IN THE HIGH COURT OF SOUTH AFRICA
EASTERN CAPE DIVISION – GRAHAMSTOWN

Case No: CA&R163/14
Date heard: 4/3/15
Date delivered: 26/3/15
Reportable

In the matter between:

BIANCA EKE **APPELLANT**

and

THE STATE **RESPONDENT**

JUDGMENT

PLASKET J

[1] The appellant was convicted, in the Magistrate's Court, Port Elizabeth, of contravening s 65(2)(a) of the National Road Traffic Act 93 of 1996, she having been found to have driven a motor vehicle on a public road while the concentration of alcohol in her blood exceeded the permissible limit of 0.05 grams per 100 millilitres. She was sentenced to a fine of R4 000 or eight months imprisonment, R1 000 or two months imprisonment being conditionally suspended for five years. She appeals against her conviction and does so with the leave of the court below.

[2] The appellant pleaded not guilty to the charge but made a number of admissions in terms of s 220 of the Criminal Procedure Act 51 of 1977 (the CPA). These admissions were that on the date mentioned in the charge sheet, the

appellant had driven the motor vehicle mentioned in the charge sheet on a public road, that a sample of her blood was drawn within the prescribed period and that the result of the analysis of the blood sample was 0.15 grams of alcohol per 100 millilitres. The appellant's attorney, in her plea explanation, expressly placed in issue 'the accuracy and reliability of the entire blood specimen measurement process'. It became clear that by this, he meant to place in issue whether the instruments used to analyse the blood sample, gas chromatographs, had been properly calibrated before the sample was analysed.

[3] The prosecutor then handed in a certificate in terms of ss 212(4) and (8) of the CPA in which Sanelisiwe Nkanyezi Zungu, who stated that she held a national diploma in analytical chemistry, described herself as an assistant forensic analyst employed by the State at the Forensic Chemistry Laboratory of the national Department of Health in Cape Town. She stated that she had analysed the blood sample in this case by means of a method, described in paragraphs 5 and 6 of the certificate, which required skill in chemistry and that she obtained the result that the concentration of alcohol in the blood sample was 0.15 grams per 100 millilitres. The certificate also stated:

'5. The concentration of ethanol (hereinafter referred to as "alcohol") in blood specimens and other fluids of biological origin, is established by using gas chromatography. This blood specimen (CTN-DD04608/2011) was analysed in duplicate using the following method (CT-B-005):

5.1 The gas chromatographs are calibrated before the specimens are analysed. Calibration is done by using certified alcohol standards of different concentrations to obtain a calibration curve. The certified standards are supplied by the National Metrology Institute of South Africa (NNISA), which is the custodian of national measuring standards in South Africa.

5.2 The blood specimen and internal standard (tertiary butanol) are dispensed into a headspace vial by means of a diluter/dispenser that has been verified with respect to volume.

5.3 The headspace vial referred to in 5.2 is then equilibrated in a headspace autosampler and, after a set period of time, a sample of the headspace in the vial is injected onto a column in a gas chromatograph. The headspace sample containing the alcohol and internal standard flows with the mobile phase (nitrogen) through the column where, as a result of interactions

between the compounds (alcohol and internal standard) and the column material, the compounds are separated. The two gas chromatographs are operated under different experimental conditions using columns of differing polarity.

5.4 At the end of the column a detector is situated that detects the compounds flowing with the mobile phase through the column. The signal generated by the detector is captured by chromatographic software and a chromatogram is illustrated. The chromatogram represents the detector's response to the alcohol and internal standard, which are observed as separate peaks, and provides the information necessary to calculate the alcohol concentration. Alcohol and internal standard are identified by their retention times (i.e. their time of residence on the column).

5.5 Reliability of the gas chromatographs is constantly checked by having recourse to the reproducibility of the retention times of the compounds on the column, base-line appearance and resolution between alcohol and internal standard peaks. In addition, a quality control specimen is chromatographed regularly to verify instrument performance. This proves that the gas chromatograph was set up and operating properly.

5.6 This method has been validated.'

Paragraph 6 contained an explanation of the method used to measure the concentration of sodium fluoride in the blood sample by using a fluoride electrode connected to an ion selective meter, and how the ion selective meter was calibrated.

[4] After this certificate had been handed in, the prosecutor closed the State's case. The attorney representing the appellant then closed the case for the defence. The matter was argued and despite the argument of the attorney representing the appellant that the proper calibration of the gas chromatographs could not be proved by way of a certificate in terms of s 212(4) but only by way of an affidavit in terms of s 212(10), the magistrate nonetheless convicted the appellant. He held, as I understand his judgment, that the s 212(4) certificate complied with the statutory requirements for its admissibility, constituted prima facie proof not only of the concentration of alcohol in the appellant's blood sample being 0.15 grams per 100 millilitres but also of the proper calibration of the instruments used and, in the absence of any gainsaying evidence, became conclusive proof of these facts.

[5] Two issues arise in this appeal. They are: (a) whether the s 212(4) certificate could be used to prove the proper calibration of the gas chromatographs; and, if so, (b) whether the mere placing in issue of the accuracy of the result obtained from the gas chromatographs was sufficient to disturb the State's prima facie case.

Section 212 of the CPA: affidavits and certificates

[6] In criminal trials, witnesses are required to give oral evidence unless a law provides to the contrary.[1] They are also required to give their evidence under oath or affirmation, unless they do not understand the nature and import of the oath or affirmation, in which case they will be admonished to tell the truth.[2] Section 212 is a law that provides for exceptions to both the requirements of witnesses giving oral evidence and giving evidence under oath or affirmation.

[7] Section 212 provides for the proof of facts by way of affidavit or certificate in defined circumstances. Section 212(4)(a) provides:

'Whenever any fact established by any examination or process requiring any skill-

(i) in biology, chemistry, physics, astronomy, geography or geology;

(ii) in mathematics, applied mathematics or mathematical statistics or in the analysis of statistics;

(iii) in computer science or in any discipline of engineering;

(iv) in anatomy or in human behavioural sciences;

(v) in biochemistry, in metallurgy, in microscopy, in any branch of pathology or in toxicology; or

(vi) in ballistics, in the identification of fingerprints or body-prints or in the examination of disputed documents,

is or may become relevant to the issue at criminal proceedings, a document purporting to be an affidavit made by a person who in that affidavit alleges that he or she is in the service of the State or of a provincial administration or any university in the Republic or any other body designated by the Minister for the purposes of this subsection by notice in the Gazette, and that he or she has established such fact by means of such an examination or process, shall, upon its mere production at such proceedings be prima facie proof of such fact: Provided that the person who may make such affidavit may, in any case in which skill is required in

[1] CPA, s 161.

[2] CPA, ss 162, 163 and 164.

chemistry, anatomy or pathology, issue a certificate in lieu of such affidavit, in which event the provisions of this paragraph shall mutatis mutandis apply with reference to such certificate.'

[8] Section 212(8)(a) states:

'In criminal proceedings in which the receipt, custody, packing, marking, delivery or despatch of any fingerprint or body-print, article of clothing, specimen, tissue (as defined in section 1 of the National Health Act, 2003 (Act 61 of 2003), or any object of whatever nature is relevant to the issue, a document purporting to be an affidavit made by a person who in that affidavit alleges-

(i) that he or she is in the service of the State or of a provincial administration, any university in the Republic or any body designated by the Minister under subsection (4);

(ii) that he or she in the performance of his or her official duties-

(aa) received from any person, institute, State department or body specified in the affidavit, a fingerprint or body-print, article of clothing, specimen, tissue or object described in the affidavit, which was packed or marked or, as the case may be, which he or she packed or marked in the manner described in the affidavit;

(bb) delivered or despatched to any person, institute, State department or body specified in the affidavit, a fingerprint or body-print, article of clothing, specimen, tissue or object described in the affidavit, which was packed or marked or, as the case may be, which he or she packed or marked in the manner described in the affidavit;

(cc) during a period specified in the affidavit, had a fingerprint or body-print, article of clothing, specimen, tissue or object described in the affidavit in his or her custody in the manner described in the affidavit, which was packed or marked in the manner described in the affidavit,

shall, upon the mere production thereof at such proceedings, be prima facie proof of the matter so alleged: Provided that the person who may make such affidavit in any case relating to any article of clothing, specimen or tissue, may issue a certificate in lieu of such affidavit, in which event the provisions of this paragraph shall mutatis mutandis apply with reference to such certificate.'

[9] Section 212(10) is concerned with the calibration of instruments. It provides:

'(a) The Minister may in respect of any measuring instrument as defined in section 1 of the Trade Metrology Act, 1973 (Act 77 of 1973), by notice in the Gazette prescribe the conditions and requirements which shall be complied with before any reading by such measuring instrument may be accepted in criminal proceedings as proof of the fact which it purports to prove, and if the Minister has so prescribed such conditions and requirements and upon proof that such conditions and requirements have been complied with in respect of any particular measuring instrument, the measuring instrument in question shall, for the purposes of proving the fact which it purports to prove, be accepted at criminal proceedings as proving the fact recorded by it, unless the contrary is proved.
(b) An affidavit in which the deponent declares that the conditions and requirements referred to in paragraph (a) have been complied with in respect of the measuring instrument in question shall, upon the mere production thereof at the criminal proceedings in question, be prima facie proof that such conditions and requirements have been complied with.'

[10] We were informed by Ms Turner, who appeared for the State, that the Minister has not prescribed, in terms of s 212(10), conditions and requirements in respect of gas chromatographs that must be complied with before any reading produced by this instrument may be accepted in criminal proceedings.

[11] The essence of the first issue that must be decided in this appeal is whether proof that a gas chromatograph has been properly calibrated, so that it can be relied upon to provide accurate measurements, may be established by the handing in by the State of a certificate in terms of s 212(4)(a) or whether an affidavit is required in terms of s 212(10).

[12] There are conflicting decisions as to whether the State may prove the accuracy of a gas chromatograph by way of a certificate in terms of s 212(4). In the cases that champion the competing positions, *S v Ross*,[3] on the one hand, and the earlier judgment of *S v Van der Sandt*,[4] on the other, the issue was precisely the same issue that confronts us in this case, namely how the accuracy of a gas chromatograph may be proved.

[3] *S v Ross* 2013 (1) SACR 77 (WCC).

[4] *S v Van der Sandt* 1997 (2) SACR 116 (W).

[13] In *Ross*, Bozalek J held that, while s 212(4) allowed for a fact established by any examination or process requiring skill in, inter alia, chemistry to be proved by way of a certificate,[5] proof of the proper calibration of the measuring instrument used could not be proved in this way because s 212(10) applied to proof of this fact.[6] Section 212(10), which only speaks of proof by way of affidavit, 'does not allow for prima facie proof of the calibration and/or accuracy of any measuring instrument by way of a certificate'.[7] As the State had sought to prove the calibration of the gas chromatograph by handing in a s 212(4) certificate, he concluded that '[t]he "evidence" in question . . . was inadmissible, since it was not proved by means of an affidavit, viva voce evidence, nor was it admitted by agreement'.[8]

[14] In *Van der Sandt*, Van Dijkhorst J held, as a point of departure, that in prosecutions for contraventions of s 122(2) of the Road Traffic Act 29 of 1989 – the predecessor of s 65(2)(a) of the National Road Traffic Act – the State was required to prove (inter alia) that the measuring instrument used – a gas chromatograph – 'gives the correct measurement' and that this entailed that 'its operation be explained, that it is proved to be trustworthy in its operation and that its result is proved to be correct'; and that this 'includes proof that it is properly calibrated'.[9]

[15] He then dealt with how these facts may be proved. He stated that while s 212 created an exception to the rule that oral evidence is usually required in criminal trials, expert evidence 'on the operation, trustworthiness and correctness of the instrument where such is used will still be required (albeit in writing)', when the section applies.[10] Having stated that s 212(4) allows for the admission of an affidavit or certificate as prima facie proof of the fact stated therein, as long as it is a fact ascertained by a process requiring skill in chemistry or physics (among other disciplines), he held:[11]

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[5] Note 3, para 9.

[6] Note 3, para 10.

[7] Note 3, para 11.

[8] Note 3, para 12.

[9] Note 4 at 131e-f.

[10] Note 4 at 133d-e.

[11] Note 4 at 133g-j.

‘The section does not contain any indication that the requirements of proof of trustworthiness and correctness have thereby been jettisoned. There is no reason to do so. The purpose of the section is to obviate *viva voce* evidence in every case where this type of evidence is necessary, not to introduce a new type of evidence, *viz* expert factual evidence of a result without explanation or clarification. As stated in *S v Dickenson* (*supra* at 96A-C) this is not opinion evidence where the facts upon which the opinion is based must be set out with such detail as to enable the court to draw its own conclusion. Nevertheless an expert who utilises an instrument of measurement which is outside the scope of judicial notice should name it and explain its operation and why it is trustworthy. Proof of reliability can be dispensed with in cases where there is a high degree of likelihood that the machine is accurate or because it has been tested. Where the test entails the use of a yardstick, proof that it has been assized is normally accepted as evidence of correctness thereof. *S v Mthimkulu* (supra at 763G-764G).’

[16] In order for a s 212(4) certificate to constitute prima facie proof of a fact stated in it, it must set out the qualifications of the person who made it, describe the process involved, explain why it is reliable and give the result.[12] Van Dijkhorst J set out the requirements of the sections as being: ‘(a) that the fact is established by a process; (b) requiring skill in chemistry; and (c) a written statement by a person who alleges that he has established such fact by means of such process’.[13] He proceeded to say:[14]

‘There is no indication that the Legislature by the use of the collective noun “process” in (a) intended to relieve the State of the duty to place before court evidence which would otherwise be required to be given orally. In fact it must be presumed that the Legislature in enacting s 212(4) was aware of the requirements of proof of facts established by expert means and intended “process” to mean a process acceptable to the *cognoscenti*, correctly calibrated and properly operated rendering accurate results. I cannot imagine any other intention. To require the deponent to state this would not go beyond the wording of s 212(4).’

[17] An interpretation of s 212(4) that requires no more than the formal statement that the result was achieved by a process requiring skill in chemistry, followed by the result would be inimical to a fair trial guaranteed by s 35(3) of the Constitution because it would not provide an accused with enough information to challenge the

[12] Note 4 at 134d-e.

[13] Note 4 at 134g-h.

[14] Note 4 at 134h-j.

result. That being so, Van Dijkhorst J held, ‘a mere statement that an expert used an unnamed unexplained process and so established a fact falls short of what is required of a fair trial’.[15] In addition, more information has to be provided in the certificate to enable the court to satisfy itself that the certificate complies with the requirements of the section – that ‘the fact was established by a process and that such process requires skill in chemistry on the part of the person utilising it’.[16]

[18] Finally, Van Dijkhorst J dealt with whether the certificate must deal with the calibration of the instrument used against assized units of measure. He held in this regard:[17]

‘A court should be practical. If a court can take judicial notice of hearsay evidence about assized scales, as was done in *S v Mthimkulu* (*supra*), there can be no serious objection to judicial notice of the fact that there is a high likelihood that scientists in designated government laboratories when calibrating their instruments will do so against correct standards. The mere allegation of proper calibration will in my view be adequate *prima facie* proof thereof. This conclusion is in conformity with the wording of s 212(4) which requires no more than that the process be set out.’

[19] I am of the view that Van Dijkhorst J’s interpretation of s 212(4) in *Van der Sandt* is correct, and that Bozalek J’s interpretation in *Ross* is not correct. I agree with Van Dijkhorst J’s reasoning to the effect that a certificate, in the circumstances permitted by s 212(4), takes the place of oral evidence, that a mere recordal of a result would not suffice if an expert witness gave oral evidence and that it does not suffice for purposes of a certificate. That being so, the certificate must, of necessity, contain more than the result: it must, to be of any use as evidence, also set out the qualifications of the person who made it, describe the process involved and explain why it is reliable.

[20] The effect of *Ross*, if correct, would be to render s 212(4) certificates both meaningless and redundant as a way of proving any result obtained by a measuring instrument: in every case, the certificate would only contain the result and it would

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[15] Note 4 at 135e.

[16] Note 4 at 135h-i.

[17] Note 4 at 136b-d.

have to be supplemented by an affidavit dealing with the calibration and accuracy of the instrument.

[21] I do not believe that the legislature, knowing what is required for the admission of expert evidence, could have intended such a result. On the contrary, the certificate procedure, while not intended to reduce the burden of proof that rests on the State, was intended to facilitate the procurement of certain evidence of an expert nature. I agree with Van Dijkhorst J in *Van der Sandt* that the purpose of s 212 is simply to 'avoid undue wastage of mainly official manpower by court attendances for the purpose of frequently undisputed evidence on matters nearly always uncontrovertible'.[18]

[22] The court in *Ross* does not appear to have considered *Van der Sandt* and so did not consider Van Dijkhorst J's interpretation of s 212(4), or the statement in the judgment, confirmed from the bar in this matter still to be the case, that the Minister has not, in terms of s 212(10), prescribed conditions and requirements in respect of gas chromatographs.[19] In these circumstances I cannot see how s 212(10) can apply in this case. A condition precedent for the section's applicability is that the Minister has prescribed conditions and requirements in respect of the measuring instrument concerned. It is only when he or she has done so (and they have been complied with by the State) that a reading produced by that measuring instrument 'may be accepted in criminal proceedings as proof of the fact which it purports to prove'. That being so, s 212(10) can have no application in this case.

[23] I accept that, in respect of those measuring instruments for which the Minister has prescribed conditions and requirements, such as the Truvelo Model M4 velocity meter in *S v Baum; S v Booysen; S v Murison*,[20] at least one affidavit has to be handed in to establish prima facie proof that the conditions and requirements have been complied with, and that even if s 212(4) would otherwise apply, a certificate would not suffice to establish that compliance. But, on the other hand, a certificate in terms of s 212(4) that complies with the requirements set out in *Van der Sandt* will

[18] Note 4 at 135f.

[19] Note 4 at 131g-h.

[20] *S v Baum; S v Booysen; S v Murison* 1979 (2) SA 671 (E).

suffice in the case of results obtained from one of what is probably a large number of measuring instruments that have not been prescribed in terms of s 212(10).

[24] In my view, the certificate handed in by the State in this matter complies with the requirements set out in *Van der Sandt* because it meets the formal requirements of s 212(4), sets out the qualifications of the analyst, describes the process used to analyse the sample, explains why it is reliable (including how the gas chromatographs were calibrated and checked for accuracy) and gives a result. It is accordingly prima facie proof of the fact stated in it, namely that the sample of the appellant's blood contained a concentration of alcohol of 0.15 grams per 100 millilitres.

[25] Ms Turner referred us to a regulation made in terms of the National Road Traffic Act. Regulation 332A creates a presumption regarding the calibration or verification of equipment used for road traffic law enforcement. It provides:

'Where in any prosecution for an alleged offence in terms of this Act, it is necessary to prove that any equipment used for road traffic law enforcement purposes was calibrated or verified to establish the accuracy and traceability of such equipment, a certified copy of a certificate issued by a laboratory that is accredited for such calibration or verification, by the South African National Accreditation System (SANAS), shall by mere production thereof, be prima facie evidence as to such calibration or verification.'

[26] She argued that the certificate that was handed in complies with reg 332A and that it establishes on a prima facie basis that the gas chromatograph was properly calibrated, irrespective of whether we consider *Ross* or *Van der Sandt* to be correct. I do not believe that it is necessary to deal with this issue in the light of the conclusion that I have arrived at. I point out, however, that the certificate that was handed in does not purport to be a certificate in terms of reg 332A but one in terms of s 212(4) and s 212(8). Consequently, the appellant was not informed that the State intended to rely on the regulation. I do not know how the appellant's attorney may have dealt with her defence had he been notified of this. Secondly, it would appear that neither the prosecutor, the appellant's attorney or the magistrate were aware of the regulation, and so none of them gave it any consideration.

[27] The first leg of the appeal, namely that the accuracy of the result produced by the gas chromatographs could only be proved by an affidavit in terms of s 212(10) and not by a certificate in terms of s 212(4) must fail. I turn now to the second issue, whether the State discharged the onus resting on it to prove, through the certificate, that the concentration of alcohol in the appellant's blood was 0.15 grams per 100 millilitres.

Prima facie proof and conclusive proof

[28] When the prosecutor handed in the s 212(4) certificate, he said that it was handed in by agreement. The appellant's attorney clarified this. He said that he had no objection to it being handed in but that the issue between the State and the defence remained whether the gas chromatographs had been properly calibrated and whether s 212(4), s 212(8) or s 212(10) applied. The State closed its case and the defence closed its case without leading any evidence.

[29] It was argued before us by Mr Price, who appeared for the appellant, that the mere fact that, in her plea explanation, the appellant placed in issue the accuracy of the blood alcohol result meant that the State had to do more, in order to secure a conviction, than merely hand in the certificate. This was so, he said, because a plea explanation is evidence (and so, I assume, would disturb the State's prima facie case). He cited *S v Bhamjee*[21] as authority for the proposition that a plea explanation is evidence.

[30] Ms Turner argued that the appellant merely placing in dispute the accuracy of the result was not sufficient to force the State to prove it by leading viva voce evidence. There was no evidence before the court below to gainsay the evidence embodied in the certificate and, in these circumstances, prima facie proof simply became conclusive proof.

[31] *Bhamjee's* case and the cases cited in it do not hold that a plea explanation is evidence. Indeed, MJ Strydom J stated that what the accused 'said in his

[21] *S v Bhamjee* 1993 (1) SACR 627 (W).

explanation of plea is not evidence' but a 'disclosure of what he is putting in issue'.[22] What these cases say is no more than that a plea explanation is evidential material because it is an unsworn statement made by an accused in which he or she discloses what is in issue between him or her and the State.[23] MJ Strydom J summed the position up by stating that in cases in which an accused does not testify, while a plea explanation 'is not on the same footing as evidence having been given on oath', it should nonetheless be considered 'in finally deciding whether the State had proved its case beyond a reasonable doubt'.[24]

[32] This does not mean that the plea explanation on its own can displace the State's prima facie evidence. Instead, by identifying the issue in dispute between the State and the accused, it identifies what the State is required to prove in order to secure a conviction.

[33] That a plea explanation is not sufficient to displace a prima facie case is clear from the cases. In *S v Britz*[25] Eloff JP held that the mere fact that the appellant placed the correctness of a s 212(4) certificate in issue 'is not sufficient to affect the *prima facie* value of the certificate'[26] and that the weight of the s 212(4) certificate 'is only affected if there is proof to the contrary'.[27] In arriving at this conclusion, he did no more than apply the judgment of the Appellate Division in *R v Chizah*[28] to the effect that whether a court accepts the contents of a certificate will depend on the evidence that challenges the contents of the certificate or places it in doubt. More importantly, Steyn CJ stated categorically that a challenge to the contents of a certificate that constituted prima facie proof necessarily had to be a challenge by way of evidence.[29]

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[22] Note 21 at 630d.

[23] Note 21 at 630d-f.

[24] Note 21 at 543b-c.

[25] *S v Britz* 1994 (2) SACR 687 (W).

[26] Note 25 at 690f-g.

[27] Note 25 at 691c-d.

[28] *S v Chizah* 1960 (1) SA 435 (A) at 442F-G.

[29] Note 28 at 442D-E.

[34] What then could the appellant have done to rebut the correctness of the result recorded in the certificate? There were, it seems to me, three possible courses open to her. First, she could have applied to the court below to exercise its discretion in terms of s 212(12) to have the analyst subpoenaed to give oral evidence.[30] Secondly, she could herself have subpoenaed the analyst to testify.[31] Thirdly, if she had a factual basis to cast doubt on the accuracy of the result – such as that it could not be accurate because she consumed no alcohol at the time concerned – she could have testified herself or called witnesses.

[35] Finally, what is the effect of the contents of the certificate not being challenged by evidence? In *Ex parte the Minister of Justice: In re R v Jacobson and Levy*,[32] Statford JA held:

'"*Prima facie*" evidence in its more usual sense, is used to mean *prima facie* proof of an issue the burden of proving which is upon the party giving that evidence. In the absence of further evidence from the other side, the *prima facie* proof becomes conclusive proof and the party giving it discharges his *onus*.'

And in *S v Veldthuizen*,[33] Diemont JA held that the words '*prima facie* evidence' used in s 212(4) were not to be 'brushed aside or minimised' and that they meant that 'the judicial officer will accept the evidence as *prima facie* proof of the issue and, in the absence of other credible evidence, that the *prima facie* proof will become conclusive proof'.

[36] In the circumstances, there being no evidence to rebut or challenge the certificate, its contents, having been prima facie proof, became conclusive proof.

Conclusion

[37] In summary, our conclusions are: first, the s 212(4) certificate that was handed in by the State constituted prima facie proof not only of the result of the analysis of the appellant's blood sample but also that the result was accurate because the gas chromatographs used were properly calibrated; and secondly, as

[30] *S v Veldthuizen* 1982 (3) SA 413 (A) at 416F.

[31] *S v Van der Sandt* (note 4) at 132g-h.

[32] *Ex parte the Minister of Justice: In re R v Jacobson and Levy* 1931 AD 466 at 478-479.

[33] Note 30 at 416G-H.

the appellant did not challenge the issue that was placed in dispute by adducing evidence to rebut or cast doubt on the prima facie evidence of the gas chromatographs' accuracy, that prima facie evidence became conclusive proof of the accuracy of the result. Accordingly, the appeal must fail.

[38] In the result, the appeal is dismissed.

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C Plasket
Judge of the High Court

I agree.

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M Makaula
Judge of the High Court

I agree.

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M Lowe
Judge of the High Court

APPEARANCES

For the appellant: T Price SC instructed by Netteltons
For the respondent: N Turner of the office of the Director of Public Prosecutions, Grahamstown