

MEDIA STATEMENT – CASE HEARING IN SUPREME COURT OF APPEAL

Robert Green and Another v The State

Supreme Court of Appeal -63/04

Hearing date: 11 January 2006

Judgment date: 3 March 2006

Criminal Procedure – bail – refusal – Court's discretion to invoke s 60(3) Act 51 of 1977

Media Summary of Judgment

Two Mpumalanga men, who are standing trial in the Regional court, Nelspruit, were partially successful in their appeal to the Supreme Court of Appeal against the refusal by the regional magistrate to release them on bail.

The Supreme Court of Appeal held today that the magistrate erred in making an order refusing to grant bail to Robert Green and Bheki Mashaba, who are charged with participating in an armed robbery at Nelspruit in September last year when over R7 million was taken. Green and Mashaba had testified at the bail hearing that they had not been involved in any way in the robbery. They said that in the circumstances there could be no case against them and that this constituted an exceptional circumstance justifying their release on bail.

In reply the State called the investigating officer, Superintendent MF Molapo, who said there was a strong case against them, including a closed circuit TV video tape showing that Green had driven the getaway vehicle used in the robbery and Mashaba, who was the security manager at the place where the robbery occurred, embracing the security officers who helped the robbers to load the proceeds of the robbery onto the getaway vehicle as well as evidence that Green's fingerprints were later found on the getaway vehicle which was abandoned after the robbery.

Superintendent Molapo was cross-examined at the bail hearing and large portions of his evidence were shown to be false.

The State refused to allow the defence access to the closed circuit television tapes.

The magistrate said that there was no reason to reject Molapo's evidence regarding the television tapes or the fingerprints and accordingly refused bail. An appeal to the Pretoria High Court was unsuccessful.

Giving judgment in the Supreme Court of Appeal Mr Justice IG Farlam, with whom Mr Justice J Heher and Mr Justice A Cachalia concurred, said that the magistrate should not in the

circumstances have accepted Molapo's evidence and should have ordered the State to make available to the defence the television tapes and the fingerprint evidence.

The decision to refuse bail was set aside and replaced by an order declining to make an order on the bail application at this stage and directing the State to make the television tape and the statements by the fingerprint experts available to the defence.