

IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE HIGH COURT, CAPE TOWN)

CASE NO: A439/11

DATE: 11 NOVEMBER 2011

5 In the matter between:

ANDREW PETERSEN Appellant

and

THE STATE Respondent

10 **JUDGMENT**

VELDHUIZEN, J

The appellant was convicted in the Regional Court on the
 15 charge of robbery with aggravating circumstances and
 sentenced to six years imprisonment. He now appeals his
 conviction and sentence.

On 17 August 2010 at about 7:50 am the complainant was a
 20 fare paying passenger in a taxi. She was on her way to the
 Waterfront in Cape Town. She testified that while they were
 driving the appellant grabbed hold of her bag which she had
 slung over her shoulder. She resisted and landed on his lap.
 He then took out a screwdriver and started, as she put it,
 25 swinging at her and hit her on the hand. In the process the
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appellant managed to get hold of her cell phone. The appellant jumped out of the taxi and ran off.

The complainant reported the incident to the police at the Sea
5 Point police station. One of the policemen drove around with
the complainant in an attempt to find her assailant but to no
avail. Back at the police station she was shown 14 to 15
photos on the computer and identified the appellant as her
assailant. He was arrested the next day.

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The appellant denied that he had robbed the complainant and
testified that he was at home sleeping at the time of the
robbery. The magistrate found the complainant to be a good
and honest witness and that her identification of the appellant
15 was reliable. I pause here to observe that it was the first time
that the complainant had seen the appellant, and from her
description of the incident she could not have had much time
for an accurate observation. One must also keep in mind that
the circumstances under which she observed her assailant was
20 not conducive to reliable identification.

The magistrate had no criticism of the appellant's evidence
and in my view rightly so. There is very little to choose
between the complainant's version and that of the appellant. It
25 is in the circumstances unsafe to convict the appellant on the

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evidence of a single witness.

In the result the APPEAL IS UPHELD AND THE APPELLANT'S
CONVICTION AND SENTENCE SET ASIDE.

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A handwritten signature in black ink, appearing to read 'J. Veldhuizen', is written over a horizontal line.

VELDHUIZEN, J

I agree,

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SABA, AJ