

SOUTH AFRICA / JUDGMENT

Mahlaku v S (A489/2008) [2009] ZAGPPHC 390 (14 October 2009)

[2009] ZAGPPHC 390

COURT

North Gauteng High Court, Pretoria

BEFORE

C Pretorius, E Jordaan

CASE / FILE NUMBER

A489/2008

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IN

THE HIGH COURT OF SOUTH AFRICA

(NORTH

GAUTENG HIGH COURT, PRETORIA)

CASE

NUMBER : A489/2008

DATE

: 14 OCTOBER 2009

In

the matter between:

PATRICK
MAHLAKU Appellant
and
THE
STATE Respondent

JUDGMENT**PRETORIUS J**

The appellant was convicted of one count of motor vehicle theft on 5 June 2000 in the Pretoria Regional Court and sentenced to 8 years imprisonment.

The appellant pleaded not guilty in the court a quo and was represented by Mr van Zyl. The record of proceedings was reconstructed by the magistrate and Mr van Zyl, on behalf of the appellant. They both gave a declaration that the record was reconstructed to the best of the parties' ability.

Sergeant J Naude testified that he was on duty on 21 November 1998 and on patrol with Constable Oosthuizen. At 20h00 they spotted a suspected stolen vehicle, a Ford Laser, with registration number [.....]. They tried to stop the vehicle, but it sped off over two red traffic lights. The driver of the vehicle lost control of the vehicle and drove into a traffic light. Both occupants of the vehicle lumped out and ran away. Sergeant Naude gave chase, after ascertaining that the ignition of the vehicle had been tampered with. He followed the driver and fired several warning shots, asking him to stop then shot the suspect. Sergeant Naude indicated that the incident had happened 2 years prior to him giving evidence and could not remember what clothes the appellant was wearing. This is not really of consequence as appellant admitted to being in the car, but denied being the driver of the vehicle. It is clear from Sergeant Naude's evidence that he could not remember all the details as clearly as when he had made his statement, due to the passage of time.

The other suspect was never arrested. Constable Oosthuizen testified that he and Sergeant Naude were on duty on the night of the incident. His evidence contradicted Sergeant Naude's evidence as to in which direction the appellant had run, as well as the lighting in the area at the time.

Mr Uys testified that he was the owner of a Ford Laser during 1998. He could not recall the registration number of the vehicle. His vehicle was stolen on 21 November 1998. He saw it again on the same night at the scene where the car had collided with an electric box in Silverton. This evidence is contrary to Sergeant Naude's evidence who testified that the vehicle had hit a robot post. Mr Uys did not find any police at the scene. Although it may be suspicious that two Ford Laser vehicles were involved in a collision on the same date the state still had to prove that the vehicle belonged to Mr Uys.

The appellant testified that he had been a passenger in the vehicle as he had obtained a lift to Mamelodi. He confirmed the state's evidence that when the police tried to stop the motor vehicle, the driver sped off and collided with a robot post.

Mr Pistorius, on behalf of the appellant, argued that the state did not prove ownership of the Ford Lazer. Although the state argued that the court must make the deduction that the Ford Lazer, in which the accused had been a passenger, was the vehicle of Mr Uys, the court has some difficulties in doing so without any clear evidence.

Mr Uys could not remember the registration of his vehicle and no attempt was made to place it before court. He further testified that his car collided with an electric box and not with a robot as all the other witnesses and appellant had testified. He did not find either the appellant Sergeant Naude or Constable.

I propose that the appeal against conviction be upheld.

The appeal against conviction is upheld and the sentence is set aside.

Oosthuizen at the scene. He can not identify the scene of the collision as the same as the one the appellant was involved in.

It is trite that the state has to prove its case beyond reasonable doubt. In assessing the evidence in *S van der Merwe* 1999 (2) SA 79 (W) Nugent J held that:

"Some of the evidence might be found to be false; some of it might be found to be unreliable; and some of it to be only possibly false or unreliable; but none of it may simply be ignored."

The Supreme Court of Appeal approved these remarks by Nugent J in *S v van Aswegen* 2001 (2) SACR 97 (SCA).

The court has considered all the evidence, the probability and improbabilities. The court has to agree with Mr Pistorius that the

fact that the state had not proven that the Ford Lazer in which the appellant was found was a stolen vehicle, which could easily have been done had the South African Police followed it up, is essential to the state's case. Theft of the motor vehicle by the appellant has thus not been proven beyond a reasonable doubt.

C Pretorius

Judge of the High Court

I agree,

E Jordaan

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