

***A1142/06 NOT REPORTABLE
DATE: 3 SEPTEMBER 2007***

IN THE HIGH COURT OF SOUTH AFRICA (TRANSVAAL PROVINCIAL
DIVISION)

In the matter between

5.
and

THE STATE

JUDGMENT

MURPHY J

1. The appellant was convicted in the Regional Court Nelspruit on a count of robbery with aggravating circumstances and contravention of section 2 of the Arms and Ammunition Act 75 of 1969.
2. The appellant was sentenced to 15 years imprisonment on the first count and 2 years imprisonment on the second count. The sentences were ordered to run concurrently.

3. The appellant approaches this court en appeal against conviction.

4. Heads of argument were not received by the court prior to the appeal heard and consequently to reserve judgment. At the appeal hearing the respondent, the state, conceded that both offences
had not been proved beyond a reasonable doubt.

6. The state submitted that the appellant's conviction on a charge of robbery with aggravating circumstances could not be supported.

6. The complainant, Mr Sibiya, was hijacked of his vehicle, a Nissan Almera with registration number CTC 264 MP on 15 April 2004. However, he was not able to identify the appellant as one of the robbers. The complainant's motor vehicle was found some two weeks later on 28 April 2004. The appellant was not linked to the offence either by fingerprints or by virtue of being in possession of any of the items that the complainant was robbed of. The only circumstantial evidence against the appellant is the fact that he was arrested in the area where the stolen vehicle was found. The appellant was found approximately 10 metres from the vehicle. It might be inferred that the appellant was indeed one of the occupants of the vehicle on 28 April 2004, but it does not follow from this that he was one of the robbers of the complainant. Accordingly, we are in agreement that the

case against the appellant
beyond a reasonable doubt.

it was unable to prove that the firearm that was tested by Inspector
Roelofse is the same firearm that was found in the appellant's possession.

7. For those reasons the appeal should succeed.

8. Accordingly, the following order is made:

i) The appeal against conviction succeeds.

ii) The conviction and sentence of the on the charge of robbery has not been
magistrate of 3 May 2005 is set
aside.

to the handling of the firearm is incomplete. The state has conceded that

JR MURPHY

JUDGE OF THE HIGH COURT

MAKGOKA

ACTING JUDGE OF
THE HIGH COURT

With regard to the weapons charge the chain of the evidence with regard

Date Heard: 20/08/07

For the Appellant Adv R I-(riel, I

Instructed By: Legal Aid, Nelspruit

For the Respondent: Adv 8T Moetetsi Instructed

By: Director of Public Prosecutions