



**IN THE HIGH COURT OF SOUTH AFRICA**  
**GAUTENG LOCAL DIVISION, JOHANNESBURG**

CASE NO: A46/2019

COURT A QUO CASE NO: 68/129/2018

1. Reportable: No  
2. Of interest to other judges: No  
3. Revised: Yes, on date reflected below

26 November 2019

A handwritten signature in black ink, appearing to read "D. M. M.", is written over a horizontal line.

(Signature)

In the matter between:

**THABISO TELEKI**

**Appellant**

and

**THE STATE**

**Respondent**

**Heard on:**

**26 November 2019**

**Delivered on:**

**26 November 2019**

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## JUDGMENT

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**DE VILLIERS, AJ:**

- [1.] The appellant was charged in the Orlando Magistrate's Court, Soweto with contravention of section 59(4)(a) read with sections 59(1)(a), 69(3), 73, and 89(1) of the **National Road Traffic Act**, 93 of 1996 and regulation 292(a) of the **National Road Traffic Regulations**, 2000 in that he drove a vehicle in excess of the speed limit of 80 km/h in an urban area at a speed of not less than 124 km/h.
- [2.] The appellant was so convicted by the learned Magistrate Mathebula on 9 October 2018. He was sentenced on the same day to a fine of R6 000.00 or 12 months of which sentence, half was suspended for 5 years on condition that he was not convicted of contravening section 59(4)(a) of the **National Road Traffic Act** during the period of suspension.
- [3.] Leave to appeal against conviction was granted on petition to this court on 15 March 2019 by the Molahlehi J and Johnson AJ.
- [4.] The Metro Police Officer Maduna testified first. He was trained in the use of a speed camera, a Traffic Patrol XRD device. It is a mobile speed measuring instrument using laser technology.
- [5.] On the morning in question Officer Maduna first had to and did check if the device was working properly by doing a scope alignment test. This test is done between the Metro Police offices and the Roodepoort (Magistrate's) Court. A fixed object is used for measuring the distance. In this case it was a paper disk on a wall, a fixed object moving at zero speed.
- [6.] Officer Maduna testified that he was told that land surveyors had measured the distance, and, provided that the device measured 100 metres or more, it worked properly. Officer Maduna was satisfied that the device was in good working order as the device measured a distance of 101.2 metres. It is self-

evident that the accuracy of this measurement would depend on the distance over which the scope alignment test was done.

- [7.] During cross-examination Officer Maduna was asked if he was trained in the use of TCSP guidelines. He was, but he did not know what the acronym stood for. He confirmed that it could be “*Technical Committee for Standards and Procedures*”. He admitted that that he was obliged to follow these guidelines. According to the transcript, clause 1.3 of the TCSP guidelines reads:

*“A land surveyor registered with the SA Council for Professional and Technical Land Surveyors, an credited laboratory or suitable qualified person shall, valet (validate) the distance measurement markers.”*

- [8.] Once the State admits that guidelines had to be followed to test if a speed measuring device operates properly, the guidelines (in the absence of evidence to the contrary) have to be followed to rely on the accuracy of speed measuring devices. See in this regard **S v Snyman** 2001(1) SACR 354 (N), a case dealing with SABS guidelines (SABS Specifications 1795-0 and 1975-1).

- [9.] The State did not present evidence about the distance over which the scope alignment test was done by a land surveyor or other duly qualified person. The Constitutional Court has ruled that hearsay evidence not objected to, must still be disregarded. See **President of the Republic of South Africa and Others v South African Rugby Football Union and Others** 2000 (1) SA 1 (CC) Para 105:

*“We are unable to agree with this reasoning which in our view is clearly fallacious. The averment, that the President had made the comment, was based on double hearsay which prima facie was inadmissible in evidence against him. If it was inadmissible, no regard could be had to it whether the President objected to the evidence or not. ...”*

[10.] Under those circumstances the State failed to establish that the device operated properly on the day in question and would measure speed accurately.

[11.] I accordingly I propose that the following order be granted:

- 1 The appeal is upheld;
- 2 The conviction and accordingly the sentence imposed by the learned Magistrate Mathebula are set aside and replaced with: "The accused is acquitted."

  
DP de Villiers AJ

It is so ordered.

  
Coppin J

On behalf of the Appellant:

Adv. DJ Combrink

Instructed by:

Lamberti Attorneys

On behalf of the Respondent:

Adv. Z Peck