

SOUTH AFRICA / JUDGMENT

S v Tsotetsi; S v Thinyane; S v Tladi (R272/2018; R352/2018; R353/2018) [2018] ZAFSHC 212 (28 December 2018) [2018] ZAFSHC 212

COURT

Free State High Court, Bloemfontein

BEFORE

Musi

CASE / FILE NUMBER

R272/2018; R352/2018; R353/2018

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IN

THE HIGH COURT OF SOUTH AFRICA,

FREE

STATE DIVISION, BLOEMFONTEIN

Review

No.: R272/2018

In

the review of:-

THE

STATE

And

MOFOTO

ALETTA TSOTETSI

Review

No.: R352/2018

JABUTI

SHORTS THINYANE

Review

No.: R353/2018

TSEKO
ABRAHAM TLADI

CORAM: MUSI, AJP

JUDGMENT

BY: MUSI, AJP

DELIVERED ON: 28 DECEMBER 2018

- [1] These matters were sent on automatic review by the magistrate, Clocolan.
- [2] The accused in the respective cases were convicted of contravening section 59(4) of Act 93 of 1996 – exceeding the general speed limit. They all pleaded guilty.
- [3] The magistrate questioned them in terms of section 112(1)(b) of the Criminal Procedure Act, 51/1977[1]. All three accused were asked leading questions. In *S v Tladi* the accused was asked as follows:

“MR TLADI: I understand Your Worship.

COURT: On the 30th of October 2018, were you on R26 in the district of Clocolan?

MR TLADI: Yes.

COURT: Were you driving a vehicle to which a Ford Ranger with registration number [...]?

COURT: At what speed were you travelling at?

MR TLADI: 176.

COURT: And what was the speed limit on that zone?

MR TLADI: 100 kilometres per hour Your Worship.

COURT: Do you admit that your actions were unlawful and intentional?

MR TLADI: Yes Your Worship.

COURT: Does the state accept the plea?

PROSECUTOR: Your Worship the state accept the plea as the court pleases.”

In *S v Thinyane* the questioning was as follows:

“ACCUSED: Understand, Your Worship.

COURT: On the 23rd of May 2018, were you on R26 a public road in the district of Clocolan?

ACCUSED: Yes, Your Worship.

COURT: Were you driving a vehicle, to wit a Toyota Camry with registration numbers [...]?

ACCUSED: Yes, Your Worship. Yes Your Worship.

COURT: Can you tell the court what happened that led to your arrest on the day in question?

ACCUSED: Your Worship, a police officer stopped and he told me that I was driving on high speed, Your Worship on that road and I was not supposed to drive on that limit of that speed Your Worship.

COURT: Yes?

ACCUSED: And Your Worship, I admit that I was guilty, Your Worship at that moment because I was driving at that high speed and I am asking the court for forgiveness, Your Worship.

COURT: At what speed were you travelling?

Are you going to speak English or Sesotho?

Which one?

ACCUSED: Sesotho.

COURT: Are you comfortable in Sesotho?

ACCUSED: Yes.

COURT: Okay, do not chop and change the languages, stick to one language for purposes of recording.

Do you understand?

ACCUSED: Your Worship, I was not aware that I was driving on that high limit speed, Your Worship but when they stopped me and showed me the readings that is when I saw I was (indistinct 00:09:58) at that high limit of speed, Your Worship.

COURT: What was that speed that you which you were travelling at?

ACCUSED: It was 145km per hour, Your Worship.

COURT: Do you admit that you were travelling at that speed?

ACCUSED: It was 100km per hour, Your Worship.

ACCUSED: Yes, Your Worship I do admit.

ACCUSED PLEADS GUILTY

PROSECUTOR: The state accepts the plea, Your Worship. As the court pleases.”

In S v Aletta Tsotetsi the questioning went as follows:

“ACCUSED: Yes Madam.

COURT: On the 25th of August 2018 and at, were you on R26 a public road in the district of Clocolan?

ACCUSED: Yes, Madam.

COURT: Were you driving a vehicle to wit a Toyota Corolla with registration numbers [...]?

COURT: At what speed were you travelling

ACCUSED: 142.

COURT: And what is the speed limit on that zone?

ACCUSED: 100km per hour.

COURT: Does the state accept the plea of the accused?

PROSECUTOR: The state accepts the plea of the accused, as the court pleases.”

[4] In Tsotetsi and Tladi the accused were not asked why he or she admits that he or she exceeded the speed limit. Neither were they asked who stopped them and under what circumstances they were stopped. They were also not asked why they exceeded the speed limit.

[5] In Thinyane, the accused was asked whether he admits that his actions were unlawful and intentional. It could not have been intentional because he said “I was not aware that I was driving on that high limit speed (sic)...”

[6] An accused who pleads guilty should ideally not be asked leading questions. The magistrate should allow the accused to inform him or her what happened and why it happened. The magistrate should thereafter ask questions to ensure that all the elements of the offence are admitted.

[7] The magistrate could not have been satisfied that the respective accused admitted all the allegations in the charge and that they were guilty.

[8] The magistrate will do well to read the recent judgment of this court in *S v Phuzi* (R254/2018, Free State High Court: Bloemfontein delivered on 28 December 2018).

[9] The convictions and sentences in all three matters ought to be set aside.

[10] I accordingly make the following order.

S v Mofoto Aletta Tsotetsi:-

The conviction and sentence are set aside.

S v Jabuti Shorts Thinyane:-

The conviction and sentence are set aside.

S v Tseko Abraham Tladi:-

C. J. MUSI, J

[1] Section 112(1)(b) reads as follows: “the presiding judge, regional magistrate or magistrate shall, if he or she is of the opinion that the offence merits punishment of imprisonment or any other form of detention without the option of a fine or of a fine exceeding the amount determined by the Minister from time to time by notice in the Gazette, or if requested thereto by the prosecutor, question the accused with reference to the alleged facts of the case in order to ascertain whether he or she admits the allegations in the charge to which he or she has pleaded guilty, and may, if satisfied that the accused is guilty of the offence to which he or she has pleaded guilty, convict the accused on his or her plea of guilty of that offence and impose any competent sentence.”

[1] Section 112(1)(b) reads as follows:

“the presiding judge, regional magistrate or magistrate shall, if he or she is of the opinion that the offence merits punishment of imprisonment or any other form of detention without the option of a fine or of a fine exceeding the amount determined by the Minister from time to time by notice in the Gazette, or if requested thereto by the prosecutor, question the accused with reference to the alleged facts of the case in order to ascertain whether he or she admits the allegations in the charge to which he or she has pleaded guilty, and may, if satisfied that the accused is guilty of the offence to which he or she has pleaded guilty, convict the accused on his or her plea of guilty of that offence and impose any competent sentence.”

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