

SOUTH AFRICA / JUDGMENT

Takwanda v S (A142/2022) [2023] ZAGPJHC 644 (5 June 2023)

[2023] ZAGPJHC 644

COURT

South Gauteng High Court, Johannesburg

BEFORE

Johnson, Ismail

CASE / FILE NUMBER

A142/2022

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REPUBLIC OF SOUTH

AFRICA

IN THE HIGH COURT OF

SOUTH AFRICA

(GAUTENG LOCAL

DIVISION, JOHANNESBURG)

CASE NO: A142/2022

NOT REPORTABLE

NOT OF INTEREST TO

OTHER JUDGES

REVISED

06.06.23

In the matter between:

SIMBAVASHE

TAKWANDA

Appellant

and

THE

STATE

Respondent

NEUTRAL CITATION: Simbavashe Takwanda v The State (Case No: A142/2022)
[2023] ZAGPJHC 644 (05 June 2023)

JUDGMENT

This judgment and order was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to Parties / their legal representatives by email and by uploading it to the electronic file of this matter on Case Lines.

JOHNSON AJ:

- [1] The appellant and a second accused were charged in the regional court, Johannesburg, with robbery with aggravating circumstances (the wielding of a firearm) read with section 51(2) of the Criminal Law Amendment Act 105/1997 In that they assaulted Mbuyiselwa Elias Naga on 19 August 2015, and with force took from him a Truck with registration number [...], two trailers with registration numbers [...]and [...], a cell phone, cash, and bank cards. The charged sheet was defective in that it lacked the correct averments as to the vehicles, but we are of the view that the defect was cured by the evidence of Mr Naga. They were charged in the alternative of a contravention of section 36 of the General Law Amendment Act 62/1955 in respect of the items mentioned in the main count, as the State alleged that there was a reasonable suspicion that it had been stolen for which possession the appellant could not give a satisfactory account. They pleaded not guilty, but were convicted on the main count on 12 April 2018. They were both sentenced 12 years' imprisonment each and no order was made in terms of section 103 (1) of the Firearms Control Act 60/2000, which rendered them both unfit to possess firearms.
- [2] There is only an appearance for the appellant, and none for the second accused. According to what we understand from Adv. Mosoang who would have appeared for both, he cannot be traced. He was therefore unable to take instructions from him, and is only appearing for the appellant. We will therefore only refer to the evidence as far as it relates to the appellant. The appeal is only against the conviction.
- [3] The evidence that was presented by the State, was that the complainant was robbed at the Heidelberg bridge in the way, and of the items mention in the charge sheet on19 August 2015 at approximately 19:40. The truck and trailers were loaded with Unilever products. He could not identify any of the perpetrators.
- [4] Mr Burger, a private investigator, was on duty on the day in question when he received information from BFK Recoveries that communications with the truck and trailers had been lost. He did however track the driver's cell phone to City Deep. He searched the area but could not locate the vehicles and called off the search.

- [5] At 06:45 BFK Recoveries gave him new co-ordinates for the location of the vehicles, and it led him to Jewel Street in Jeppe's Town. He arrived there at 07:36. After he arrested the absent accused, he approached the appellant who was sitting behind the steering wheel while the engine of the vehicle was idling. The dashboard was dismantled in their search for the tracking device. He arrested the appellant with the assistance of Warrant Officer Phakathi, who happened to pass by and was off-duty.
- [6] The vehicles had no mechanical problems and was driven away from the scene.
- [7] All the above-mentioned facts are common cause. The only issue, is whether the appellant was involved in the robbery.
- [8] The appellant testified that he was walking along Jules Street when he noticed the truck on the side of the road. He approached the driver to enquire whether his company could assist him with employment, as he is a qualified driver. The driver requested him to assist in hooking the trailer, that is how he ended up in the driver's seat. The driver's phone rang and he said that he was going to a shop to buy airtime, and disappeared. Mr Burger then appeared on the scene.
- [9] The learned magistrate accepted the evidence of Mr Burger and Warrant Officer Phakathi and rejected the version of the Appellant. We are of the opinion that his assessment cannot be faulted and we agree with him.
- [10] During argument before us Adv. Mosoang for the appellant conceded that the appellant was in recent possession of the vehicles mentioned in the charge sheet. This was a well-made concession as the learned magistrate correctly applied the principles relating to recent possession, and we could not find any misdirection.
- [11] Ultimately, the trial court's finding of guilt hinged on whether the appellant was unable to satisfactorily explain how he came to be in possession of the vehicle, coupled with the rejection of his version concerning the circumstances giving rise to his arrest. As is evident from the judgment, the State relied on the doctrine of recent possession in arguing for a conviction.
- [12] The learned magistrate considered whether he could on the proved facts, infer that the accused was guilty of the offence if regard is had to the doctrine of recent possession as referred to in *S v Parrow* 1973 (1) SA 603 (A) at 604 C.
- [13] He considered the evidence of the appellant, but found that his evidence in effect did not amount to an innocent explanation which might reasonably be true. The finding was in our opinion correct, and Adv. Mosoang could not point to any reason why it was not. We find it highly improbable that a robber would leave his valuable bait in the hands of the appellant, a stranger to him, to go and buy airtime, whilst the engine was idling. Nothing prevented the appellant from driving away from the scene. His version that he had to assist the driver to hook up the trailers is also false. It is common cause that there was nothing wrong with the truck and trailers when it was driven away after the recovery.

[14] There was in our opinion no misdirection of facts by the trial court, and the conclusion was correct. The court of appeal will only reject the trial court's assessment of the evidence if it is convinced that the assessment is wrong. That was not the case here.

[15] We make the following order:

The appeal against conviction is dismissed.

JOHNSON A J

ACTING JUDGE OF THE HIGH COURT

GAUTENG LOCAL DIVISION

I agree and it is so ordered

ISMAIL J

JUDGE OF THE HIGH COURT

GAUTENG LOCAL DIVISION

Heard on: 22 May 2023

For the Appellant: Adv. Mosoang Johannesburg local Office 3rd floor 56 Main street Marshalltown Johannesburg For the State: Adv. Kau Office of the Director of Public Prosecutions Innes Chambers Cnr Pritchard & Kruis Street Johannesburg, 2000 Tel:

(011) 220 4071 Fax:

(011) 220 4057 Cell: 082 845 4747

Date of Judgment: 06 June 2023

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