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

Appeal case number: A177/2024
Regional Court case number: SH2/157/19

In the matter between:

MICHAEL MEINTJIES Appellant

and

THE STATE Respondent

JUDGMENT DELIVERED ON 4 JUNE 2025

VAN ZYL AJ:

Introduction

1. The appellant appeals against his conviction in the Bellville Regional Court on a charge of robbery with aggravating circumstances, read with the provisions of section 51(2) of the Criminal Law Amendment Act 105 of 1997.[1]

[1] The appellant was expressly warned at the outset of the trial that the provisions of section 51(2) read with Schedule 2 Part 2 of this Act would apply should he be found guilty.

2. The appellant was one of three accused before the regional court.[2] He was legally represented throughout the trial, and pleaded not guilty on 12 May 2021. On 18 October 2023 he was convicted as charged, and on 25 October 2023 he was sentenced to ten years' direct imprisonment, of which four years were suspended for a period of five years.

3. The appellant subsequently successfully applied for leave to appeal against his conviction. It appears from the record that the appellant has been, and remains, in custody.

The grounds of appeal

4. It was common cause at the trial that the complainant's cellphones and R500,00 cash were stolen. It was also common cause that two of these cellphones and R300,00 cash were found in the possession of the appellant's co-accused, referred to as accused 1. It was further not disputed that the appellant and accused 3 (the appellant's other co-accused) were arrested at the house of accused 3, and that the complainant, Mr Kabango, pointed them out to the police as the people who had robbed him.

5. The issues in dispute at the trial were whether Mr Kabango was robbed at gunpoint by the appellant, whether the appellant was on the crime scene at all, and whether he was positively identified by the complainant as the person who pointed the firearm at him during the robbery.

6. Mr Kabango was a single witness with regard to the identification of the appellant. As such, his evidence is to be treated with caution.

7. The nub of this case is thus whether the appellant was correctly identified as one of the perpetrators of the crime. This is because the appellant's defence at the trial was that he was not near the scene of the crime at the material time, and therefore did not have any involvement in the robbery.

---

[2] The appellant was referred to in the regional court as "accused 2".

8. The grounds for his appeal are, in essence, that the regional court erred in:

8.1. Not attaching any weight to the statement of Mr Kabango's partner, Ms Baartman, who did not give *viva voce* evidence but whose statement was handed in by consent. The regional court therefore erred in finding that the affidavit does not assist the court in deciding whether the appellant had pointed a firearm at Mr Kabango. The appellant further complains that the regional court erred in failing to invoke section 186 of the Criminal Procedure Act 51 of 1977 ("CPA") and calling Ms Baartman to clarify this issue.

8.2. Finding that the appellant was on the crime scene with his co-accused, and that Mr Kabango positively identified him as one of the perpetrators. The regional court accordingly erred in finding that Mr Kabango was an honest and reliable witness.

8.3. Finding that the State had proved its case beyond reasonable doubt.

9. As a general principle in the consideration of this appeal, it is trite that a court of appeal will very rarely interfere with the findings of fact of the trial court, including credibility findings about witnesses.[3] In the absence of demonstrable and material misdirection by the trial court, its findings of fact are presumed to be correct, and will be disregarded only if the recorded evidence shows them to be clearly wrong.[4] A court of appeal would therefore only interfere with the trial court's evaluation of oral evidence in exceptional circumstances.[5]

10. I turn to consider whether there is merit in these grounds of appeal.

Ms Baartman's statement in the context of proof beyond a reasonable doubt

---

3 *R v Dhlumayo and another* 1948 (2) SA 677 (A) at 705-706.
4 S *v Hadebe and others* 1997 (2) SACR 641 (SCA) at 645e-f.
5 *S v Monyane and others* 2008 (1) SACR 543 (SCA) para 15.

11. Mr Kabango's partner, Ms Baartman, was not called as a witness to give oral evidence at the trial, despite the fact that she was in the vicinity when the crime was committed. She was the one who phoned the police to report the crime. Her statement to the police was merely handed in by consent between the parties' legal representatives. In her statement, Ms Baartman does not mention either the appellant or the fact that one of the perpetrators pointed a firearm at Mr Kabango.

12. The appellant says that the regional court should have invoked section 186 of the CPA to call Ms Baartman as a witness so that she could "clear up" the discrepancy between the content of her statement and Mr Kabango's evidence. Section 186 of the CPA provides as follows:

> **"*186 Court may subpoena witness***
> *The court may at any stage of criminal proceedings subpoena or cause to be subpoenaed any person as a witness at such proceedings, and the court shall so subpoena a witness or so cause a witness to be subpoenaed if the evidence of such witness appears to the court essential to the just decision of the case."*

13. There are several important considerations in evaluating this aspect of the appellant's case.

14. First, in *R v Blom*[6] it was held that when reasoning by inference in criminal proceedings, there are two cardinal rules of logic that cannot be ignored: the inference sought to be drawn must be consistent with all the proved facts, and the proved facts should be such that they exclude every reasonable inference from them save the one sought to be drawn.

15. Second, the correct approach for the court to follow in the event of contradictions between the evidence of the state witnesses and the defense is

---

6 1939 AD 188 at 202-203.

to apply its mind not only to the merits and demerits of the state and defense witnesses, but also to the probabilities of the case. The evidence must be considered as a whole. In *S v Mafaladiso en andere*[7] the Court held as follows:[8]

"The judicial approach to contradictions between two witnesses and contradictions between the versions of the same witness (such inter alia, between her or his viva voce evidence and previous statement) is in principle (even if not in degree), identical. Indeed in neither case is the aim to prove which of the versions is correct, but to satisfy oneself that the witness could err, either because of defective recollection or by dishonesty. …
The mere fact that there are self-contradictions must be approach with caution by the court. Firstly, it must be carefully determined whether there is an actual contradiction and what the precise nature thereof is. ... Secondly , it must be kept in mind that not every error by a witness and not every contradiction or deviation affects the credibility of a witness. Non-material deviations are not necessarily relevant…. Thirdly, the contradictory versions must be considered on a holistic basis. The circumstances under which the versions were made, the proven reasons for the contradictions, the actual effect of the contradictions with regard to the reliability and credibility of the witness, the question whether the witness was given sufficient opportunity to explain contradictions - and the quality of the explanations - and the connection between the contradictions and the rest of the witness' evidence, amongst other factors, to be taken into consideration and weighed up…. Lastly, there is the final task of the trial Judge, namely to weigh up the previous statement against the viva voce evidence, to consider all the evidence and to decide whether it is reliable or not and to decide whether the truth have been told, despite any shortcomings."

16. Third, as regards proof beyond reasonable doubt, in *S v Chabalala*[9] the Supreme Court of Appeal ("SCA") formulated the principles for evaluating the

---

7 2003 (1) SACR 583 (SCA) at 593F-594G. Emphasis supplied.
8 My translation from the original Afrikaans text. Emphasis supplied.
9 2003 (1) SACR 134 (SCA) para 15. Emphasis supplied.

evidence of the State and the accused in criminal trials as follows:

"The trial court's approach to the case *was, however, holistic and in this it* was *undoubtedly right: S v Van Aswegen 2001 (2) SACR 97 (SCA). The correct approach is to weigh up all the elements which points towards the guilt of the accused against all those which are indicative of his innocence, taking proper account of the inherent strengths and weaknesses, probabilities and improbabilities on both sides and, having done* so, *to decide whether the balance weighs* so *heavily in favour of the State* as *to exclude any reasonable doubt about the accused's guilt."*

17. In *S v Van der Meyden*[10] the Court held:

"A court does not base its conclusion, whether it be to convict or to acquit, on only part of the evidence …. The proper test is that the accused is bound to be convicted if the evidence established his guilt beyond reasonable doubt, and the logical corollary is that he must be acquitted if it is reasonably possible that he might be innocent. The process of reasoning which is appropriate to the application of that test in any particular case will depend on the nature of the evidence which the court has before it. What must be borne in mind, however, is that the conclusion which is reached (whether it be to convict or to acquit) must account for all the evidence. Some of the evidence might be found to be false; some of it might be found unreliable; some of it might be found to be possibly false or unreliable; but none may simply be ignored."

18. Proof beyond reasonable doubt must thus be determined by assessing all probabilities and improbabilities, not only in the evidence of the state, but also in the evidence of the accused:[11]

"But whilst it is entirely permissible for a court to test an accused's evidence against the probabilities, it is improper to determine his or her guilt on a

---

10 1999 (1) SACR 447 (W) at 449I-450B. Emphasis supplied.

11 *Monageng v S* [2009] 1 All SA 237 (SCA) paras 13-14. Emphasis supplied.

balance of probabilities. The standard of proof remains proof beyond reasonable doubt, i.e. evidence with such a high degree of probability that the ordinary reasonable man, after mature consideration comes to the conclusion that there exists no reasonable doubt that an accused has committed the crime charged. An accused's evidence therefore can be rejected on the basis of probabilities only if found to be so improbable that it cannot be reasonably possibly true ..."

19. There is no obligation on the State to close every avenue of escape for the accused. The State's evidence must, however, be of such a degree that upon mature consideration a reasonable person would have no doubt that the accused committed the offence. In evaluating the evidence, a court must adopt a holistic approach and consider and evaluate all the evidence as presented.[12] The accused does not bear any onus.[13]

20. In the present matter the parties did not, by consenting to the handing in of the statement, admit the truth of its contents. The statement therefore did not constitute evidence before the regional court. Ms Baartman was not cross-examined thereon. It is not clear what her observation capabilities were at the time, whether there were any obstructions in her line of sight, or whether she was pre-occupied with being on the phone with the police. In light of the evidence given by the appellant and his co-accused, it does not appear that Ms Baartman's oral evidence would have taken the evidence already on record any further.

21. It is no use speculating as to why the State decided not to call Ms Baartman to give oral evidence. For that matter, I do not know why the appellant did not call her, as she would have been available to him as a witness. It is in my view reasonable to assume that the State was of the opinion that the evidence already on record was sufficient to discharge the onus of proof beyond a reasonable doubt. The regional court agreed with the State, and I cannot find fault with its approach. In considering the statement, the regional court

---

12 *R v Mlambo* [1957] 4 All SA 326 (A) at 337.
13 See *S v V* 2001 (1) SACR 453 (SCA) para 3.

commented as follows:

"*I have read the affidavit of Ms Baartman and when one takes that evidence of the complainant holistically and the suggestions made to the complainant, it becomes clear that a lot if information is lacking from the said affidavit. The affidavit was not tested. … It is my view that this affidavit does not serve to assist the court in arriving at a decision …*"

22. The magistrate carefully considered the questions arising from Ms Baartman's statement in the light of the evidence led by the accused and Mr Kabango. He clearly did not find it necessary to invoke section 208 of the CPA to clarify those questions, because the available evidence as a whole answered the core issues in the matter. This included evidence other than Mr Kabango's evidence, for example, the appellant's demeanour when he was taken into custody, and the admitted whereabouts of his co-accused at the time of the robbery.

23. I am thus of the view that the regional court did not err in failing to call Ms Baartman to give oral evidence.

Identification and the single witness

24. Section 208 of the CPA provides for the conviction of an accused person on the single evidence of any competent witness:

"*208 Conviction may follow on evidence of single witness*
An accused may be convicted of any offence on the single evidence of any competent witness."

25. As indicated, Mr Kabango was a single witness in respect of the identification of the appellant at the scene of the crime. His evidence is, however, corroborated by the other facts placed before the regional court. In *S v Sauls*

and others[14] it was held that*:*

"*There is no rule of thumb test or formula to apply when it comes to a consideration of the credibility of a single witness. The trial judge will weigh his evidence, will consider its merits and demerits and having done so, will decide whether it is trustworthy and whether despite the fact that there are shortcomings or defects or contradictions in the testimony, he is satisfied that the truth has been told … It has been said more than once that the exercise of caution must not be allowed to displace the exercise of common sense."*

26. In *R v Mokoena*[15] the Court remarked:

"*Now the uncorroborated evidence of a single competent and credible witness is no doubt declared to be sufficient for a conviction by [the section], but in my opinion that section should only be relied on where the evidence of a single witness is clear and satisfactory in every material respect. Thus, the section should not be invoked where, for instance the witness has an interest or bias adverse to the accused, where he has made a previous inconsistent statement, where he contradicts himself in the witness box, where he has been found guilty of an offence involving dishonesty, where he has not had proper opportunities for observation, etc.*"

27. In the present matter, Ms Kabango's evidence was clear and satisfactory in material respects. He was consistent in his identification of the appellant as the one pointed the gun at him during the robbery. There was no suggestion of an interest or bias adverse to the appellant. He had not made a previous inconsistent statement, and did not contradict himself in the witness box. He had not been convicted of dishonesty previously, and had sufficient opportunity when the crime was committed to observe the appellant.

28. In S *v Mthetwa*[16] it was stated that:

---

14 1981 (3) SA 172 (A) at 180F-H.
15 1932 OPD 79 at 80. Emphasis supplied.
16 1972 (3) SA 766 (A) at 768A-C.

"*Because of the fallibility of human observation, evidence of identification is approached by the courts with some caution. It is not enough for the identifying witness to be honest: the reliability of his observation must also be tested. This depends on various factors, such as lighting, visibility, and eyesight; the proximity of the witness; the opportunity for observation, both as to time and situation; the extent of his prior knowledge of the accused; the mobility of the scene; corroboration; suggestibility; the accused's face, voice, build, gait and dress; the result of any identification parades, if any; and of course the evidence on behalf of the accused. The list is not exhaustive . These factors or such of them as are applicable in a particular case, are not individually decisive, but must be weighed one against the other, in the light of the totality of the evidence, and the probabilities...* "

29. Applying the test set out in *S v Mthetwa* in the present case, it appears from the record that Mr Kabango was honest in his evidence, and his observation of the appellant was reliable. He knew the appellant from having seen him on previous occasions. During the robbery, he was in close proximity to the appellant, and in fact observed him directly from the front, in daylight. Although the incident happened fast, Mr Kabango's prior knowledge of the appellant meant that he did not need much time to recognize him. Mr Kabango also managed to identify the appellant again within a few minutes after the incident. He as consistent not only in identifying the appellant, but also in describing the role the appellant (and his co-accused) had played in the robbery.

30. In *Abdullah v S,*[17] the SCA stated:

"…when seeing a *person who is known to you, it is not* a *process of observation that takes place but rather one of recognition. This is* a *different cognitive process which plays* a *vital role in our everyday social interaction. The time necessary to recognize* a *known face as opposed to identifying* a

[17] [2022] ZASCA 33 (31 March 2022) para 13. Emphasis supplied.

person for the first time, is very different. It has been recognized by our courts that where a witness knows the person sought to be identified, or has seen him frequently, the identification is likely to be accurate."

31. Thus, where a witness knows a person, questions of identification, of facial characteristics, and of clothing are of much less importance than in cases where there is no previous acquaintance with the person sought to be identified. What must be tested is the degree of previous knowledge and the opportunity for a correct identification, having regard to the circumstances in which the identification was made.[18] The way in which Mr Kabango described his encounter with the appellant during the incident leaves little room for doubt, let alone reasonable doubt. The only reasonable inference to be drawn from the evidence, viewed holistically, is that the appellant was one of the perpetrators of the crime.[19]

31. In my view, the regional court gave due regard to the fallibility of identification, and properly addressed the manner in which the appellant was identified. The facts indicate that Mr Kabango was familiar with all three accused. He had seen them in the vicinity on previously occasions, and thus recognized them. He was clear in cross-examination that he had not only known the appellant from the day of the incident, but had seen him previously. Mr Kabango was certain about the identification of the appellant when he pointed him out to the police. There was no hesitation on his part. He remained clear and consistent in this respect even under cross-examination.

32. It follows that Mr Kabango's identification of the appellant as one of the perpetrators, and particularly as the one who had pointed the firearm at him, cannot be faulted. The appellant was correctly convicted on the charge of robbery with aggravating circumstances.

33. There is accordingly no merit in the appellant's argument in this respect.

---

18 *R v Dladla* 1962 (1) SA 307 (A) at 310C-E.

19 See *S v Teixeira* 1980 (3) SA 755 (A) at 761: "… *in evaluating the evidence of a single witness, a final evaluation can rarely, if ever, be made without considering whether such evidence is consistent with the probabilities*."

Order

34. In the circumstances, I suggest that the appeal be dismissed.

_____

P. S. VAN ZYL

Acting Judge of the High Court

I agree, and it is so ordered.

_____

D. M. THULARE

Judge of the High Court

Appearances:

For the appellant:	Mr M. W. Strauss, instructed by the Cape Town Justice Centre
For the respondent:	Ms C. Monis, Directorate of Public Prosecutions, Western Cape