

48/89

Case no 50/88  
/MC

IN THE SUPREME COURT OF SOUTH AFRICA  
(APPELLATE DIVISION)

Between:

DOLLY VERONICA DANIELS ..... Appellant  
(Appellant a quo)

- and -

THE STATE ..... Respondent

CORAM: E M GROSSKOPF, MILNE JJA et NICHOLAS AJA.

HEARD: 23 MARCH 1989.

DELIVERED: 31 MARCH 1989.

J U D G M E N T

NICHOLAS AJA.

NICHOLAS AJA:-

The appellant, a 42 year old woman, was convicted in the Magistrates' Court, Johannesburg, of dealing in 911 tablets containing Methaqualone (Mandrax) in contravention of s 2(a) of the Abuse of Dependence-producing Substances and Rehabilitation Centres Act, 41 of 1971. She was sentenced to imprisonment for 5 years. An appeal to the Witwatersrand Local Division was unsuccessful, and she now appeals against the conviction to this court on leave granted by the Court a quo.

During the morning of 21 May 1985, four members of the South African Police, who were attached to the South African Narcotics Bureau (SANAB) at Soweto, arrived at the appellant's house at 30 Cavendish Street, Eldorado Park. They were led by Captain Carstens, who displayed his police appointment certificate and informed the appellant that they were police officers and proposed to search the house. She said that she

would not permit a search, explaining that she had, shortly before, been robbed of R5 000 by people who had also held themselves out as police officers and searched her premises. Carstens walked into the main bedroom together with the appellant. He enquired from her, who slept there. She replied that she did, and that her friend who was present and who was later charged with her as accused No 2, sometimes slept with her. On Carstens's instructions, two constables (Nel and Newyear) began to search the room. The appellant cursed and screamed at the police. With the consent of Carstens, she telephoned the police at Kliptown to ask them to be present before further search. In the bedroom were a wardrobe and a dressing table, both of which were locked. Carstens asked the appellant to open them. According to his evidence,

"Sy het egter gesê dat sy die sleutel sal soek en later aan my gesê, edelagbare, dat sy nie weet waar die sleutel is nie. Die beskuldigde het gesê, edelagbare,

dat sy nou na Kliptown polisiestasie wou ry sodat sy die polisie kan gaan haal om teenwoordig te wees. Sy het vertrek met 'n Peugeot 504 voertuig."

When she left, the appellant told Edith, a black woman who was present, to remain in the bedroom and see that the police did not fiddle around with her things. After waiting for about half an hour, Carstens sent Captain Basson and Constable Newyear to Kliptown police station to look for the appellant. They returned without having found her. Carstens then gave instructions for the forcing of the locks on the wardrobe and the dressing table. This was done. In the wardrobe was found a red carrier-bag bearing the words "Lucky Seven". It was placed on the bed and three plastic bags - one white, one green and one pink - were taken out. Reference will be made later to what was contained in the bags. The contents were replaced in the Lucky Seven bag, which was taken to Protea police station. Accused No 2 and Edith were escorted there.

At the police station the contents of the red bag were more closely examined. In the white bag were found 495 loose tablets; in the green bag four plastic bank bags each of which contained 100 tablets; and in the pink bag was a plastic bank bag which contained 16 loose tablets and R725 in banknotes.

The tablets were submitted for chemical analysis and found to contain Methaqualone.

Two days after the occurrence the appellant arrived at Carstens's office, accompanied by her legal adviser. She claimed the said amount of R725 which was in the red bag and Carstens handed it to her.

Evidence for the prosecution was given by each of the four policemen, namely, Captain Carstens, Captain Basson and Constables Newyear and Nel. The appellant was the only witness for the defence. She said that 30 Cavendish Street is a six-roomed house, in which she lived with her son and Mampe Manuel, Edith Molefe and Elizabeth. She occupied the main bedroom,

but her boyfriend, accused No 2, sometimes slept there. Mampe Manuel and Edith Molefe were her helpers "in cleaning the house and in selling the liquor". The liquor storage was in the wardrobe in the main bedroom. The keys to the wardrobe were held by Mampe.

She said that Carstens and his party arrived at her house at "about something to ten". There were people in the house sitting drinking liquor. She was "a bit upset". The reason was that :-

"A few weeks ago there came also people that said they were police. They said they wanted to search the house. After they searched the house, they stole money in the wardrobe which was R5 000 and that money was supposed to have (been used to buy a) car the following day ..... They also left a packet with tablets .....(which) they left in the wardrobe .... in the bank plastic bag .... Mandrax tablets, which I took to the .... Kliptown police station..... I reported the matter at the police station."

She said that with Carstens's permission, she 'phoned Kliptown police station and spoke to Sergeant Steve, who said she should come over. She then went to the police station and did not return to the house until after the police had left.

Asked what, so far as she knew, was kept in the wardrobe, she said that there was money in the Lucky Seven bag, liquor, crockery, a camera and a few other items. The money kept there was "change for the liquor" and she said that money which she received from the sale of men's clothing (in which she travelled in Lesotho and Natal) was also kept in the Lucky Seven Bag.

She did not know of any Mandrax tablets in the wardrobe. She had no idea where the Mandrax came from: "I do not know anything about it".

There was only one set of keys for the wardrobe. "Mampe usually kept the keys, because she was in charge of the liquor." She said however that she (the appellant) used the

wardrobe regularly as well.

The only material difference between Carstens and the appellant was in regard to what she said in answer to his request for the keys. In her evidence she said,

"Captain Carstens asked me for the wardrobe keys. I told Captain Carstens I am going to look for the keys. So when I came back, I think I did tell him that I think the keys are with Mampe."

It was not however put to Carstens in cross-examination that the appellant told him that she thought the keys were with Mampe. All that he was asked was whether he knew the name of Mampe Manuel, which he denied.

Evidence in this connection was also given for the State by Captain Basson, who said :-

"...daar is 'n versoek aan beskuldigde 1 gerig om die deure oop te sluit. Sy het gesê dat sy die sleutel sal kry, maar dat sy eers na die polisiestasie wil gaan."

Asked in cross-examination whether the appellant mentioned the



name of Mampe, he replied that he had never heard such a name.

It was put to him that the appellant would say that she was asked where the key was, and that

"Sy het toe geantwoord sy sal vir die sleutels gaan soek. Sy meen sy het bygevoeg die sleutels is by Mampe, want sy het die sleutels van die hangkas."

The witness replied that he could not remember this.

In his judgment the magistrate said that there were inconsistencies and discrepancies regarding the keys to the wardrobe between the evidence of Carstens and that of Basson. He held nevertheless that the name Mampe was not mentioned. Here the magistrate was undoubtedly correct. Carstens was not cross-examined on the point, and in her own evidence the appellant was very uncertain: "I think I did tell him that I think the keys are with Mampe."

In regard to the appellant, the magistrate said that he could not say that she was an unimpressive witness: she

acquitted herself well in the witness-box, and she gave her evidence candidly and without any signs of hesitation.

Nevertheless, on an overview of the whole case, and having regard to the probabilities, the magistrate concluded that the Court could safely reject the appellant's version. He was satisfied that the tablets found in the appellant's wardrobe were in her possession and that she had sole custody and possession of the tablets. By virtue of s 10(1)(a)(ii) of the Act it was to be presumed that she dealt therein.

The crucial question in this appeal is whether there was proof, beyond reasonable doubt, that the appellant had knowledge that her red bag contained Mandrax. The answer depends upon inference from the proved circumstances and must therefore be tested by the cardinal rules of logic referred to in R v Blom 1939 AD 188 at 202-203.

Is the inference, that the appellant had such knowledge, consistent with all the proved facts? It is clear

that it is. The police found the dagga in the appellant's house; in her bedroom; in her locked wardrobe; in her red Lucky Seven bag; together with money which she claimed as her own. There are inferences to be drawn from the distribution of the contents of the Lucky Seven bag. The white bag contained the bulk stock of Mandrax; and the green bag with its four bank bags each with 100 tablets, contained the intermediate stock, ready for transfer as needed to the pink bag which contained current stock and also R725 in banknotes. The most probable inference is that the money was the proceeds of dealings in Mandrax. Whoever put the money in the bag had knowledge of the Mandrax. And it was the appellant who claimed the money as her own.

There is another circumstance which is inconsistent with the appellant's innocence. When she was asked for the keys, she left the house, saying that she was going to Kliptown police station. She was not found at the police station and she did not return to her house until some time after the police

had left. When invited to state the basis of her defence at the pleading stage, she said -

"I know nothing about the things which was found in my house. I was not there when it was allegedly found. I left my house in the morning of 21 May about 10 o'clock. I was not aware of any tablets in my house when I left. When I returned at about 14h00 that day, I found the police were there and already gone."

It may be that her recollection of the times was inaccurate - Carstens said that they arrived at the appellant's house at 11h45. Nevertheless it is clear that the appellant was away from the house for a considerable time, returning home only after the police had gone. Unless she had knowledge of the Mandrax, her conduct was inexplicable, especially after the previous incident which was alleged to involve R5 000. Asked by the magistrate why she did not stay at the house to protect her property, she said, "But I was too scared, your worship". Certainly she had no physical fear of the police. She cursed

and screamed at them. She was permitted to telephone the Kliptown police station. She was allowed to leave the house to go there. The only fear she could have had was fear of discovery, and she wished not to be at home when this occurred so that she could say (as she did say later) that she was not there when the Mandrax was found.

Are the proved facts such that they exclude every other reasonable inference from them? The only other possible inference which can be suggested is that Mampe introduced the Mandrax into the wardrobe without the knowledge of the appellant.

Despite the appellant's evidence to that effect, it is highly unlikely that Mampe would have been given custody of the wardrobe keys. According to the appellant, the reason why Mampe had the keys was that the "liquor storage is in the bedroom in the wardrobe" and Mampe "was in charge of the liquor", "we used to keep the liquor money in my room"; "we store the liquor in the wardrobe, plus the change (for liquor)". The police

witnesses did not say that they found liquor in the wardrobe or any "change", or any money other than the R725, nor was it put to them that they did. The appellant said in her evidence that her money was kept in the red bag - the R725, and the R5 000 which was stolen, and the proceeds of sales by her of men's clothing. It is not credible that the appellant would have given Mampe (who had been employed by the appellant in a menial capacity for a year) access to sums of money of that order. Moreover, when she was asked for the keys the appellant did not tell Carstens that they were with Mampe who was in the house at the time. That she would surely have done if it was the case, and she had no knowledge of the Mandrax.

It is inherently improbable that, even if Mampe had the opportunity to introduce the Mandrax into the red bag, she would or could have done so. She was a servant, whose duties were cleaning, and selling liquor, and it is extremely unlikely that she could have been in possession of Mandrax with a street

value of many thousands of rands; or that, she would have placed Mandrax tablets in her employer's red bag, in which her employer was accustomed to keep money, and to which her employer had regular access . As stated above, the inference from the distribution of the Mandrax in the three bags was that the possessor was carrying on a business of Mandrax dealing. It is not credible that Mampe would have dared to deal in Mandrax under the nose of her employer.

For these reasons, any inference that it was Mampe who was in possession of the Mandrax is not a reasonable inference.

The conclusion is that the appellant's guilt was established beyond a reasonable doubt. The appeal is dismissed.

H.C. NICHOLAS AJA.

E. M. GROSSKOPF JA)  
MILNE JA) Concur.