
SOUTH AFRICA / JUDGMENT

Parkins v S (A113/16) [2016] ZAWCHC 144; 2017 (1) SACR 235 (WCC) (27 October 2016) [2016] ZAWCHC 144

COURT

Western Cape High Court, Cape Town

BEFORE

Henney, Smuts

CASE / FILE NUMBER

A113/16

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IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)

(Coram: Henney, J et Smuts, AJ)

[Reportable]

Case No: A113/16

In the matter between:

BRADLEY PARKINS Appellant

and

THE STATE Respondent

JUDGMENT:

27 OCTOBER 2016

Coram

: HENNEY, J et SMUTS, AJ

Judgment

by

: HENNEY, J et SMUTS, AJ

For the Appellant :

Adv John Van Der Berg

Instructed by

: R D Roode Attorney

P O Box 445

Kuils River

CAPE TOWN

c/o

: O J Williams & Associates

1 Egham Road

Wynberg

7800

For the Respondent : Adv G Wolmarans

Instructed by

: Director of Public Prosecutions

Private Bag X9003

Date(s) of Hearing : 14 OCTOBER 2016

Judgment

delivered on : 27 OCTOBER 2016

HENNEY, J et SMUTS, AJ

Introduction

[1] The Appellant was convicted in the Regional Court sitting at Wynberg on the following charges:

1.1 Count 1: Murder committed on 23 February 2008 at Sandown Lane, Athlone, in that the court found that he unlawfully and intentionally

killed Donovan Cupido (“the deceased”) by shooting him with a 9 mm Tanfoglio semi-automatic pistol serial number no: AB 02086 (‘the Tanfoglio’).

1.2 Count 2: Possession of the firearm, as mentioned above, without being the holder of a licence to possess such firearm in contravention of section 3 of the Firearms Control Act^[1] at the same time, date and place mentioned in Count 1.

1.3 Count 3: Possession of one 9mm Norinco semi-automatic pistol with serial number 408336 ('the Norinco') in

contravention of sec 3 of the Firearms Control Act, on the same time, date and place as mentioned in count 1.

1.4 Count 4: Possession of 15 rounds of 9 mm rounds of ammunition in contravention of section 90 of the Firearms Control Act 60 of 2000, also at the same time, date and place as mentioned in Count 1.

1.5 These charges emanate from a shooting incident where the deceased was found to have been shot and killed by the Appellant. The facts and circumstances surrounding this incident, to which we will refer as the first shooting incident, are set out below.

1.6 Two further charges emanated from an incident occurring on 29 May 2008 at 7 Barrowdale Close, Parklands, the residence of the Appellant at the time of his arrest. These are:

1.7 Count 5: A further charge in contravention of section 3 of the Firearms Control Act 60 of 2000. He was found guilty of possession of the same Tanfoglio as mentioned in Count 1 above except that in respect of this charge, he was found to be in possession thereof on 29 May 2008. In respect of this charge, he was also found guilty of being in unlawful possession of the Norinco and a 9 mm semi-automatic Taurus pistol ('the Taurus').

1.8 Count 6: This is a further charge of possession of ammunition in contravention of section 90 of the Firearms Control Act, also committed on 29 May 2008 at 7 Barrowdale Close, Parklands. I will refer to this as the search and seizure incident.

The Appellant was convicted on all these charges on 9 December 2013 and sentenced by Regional Magistrate Govuza on 23 April 2014.

[2] During this time, the Appellant was also standing trial with two other accused, also in the Regional Court sitting at Wynberg, before Regional Magistrate Langa, on the following charges:

2.1 Count 1: Murder committed on 22 April 2008 at Kudu Street, Athlone. It was alleged that he killed EV, a female person, by shooting her with a firearm.

2.2 Count 2 : Possession of a firearm which the make and model were unknown to the state, also in contravention of section 3 of the Firearms Control Act on the same date, time and at the same place as mentioned in the first charge, without holding a licence to possess such firearm.

2.3 Count 3: Attempted murder. It was alleged that he intended to kill RM by shooting at him with a firearm at the same

time, date and place as mentioned in count one.

2.4 Count 4: Possession of 7 rounds of 9 mm rounds of ammunition and 2 x .40 Smith and Wesson calibre rounds of in contravention of section 90 of the Firearms Control Act.

[2] However, according to the ballistic evidence all three firearms were linked to this shooting incident.

[3] 51 of 1977.

[4] Jacobson v Havinga t/a Havingas 2001 (2) SA 177 (T).

[5] See the discussion in Du Toit et al Commentary on the Criminal Procedure Act 2016 Vol 1 15-33,36 and the authorities there quoted.

[6] Carmichele v Minister of Safety and Security and Another (Centre for Applied Legal Studies Intervening) [2001] ZACC 22; 2001

(4) SA 938 (CC) par [36].

[7] Kommissaris van Binnelandse Inkomste v ABSA Bank Bpk 1995

(1) SA 653 (A) at 674C-D.

[8] See, for instance, Milton South African Criminal Law and Procedure 1996 Vol II 3rd at 10.

[9] 2014

(5) SA 297 (SCA) par [26].

[10] 2002

(2) SACR 325 (SCA).

[11] 45 of 1988.

[12] S v Msimango and Another 2010 (1) SACR 544 (GSJ); S v Mothlabane and Others 1995 (2) SACR 528 (B); S v Khumalo (110/12)

[2012] ZAGPJHC 141.

[13] Mpungose and Another v S (460/10) [2011] ZASCA 60 (31 March 2011); Seemela v S 2016

(2) SACR 125 (SCA).

[14] (109/2014)

[2015] ZASCA 52 (27 March 2015).

[15] (208/95)

[1996] ZASCA 14 (18 March 1996) where it was held at par [34-35] “[...] a judge should hesitate long in admitting or relying on hearsay evidence which plays a decisive or even significant part in

convicting an accused, unless there are compelling justifications for doing so.”

[16]

[2006] ZASCA 105; 2007

(1) SA 240 (SCA) at par [171].

[17] 1972

(3) SA 766 (A) at 768.

[18] 2002

(6) SA 305 (SCA).

[19] 1939 AD 188 at 202-3.

[20] 1996

(2) SACR 1 (A) at 8C-E.

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