IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN

Review No: R29/2019
Magistrates Court Case No: 882/18

In the review between:

THE STATE

versus

GOMOLEMO THAKANYANE

CORAM:	NAIDOO ADJP *et* MOLITSOANE, J
JUDGMENT:	NAIDOO, ADJP
DELIVERED ON:	28 JUNE 2019

REVIEW JUDGMENT

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[1] This matter came before us on automatic review in terms of section 302 of the Criminal Procedure Act 51 of 1977 (CPA). The accused was charged, in the Brandfort Magistrates Court, with

contravening section 59(4)(a) of the National Road Traffic Act 93 of 1996, the allegation being that he exceeded the general speed limit by travelling at 141km per hour on a road where the speed limit was 80 km per hour. The speed was recorded by a speed recording device, operated by a traffic officer. The accused pleaded guilty and after the court questioned him in terms of section 112(1)(b) of the CPA, he was found guilty and sentenced to a fine of Ten Thousand Rand (R10 000) or Ten (10) months' imprisonment, which was wholly suspended for three (3) years on certain conditions.

[2] A query, in writing, was addressed to the magistrate enquiring if the accused was asked about competence and ability of the traffic officer who operated the speed recording device, and whether the magistrate satisfied himself that the accused admitted the competence of the traffic officer to operate such a device, in line with the Full Bench decision of this Division in S v Enoch Phuzi, Case number R254/2018. In his response, the magistrate conceded that the accused was not asked about the competence of the traffic officer but that he rather focused on the proper functioning of the device. The magistrate also conceded that the court did not satisfy itself that the accused admitted the competence of the traffic officer to operate the device in question. The magistrate indicated that the guidelines set out in Phuzi were not followed and requested that the conviction and sentence be set aside.

[3] On further perusal of the record, it is clear that the accused did not admit that he knew it was unlawful for him to travel at the speed he did or that his transgression was punishable by law. The magistrate embarked on a line of questioning to extract information

that was completely irrelevant to the charge, for example, lengthy questioning about the state of his mother's health after the incident, and exactly which area in Mafikeng that he was coming from.

[4] In Phuzi, the court held at paragraph 29 that

> "In order to prove that the speed limit was exceeded the State would have to prove that the speed measuring device was reliable for the purpose; that it determined and registered the speed accurately and that it was properly set up in accordance with the manufacturer's specifications. It is axiomatic that a properly trained person would be able to set up the device in accordance with the manufacturer's specifications. It was further held that a court cannot take judicial notice of the fact that the person who operated the device is trained to do so, and the court ultimately found that "the competence of the traffic officer to set up and operate the speed measuring device must be admitted in order to prove that the speed was measured in accordance with the manufacturer's specifications". (paragraph 31)

[5] In the light of the above, the court *a quo*, in my view, erred in finding that all the elements of the offence were proven in order to sustain a conviction. I am of the view that both the conviction and sentence cannot be sustained.

[6] In the circumstances, the following order is made:

The conviction and sentence in this matter are set aside

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S. NAIDOO, ADJP

I agree.

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P MOLITSOANE, J