

**IN THE HIGH COURT OF SOUTH AFRICA
(BOPHUTHATSWANA PROVINCIAL DIVISION)**

CA NO.:78/05

In the matter between:

THE STATE

AND

DIKOBO KGOTLAETSILE PHILLIP

REVIEW JUDGMENT

TLHAPI AJ:

[1] The accused was charged in terms of Section 65 (1)(a) and (b) and 65(2) of the National Road Traffic Act 93 of 1996.

Section 65 (1) provides:

- (1) No person shall on a public road-
 - (a) drive a vehicle; or
 - (b) occupy the drivers seat of a motor vehicle the engine of which is running while under the influence of liquor, or a drug having a narcotic effect.

And in the alternative of Section 65 (2) provides:

- (2) No person shall on a public Road –
 - (a) drive a vehicle; or
 - (b) occupy the driver's seat of a motor vehicle the engine of which is running, while the concentration of alcohol is not less than 0,05 gram per 100 millilitres, or in the case of a professional driver referred to in section 32, not less than 0,02 gram per 100 millilitres.

The accused's alcohol concentration in his blood was alleged to have recorded 0.16grams per 100 millilitres and this was reflected in the alternative charge before the Magistrate.

- [2] The record reflects that on the 12th of April 2005 after the charges were put to the accused he indicated that he understood them. The record also reflects that he pleaded guilty to both the main and alternative charges. The record reflects that only a plea explanation in respect of the main charge in terms of Section 112 of Act 51 of 1977 was taken.

The learned Magistrate put the following questions:

“BY COURT

Q. Do you admit or deny the charge sheet allegation that on the day in question, you drove a motor vehicle whilst under the influence of intoxicating liquor?

R. I admit.

Q. Do you voluntarily and wilfully plead guilty to the charge.

R. Yes.

Q. Are you prepared to tell the court what amount of intoxicating liquor had you taken on the day in question such that you became under the influence of liquor.

R. Yes. I drank three (3) dumpies of reds.

Q. Are you prepared to tell court what type of liquor is reds.

R. Yes. Cider type.

Q. Is it correct that the incident took place on 25/9/04 on the public road to Driefontein village in Lehurutshe.

R. Correct.

Q. Is it correct that on the day in question you were driving a motor vehicle with registration number DZJ742NW.

R. Correct.

Q. Is it correct that on the day in question at the time you were confronted by the traffic officer or police officer, you occupied the vehicle's driver seat of the vehicle concerned and the engine thereof was running.

R. Correct.

Q. Did you have a right to do that or to drive that motor vehicle under such conditions.

R. No.

Q. Did you know that your action to drive such vehicle under such conditions was unlawful.

R. I know.”

[3] The accused was convicted for contravening Section 65(1) (a) and (b) of Act 93 of 1996 and was sentenced to R1 000.00 or 1 year imprisonment.

[4] When the matter came before Pistor AJ he raised the following query:

“Could the presiding Magistrate please indicate whether from the answers given by the accused as part of his plea explanation it became clear that the accused had been “under the influence” of intoxicating liquor? It seems as if the accused has not given any indication (save perhaps for a repetition of the allegation in the charge sheet) of what the influence of the liquor that he had taken was on his person. Similarly there seems to be no information on record regarding the manner by which the accused had driven the vehicle from which it can be deduced that his driving skills were impaired by the liquor that he had taken. Is the end result not that the accused admitted that he had taken liquor but that there is insufficient information to find that at the time of his driving of the vehicle he was “under the influence” of such liquor?”.

[5] The response advanced by the Learned Magistrate is summarised as follows:

5.1 from the accused’s answers it became clear that he had been “under the influence of liquor”. The court was satisfied thereby and did not canvass further if indeed it was true.

5.2 he was satisfied that the accused had pleaded guilty to all the essential requirements of the offence and that he was therefore guilty.

5.3 he conceded that the accused did not give any indication on what the influence of liquor was on his person, because the court restricted itself to its duties as embodied in Section 112(b) of the Criminal Procedure Act 51 of 1977 in that:

- (i) He questioned the accused with reference to the alleged facts in order to ascertain whether the accused admits the allegations in the charge;
- (ii) He satisfied himself that the accused is guilty; and
- (iii) He considered the provisions of Section 35(3) of the Constitution of the Republic of South (Act 108 of 1996) which guarantees the right to a fair trial and which guides the Court 'in its determination of the nature and the ambit of the questions which should be put to the accused'.

[6] In **S v Vorster 2002 (1) SACR 379 at 382D-G** Hugo J said:

“The Magistrate must gain his satisfaction of guilt of the accused by virtue of his own questioning. He need not go into the evidence that the State may or may not have to prove the allegation in the charge sheet. In so-called drunk driving cases it also happens frequently that an accused would plead guilty but then upon questioning would assert that his senses were not affected by the alcohol he had consumed. In such cases he pleads wrongly...”.

The accused admitted that he was under the influence of liquor but that he had taken only three dumpies of cider. The learned Magistrate did not put any question to the accused to establish what effect the alcohol allegedly consumed had on his senses.

In my view, the Learned Magistrate should have canvassed the issue further to enable him to evaluate why the accused believed that he was under the influence of liquor and whether on his own admissions, it could be established whether, the liquor consumed had the effect of impairing or diminishing his skill and judgement. This would have justified a finding of guilt under section 65 (1) (a) and (b). In **S v Engelbrecht 2001(2) SACR 38 at 46A** , Knoll J stated that the meaning “under the influence of intoxicating liquor” still retained the following meaning as stated in **R v Spider 1945 AD 433 at 436:**

“that the skill and judgment normally required in the manipulation of a motor car is diminished or impaired as a result of the consumption of alcohol”.

In the **Vorster** case, supra at **387E** Hugo J made the following remarks:

“In pleas of guilty there is no obligation on the State to show anything. Provided its charge sheet discloses an offence it has no further obligation on a plea of guilty. Such obligation as there is rests upon the magistrate.”
(My underlining for emphasis)

The Learned Magistrate in my view misdirected himself in interpreting the Learned Judge’s comment quoted above to mean, that the Court is not concerned with the admissibility of evidence on a plea of guilty. The Learned Judge clearly states that the Court in exercising its duties under Section 112(b) of the Criminal Procedure Act 51 of 1977, should not

concern itself with what is in the State's docket, but that the court has a responsibility to satisfy itself that the facts admitted by the accused are sufficient to establish guilt of the offence with which he is charged.

It is for the above reasons that I am not satisfied that the Learned Magistrate on the admissions made by the accused could justify a finding of guilty on the main charge, therefore the proceedings were not in accordance with justice.

The conviction and sentence is therefore accordingly set aside.

V V TLHAPI
ACTING JUDGE OF THE HIGH COURT

I agree

A A LANDMAN
JUDGE OF THE HIGH COURT

DATED : 14 JULY 2005