

NOT FOR PUBLICATION

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX
APPELLATE DIVISION

NOBLE S. JAMES,)
) D.C. CRIM. APP. NO. 2001/76
Appellant,)
)
v.) Re: T.C. Traffic No. 4456/2001
)
GOVERNMENT OF THE VIRGIN ISLANDS,)
)
Appellee.)
_____)

On Appeal from the Territorial Court of the Virgin Islands

Considered: December 6, 2002

Filed: January 21, 2003

BEFORE: **RAYMOND L. FINCH**, Chief Judge, District Court of the Virgin Islands; **THOMAS K. MOORE**, Judge of the District Court of the Virgin Islands; and **IVE A. SWAN**, Judge of the Territorial Court, Sitting by Designation

ATTORNEYS:

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St. Croix, U.S.V.I.
Attorney for Appellant.

Carol Moore, Esq.
Assistant Attorney General
Attorney for Appellee.

MEMORANDUM OPINION

PER CURIAM.

Following a bench trial in Territorial Court, appellant was

convicted of operating a vehicle in a negligent manner, by failing to yield the right-of-way, and fined \$50. Appellant now challenges that conviction on grounds the Court's finding of guilt was unsupported by sufficient evidence and premised on incredible testimony. For the reasons which follow, the trial court's finding of guilt will be **AFFIRMED**.

I. FACTS AND PROCEDURAL HISTORY

This case arose from a traffic accident involving the appellant, Noble S. James ("Appellant") and another driver, Elizabeth James ("Mrs. James" or "the other driver"). The facts surrounding the accident were largely disputed.¹ At trial, both drivers acknowledged their vehicles collided on Melvin H. Evans Highway on June 19, 2001. Appellant was traveling west to east on the Melvin Evans Highway. Mrs. James was traveling north to south on an intersecting roadway, intending to cross the highway to her place of employment. The accident occurred at approximately 7:00 a.m. Appellant was interviewed at the scene by the traffic investigator, Police Officer Germaine Payne ("Officer Payne"). However, because the other driver was injured and left the scene by ambulance, she was interviewed by police at the Juan Luis Hospital later that day. It is at this point that

¹ The Government has filed no appellate brief. The facts stated herein are taken from record.

the parties' version of the facts diverge.

Each driver contends the other disregarded the respective red light, thereby causing the collision. At trial, appellant testified he was proceeding eastward in the left lane through the intersection on a green light when Mrs. James emerged from the intersection of Golden Grove-Public Safety, striking his vehicle. [Appendix ("App.") at 98-99]. Appellant attempted to steer clear of the vehicle by moving to the right lane, but was struck on the front left side. His car sustained damage to the left wheel, door, left front fender and hood. [App. at 98-99, 118].

Appellant maintains there was no one in the area at the time of the collision. [App. at 100-01, 106]. However, he acknowledges seeing another individual, now identified as Philbert Price ("Price"), at the scene immediately following the accident. [*Id.*]. As appellant exited his vehicle to retrieve a water cooler which had been propelled from his truck during the accident, he saw Price running from across the southern side of the highway toward the car driven by Mrs. James. [App. at 100-01,106]. However, on cross-examination, appellant acknowledged he never saw Price prior to exiting the truck and really did not know where that individual might have been positioned before that time. [App. at 116]. He also saw another unidentified woman standing in the area after the accident, whom he initially

mistook for the driver of the car with which he had collided.

[*Id.*].

Mrs. James offered a different version of events. She testified she was traveling southward on the Golden Grove-Public Safety Road, on her way to Transducer Technology, in the Industrial Park Building, and had approached a traffic light where that road intersects with the Melvin Evans Highway. [App. at 8]. She said she stopped at that intersection and waited for the green light before proceeding. [App. at 8-11]. She was struck as she moved into the intersection, causing damage to the right front of her vehicle. [*Id.*]. Appellee recalled Price approaching her car immediately after the collision and noted that, in fact, he was the one who called the ambulance. [App. at 13].

Though both drivers recalled Price's presence at the scene within seconds of the accident, they disputed at what point he arrived there and whether he could have witnessed the accident. Mrs. James asserted she initially saw Price standing on the northern side of the Golden Grove intersection, prior to the accident, as she waited for the traffic light. She offered him a ride across the street, which he declined. [App. at 19-22]. She said the last time she saw Price, he was crossing the highway ahead of her, though she was unsure exactly where he was at the time of the collision. [App. at 21-22].

Price also testified as a witness for the Government at trial. His testimony was largely consistent with that of Mrs. James and, to some extent, with that of the appellant. He said he was walking to work that day and first saw Mrs. James at the Golden Grove intersection. [App. at 44-46]. After declining her offer of a ride, Price crossed the highway on foot heading southward, and got into the car of another individual, Hannah Charles, who was preparing to enter the Industrial Park. [App. at 46-47, 55-59]. Price testified that, from where he sat in the third car, he was able to observe that the eastbound-westbound traffic lights were red and, therefore, inferred that the northern and southern traffic lights must have been green.

In the course of the accident investigation, Officer Payne observed skid marks on the left, eastbound lane of the Melvin Evans highway. Those marks extended approximately 51 feet, nine inches into the intersection. [App. at 67-69]. Based on this field test, Officer Payne determined that the impact occurred over 51 feet past the eastbound stop bar, in Mrs. James' lane of travel. [App. at 71-72].

Neither Price nor any other witness was present at the scene when Officer Payne arrived. Officer Payne learned that Price was a witness to the accident when Mrs. James called her approximately two days after the initial interview. [App. at 83].

After several failed attempts to contact Price, Officer Payne finally interviewed him about 10 days following the accident, when he flagged her down at an intersection. [App. at 74-76, 86-89]. Armed with this information and the other data collected at the scene, Officer Payne determined that the appellant had entered the intersection on a red light and, accordingly, issued a citation for negligent operation of a vehicle.

II. DISCUSSION

A. Jurisdiction and Standard of Review

This Court has jurisdiction to review the trial court's determinations in criminal cases. See, V.I. CODE ANN. tit 4, § 33. A trial court's finding of negligence, made in a non-jury trial, is subject to the clearly erroneous standard of review, with due regard afforded the trial court's opportunity to judge the credibility of witnesses. See, *Bryan v. Government of the V.I.*, 150 F.Supp.2d 821, 827 (D.V.I. App. Div. 2001); see, also, 4 V.I.C. § 33; *Poleon v. Government of the V.I.*, 184 F. Supp. 2d 428 (D.V.I. App. Div. 2002). In the criminal context, the court's factual findings are clearly erroneous if it is evident that "the factfinder in the first instance made a mistake in concluding that a fact had been proven under the applicable standard of proof" - that is, reasonable doubt. See, *Bryan*, 150

F. Supp. 2d at 827 n. 7. Such error is indicated where the trial court's factual findings: 1) are unsupported by substantial evidence; 2) lack adequate evidentiary support in the record; 3) are against the clear weight of the evidence; or 4) where the trial court has misapprehended the weight of the evidence. *Id.* (citing *Davin v. U.S. Dep't. of Justice*, 60 F.3d 1043, 1049 (3d Cir. 1995)).

**B. The Evidence Presented At Trial Was Sufficient
To Sustain a Finding of Guilt.**

Appellant argues his conviction was not supported by credible evidence to establish, beyond a reasonable doubt, that he had failed to yield the right-of-way. In support of this argument, appellant contends that testimony by the Government's witness was marked by inconsistencies which improperly formed the basis for his conviction and without which a conviction could not be had.

Title 20, Section 503 of the Virgin Islands Code, under which appellant was convicted, makes it unlawful "for any person to operate a motor vehicle in a negligent manner over and along the public highways of this Territory." 20 V.I.C. § 503. That section further defines the conduct constituting operation of a vehicle in a "negligent manner" to include "the operation of a vehicle upon the public highways of this Territory in such a

manner as to endanger or be likely to endanger any person or property." *Id.* To sustain a finding of guilt under this section, the court must determine, beyond a reasonable doubt, that the appellant: operated his vehicle on a public highway and did so in a manner which endangered or was likely to endanger a person or property. *See, Poleon*, 184 F. Supp. 2d at 433 (citing *Government of V.I. v. Ruiz*, 20 V.I. 439, 442-43 (Terr. Ct. 1984)).

In this instance, the evidence before the trial court consisted of testimony from both drivers and from the only apparent witness to the accident, as well as results of the traffic investigation. That testimony established that appellant failed to observe the red light when he entered the intersection. Moreover, although the witness' testimony may have swayed the pendulum in Officer Payne's initial determination of fault, the trial court also had before it other evidence regarding the location of damage to each vehicle and the location and length of skid marks observed during the traffic investigation, indicating the point of impact and the appellant's stopping distance. Viewed in the light most favorable to the government, this was sufficient evidence from which the trial court - and, indeed, any reasonable trier of fact - could have determined guilt beyond a reasonable doubt. *See, Durham Life Ins. Co v. Evans*, 166 F.3d

139, 147 (3d Cir. 1999) (citations omitted). The appellant's attempt to cast doubt on Price's testimony does not preclude this result.

Appellant suggests here, as he did at trial, that Price did not appear on the scene until after the collision, yet surfaced as a purported witness for the Government 10 days following the accident. This assertion disregards the undisputed testimony at trial that Price ran to the parties' aid within seconds of the accident and appellant's admission that he could not attest to Price's whereabouts prior to seeing him running toward the accident. Significantly, Price was the one who called the ambulance, supporting his immediate presence there. Moreover, Officer Payne admitted she conducted only a limited interview of Mrs. James at the hospital, after noting she was in obvious pain and awaiting medical treatment. There was, therefore, no reason for the officer, nor the court, to regard as suspect Mrs. James' follow-up call to the officer two days after the accident to notify her of Price's identity. Price's effort to flag down the investigating officer 10 days later to give his version of events is also not suspect, when viewed in conjunction with the testimony regarding the officer's previous unsuccessful attempts to contact him, which included leaving messages at his job.

Given these facts, it cannot be said that Price's testimony was sufficiently impeached and should not have been credited.

Appellant additionally challenges as incredible Price's testimony that the appellant disregarded the red light and contends it was physically impossible for him to have viewed the traffic light from his purported position in the third car. Appellant further points to the witness' acquaintance with both Mrs. James and the investigating officer as evidence of his bias and lack of credibility.

The trial court was faced with contradictory evidence from the appellant, who maintained he had the right-of-way, and from Mrs. James and Price, who both testified appellant entered the intersection on a red light. Appellant had ample opportunities during trial to question Price's credibility and potential biases and, indeed, aptly did so. The trial court, nonetheless, credited Price's testimony after specifically finding that witness credible and rejecting appellant's suggestion of fabrication, thereby resolving the credibility issue against the appellant. [Court's Findings, App. at 138-141]. Such credibility determinations fall squarely within the purview of the trial court and will not be disturbed on appeal. It is well-settled that, where evidence at trial consists largely of contradictory oral evidence, due regard must be accorded the trial court's

opportunity to judge the credibility of witnesses. *See, United States v. Delerme*, 457 F.2d 156, 160 (3d Cir. 1972); *see, also, Georges v. Government of V.I.*, 119 F. Supp. 2d 514, 523 (D.V.I. App. Div. 2000). Crediting the testimony of Price and that of Officer Payne, there was sufficient evidence to determine the appellant's guilt beyond a reasonable doubt. Accordingly, the trial court's finding of guilt was not clearly erroneous and will be **AFFIRMED**.

III. CONCLUSION

This Court will **AFFIRM** the appellant's conviction for negligent operation of a vehicle, having determined there was sufficient evidence on the record to support a finding of guilt beyond a reasonable doubt.

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ORDER

PER CURIAM

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For the reasons stated in an accompanying Memorandum Opinion
of even date, it is hereby

ORDERED that the conviction of Noble S. James is **AFFIRMED**.

SO ORDERED this 21st day of January, 2003.

ATTEST:

WILFREDO F. MORALES
Clerk of the Court

By: _____
Deputy Clerk