

SOUTH AFRICA / JUDGMENT

Silinga v S (CA & R 259/2019) [2021] ZAECHGC 32 (11 March 2021)

[2021] ZAECHGC 32

COURT

Eastern Cape High Court, Grahamstown

BEFORE

A. Govindjee, B. Majiki

CASE / FILE NUMBER

CA & R 259/2019

Source: saflii.org · Research copy typeset by Esheria. Not court-issued or certified.

Source record

IN THE HIGH COURT OF
SOUTH AFRICA
(EASTERN
CAPE DIVISION, GRAHAMSTOWN)

Case

No: CA & R 259/2019

In

the matter

between:

XOLISILE
SILINGA
APPELLANT
And
THE STATE
RESPONDENT

JUDGMENT

GOVINDJEE AJ:

- [1] The appellant was charged in the Grahamstown district court with housebreaking with intention to steal and theft. He was accused of breaking into and entering the house of the complainant and stealing an angle grinder.

- [2] The appellant pleaded not guilty. He denied breaking into the complainant's premises. He said that he took the grinder from a family member, in order to compensate him for the money that was due to him. He was convicted and sentenced to three years' imprisonment. Leave to appeal against conviction was granted on petition.
- [3] The case on appeal is that the conviction should be set aside due to lack of any direct evidence linking the appellant to the offence and the failure to prove that the appellant's explanation of events was false. It is also averred that the presiding officer misdirected himself by relying on the doctrine of recent possession and for erroneously inferring the appellant's guilt.
- [4] The State's case was based on the evidence of the complainant and a police official, Mr Kahla. The complainant testified that he had been woken by the sound of people trying to break into his premises on 15 May 2019. They were chased away by his dog and could not be identified or apprehended at the time. Shortly after the incident, the complainant noticed that the door leading to his garage area was open and that only his angle grinder was missing. The grinder was subsequently recovered by the police, and identified by the complainant.
- [5] Mr Kahla testified that he was on duty at Bedford Police Station. He received information about an individual selling a grinder on 16 May 2019. The information led him to a vehicle driven by Samkela Royland (Royland) and the discovery of an angle grinder behind the seat of the vehicle. Later it was identified by the complainant to be the grinder that was missing following the break-in. Royland could not explain the ownership of the angle grinder, resulting in him being taken in for questioning at the police station. He then indicated that the appellant left the angle grinder with him the previous day.
- [6] The appellant was then questioned at his home by Mr Kahla. He indicated that he had received an angle grinder from a family member living or working in Cradock and that he had been in possession of the item for approximately one week. Mr Kahla did not believe the said explanation. He referred the matter to the detectives in Cradock for follow-up, but there is no evidence to suggest this actually occurred.
- [7] According to Mr Kahla, the angle grinder was visible to the appellant when he was subsequently detained for questioning and the appellant confirmed that it was the grinder that he had left with Royland. His testimony in this regard was as follows:

"He did see it, Your Worship, when he entered the station with me, Your Worship, because it was just there in the open and it was just to be registered and booked in Your Worship. He did see it Your Worship and further confirmed that it was the grinder that he had left with Samkela, Your Worship."

Later in cross-examination he amplified as follows:

“Yes he confirmed stating that there was a grinder that he left in the vehicle of Samkela, Your Worship... To explain this clearly, Your Worship, we entered the police station there at the Charge Office. The grinder was there on top of the table as we entered. Without me having said any single word, Your Worship, he just pointed at the grinder and said, ‘This is the grinder’.”

- [8] The appellant testified in his own defence that Royland had borrowed an angle grinder from him. He had taken the angle grinder from the vehicle of an uncle living in Cradock who was indebted to him, following a quarrel about the debt. Mr Kahla had visited the appellant at his home a week after he had lent the angle grinder to Royland. The appellant suggested that he had kept the angle grinder for a week before he gave it to Royland who in turn had it for about two days before the police’s intervention. The police did not follow up on the appellant’s uncle.
- [9] Under cross-examination, the appellant named his uncle as Wanda Silinga, but could not provide his address in Cradock or telephone number. He disputed that the angle grinder referred to by Mr Kahla was the same grinder he had given to Royland. This he said despite the fact that he testified that he had not seen the angle grinder at the police station. This was based on Mr Kahla’s description of the angle grinder as “big”.
- [10] The court a quo accepted that the complainant’s premises was broken into around midnight on 15 May 2019, that an angle grinder was stolen from the garage and identified by the complainant on 16 May 2019. Further that the said angle grinder was found to be in the possession of Royland, it was therefore clear that Royland had received that angle grinder from the appellant. He found that the appellant’s version that he had been in possession of the angle grinder for a week was implausible. His late denial that the angle grinder he had lent to Royland was that of the complainant was also concocted. The learned magistrate concluded that “the grinder was found within hours of the housebreaking in the possession of the accused, the only logical conclusion to draw from those facts is that the accused is the person who broke into the premises and stole the grinder. He is therefore found guilty of housebreaking with intent to steal and theft as charged.”
- [11] The evidence connecting the appellant to the actual housebreaking and theft of the angle grinder is circumstantial. As such, the inference sought to be drawn by the state must be consistent with all the proved facts, which must exclude every reasonable inference save the one sought to be drawn.[1] In *R v Tshabalala and others*, [2] the court held that when property is proven to be stolen, the accused’s conduct and the absence of explanation or giving of a false explanation in relation to such property are relevant to the question whether possession was innocent or guilty and constitutes circumstantial evidence from which an inference of guilt may be drawn.

- [12] In *S v Parrow*,^[3] Holmes JA held that: “On proof of possession by the accused of recently stolen property, the court may (not must) convict him of theft in the absence of an innocent explanation which must reasonably be true. This is an epigrammatic way of saying that the court should think its way through the totality of the facts of each particular case and must acquit the accused unless it can infer, as the only inference, that he stole the property”.
- [13] If the proven facts do not exclude all other reasonable inferences, there is doubt whether the inference sought to be drawn is correct, and the state remains bound to furnish proof beyond reasonable doubt.
- [14] Royland was not called to testify but that is not of any consequence in the light of the fact that the appellant had admitted to having been in possession of an angle grinder which he then lent to Royland. The court *a quo* rejected that version.
- [15] Regarding the doctrine of recent possession, the Supreme Court of Appeal held in *Mothwa v The State*:^[4]

“The doctrine of recent possession permits the court to make the inference that the possessor of the property had knowledge that the property was obtained in the commission of an offence and in certain instances was also a party to the initial offence. The court must be satisfied that (a) the accused was found in possession of the property; (b) the item was recently stolen. When considering whether to draw such an inference, the court must have regard to factors such as the length of time that passed between the possession and the actual offence, the rareness of the property, the readiness with which the property can or is likely to pass to another person.”

- [16] I am of the view that the doctrine of recent possession is sufficiently broad to encapsulate the appellant’s admission that he had been in possession of the stolen property before lending it to Royland.^[5] Courts have repeatedly emphasized that the doctrine of recent possession must not be used to undermine the onus of proof which always remains with the State. It is not for the accused to rebut an inference of guilt by providing an explanation. All that the law requires is that, having been found in possession of property that has been recently stolen, the accused gives the court a reasonable explanation for such possession.^[6]
- [17] As such, in the absence of a reasonably true explanation, the appellant’s conviction must stand. The appellant’s explanation for coming into possession of the angle grinder is vague in respect of the identity and whereabouts of Wanda Silinga (which was central to his defence). More importantly, the explanation is inconsistent with the proven fact that the item was recovered within a day of the housebreaking and theft. Accordingly, the explanation must be found to be false. The belated suggestion that the angle grinder recovered by the police was not the same angle grinder the appellant admitted lending to Royland was also correctly rejected. As Mr Geldenhuys correctly conceded, for this explanation to be true it

would have required Royland to have been in possession of two different grinders at the time he was questioned. There is simply no suggestion of such a nature whatsoever. It is clear from the accepted testimony of Mr Kahla, extracted above, that the appellant himself pointed out the grinder at the police station and that this was the very same grinder that had been stolen from the complainant. In the absence of a reasonable explanation the conviction must stand. The issue of not having been shown the grinder was also not put to Kahla. This was despite the fact that the cross-examination referred to in par 7 above provided the ideal opportunity to put this version. Finally, Kahla's mere reference to the grinder as being 'big' as the basis for suggesting a different grinder must, when considering the subjectivity of reference to a 'big' or 'small' grinder, be rejected.

[18] I therefore make the following order:

The appeal is dismissed.

A. GOVINDJEE

ACTING JUDGE OF THE HIGH COURT

Majiki J:

I agree.

B. MAJIKI

JUDGE OF THE HIGH COURT

Appearances:

Obo the Appellant:

Adv D. Geldenhuys

Legal Aid South Africa, Grahamstown

69 High Street, Grahamstown

Tel: 046 622 9350

Ref: Mr M T Solani

Obo the Respondent:

Adv H. Obermeyer

NDPP, High Street, Grahamstown

Tel:

(046) 602 3000

Heard:

10 February 2021

Delivered:

11 March 2021

[1] Rex v Blom 1939 AD 188 at page 202-3.

[2] 1942 TPD 27 at page 30.

[3] 1973

(1) SA 603 (A) 604B-C.

[4] [2015] ZASCA 143 at paras 8-9.

[5] See S v Mohlomi Pii [2013] ZAFSHC 216 par 20.

[6] Mothwa v The State

[2015] ZASCA 143 par 10.

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.saflii.org/za/cases/ZAECGHC/2021/32.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/silinga-v-s-unknown-topic-aecghc-2021>

Prepared on 9 October 2026 · Esheria