THE SUPREME COURT OF APPEAL
REPUBLIC OF SOUTH AFRICA

JUDGMENT

Not Reportable

CASE NO: 453/07

In the matter between:

PATRICK LANGEVELDT **APPELLANT**

versus

THE STATE **RESPONDENT**

CORAM: **MPATI AP, STREICHER, HEHER JJA and LEACH, KGOMO AJJA**

Date of hearing: **20 MAY 2008**

Date of delivery: **02 JUNE 2008**

Summary: **Motor collision – factual dispute – no misdirection on the part of trial court**

Neutral citation: **P Langeveldt v The State (453/2007) [2008] ZASCA 81 (2 June 2008)**

KGOMO AJA

[1] The appellant was convicted in the Stellenbosch Regional Court on 22 July 2002 of culpable homicide arising from the alleged negligent or reckless driving of a motor vehicle and was sentenced to four years imprisonment in terms of s 276(1)(i) of the Criminal Procedure Act, 51 of 1977. On appeal to the Cape High Court (Louw J, Zondi AJ concurring) his conviction was confirmed but the sentence was altered to one of three years imprisonment in terms of s 276(1)(i) of the Act. This appeal, with leave of the court a quo, is against the conviction only.

[2] It is common cause that a head-on collision occurred on 31 January 1998 between the motor vehicle driven by the appellant and that driven by Mr Douglas. The appellant was the sole occupant of his car whereas Douglas had his wife, daughter and son, Marius, as passengers in his car. Marius, who was badly injured and hospitalized for several months, and the appellant were the only survivors of the accident.

[3] It was further common cause that the collision took place on Douglas's side of the road and the appellant's wrong side of the road. The appellant was driving from his friend's home out of Stellenbosch while the Douglas family was driving in the opposite direction into Stellenbosch.

[4] The appellant's defence is succinctly captured by his counsel in his heads of argument:

'Gegewe die feite in die onderhawige saak het Appellant getuig dat hy die oorledene se voertuig waargeneem het op `n afstand van `n 100 meter, die voertuig het oor beweeg na sy baan, hy het remme getrap wat veroorsaak het dat sy voertuig oor beweeg het na die regter baan terwyl die oorledene op sy beurt weer teruggekeer het na die linker baan wat `n kop aan kop botsing veroorsaak het.'

[5] The state relied on the evidence of four witnesses. The first was a Mr Davids, who testified that he was driving his employer's vehicle at the Old Helshoogte Road and Kahler Street junction. He had the right of way. The appellant entered the junction without stopping. Davids applied his brakes and just managed to avoid a collision. The appellant, slouched heavily towards the front passenger's seat with his head leaning on one shoulder, simply drove on as if nothing had happened. Davids was now heading in the same direction as the appellant and witnessed him ignoring another stop sign. He further noticed appellant's vehicle traveling in a zigzag fashion on a straight road. The appellant inexplicably from time to time accelerated or slowed down. Davids reckoned that the appellant posed a danger to other road users and, by way of his municipal car radio, notified the traffic police accordingly, before he turned off in another direction.

[6] Ms Lambrechts and Ms Nel, sisters, testified that they were driving in Bird Street, Stellenbosch and heading towards Koelenhof. While waiting at a red traffic light they noticed the appellant approaching from their right in Bell Street. He turned into Bird Street and in doing so narrowly missed colliding with the kerb on his left and with vehicles traveling in the opposite direction in Bird Street. The appellant tilted perceptibly towards the passenger's seat during his driving. The ladies drove behind him. They observed him speed away and then reduce speed for no apparent reason. His vehicle also swerved from side to side even though he managed to keep it in his correct lane. Ms Nel, who was the passenger, noted the registration of the appellant's vehicle because she and Ms Lambrechts who was driving, realized that they were witnessing an accident waiting to happen. According to the sisters the appellant sped away as they were approaching a bend. They lost sight of him momentarily at that point and then heard a bang. When they came around the bend they realized that a collision had occurred and when another vehicle stopped at the scene they turned around in order to report the matter to the police.

[7] The crucial witness for the State was the surviving member of the Douglas family, Marius. He was accused by the defence of concocting a version. The magistrate found him to be an honest and credible witness. There is no reason to differ from this finding.

[8] Marius's acceptable and accepted evidence boils down to the following. His father was the driver of their car and he was the front passenger. He was 16 years old at that stage. The family was on their way to have dinner with a relative. They were on time and his father drove normally ('binne perke … en rustig'), although he was unsure of the exact speed. His father kept to his correct side of the road throughout. He became aware of the appellant's vehicle when it was practically upon them on their side of the road. As Marius was not the driver there was no need for him to have been vigilant and to have become aware of the impending danger before he actually did. Counsel's criticism of him in this regard is unfounded. What is certain is that if his father's vehicle had swerved in the violent fashion described by the appellant and at high speed, he would have been aware of it.

[9] The magistrate also found Davids and the two sisters to be credible witnesses. It is significant that they all described, in essentially similar terms, the erratic manner in which appellant was driving at different locations. All these witnesses alluded to the contorted posture that the appellant adopted while driving. This points to the fact that the appellant, for whatever reason, was not fully in control of himself, let alone his vehicle.

[10] On the other hand the appellant stated that he had three or four glasses of wine over a period of some six hours, during which he also had a meal, at his friend's place. He over-elaborated on how carefully he drove from his friend's home and even recalled how considerate he was at the stop streets and the robots, what speeds he travelled at,

where he accelerated and why. He denied that he was drunk or that he drove in the manner described by the witnesses. He described his extraordinary posture to a chronic back problem. He acknowledged that at one stage he drove on the edge of the road but explained that he did so to pick up his cell phone from the front passenger's seat when it was ringing.

[11] The appellant blamed Douglas for causing the accident and stated that all he did was to take emergency evasive action in the manner and for the reason described in para 4 above. His counsel submitted that support for his version is to be found in the brake marks which were unbroken for a distance of 15 meters and started on the appellant's side of the road leading up to the point of impact on his incorrect side of the road.

[12] The magistrate was not impressed with the appellant's evidence and rejected it as not being reasonably possibly true. Appellant's concession concerning his awkward posture in the vehicle, his driving on the edge of the road and his erratic driving lends credence to the truthfulness of the evidence given by Davids and the two sisters.

[13] The magistrate carefully evaluated the evidence of all witnesses. He was of the view that appellant's erratic driving and awkward posture indicated intoxication. He gave reasons for such finding and did not misdirect himself in any way. In fact, in his heads of argument, appellant's counsel conceded that the appellant was possibly drunk. He stated:

'Dit word nietemin toegegee dat die Appellant in die lig van die getuienis van Davids en die twee susters moontlik onder die invloed van drank was. Gevolglik moet hy, met respek aan daardie oortreding skuldig bevind word.'

[14] Appellant's counsel argued furthermore that there was no reason for the appellant to have braked, as he did, leaving the oblique tyre burn marks across the road, if something untoward had not been noticeable in the driving of Douglas. There may have been some merit in this submission had it not been for the fact that according to his own evidence the appellant was driving at about 120 km per hour immediately before the collision and had consistently shown lack of control over his vehicle; and had it not been for the credible evidence of Marius to the effect that there was nothing untoward in the driving of Douglas. In the light of that evidence we cannot find that the magistrate was not correct in concluding that the negligence of the appellant had been established.

[15] I make the following order:

The appeal is dismissed.

F D KGOMO

ACTING JUDGE OF APPEAL

CONCUR:) MPATI AP

) STREICHER JA

) HEHER JA

) LEACH JA