



IN THE HIGH COURT OF SOUTH AFRICA
(NORTH GAUTENG HIGH COURT)

Case number: A72/2012

Date: 3 May 2013

DELETE WHICHEVER IS NOT APPLICABLE	
(1) REPORTABLE: YES/NO	
(2) OF INTEREST TO OTHERS JUDGES: YES/NO	
(3) REVISED	
3/5/2013	<i>Pretorius</i>
DATE	SIGNATURE

In the matter between:

THE STATE

Applicant

and

ROBERT MCBRIDE

Respondent

LEAVE TO APPEAL JUDGMENT

PRETORIUS J.

[1] The State applied for leave to appeal in terms of section 311 (1) of the
Criminal Procedure Act 51 of 1977. This application was opposed.

[2] Section 311 (1) provides:

*“(1) Where the provincial or local division on appeal, whether brought by the attorney-general or other prosecutor or the person convicted, gives a decision in favour of the person **convicted on a question of law**, the attorney-general or other prosecutor against whom the decision is given may appeal to the Appellate Division of the Supreme Court, which shall, if it decides the matter in issue in favour of the appellant, set aside or vary the decision appealed from and, if the matter was brought before the provincial or local division ...”* (Court’s emphasis)

[3] The first ground of appeal according to the state is not based on a legal point. In any event the state had conceded that the inference should be drawn that the making of the statements by the three accomplice witnesses was related to the indemnity in the Marco Singh matter. The state conceded that there was a *nexus* between the making of the statements in this case on 30 May 2007 and the making of statements in the Marco Singh matter on 2 July 2007.

[4] The question of the statement by Dr Moratboa not being allowed to be presented as evidence in the court *a quo* is not a question of law. It did not play any role in the court *a quo* and was not presented in this court and is thus of no importance. The state chose to present the medical

certificate to the court *a quo* and withheld agreement to have the statement by Dr Moratioa placed before court.

[5] The court found that there was other evidence available as to what had happened at the party prior to the collision, but the state chose not to use any of it, although it had been clear that the three accomplice witnesses' evidence has been compromised. This fact can in no way be regarded as a question of law in terms of section 311 (1).

[6] The evidence of Professor van Gelder did carry substantial weight, as there was no expert evidence from the state to contradict his evidence. This finding is not a question of law and does not qualify the state to appeal, it was a factual finding.

[7] In the circumstances, where the three accomplice witnesses were found to be liars, there is no other evidence of the appellant's behaviour before the collision. This fact left the state with a motor vehicle collision where the driver was injured and according to some witnesses smelt of intoxicating liquor. Professor van Gelder's evidence was clear that after he had considered the state witnesses' evidence that all the symptoms observed at the scene could point to some other cause, such as hypoglaecemia or concussion, which was not refuted by the state.

[8] This court is satisfied that the state has not raised any question of law that should be considered by the Supreme Court of Appeal.

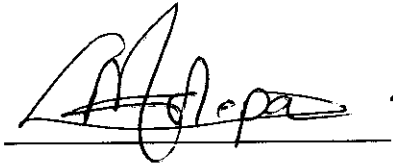
[9] The application for leave to appeal is dismissed.



C Pretorius

Judge of the High Court

I agree,



L M Molopa-Sethosa

Judge of the High Court

Case number	:	A 72/2012
Heard on	:	25 April 2013
For the Applicant	:	Adv Du Plessis
Instructed by	:	Director of Public Prosecutions
For the Respondent	:	Adv GH Penzhorn SC
	:	Adv JE Howse

Instructed by : Jose Nascimento

Date of Judgment : April 2013