islands Code was referenced on the traffic citation nor were either the box for reckless driving or negligent driving checked.

Officer President later filed the traffic citation with the Traffic Division of the Superior Court on January 24, 2014, resulting in a criminal case being brought against Mayers. The Magistrate Court held a bench trial on February 6, 2014. Just before trial, the People moved to amend the complaint to add negligent driving so that the charge against Mayers alleged failure to maintain control of a vehicle by negligent driving. The Magistrate Court granted the People's request over Mayers's objection but did give him the option of a continuance if he felt he was not ready to proceed. Mayers declined, stating he was "quite ready." *Id.* at 5:20.

To prove its case, the People called Jack, Arroyo, Robles, and President to testify. Mayers cross-examined each witness, moved a number of photographs from the accident scene into evidence, and then testified on his own behalf. Following closing arguments, the Magistrate Court took the matter under advisement. The Court later issued a written judgment, entered February 14, 2014, finding Mayers guilty of negligent driving by failure to maintain control of a vehicle in violation of section 503 of title 20 of the Virgin Islands Code. The Court sentenced Mayers to pay a fine of \$75.00 and court costs of \$75.00

By letter dated and docketed February 24, 2014, Mayers filed a timely petition for review with the Appellate Division. By Order entered June 30, 2015, the Court construed the petition in letter format—as well as other correspondence Mayers had filed on appeal—as his briefing and further ordered that the People had waived its right to be heard on appeal. A transcript of the January 24, 2014 bench trial was finally submitted to the Court on July 2, 2015 after a delay not relevant to the merits. Nothing further has come before the Court.

DISCUSSION

"Judges sitting in the Appellate Division of the Superior Court function like an appellate court with the Magistrate Division functioning as the trial court." *Julien v. Mims*, SX-12-SM-300, 2015 V.I. LEXIS 92, *8 (Super. Ct. App. Div. Aug. 4, 2015) (unpublished). As an appellate court, the Appellate

Division “is not charged with re-assessing the credibility of witnesses.” *Bekker v. People of the V.I.*, ST-14-MV-504, 2015 V.I. LEXIS 82, *3 (Super. Ct. App. Div. July 7, 2015) (unpublished). Instead, the appellate court can only “review[] the facts found by the magistrate court for clear error and must accept those [facts] unless they are devoid of minimum evidentiary support or bear no rational relationship to the supportive evidentiary data.” *Julien*, 2015 V.I. LEXIS 92 at *9 (quotation and alteration omitted). But “[t]he law applied by the magistrate court is reviewed under a plenary standard.” *Id.*

Section 503 of title 20 of the Virgin Islands Code criminalizes negligent driving. The elements, as other courts have held, are: “(1) operating a vehicle in a negligent manner, (2) over and along a public highway of this Territory, and (3) in such a manner as to endanger or be likely to endanger any person or property.” *Gov’t of the V.I. v. Smith*, 45 V.I. 293, 298 (Terr. Ct. 2003). *See also Poleon v. Gov’t of the V.I.*, 184 F. Supp. 2d 428, 433 (D.V.I. App. Div. 2002) (“To satisfy the elements of the statute the government had to prove beyond a reasonable doubt that [the defendant] operated a motor vehicle in a negligent manner over and along a public highway, and that the he operated the vehicle in such a manner as to endanger or be likely to endanger any person or property.” (citing *Gov’t of the V.I. v. Ruiz*, 20, V.I. 439, 442-43 (Terr. Ct. 1984))). At trial, the evidence clearly showed that Mayers was operating a vehicle, a 2014 Hyundai Genesis, and that he was operating it on a public highway in the Virgin Islands, the Melvin H. Evans Highway, at the time of the accident. These facts were not disputed at trial and are not disputed on appeal. What Mayers disputed at trial, and what he reasserts on appeal, is the third element of the crime: that he operated his vehicle negligently, or in such a way as to endanger persons or property.

To the extent Mayers, on review, asks this Court to reassess the credibility of the witnesses or to reweigh the evidence, that request must be rejected. When a case is heard in the Magistrate Division, the magistrate court acts as the trial court. On review to the Appellate Division, the judge must defer to the magistrate court’s findings so long as those findings have support in the evidence. *See, e.g., Bekker*, 2015

V.I. LEXIS 82 at *3. Here, the evidence shows that Mayers told Officer President at the scene—something he later admitted under oath at trial—that he was driving approximately 55 to 60 miles per hour just before the collision occurred. He testified that he was driving in the “fast lane” because the other lane had “slow traffic.” (Trial Tr. 60:17 & 76:23.) This testimony clearly supports the Magistrate Court’s findings, in its February 14, 2014 Judgment, that Mayers “was driving his vehicle on the right half of the highway” and further that he “was operating his vehicle in excess of the speed limit.” (Jgmt 3-4, entered Feb. 14, 2014.) Both findings show beyond a reasonable doubt that Mayers was operating his vehicle negligently.

Section 494(b) of title 20 of the Virgin Islands Code sets the speed limit for automobiles on the Melvin H. Evans Highway at 55 miles per hour. While Mayers may be correct that motorists sometimes exceed that speed when passing other vehicles, the law does not permit an excess passing speed. So, by exceeding the speed limit, Mayers acted negligently. Similarly, section 163 of title 23 of the Virgin Islands Code directs that the right lane is only to be used when passing other vehicles, not for traveling. *See* 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.”). Again, Mayers may be correct that motorists often use the right lane of the Evans Highway as a “fast lane,” but that is contrary to what the law permits. Moreover, the Magistrate Court found that Mayers “was not simply overtaking Jack at the time of the accident. [Instead, h]e was *and had been* driving in the right lane of the highway for some period of time prior to the collision.” (Jgmt 3 (emphasis added).) This finding, though not directly shown by the evidence, is certainly inferable from the evidence. Therefore, it cannot be disturbed on appeal. Lastly, the Magistrate Court found that Mayers was driving in such a way that he endangered persons or property. The damage done to the three vehicles involved in the collision supports this finding and since the court’s findings are supported by the evidence, the guilty verdict must be affirmed.

A final issue Mayers raises on review is the last-minute amendment to the charging document. Just

before trial began, the prosecutor orally moved to amend the charge against Mayers. The citation initially charged Mayers with “failing to maintain control of a vehicle.” While Mayers did object to the amendment at trial, and renews his objection on appeal, the amendment was a technical amendment, not a substantive change to the charge and, pursuant to the Rules of the Superior Court, was permitted. Superior Court Rule 8 provides that “[t]he court may amend any . . . pleading for any omission or defect therein, or for any variance between the complaint and the evidence adduce at the trial.” Super. Ct. R. 8.

Here, even though the citation did not initially charge Mayers with negligent driving, Mayers was on notice that he was being charged generally with failing to maintain control of his vehicle. Failure to maintain control of a vehicle forms the basis for only negligent driving, which is a violation of section 503 of title 20 of the Virgin Islands Code.¹ See, e.g., *Trippett v. Gov’t of the V.I.*, D.C. Crim. App. No. 2003-031, 2004 U.S. Dist. LEXIS 25946, *2-4 (D.V.I. App. Div. Dec. 7, 2004) (unpublished) (explaining that appellant was charged under 20 V.I.C. § 503 with failure to maintain control of her vehicle). Omitting the citation to the statute upon which the charge was based was a defect that the People could cure by amendment under Superior Court Rule 8. Cf. *Tindell v. People*, 56 V.I. 138, 148 (2012) (“to establish that the Superior Court had subject matter jurisdiction over this case, the People were only required to allege in the information that the charged offense occurred in the Virgin Islands and to cite to the Virgin Islands criminal statute that [the defendant] allegedly violated.”). For this reason, Mayers’s last claim must be rejected.

¹ Notably, the phrase “failing to maintain control of a vehicle” only appears in section 512 of title 20 of the Virgin Islands Code, the schedule of fines the Legislature enacted in 2011 for traffic offenses. Among other offenses listed, “failing to maintain control of vehicle” carries, for a first offense, a \$30.00 fine. But the source, or criminal statute, cited for this fine is section 492 of title 20, which criminalizes reckless driving, not negligent driving. In contrast, negligent driving under section 503 of title 20 carries a higher fine—\$75.00 for a first offense according to section 512 of title 20—than the fine for a first offense of reckless driving. Reckless driving is a more serious offense than negligent driving as it criminalizes the operation of a vehicle “in such a manner as to indicate either *a willful or wonton disregard* for the safety of person or property.” 20 V.I.C. § 492 (emphasis added). Neither Mayers on appeal, nor the Magistrate Court in its judgment, noted the inconsistencies between the fines imposed by statute for each offense. This Court, in its appellate capacity, declines to address, but does nonetheless note, that discrepancy.

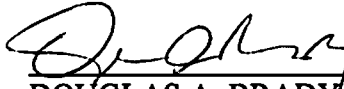
CONCLUSION

Having considered the points of error Mayers raised, the Court rejects each and affirms the conviction and sentence. Accordingly it is hereby

ORDERED that the Judgment, entered February 14, 2014 is AFFIRMED. It is further

ORDERED that a copy of this Order be served on all parties, FORTHWITH.

Dated: January 19, 2016.

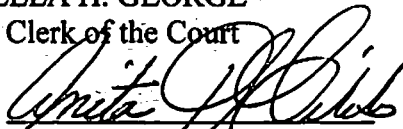


DOUGLAS A. BRADY
Judge of the Superior Court

ATTEST:

ESTRELLA H. GEORGE
Acting Clerk of the Court

By:



Court Clerk Supervisor