

CASE NO.: CR164/2007

**IN THE HIGH COURT OF NAMIBIA**

**In the matter between:**

**THE STATE**

**Versus**

**JUBLIN KOOPER**

**[HIGH COURT REVIEW CASE NO.: 1210/07]**

**CORAM:** , J et PARKER, J

Delivered on:

2007 November 28

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**REVIEW JUDGMENT**

**PARKER, J.:**

[1] The accused was charged before the Mariental Magistrate's Court with four counts involving motor vehicle offences in terms of the Road Traffic and Transport Act, 1999 (Act No. 22 of 1999) (the Act). After the commencement of proceedings, three counts were withdrawn, leaving only count 4, i.e. "removing vehicle from position it came to rest after an accident," that is, contravening s.78(3) of the Road Traffic and Transport Act,

i.e. the Act.

[2] The accused pleaded guilty and he was convicted on his own plea of guilty and sentenced accordingly.

[3] I addressed a question to the learned magistrate in the following terms:  
“Would the learned magistrate kindly comment as whether the accused did admit all the elements of the offence in s.78 (3) of Act 22 of 1999, taking into account the accused’s response to the court’s question, ‘No persons were injured in any vehicle as I was alone and no persons were injured on the donkey cart?’”

[4] The essence of the learned magistrate’s response is contained in this passage: “The whole focus and reasoning behind the conviction was the removal of the vehicle from the position it came to rest after the accident and the element of injuries sustained by any person as a result of the accident was mistakenly considered as not as relevant as the removal of the vehicle.”

The learned magistrate added that his short answer to my question “is all the elements of the offence in section 78(3) of Act 22 that he accused admitted 1999 ...”

[5] I do not think the learned magistrate is correct, if regard is had to the provisions of s.78 (3) of the Act:

A vehicle which is involved in an accident in which any person is killed or injured shall not be removed by any person from the position in which it came to rest, except if such removal is authorised by a traffic officer, but, if the accident causes a complete obstruction of the roadway, such vehicle may without such authorization be moved sufficiently to allow the passage of traffic, providing the person moving the vehicle ensures that the stationary position thereof is first clearly marked on the surface of the roadway before it is moved.

[6] The elements of the offence are in the opening lines of s.78(3), namely, “A vehicle which is involved in an accident in which any person is killed or injured shall not be removed by any person from the position in which it came to rest, ...” (My emphasis)

[7] Thus, the definition of the proscription describing the requirements set by s.78 (3) of the Act for liability for the crime (see Snyman, *Criminal Law*, 3<sup>rd</sup> ed.: Chapter IIIA)) is not only the removal of the vehicle involved in the accident from the position in which it came to rest, but also a person must have been “killed or injured” in the vehicle that was involved in the accident and which was so removed. Indeed, the proscription of the s.78 (3) crime can be reduced to this paradigm: A person who removes a vehicle that has been involved in an accident from the position in which that vehicle came to rest commits an offence (under s.78 (3)) if a person is killed or injured in that vehicle.

[8] The record shows indubitably that no person was killed or injured in the vehicle that the accused removed or in any vehicle for that matter. That being the case, I find that the accused did not admit all the elements of the offence in s.78 (3) of the Act. It follows that the conviction cannot stand.

[9] In his response to my query, the learned magistrate submitted that if I

find that justice was not served the matter should be referred to the trial court. I do not think any purpose will be served by doing that. As I have said, on the facts the accused did not commit the offence set out in s.78 (3) of the Act.

[10] In the result, the following order:

The conviction and sentence are set aside.

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PARKER, J

I agree.

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MAINGA, J