

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

CHRIS GEORGE,	)	CASE NO. SX-16-RV-002
	)	
Petitioner,	)	(RE: Case Nos. SX-15-MV-2974 and SX-15-
	)	MV-2975)
v.	)	
	)	
PEOPLE OF THE VIRGIN ISLANDS,	)	
	)	
Respondent.	)	
	)	

On Review from the Magistrate Division
District of St. Croix
Superior Court Magistrate Judge: Hon. Miguel A. Camacho

APPEARANCES:

CHRIS GEORGE
Frederiksted, VI 00840
Pro se Petitioner

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Attorneys for Respondent¹

MEMORANDUM OPINION

MOLLOY, Robert A., Judge.

THIS MATTER is in the Appellate Division on review from the Magistrate Division. The police issued two citations to Chris George (“Chris”²) and he filed a motion to dismiss both, arguing, *inter alia*, that he was travelling, not driving, when the police stopped him. The Magistrate Court

¹ Counsel did not appear on review for the respondent, People of the Virgin Islands. Counsel named above appeared before the trial court.

² During oral argument, Chris George corrected the Magistrate Court, stating “My name is Chris, not Mr. George.” (Trial Tr. 31:25-32:1, May 5, 2016.) The Court will likewise refer to the defendant / petitioner on review as Chris throughout this opinion.

heard argument on Chris' motion, denied it from the bench, and proceeded with trial. Chris was found guilty of both petty offenses and sentenced to pay fines and court costs. He filed a petition for review in the Appellate Division. On review, Chris claims the Magistrate Court erred in denying his motion to dismiss. For the reasons stated below, the Court affirms the denial of Chris' motion.

I. FACTUAL AND PROCEDURAL BACKGROUND

Officer Keisha Benjamin, along with other officers of the Virgin Islands Police Department, were “conducting a traffic initiative in the vicinity of Company and Church Streets” in Christiansted on October 7, 2015. (Trial. Tr. 55:19-20, May 5, 2015.) Officer Benjamin noticed a truck turning from Hospital Street onto Company Street. The truck did not have a current registration sticker affixed to the windshield. Benjamin stopped the truck, asked the driver for “his documents and his registration and his insurance and discovered that they were expired.” *Id.* at 55:24-25. She asked the driver, later identified as Chris George, “if he had up-to-date registration and insurance.” *Id.* at 56:1. He did not. So Benjamin issued him two “citations for operation of [an] unregistered and uninsured vehicle.” *Id.* at 56:6-7. The police also towed Chris' truck away.

Both citations were filed in the Superior Court on October 16, 2015. The first citation, number 220548 and assigned case number SX-15-MV-2974, charged Chris with operating an unregistered motor vehicle on a public highway in violation of Section 331 of Title 20 of the Virgin Islands Code. The other citation, number 220549 and assigned case number SX-15-MV-2975, charged Chris with operating a motor vehicle on public roads without insurance in violation of Section 712 of Title 20 of the Virgin Islands Code. The Clerk's Office assigned both cases to the same magistrate judge and calendared trial for both cases on February 25, 2016.

On January 13, 2016, Chris, representing himself, filed a motion in each case to dismiss the

charge. Chris' motion challenged the authority of the police, the jurisdiction of the court, and the laws of the Virgin Islands. Although Chris had filed his motions over a month before the parties were scheduled to appear on February 25, 2016, the Magistrate Court continued trial to allow the prosecution time to respond to Chris' motion and Chris time to reply to their response. The People filed their response in opposition on May 4, 2016. Chris filed his reply the same day.

The parties appeared before the Magistrate Court for trial on May 5, 2016.³ Chris represented himself. The People appeared through counsel. Before proceeding with trial, the Magistrate Court heard argument on Chris' motion to dismiss and then denied it from the bench. Over Chris' objection, trial proceeded. The prosecution called Officer Benjamin to testify, moved both citations into evidence, and rested. Chris did not cross-examine Officer Benjamin or testify in his defense. The court found him guilty on both counts, fined him \$100 for operating an unregistered vehicle, \$250 for operating an uninsured vehicle, and \$150 in combined court costs for both cases. The Magistrate Court did not reduce its decision to a written judgment until November 15, 2016, which the Clerk's Office entered the next day.

In the interim, Chris filed a petition on May 9, 2016 for review. He also requested a transcript of the bench trial, which was submitted on June 20, 2016. In his petition, Chris asked that the Appellate Division waive the briefing requirement. The judge to whom this review was initially assigned granted Chris' request, but only as to his right to file a brief, not as to the People's right to file a brief. The court did, however, give the People a deadline to respond. They did not and therefore forfeited the right to be heard on review. *See* Super. Ct. R. 322.1(i)(G)(ii) ("If a respondent fails to file a responsive brief within the time provided by these rules . . . the respondent shall lose any

³ Trial was initially continued trial to April 7, 2016 and on April 7, 2016 to May 5, 2016.

further opportunity to be heard in the review proceedings.”). This matter was reassigned to the undersigned judge upon the prior judge’s recusal *sua sponte*. *See generally People v. Chris*, Case No. SX-16-RV-002, 2017 V.I. LEXIS 48 (Super. Ct. App. Div. Mar. 22, 2017).

II. JURISDICTION AND STANDARD OF REVIEW

The Magistrate Division has original jurisdiction over all non-felony traffic offenses. *See* 4 V.I.C. § 124(b) (“The Magistrate Division of the Superior Court has exclusive jurisdiction over all traffic offenses, except felony traffic offenses.”). “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 (Super. Ct. App. Div. Feb. 22, 2016) (internal citation omitted). “Because cases in the Magistrate Division are decided without a jury, the magistrate court hears the testimony and considers the evidence before finding the facts and applying the law.” *Carlos Warehouse v. Thomas*, 64 V.I. 173, 180 (Super. Ct. App. Div. 2016) (citing *In re: Estate of Small*, 57 V.I. 416, 428-29 (V.I. 2012)).

Here, the Magistrate Court held a bench trial on May 5, 2016, found Chris guilty on both counts, and imposed a fine and court costs for both cases. Chris sought review on May 9, 2016. However, the court did not reduce its oral decision to writing until November 14, 2016, which the Clerk’s Office entered on November 15, 2016. Parties may seek review before the magistrate court reduces its judgment or other dispositive order to writing. But a review is not deemed filed until the magistrate court’s written judgment or decision is entered. *See* Super. Ct. R. 322.1(b)(2)(C) (“Where a petition for review is filed after an oral decision but before entry of a written order or judgment, it is deemed filed as of the date of the written order or judgment appealed from.”). Thus, Chris’

review was not “deemed filed” until November 15, 2016. Because he filed for review months earlier, the Appellate Division has jurisdiction over this internal appeal.

On review, judges in the Appellate Division “function like an appellate court with the Magistrate Division functioning as the trial court.” *David*, 2016 V.I. LEXIS 15 at *9 (quotation marks and citations omitted).

[T]he Appellate Division judge must address the arguments raised in the parties’ briefs unless the court finds any of the arguments have been waived. When considering the arguments raised on review, 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. However, the appellate court does not defer to the law the magistrate court applied. Instead, questions of law are reviewed under a plenary standard.

Id. at *9-10 (quotation marks, ellipses, and citations omitted).

III. DISCUSSION

Chris raises three errors on review, each within the May 9, 2016 petition: “(1) no case or cause of action; (2) failed to prove commerce was being conducted; (3) erroneously substituted [his] right to travel for a privilege to drive.” (Pet’r’s Pet. for Review 1, filed May 9, 2016.) Chris claims that “none of [his] arguments in [his] motion to dismiss were rebutted, but the Magistrate [Court] denied [his] motion and proceed to trial.” *Id.* Chris also claims the Magistrate Court proceeded with trial over his objection, without establish its jurisdiction first. *See id.* (“I objected to the trial on the ground that the court failed to establish jurisdiction and had no authority to reach [the] merits.” (citing *Melo v. United States*, 505 F.2d 1026 (8th Cir. 1974))). Chris raised each ground in his January 13, 2016 Motion to Dismiss and has preserved them for appellate review. *Cf. Gardiner v. Diaz*, 58 V.I. 199, 205 n.5 (V.I. 2013) (“[T]he Appellate Division of the Superior Court should, as a routine matter, address the arguments raised before it in the parties’ briefs. If the Appellate Division determines

that an appellant has waived any of the arguments raised in the brief, it should so indicate.”).

Chris’ motion—as well as his reply to the People’s response in opposition and the arguments he made in court—all boil down to the same few points. Chris first argued that he was not driving his truck when Officer Benjamin stopped him, but rather traveling in his truck.

THE COURT: Are you supposed to have a registered vehicle?

THE DEFENDANT: A registered vehicle? I don’t drive a vehicle.

THE COURT: What were you driving?

THE DEFENDANT: I drove – correction. I traveled in my truck.

THE COURT: Isn’t that a vehicle?

THE DEFENDANT: It’s not a vehicle.

(Trial Tr. 9:22-10:5.) Travelling is not the same as driving according to Chris.

THE DEFENDANT: The term travel means to journey or pass through or over, as a country, district, road, et cetera; to go from one place to another, whether on foot or horseback, maybe even on someone’s back or in any conveyance as a train, an automobile, carriage, ship or aircraft, make a journey. So whether I’m on foot, whether I’m on horseback, someone’s back, whatever, in my automobile, my truck my jeep, whatever, I’m traveling.

Id. at 16:16-24 (paragraph break omitted). (*See also* Def.’s Mot. to Dismiss 5, filed Jan. 13, 2016, *People v. George*, SX-15-MV-2947 (“There are United States court cases that confirm and point out the difference between the ‘**right**’ of the people to travel and a government ‘**privilege**’ to drive.”).⁴) “[T]erms such as ‘driver,’ ‘driving,’ ‘vehicle,’ etc. . . . , are all related to commercial activities,” Chris asserted. (Def.’s Reply to People’s Opp’n 9, filed May 4, 2016.) So “any application of the traffic statute outside of that construct renders it unconstitutional,” he claimed. *Id.* Chris conceded that the

⁴ Superior Court Rule 322.1(h)(1) directs that the record on review constitutes “[t]he original case file, to include all exhibits and evidence taken by a magistrate in consideration of the case, and the transcript of proceedings, if any.” In 2015, the Clerk “adopted a new internal procedure whereby petitions for review filed with the Appellate Division . . . are assigned a new case number.” *David*, 2016 V.I. LEXIS 15 at *8 n.1 (quotation marks and citation omitted). However, “there is no Appellate Division rule at present that requires the parties to prepare and submit the trial court record in the internal appeal case.” *Id.* at *14 n.2. Thus, the Appellate Division judges must still review the documents filed in the trial court when deciding internal appeals. *Cf. id.* In this instance, there are two original case files, SX-15-MV-2974 and SX-15-MV-2975. Because the documents pertinent to this review are the same for both cases, excluding the charging documents, all citations to the record are to the case ending in 2974.

Government can make people lose their driving privileges if they drive a vehicle without car insurance, but only “as it applies to commercial activities.” *Id.* (citing *Gov’t of the V.I. v. Cover*, 16 V.I. 321, 326-27 (Terr Ct. 1979)). Driving a motor vehicle is a commercial activity, Chris argued. (*Cf.* Trial Tr. 15:1, 22-24 (“I manage my car. I don’t drive. . . . I am not employed when I travel in a truck. I am not conducting any business.”).) Since Chris was not engaged in commerce when Officer Benjamin stopped him, she had no authority, he claimed, to cite him with any violations of Virgin Islands vehicle and traffic law. Thus, if the police officer lacked authority to issue him a citation, the prosecutor lacked authority to file a case against him, and the trial court lacked jurisdiction to try the case. *Cf. id.* at 17:19-24 (“Again, the government has no jurisdiction over me in my private truck when I’m traveling on the road. I was not conducting any commercial activity because Federal or State government can only regulate commercial activity, not private individuals.”).

In denying Chris’ motion to dismiss, the Magistrate Court ruled from the bench that

operating a motor vehicle on the highways of this territory [is] regulated by the executive branch, which is their right as a police power to enforce the legislation that’s been passed by duly appointed persons of this community. And they have passed regulations to regulate traffic. And one of those regulations is that anybody operating a motor vehicle on the highways has to have their vehicle registered and insured. Your vehicle was not registered or insured. Your motion to dismiss is denied.

Id. at 54:2-11 (paragraph break omitted). In later reducing its decision to writing, the court explained further that “[i]t is a well-settled tenant of constitutional law that federal or state governments may adopt legislation, under their police powers, that may affect the rights of an individual when those rights conflict with the promotion and maintenance of the health, safety, morals, and general welfare of the public,” and concluded that “[t]he requirement of registration and insurance on vehicles is a permissible exercise of the territory’s police power under the Revised Organic Act of 1954 as amended.” (Jgmt 1-2, entered Nov. 15, 2016.) After careful consideration, the

Court must reject Chris' claims of error and affirm the Magistrate Court's denial of his motion to dismiss.

Chris' challenge to the Magistrate Court's jurisdiction is rejected. *See* 4 V.I.C. § 124(b) ("The Magistrate Division of the Superior Court has exclusive jurisdiction over all traffic offenses, except felony traffic offenses."); *accord* *People v. Melendez*, SX-16-RV-003, 2017 V.I. LEXIS 49, *15 (Super. Ct. App. Div. Mar. 22, 2017) ("The Virgin Islands Code vests jurisdiction over non-felony offenses of the vehicle and traffic laws of the Virgin Islands in the Magistrate Division of the Superior Court. Superior Court magistrate judges are assigned to the Magistrate Division where they hear all non-felony traffic offenses." (quotation marks and citations omitted)).

Chris' claims of error are also rejected. Chris admitted that he stopped purchasing insurance and stopped registering his vehicle years ago once he "saw the light after [he] got injured from being a police officer." (Trial Tr. 31:18-19.) It was then that he began "to conduct [his] own research in these matters." *Id.* at 31:19-20. His research has led him astray.⁵ As the Magistrate Court explained, the Virgin Islands Code equates operator with "a chauffeur, [a] driver, or any person operating a motor vehicle." (Trial Tr. 49:18-19 (quoting 20 V.I.C. § 101).) Motor vehicles include "all vehicles

⁵ Chris was correct on one technical point, that there is no victim, *per se*, in this case, not "in the sense that the word is most commonly used." *People v. Melendez*, SX-16-RV-003, 2017 V.I. LEXIS 49, *10 (Super. Ct. App. Div. Mar. 22, 2017). (*Cf.* Trial Tr. 47:12-15 ("[P]resent me the victim that is required by law so that I may be able to face them. Because the government cannot be the victim.")) Rather, the victim is "the community as a whole." *Melendez*, 2017 V.I. LEXIS 49 at *10 (citations omitted). As the Magistrate Court explained, "[t]he victim is the State. . . . The people that represent all of us." (Trial Tr. 42:15-21.)

The people vote. They people are the ones that put the governor, who is the head [of] the executive branch, the senators who control the legislative branch, and the governor [s]elects the judges that sit in the Superior Court. . . . There you have the people selecting those people who are making the laws that you are contesting now. They are your people. . . . And the people are injured because you have violated what they have put in the books or they say.

Id. at 44:4-19 (paragraph breaks omitted). *Accord* *Cover*, 16 V.I. at 326 ("Because this is a law which affects a large segment of the population—practically all adults as drivers, and the entire population *as potential victims*—it must be applied evenhandedly." (emphasis added)).

propelled by power other than muscular, except those running upon rails or tracks, road rollers, tractors, and self-propelled plows and golf carts.” 20 V.I.C. § 101. Chris was not pushing his truck onto Company Street on October 7, 2015 when Officer Benjamin stopped him. He was operating or, in other words, driving his truck.

That said, under Virgin Islands law, persons are licensed to *operate* motor vehicles, not to *drive* them. *See, e.g.*, 20 V.I.C. § 371(a) (“[N]o person shall *operate* a motor vehicle upon the public highways without an *operator’s license* issued by the Director of Motor Vehicles.” (emphasis added)); *id.* § 373 (c) (“An *operator’s license* is valid for five years and expires on the licensee’s birthday in the fifth year after issuance.” (emphasis added)); *id.* § 375(a) (“Before issuing an *operator’s license*, the Director of Motor Vehicles may require such proof as he deems necessary that an applicant is physically and mentally fit to *operate a motor vehicle*.” (emphasis added)). Moreover, it is common for judges, lawyers, legislators, and even the public in general to speak of driver’s licenses in the Virgin Islands, not operator’s licenses. *Compare Cover*, 16 V.I. at 322 (“The defendant in this action was charged on January 29, 1979, with *operation* of an uninsured motor vehicle.” (emphasis added)), *with id.* at 323 (“if you plead guilty or you are found guilty of *driving* without insurance, you lose your driver’s license for six months.” (emphasis added)).⁶ But the distinction between driver and operator has no significance under the law because the law directs that the words “operator” and “driver” are synonymous. *See* 20 V.I.C. § 101. Further, both words are used interchangeably throughout the Virgin Islands Code. *Compare* 20 V.I.C. § 493(a) (“It is unlawful for

⁶ The discussion in *Cover* regarding the automatic suspension of operating, or driving, privileges is no longer current. Section 712 of Title 20 of the Virgin Islands Code governs at present and directs that suspension occurs upon the second and all subsequent convictions. *See* 20 V.I.C. § 712 (“Upon subsequent conviction, he shall be fined not less than \$500.00, nor more than \$1,000.00, and shall forfeit his right to operate a motor vehicle upon the roads and highways of this territory for a period of not less than thirty (30) days, or more than two (2) years from the date of his conviction.”).

any person who is under the influence of an intoxicating liquor or a controlled substance . . . to drive, operate, or be in actual physical control of, any motor vehicle within the Territory.”), and *id.* § 493(c)(1)(A) (“[U]pon a first conviction for a violation of subsection (a) hereof, the court may suspend or revoke, for a period of six months . . . the license to operate a motor vehicle of the person so convicted if the person possesses such license.”), with *id.* § 493(c)(1)(C) (“After a person’s driving privileges have been suspended or revoked for at least 30 days under this paragraph, the person may petition the court for a restricted license and the court may order the Police Commissioner to issue a restricted driving license for the remainder of the period of suspension or revocation.”). *See also, e.g.,* 14 V.I.C. § 481(b) (“A child who commits a second or subsequent violation of the curfew herein while *operating* a motor vehicle may have their *driver’s license* suspended for not more than six (6) months.” (emphasis added)); 20 V.I.C. § 465(b) (“Every motorcycle, operated or driven upon the public highways, shall be equipped with adequate brakes in good working order and sufficient to control such motorcycle at all times.”); *id.* § 496 (“Every person operating a motor vehicle shall, on a signal by a person riding, leading, or driving horses or other draught animals, bring the motor vehicle to a stop, and if traveling in the opposite direction, remain stationary as long as may be reasonable to allow such animals to pass. If traveling in the same direction the driver of the motor vehicle shall use reasonable caution.”).

Chris’ construction of Virgin Islands law is incorrect. When operator and driver are viewed synonymously and “construed according to the common and approved usage of the English language,” 1 V.I.C. § 42, Chris’ challenge fails. Section 331 of Title 20 of the Virgin Islands Code directs that “no motor vehicle, bicycle, or trailer shall be operated upon the public highways of the Virgin Islands unless . . . it has been registered by the Director of Motor Vehicles.” 20 V.I.C. § 331(1).

And before a motor vehicle can be registered by the Director of Motor Vehicles, “the owner of the vehicle [must file] with the Police Commissioner [sic] proof of coverage by a satisfactory ‘owner’s’ policy of liability insurance.”⁷ 20 V.I.C. § 701. Proof that a vehicle is insured is necessary before a vehicle can be registered. The two go hand in hand.

Like every other government in the United States, the Government of the Virgin Islands “has the authority, the responsibility, the right to regulate activities between its citizens.” (Trial Tr. 33:14-15.)

The primary purpose of compulsory motor vehicle liability insurance laws is to compensate innocent victims who have been injured by the negligence of financially irresponsible motorists. To that end, the Virgin Islands Legislature imposed penalties on any owner or registrant of a motor vehicle registered in this territory who operates or causes to be operated, a motor vehicle upon any public road or highway in this territory without motor vehicle liability insurance coverage required” and “any other who operates or caused a motor vehicle to be operated and who knows or should know from the attendant circumstances that the motor vehicle is without motor vehicle liability insurance coverage.”

Krind v. Barlow, 44 V.I. 293, 298-99 (Terr. Ct. 2002) (citing *Cover*, 16 V.I. at 326) (quoting 20 V.I.C. § 712). Similarly, “[a]n unregistered vehicle gives the motoring public no assurances that it is fit to traverse the public roads and makes it a danger to the greater community.” *Allen v. People*, 59 V.I. 631, 637 (V.I. 2013). Chris admitted that he did not comply with the requirement to insure his vehicle or to register his vehicle. He contends instead that the Government cannot make him do so. The Magistrate Court rejected his arguments. On review, this Court finds no error.

⁷ “In 2005, the Legislature amended the Virgin Islands Code to substitute ‘Director of Motor Vehicles’ for ‘Commissioner of Police’” throughout multiple chapters in Title 20. *People v. Rohn*, 55 V.I. 100, 111 n.3 (Super Ct. 2011), *rev’d on other grounds*, 57 V.I. 637 (V.I. 2012). Section 701 is located within chapter 47 of Title 20 and still directs that proof of insurance must be filed with the Police Commissioner, not the Director of Motor Vehicles. The practice, however, is that proof of insurance is submitted to the Bureau of Motor Vehicles. It appears that, in replacing most (if not all) of the references to “Commissioner of Police” throughout Title 20, the Legislature neglected to include references to “Police Commissioner” as well. The statute is quoted above as it stands.

IV. CONCLUSION

Accordingly, for the reasons stated above, the Magistrate Court's decision to deny Chris' motion to dismiss the citations—operating an unregistered vehicle and operating an uninsured vehicle—is affirmed.

Date: April 5, 2017

ATTEST:

ESTRELLA H. GEORGE
Clerk of the Court

By: 

Court Clerk Supervisor

Dated: 

4/5/17



ROBERT A. MOLLOY
Judge of the Superior Court