



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

Not reportable / Reportable

Case no: A107/2025

In the matter between:

THABO VICTOR THAMAE

APPELLANT

and

THE STATE

RESPONDENT

Neutral citation: *Thamae v The State* (A107/2025) [2026] ZAFSHC 107 (20 March 2026)

Coram: REINDERS *et* MOLITSOANE JJ

Heard: 16 March 2026

Delivered: 20 March 2026

Summary: Appeal against conviction – identification of the perpetrator – cautionary rule in respect of a single witness.

ORDER

- 1 The appeal is dismissed.
 - 2 The conviction and sentence are confirmed.
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JUDGMENT

Reinders J (Molitsoane J concurring)

[1] The appellant was arraigned in the Regional Court, Welkom on a charge of rape read with the provisions of s 51(2), Part II, Schedule 2 of the Criminal Law Amendment Act 105 of 1997. More in particular the state averred that in the early morning hours of 29 May 2023 the appellant had raped the complainant by committing an act of sexual penetration with her without her consent.

[2] The appellant pleaded not guilty to the aforementioned charge, but having heard evidence, the learned magistrate convicted and sentenced him to ten years' imprisonment. The trial court refused leave to appeal, but this Court, on petition (Daniso et Chesiwe JJ), granted leave to the appellant to appeal his conviction.

[3] Mr Reyneke, appearing for the appellant, summarised the appellant's grounds of appeal as follows:

'1.4.1 That the Court *a quo* erred in finding that the Appellant's guilt was proven beyond reasonable doubt;

1.4.2 That the Court *a quo* erred in accepting the evidence led on behalf of the State compared to –

- a) The Complainant's state of sobriety;
- b) The conflicting version the Complainant gave;
- c) The absence of injuries to the Appellant, supposedly inflicted by the Complainant; and
- d) The absence of a DNA analysis.

1.4.3 That the Court *a quo* did not properly evaluate the evidence as presented.'

[4] The appeal is opposed by the state, as represented by Ms Moroka. The state supports the conviction of the appellant by the trial court.

[5] The upshot of the version of the state, as accepted by the trial court, entailed the following: The complainant testified that she was a patron at a tavern on the day in question, accompanied by her cousin Me Ntshidi, where she had been consuming alcohol. She was called outside of the tavern by a person, later identified by her as the appellant. He grabbed and pulled her away from the tavern despite her resistance. The appellant covered her mouth with his hands to prevent her from making alarm and took her to a house adjacent to the tavern. He then strangled her and pulled her to the ground, whereafter he undressed her and had sexual intercourse with her without her consent. He even threatened to kill her and bashed her head against the wall. In order to get him "off" her, she stabbed him with a broken bottle and managed to escape whereafter she made a report that she had been raped and members of the South African Police (the SAPS) arrived. A medical examination was performed on her, which findings were recorded in the J88-report handed into evidence by agreement between the parties. Me Ntshidi testified that in those early morning hours, she had spoken to the appellant, who had been known to her, at the tavern. The appellant "pulled" the complainant from the tavern despite the latter trying to resist against his pulling.

[6] The appellant denied that he had sexual intercourse with the complainant. According to him, he was indeed at the tavern where he observed the complainant, who had requested him to buy her a drink. He attempted to have a conversation with the complainant, which advances she refused.

[7] It is common cause that the complainant was a single witness as to the identity of the rapist upon the execution of the offence itself. The magistrate, having summarised the evidence tendered before her, provided her reasoning for convicting the appellant as she did. It is evident from the judgment that she was alive to the manner in which she had to adjudicate on the identity of the perpetrator who had raped the complainant, considering the evidence of the complainant as a single witness in this respect. The magistrate was also aware of the cautionary rule relating to identification. She dealt, amongst others, with the ample opportunity that the complainant had to observe the

appellant in close proximity and the lightning in and outside of the tavern. The complainant also pointed the appellant out as her perpetrator to the South African Police Service. Moreover, the magistrate found corroboration for the complainant's evidence, not only in the evidence of Ms Ntshidi who had observed the appellant pulling the complainant, but also in the uncontested J88 which indicated injuries to the complainant's face as testified to by her and a white discharge from her vagina. In evaluating the evidence in its totality, she alluded to discrepancies in the state case and found them not to be material. The magistrate was satisfied that, despite such, the truth had been told by the complainant and Ms Ntshidi.

[8] On the other hand, the appellant did not make a good impression on the magistrate who found him to be evasive, his version to be flawed and not reasonably possibly true in light of the totality of the evidence. In this regard, Mr Reyneke responsibly observed as follows:

'Appellant's own version failed miserably, as it was put on his behalf that the Complainant had asked him to buy her a drink, but his answer as to when she made that request (in the light of his own evidence), is still begging an answer. Even his Representative tried to curb the absence of the said evidence by leading him to an answer, albeit not per his original version. I can thus not submit that the summary by the Court a quo on this aspect was incorrect . . .'

[9] Despite the appellant complaining that the magistrate did not take into account the complainant's state of sobriety, the record reflects that the magistrate satisfied herself that the complainant could testify on what had transpired and her level of intoxication was not such that she did not have control of her faculties. The magistrate dealt with the absence of DNA evidence linking the appellant to the rape of the complainant and injuries to the appellant. In my view the absence of such evidence, does not mean that the magistrate had erred by finding that the state has proven its case beyond a reasonable doubt. I say so because the trial court concluded that:

'... In light of the totality of the evidence and in light of factors which are common cause the court finds that the evidence does indicate that it is the accused that pulled the complainant out of the tavern. The rape of the complainant is not in dispute. The only reasonable inference that can be drawn then is that it is the accused that had sexual intercourse with the complainant without her consent and raped her... in light of the totality of the evidence and the corroboration of evidence of identification the court is satisfied that the requirements of caution is satisfied and that the

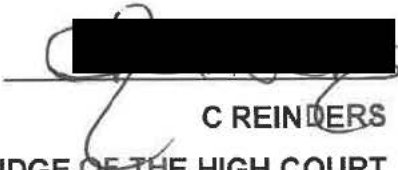
accused has been clearly identified as the perpetrator in this crime...'. It is evident that the trial court duly considered and evaluated all evidence placed before her holistically as she was supposed to do.

[10] Having considered the submissions of Ms Moroka and Mr Reyneke and scrutinised the judgment of the trial court as alluded to herein above, I have not been convinced by the appellant that the magistrate had erred in any way as complained of in his grounds of appeal or, for that matter, in any other manner. The appeal therefore stands to be dismissed.

[11] The appeal lay only against the conviction of the appellant. I might mention in passing, though, that the learned magistrate's deviation from the prescribed minimum sentence of 15 years' (imposing 10 years') imprisonment by alluding to substantial and compelling circumstances, is a discretion which can in any event not be interfered with subject to trite case law for doing so.

[12] For all the reasons as indicated herein above, it follows that the appeal cannot succeed. Accordingly, I make the following order:

- 1 The appeal is dismissed.
- 2 The conviction and sentence are confirmed.


C REINDERS
JUDGE OF THE HIGH COURT

I concur.


P MOLITSOANE
JUDGE OF THE HIGH COURT

Appearances:

On behalf of the appellant

Instructed by:

JD Reyneke

Legal Aid South Africa, Bloemfontein

On behalf of the respondent:

Instructed by:

MM Moroka

NDPP, Bloemfontein