



**CASE NO. CR 23/2011**

**IN THE HIGH COURT OF NAMIBIA**

In the matter between:

**THE STATE**

versus

**BRADLEY RICHTER**

**ACCUSED**

HIGH COURT REVIEW CASE NO. 99/2011

**CORAM:** SIBOLEKAJ *et* UNENGU, AJ

Delivered on: 15 March 2011

**REVIEW JUDGMENT**

**UNENGU, AJ.:** [1] The accused in the matter was arraigned in the Windhoek Magistrates' Court on charges of:

Count 1: Reckless or Negligence driving, i.e. contravening section 80(1) read with other sections of Act 22 of 1999, of the Road Traffic and Transportation Act;

Count 2: Driving without a driver's licence, a contravention of section 31(1) (a) read with sections 31(2), and 106(7) of the same Act, namely Act 22 of 1999.

[2] The accused pleaded guilty to both counts whereupon the learned magistrate questioned him, on both counts, in terms of section 112(1)(b), of the

Criminal Procedure Act, 51 of 1977 and convicted him as follows:

Count 1: "Verdict: Guilty as charged"

Count 2: "Verdict: Guilty as charged"

[3] The learned magistrate then proceeded to sentence the accused after the latter and the prosecutor were afforded the opportunity each to address the court in mitigation and in aggravation of the sentence respectively. The following sentence was meted out.

Count 1: "N\$3000.00 or 12 months imprisonment."

Count 2: N\$800.00 or 4 months imprisonment."

The sentence imposed is not subject to automatic review in terms of section 302 of the CPA if the fines were paid by the accused. However, it would appear that the accused did not pay the fines and as a result, the matter has to be submitted for automatic review.

[4] When the record of proceedings was placed before me for review, I was not satisfied with the magistrate returning a verdict of "guilty as charged on count 1 and the manner how the record was bound. I referred the record back to the learned magistrate and requested reasons for the verdict "guilty as charged" when the offence against the accused is one of reckless or negligent driving. Also for the magistrate to explain why she allowed a record which was not properly bound to be forwarded to the High Court for review.

[5] The learned magistrate replied to my queries and apologised that the mistakes were as a result of an oversight on her part. She stated that the correct verdict on count 1 should be guilty of negligent driving not as charged. Further, she referred the court to the case of **S v Dandoka** 1992 NR 189 (HC) where section 80(1) of Act 22 of 1999 which provides for the offence of reckless or negligent driving was discussed. Magistrates should note that when an accused

person is charged with an offence of reckless or negligent driving, in contravention of section 80(1) of Act 22 of 1999, he or she can only convict the accused of either reckless or negligent driving, not both or as charged.

[6] That being the case, I am satisfied that, the slight oversight on the part of the magistrate did not cause an injustice to the accused person. In any event, the accused knew that his answers to questions put to him by the magistrate in terms of section 112(1)(b) of the CPA, established negligence on his part.

[7] In the result the following order is made:

1. The verdict of "guilty as charged" in count 1 is set aside and substituted for the verdict: guilty of negligent driving.

The sentence in count 1 is in order and is confirmed.

The conviction and sentence in count 2 are in order and confirmed.

**UNENGU, AJ**

I agree

**SIBOLEKA, J**