

FORM A
FILING SHEET FOR SOUTH EASTERN CAPE LOCAL DIVISION
JUDGMENT

PARTIES: **CAMERON KING V THE STATE (NOT REPORTABLE)**

- Case Number: **CA&R 226/08**
- High Court: **GRAHAMSTOWN**
- DATE HEARD: **22 October 2008**
- DATE DELIVERED: **24 October 2008**

JUDGE(S): **JANSEN J ; GOOSEN AJ**

LEGAL REPRESENTATIVES –

Appearances:

- for the Applicant(s): **ADV XOZWA**
- for the Respondent(s): **ADV ROBINSON**

Instructing attorneys:

- Applicant(s): **LEGAL AID BOARD**
- Respondent(s): **DIRECTOR OF PUBLIC PROSECUTIONS**

CASE INFORMATION -

- *Nature of proceedings:*
- ***Key Words:***

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

(NOT REPORTABLE)

C.A. & R.: 226/08

Date delivered: 24/10/2008

In the matter between:

CAMERON KING

Appellant

and

THE STATE

Respondent

JUDGMENT

JANSEN, J:

The appellant was convicted in the Regional Court of Port Elizabeth on a charge of robbery with aggravating circumstances. He was sentenced to 15 years imprisonment. He now appeals, with leave granted by the regional magistrate, against his conviction and the sentence imposed.

It was not disputed that the complainant, D S, a 16 year old boy, was robbed on 20 November 2007 at approximately half past one in the afternoon in Arcadia in the district of Port Elizabeth. Two men approached him with one pointing a firearm at him. That person's face was covered. The other person removed a cell phone and R30 in cash from the complainant. This second person, according to the complainant, was the appellant. That was the first day for him to have seen the appellant. The State's case against the

appellant was based on the evidence of a single witness, the complainant identifying the appellant.

The complainant testified that within half an hour after he had been robbed he reported the matter to the police. He was given a photo album and amongst the photographs in the album he identified a person on one of the photographs as the person who had robbed him. The complainant did not give any evidence to show that he had seen the appellant again from the time he had been robbed until he identified the appellant in the witness box.

The police officer to whom the robbery was reported by the complainant was Inspector Thyse. He testified that he gave a photo album which contained photographs of approximately 700 men to the complainant. A photograph was pointed out by the complainant. Inspector Thyse established the name and address of the person depicted in the photograph. That person's name was Cameron King. That is name of the appellant. Captain Thyse then went to the address attached to the photograph and to the name Cameron King, but he could not find the appellant at that address. The next morning Captain Thyse received a phone call from the complainant and a description of the clothing worn by the suspect. The complainant also made a report to him about the suspect's whereabouts. As a result of this phone call Inspector Thyse went to a certain address in Rensburg Street where he found the appellant and arrested him. Although Inspector Thyse did not testify in detail about the arrest of the appellant it must be assumed that at the time of the arrest Inspector Thyse informed the appellant that he was arrested for

robbery committed the previous day. According to Inspector Thysse the appellant denied having been involved in a robbery the previous day and informed Inspector Thysse that he had been doing some painting at a house in Rensburg Street.

The complainant was not led to give any evidence about the phone call testified about by Inspector Thysse, made by him to Inspector Thysse the day after the robbery.

The appellant denied any involvement in the crime. He testified that on the day in question, that was the day before his arrest, he was doing some painting at the house of one Veronica. When he was arrested by Inspector Thysse he told Inspector Thysse that he had been doing the painting at Veronica's place and he invited Inspector Thysse to go to Veronica's house to find support for his alibi. Inspector Thysse did not want to do that and told the appellant that it can be sorted out at court. Veronica was called to testify on behalf of the appellant. It is clear from her evidence that she was not certain about the dates, but she testified that the appellant had at a certain stage during November painted her house, and she can remember that the day before the appellant was arrested he had been with her.

The regional magistrate accepted the evidence given by the complainant identifying the appellant as one of the robbers. She rejected the alibi evidence of the appellant as not reasonably possibly true. In doing so she

placed much reliance on the fact that Veronica could not specifically testify as to the date upon which the appellant was busy painting her house.

The onus was on the State to prove the guilt of the appellant beyond any reasonable doubt. Evidence of identification should be treated with caution, in particular if that identification evidence comes from a single witness. It has often been said that the most honest witness can make a mistake with the identification of a suspect.

In the instant case the photograph was not produced as an exhibit in court. The magistrate did not know anything about the photograph. There was no evidence placed before the regional magistrate as to how long ago the photograph of the appellant was taken. It is not known whether it is a black and white photograph or a coloured photograph. It is not known whether the photograph depicts the full body of the appellant or a head and shoulder position or only his head. Nothing was placed on record as to the features of the appellant on the photograph on which the complainant could recognise him. No questions relating to the appellant's height, build and complexion were put to the complainant. His evidence amounted to a bald statement that the appellant was the person who committed the crime. That was not enough. Such a bald statement unexplored, untested and uninvestigated leaves the door wide open for the possibility of a mistake. See ***R v Shekelele and Another*** 1953 (1) SA 636 (T) at 638F-H.

Mr **Robinson**, appearing on behalf of the State, submitted that the identification of the appellant by the complainant on the photograph and the subsequent arrest of the appellant by Inspector Thysse was sufficient. He referred to the evidence of Inspector Thysse about the arrest and submitted that an inference can be drawn from Inspector Thysse's evidence that he, at the time when he arrested the appellant, was in possession of the photograph and that he himself could identify the appellant by comparing the appellant's features with the photograph. That, however, is not clear from the evidence given by Inspector Thysse. Inspector Thysse was Afrikaans speaking. He gave his evidence in Afrikaans. His evidence in Afrikaans was translated into English. It appears from the record that the interpreter was probably a Xhosa speaking person. It is clear from his interpretation of the Inspector's evidence from Afrikaans to English that English was not his first language. When he gave his evidence in chief Inspector Thysse did not mention that he had the photograph of the appellant with him at the time when he arrested him. The Inspector's evidence during cross-examination reads as follows:

"All right. Now when you saw this suspect whose clothes were described to you, did you ask him his name? How did you get to know that this is the Cameron King that you had – that this, the complainant, had identified to you? --- The complainant contacted me, told that where the suspect was, the suspect in Rensburg Street with the clothing that has been described and I had this photo of the photo album with me.

Yes? --- I then stopped at him, I asked him who is he, then he told me and then I did tell him that he has been shown on by means of a photograph, an album in a photo, that he is now involved now in an armed robbery and then I arrested him.”

Although an inference can be drawn from the evidence that he did have the photograph with him there is no indication at all that he showed the photograph to the appellant or that he compared the appellant’s features with the photograph that he had in his possession.

It was properly conceded by Mr **Robinson** that the manner in which the State’s case was presented at the trial leaves much to be desired.

In my view, the regional magistrate should have found that the identification evidence of the single witness was not clear and satisfactory in all material respects.

In the result, the appeal is allowed and the conviction and sentence set aside.

J C H JANSEN

JUDGE OF THE HIGH COURT

GOOSEN AJ:

I agree.

G GOOSEN

ACTING JUDGE OF THE HIGH COURT