

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

Appeal No.: A105/2013

In the matter between:

MPHALANE ANTHONY TAYE

Appellant

and

THE STATE

Respondent

CORAM:

VAN DER MERWE, J *et* MOTLOUNG, AJ

HEARD ON:

10 FEBRUARY 2014

JUDGMENT BY:

MOTLOUNG, AJ

DELIVERED ON:

6 MARCH 2014

[1] The appellant appeared in the Bethlehem district court on the 17th September 2012 on a charge of reckless or negligent driving. He was convicted of negligent driving and sentenced to R3 000.00 or six months, which sentence was suspended for three years. The appellant appeals against the conviction with the leave of the magistrate.

[2] The conviction flowed from a collision between a Toyota Venture with registration number C[...], driven by the complainant, Mr Maipato, and a Volkswagen Golf with registration number C[...], driven by the appellant, Mphalane Anthony Taye. The collision took place on Riemland road in

Bethlehem on the 26th January 2012.

- [3] The evidence of the complainant was that at approximately 9 (nine) to 10 (ten) o'clock at night on the day of the collision, he was driving in the right hand lane of the two lanes leading south. It was not overcast and visibility was clear. The appellant was driving from the opposite direction in the left lane of the two lanes leading north. A Quantum kombi was also driving in the left lane in a northerly direction. It appeared that the appellant intended to overtake the Quantum. The vehicles were driving at approximately 60 km/h. Suddenly the appellant's vehicle veered to the right hand side of the road and collided with the venture driven by the complainant. This was out of the blue as there was ample space to overtake the Quantum.

- [4] The damage to complainant's vehicle was on the right fender, as well as a torn right front tyre and damaged rim. Due to the impact of the collision, the Venture ended up on the opposite side from where it came.

- [5] The complainant testified that the appellant seemed to be under the influence of alcohol, as they had to assist him to get out of the vehicle after the collision. The appellant could not stand on his feet. Soon thereafter police arrived on the scene, but the appellant was then whisked away by friends and left the accident scene. The police officer was informed that the appellant was about to leave, but he failed to act.

- [6] On arrival at the scene, student constable Moses Nkomo found the complainant's vehicle on the opposite side of the road. He proceeded to draw a sketch plan.

- [7] It was further the evidence of the complainant that the appellant did not know what happened. He said that the appellant came to see him the next morning to ask what happened, as the appellant could not remember how the accident occurred. The complainant said everything happened so fast, he could do nothing to avoid a collision. The appellant offered to repair the complainant's vehicle.

- [8] In support of the state case, constable Moses Nkono also testified that broken glass was found on the point of impact as indicated by the complainant. This is also reflected on the sketch plan submitted. He said the bonnet of the Golf driven by appellant was also damaged. Furthermore, the right front headlamp of the Golf and the mirror were also damaged. There was no damage to the right front door of the Golf. He further found that the Venture of the complainant was damaged on the fender, right rim as well as a torn wheel, as testified by the complainant.
- [9] He emphasised that these were his observations, as he did not see the accident taking place. He had interviewed the complainant as the appellant had already left the scene of the accident. He said there were streetlights at the scene of the accident and while it was at dark, the sky was clear.
- [10] The appellant testified that he was coming from Nando's, a fast food outlet, that night driving in the direction of Bohlokong. After stopping at the set of robots at the intersection of Muller and Riemland Road, he drove on to the left lane of the two lanes to Bohlokong. He noticed a Quantum kombi travelling in the same direction and he decided to change lanes to overtake the Quantum. This necessitated that he drive into the right lane of the two lanes.
- [11] Upon reaching the turn-off to Malan Street, he noticed the Venture, driven by the complainant, indicating that it would turn right and he anticipated that it would wait for him to pass. The next moment the Venture just bumped into his vehicle and hit it at the front wheel at the right door pillar.
- [12] He tried to avoid the accident by accelerating, but the Venture had already bumped into his vehicle. He said this took place far from the collision point as indicated on the sketch plan and that the accident did not occur at the point indicated on the plan. He was not under the influence of liquor. On the day of the accident he suffered shock as a result of which he rushed home to get medication

for his heart condition.

[13] It is clear that on the version of the complainant the collision was caused by the negligence of the appellant whilst on the version of the appellant it was caused by the negligence of the complainant.

[14] The magistrate accepted the evidence of the complainant and rejected that of the appellant as false beyond reasonable doubt. On appeal we can only interfere with these findings in case of material misdirection by the magistrate or if we are convinced that they are wrong. See **R v Dhlumayo and Another** 1948 (2) SA 677 (AD).

[15] No reliance is placed by the appellant on misdirection. We are not convinced that the findings of the magistrate are wrong. On the contrary, they appear to rest on solid grounds.

15.1 Constable Moses Nkomo corroborated the evidence of the complainant with regard to the area of impact. He testified that the broken glass pieces were found on the opposite side of the road relative to where the appellant was heading to.

15.2 He further corroborated the evidence of the complainant regarding the damage to both vehicles. He gave evidence that the front part of the appellant's Golf was damaged, which contradicts appellant's version that the complainant was turning to the right and as a result bumped into the door of his vehicle.

15.3 Another shortcoming in the evidence of the appellant was that he left the scene of the accident as soon as police arrived. He failed to explain adequately why he could not wait until the police completed the investigation.

[16] In the result, the appeal must fail.

ORDER

[17] The appeal is dismissed.

S.E. MOTLOUNG, AJ

I concur.

C.H.G. VAN DER MERWE, J

On behalf of appellant:

Adv P. Nel
Instructed by:
Bloemfontein Justice Centre
BLOEMFONTEIN

On behalf of respondent:

Adv S. Mthethwa
Instructed by:
Director of Public Prosecutions
BLOEMFONTEIN

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