

TERRITORY OF THE VIRGIN ISLANDS
IN THE COURT OF APPEAL

MAGISTERIAL CRIMINAL APPEAL NO. 2 OF 1992

BETWEEN:

MARTIN ALPHONSO

Appellant

and

THE COMMISSIONER OF POLICE

Respondent

Before:

The Right Hon. Sir Vincent Floissac

Chief Justice

The Hon. Justice Dennis Byron

Justice of Appeal

The Hon. Justice Dr. Nicholas Liverpool

Justice of Appeal

Appearances:

Dr. Gonsalves for Appellant

Mr. D. Baptiste for Respondent

1992 June 21 & 22

Byron J.A.

This is an appeal against the decision of the Magistrate in which he convicted the appellant for driving without due care and attention contrary to Section 30 of the Road Traffic Act, No. 5 of 1988 of the Laws of the Virgin Islands and fined him \$200.00

It was a case where the appellant was driving a red Montero jeep eastwards along the Treasure Isle Public Road on the 27th November, 1991 at about 1:30 p.m. Ahead of him and travelling in the same direction was a car preceded by a bicycle ridden by Deodath Ramnath. An accident occurred when the appellant overtook the car and tried to overtake the bicycle. The Magistrate concluded that the appellant was not keeping a proper lookout and was overtaking when it was not safe to do so, and that he was speeding.

The appeal was argued on the solitary ground that the decision was unreasonable or could not be supported having regard to the evidence.

The prosecution relied on seven witnesses. There were two eye witnesses to the accident, witnesses who arrived immediately afterwards, including Dr. Adamson who rendered first aid to the cyclist pending the arrival of the ambulance and the police, and the police investigators, including P.C. Butcher who produced photographs he took at the scene.

Raymond Fonseca testified that he was driving his vehicle behind the cyclist at about 10 m.p.h. When he was about 20 - 25 feet behind him the cyclist made a right turn and was crossing the road.

Counsel for the appellant argued that the cyclist created an emergency by turning right across the road without first having signalled his intention to do so, or having rung his bell. Fonseca, however, said that he was not surprised when the cyclist made the right turn.

At that time the appellant's vehicle suddenly came alongside Fonseca's car. Fonseca immediately stopped his car, saw the appellant apply brakes and slide into the cyclist and throw him on the right side of the parking lot. He estimated the distance the cyclist was thrown at 8 - 10 feet.

Roosevelt Smith testified that he was driving along the Pasea Estate Road when he saw the appellant's vehicle travelling towards him at about 60 m.p.h. He saw the car strike the cyclist who flipped over about three times before coming to a stop 70 to 80 feet from the impact. At that time he was about 200 feet away.

Sgt. Holder who headed the police investigations gave evidence

of his conversation with the appellant at the scene. He testified that he took measurements of distances pointed out to him by the appellant and these included:

- (i) the distance from where he first saw the cyclist was 68 feet 2 inches.
- (ii) the length of tyre impressions leading to front left wheel of appellant's car 58 feet 3 inches.
- (iii) the distance from the point of impact to where the cyclist was lying 81 feet.

Sgt. Holder also said that the jeep received extensive damage to the front hood, left front side of front windshield and front grill. He also gave evidence that the speed limit in that area was 30 m.p.h.

The appellant also gave evidence on oath. He said he was driving at 15 - 20 m.p.h. behind Fonseca's car and he decided to overtake because the traffic was clear, but when he got in line with the car he saw the bicycle crossing the street. He said he tried to stop but it was too close and he turned right in an unsuccessful attempt to avoid the collision. He insisted -

"I first saw the cyclist when I got in line with the Toyota. I was 2 to 3 feet away from the cyclist when I first saw him."

He denied that he was travelling at 60 m.p.h. He also denied being present when Sgt. Holder took the measurements and although he admitted pointing out the things Sgt. Holder measured he said that distances he gave were "impossible". He denied that his car was extensively damaged. He said that only his park lamp was damaged and his bonnet had a dent.

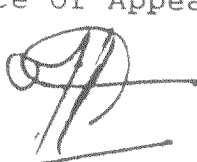
In his reasons the Magistrate indicated that even if he accepted the evidence of the appellant he would have found him guilty because his failure to see the cyclist until he was so close demonstrated that he was not paying attention. But it is clear that the Magistrate placed more reliance on the prosecution witnesses whom he said he believed. The law is already well settled that the trial Court who had the opportunity to see and hear the witnesses is in a better position to assess their

credibility than an appellate Court which has to rely on the cold and lifeless written record of the proceedings. I could find nothing to support the view that the Magistrate's finding on the credibility of the witnesses was erroneous. There can be no doubt however that the evidence of Fonseca supported the conclusion that the appellant overtook when it was unsafe so to do, that the evidence of Smith and of Sgt. Holder supported the conclusion that the appellant was driving at an excessive speed and even the evidence of the appellant himself supported the conclusion that he was not keeping a proper lookout.

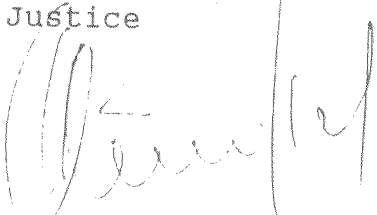
This appeal has to be dismissed because the Magistrate's decision was reasonable and was supported by the evidence. I would therefore dismiss the appeal.


 C.M.D. Byron
 Justice of Appeal

I concur.


 SIR VINCENT FLOISSAC
 Chief Justice

I concur.


 Nicholas Liverpool
 Justice of Appeal