



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

Not reportable

Review no: R62/2024

In the matter between

THE STATE

and

JACQUES JERLINE

Coram: Van Zyl J et Van Rhyn J

Delivered: 20 December 2024

Summary: Special Review s 304(4) Criminal Procedure Act 51 of 1977-
contravention s 65(1)(a) or (b) and s 65(2)(a) or (b) of the National Road
Traffic Act 93 of 1996 – no plea recorded in respect of alternative charge – all
elements of offence not admitted on main or alternative counts –conviction and
sentence set aside.

ORDER

On review from the Dealesville Magistrate's Court (sitting as the court *a quo*):

1. The conviction and sentence are set aside.
2. The matter is remitted to the Dealesville Magistrate's Court to commence *de novo* before a different presiding officer.

JUDGMENT

Van Rhyn J (Van Zyl J concurring)

[1] This matter is before us on Special Review in accordance with the provisions of section 304(4) of the Criminal Procedure Act 51 of 1977 (the CPA) from the Magistrate's Court for the district of Boshof held at Dealesville.

[2] The accused was charged with contravening section 65(1)(a) or (b) of the National Road Traffic Act 93 of 1996 (the Act), read with certain sections of the Act, in that he allegedly drove a motor vehicle on a public road or occupying the driver's seat of a motor vehicle, the engine of which is running, whilst under the influence of intoxicating liquor or a drug having a narcotic effect. The accused was furthermore charged with an alternative charge, to wit that he is guilty of the offence of contravening the provisions of s 65(2)(a) or (b) read with certain sections of the Act, driving a vehicle whilst the concentration of alcohol in his blood exceeded the legal limit.

[3] It appears from the record that the charges under s 65(1)(b) and s 65(2)(b) were, however, not put to the accused. On Annexure A to the charge sheet both ss 65(1)(b) and 65(2)(b) appears to have been deleted, which could explain why these charges were not put to the accused and accordingly, no pleas were recorded in respect of the said charges. From annexure A to the charge sheet, it is evident that the accused faced a charge that he on or about 21 February 2020 and at Andries Pretorius Street at Boshoff drove a vehicle, a Fiat bakkie, under the influence of intoxicating liquor or a drug having a narcotic effect. When the said charge was read into the record it was stated that the accused had on 21 February 2024 committed the said offence and not during 2020.

[4] The accused was legally represented and pleaded guilty to the charge of driving under the influence of liquor and thereby contravening the provisions of s 65(1)(a). No plea was recorded in respect of the alternative charge even though same was put to the accused. The accused's legal representative indicated to the court that

'... it is believed that the alternative count was withdrawn' by the prosecution. This was not confirmed by Adv Seboko for the State. The accused's plea was accepted by the State.

[5] Upon his plea, the legal representative of the accused handed in as evidence a written statement in terms of s112(2) of the CPA (the 's112(2) statement'). From paragraph 1 of the s112(2) statement it is apparent that the accused simply declares that he admits guilt on the charge of driving under the influence of liquor and thereby contravening the provisions of section 65(1)(a). The factual matrix upon which the conviction was based is contained in paragraph 3 and 4 of the s 112(2) statement and we quote same in full as follows:

'3

On the 1st of February 2020 it was in the morning and I was coming from my girlfriend's place where there was a party the previous night. I was then trying to get home when I was in Andries Pretorius Street and that was when I saw a roadblock that had many police officers. They then stopped me and they decided to request to searched the car and that was when they then found a single bottle of alcohol. They then requested to take me to the hospital and I was thereafter arrested.

4.

I confirm that at the time of committing the offence of driving under the influence I was in my sound and sober senses.'

[6] The accused was convicted '... of contravention of the provisions of the said sections and the presiding magistrate held that he was satisfied that all the elements of the offence of contravention of the provisions of section 65(1)(a) or (b) read with sections of the Act referred to in the charge sheet had been admitted by the accused in his plea. The accused was sentenced to a fine of R5 000 or ten month's imprisonment which was wholly suspended for a period of five years on condition that the accused is not convicted of the offence of contravention of the provisions of ss 65(1)(a) or (b) read with ss 1, 33, 35, 65(3), 65(4), 65(8), 65(9), 69(1), 73 and 89 of the Act. The trial court, acting in terms of ss 34 and 35 of the Act, further ordered that the suspension of the accused's driver's license should not take effect. The presiding magistrate made no order in terms of s103 of the Firearms control Act 60 of 2000.

[7] On 21 November 2024 the Acting Senior Magistrate, Bloemfontein enquired from the presiding officer to clarify to which charge the accused pleaded guilty as no plea had been recorded in respect of the alternative charge. From the response of the presiding magistrate, it appears as if no plea was tendered by the accused in respect of the alternative charge and this aspect was not followed up during the hearing of the matter. The following further issues were raised by the Acting Senior Magistrate:

- (a) The plea does not admit all the elements of the charge;
- (b) There is no indication that the accused consumed alcohol prior to being stopped at the road block;
- (c) There is no indication if the alcohol consumption had an effect on the skills and abilities of the accused to drive the motor vehicle like an ordinary driver would;
- (d) The accused stated in paragraph 4 of the s 112(2) statement that at the time of committing the offence of driving under the influence he was in his sound and sober senses, which is clearly inconsistent with a plea of guilty on the said charge(s);
- (e) In paragraph 6 of the said statement the accused admits to the s 212 Statement being handed into court as an exhibit. It however appears as if no such statement was received as an exhibit. Even though a plea to the alternative count was not recorded, some of the admissions in the s 112(2) statement refers to the drawing of blood at the hospital and that the blood was drawn within the prescribed two hours period, being a clear indication that these elements refer to the alternative count.
- (f) The enquiry into the suspension of the accused's driving license in terms of ss 34 and 35 is to be clarified by the presiding magistrate.

[8] In his reply the presiding magistrate indicated that he should have been more prudent and ought to have engaged with the legal representative on behalf of the accused regarding the contradicting information contained in the s 112(2) statement. The presiding magistrate was furthermore of the opinion that the accused pleaded guilty on the main charge and not the alternative charge and therefore it was not

necessary to submit the s 212 statement.

[9] The State accepted the plea of guilty in respect of the main charge put to the accused. However, the alternative charge was also put to the accused and no plea was recorded in respect of the alternative charge and there is no indication that the said charge was indeed withdrawn by the prosecution. I agree with the contention by the Acting Senior Magistrate that the plea of guilty is not in accordance with justice. No mention is made in the s112(2) statement that the accused had indeed consumed alcoholic beverages prior to being stopped at the road block nor is there any indication by him that he was driving the vehicle while under the influence of intoxicating liquor or drug having a narcotic effect upon him. The accused did not admit all the elements of the offence on the main or alternative counts.

[10] The essence of a charge is that an accused person has to be informed with sufficient clarity of the case that the State wants to pursue against him. The particulars as to the time when the offence was committed must be set forth so as to inform the accused of the time when the offence was allegedly committed. In the charge sheet reference is made to 1 February 2020 being the date upon which the offence was committed, but when the charge was read to the accused it was stated that the offence was committed on 1 February 2024.

[11] The sentence imposed by the presiding magistrate is suspended on condition that the accused is not found guilty of contravention of numerous sections of the Act. The wording of the suspension of the sentence does not refer to a contravention 'committed during the period of suspension' thus making the sentence reliant upon conviction only, irrespective of the period in which the contravention takes place.

[12] The suspension of the driving licence of a person convicted of the contravention of the provisions of the Act is not limited to s 35. Where s 35 mandates the compulsory suspension of a driving licence for certain periods of time, the court has a general discretionary power in terms of s 34(1)(a) to order the suspension of the driving licence of an offender for a period, as the court may deem fit. Upon a conviction, the driving licence of an offender is automatically suspended through the operation of law. An enquiry should be held to determine whether or not the automatic suspension of the driving license should be lifted or not. The offender must then be called upon to give

cogent reasons why such mandatory suspension should not immediately take effect.

[13] The accused is a first offender. The accused addressed the presiding magistrate in respect of the provisions of s 34 of the Act in that he is a farm worker and needs a motor vehicle to perform his duties on the farm. No mention was made of s 35 and the presiding magistrate did not, before imposing sentence, bring the provisions of s 35(1) or (2), as the case may be, or s 35(3), to the notice of the accused.¹ The prosecutor, on the other hand, addressed the trial court in respect of the provisions of s 34 but did not mention s 35 of the Act. I am of the view that no enquiry was conducted in accordance with the provisions of either s 34 nor s 35 the Act with the result that the reference by the presiding magistrate to both the said sections in the judgment on sentence is incorrect.

[14] For the reasons set out above, the proceedings were not in accordance with justice, and as such the conviction must be set aside. Accordingly, the sentence including the order in terms of ss 34 and 35 of the Act must be set aside.

[15] Accordingly I propose the following order:

1. The conviction and sentence are set aside.
2. The matter is remitted to the Dealesville Magistrate's Court to commence *de novo* before a different presiding officer.



VAN RHYN, J

¹ S 35(4) of the National Road Traffic Act, 93 of 1996.

I concur and it is so ordered.



VAN ZYL, J