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S v RANTSANE

(ORANGE FREE STATE PROVINCIAL DIVISION)

1979 August 30 BRINK and VAN HEERDEN JJ

Criminal procedure—Evidence—Proof of facts by sworn affidavit—Criminal Procedure Act 51 of 1977 s 212 (4)—No allegation in affidavit that it was established by means of an examination or process requiring skill in regard to one of the specified fields that an

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exhibit was fuse cord, an authorised explosive in terms of the Explosives Act 26 of 1956—Affidavit not admissible.

A sworn affidavit which identifies an exhibit as a piece of fuse cord, an authorised explosive in terms of the Explosives Act 26 of 1956, is not admissible under s 212 (4) of the Criminal Procedure Act 51 of 1977 where it contains no allegation that this fact has been established by means of an examination or process requiring skill in regard to one of the specified fields.

Review.

BRINK J: The accused was found guilty in the magistrate's court of a

contravention of s 6 (1) of the Explosives Act 26 of 1965 on the ground thereof that he had authorised explosives, to wit two pieces of fuse cord in his possession. He was sentenced to six months' imprisonment.

According to *Government Notice* R1603 of 8 September 1972 a fuse cord is an authorised explosive.

The State's case was based, *inter alia*, on an affidavit of Detective-Sergeant Landman of the South African Police. According to his affidavit he was appointed as an inspector of explosives in terms of s 2 (1) of the Explosives Act. His affidavit further reads as follows:

"On Friday 1 June 1979 Constable De Witt of Odendaalsrus showed me approximately one metre of burnt out fuse cord. I inspected it and found that it had burnt to ash and contained copper wire which had been left behind. I recognized it as IC 57 fuse cord of which the colour is green before burning. This fuse cord normally burns at a speed of approximately 4-8 seconds per foot. One metre of fuse cord is sufficient to commit arson, if it lands between coir and paper. The constitution of IC 57 is a thin copper wire which is encircled by a combustible constitution, and the function of the copper wire is to carry the heat from the burning point towards the unburnt part of the fuse cord and also controls the burning speed."

The accused was unrepresented. The affidavit of Detective-Sergeant Landman was submitted with the accused's consent. In the record it was only recorded that the accused had no objection to the handing in of the affidavit.

Although the magistrate, in answer to a review enquiry, contended that the affidavit was admissible as evidence in terms of s 212 (4) of the Criminal Procedure Act 51 of 1977, it is clear that this section is not applicable. There is no allegation in the affidavit that it was established by means of an examination or process requiring skill in regard to one of the

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specified fields, that the exhibit concerned was fuse cord, as contemplated in the said *Government Notice*. I also do not think that s 220 of the Criminal Procedure Act can serve as a basis in the present case for the admission of the affidavit in evidence. The magistrate did not admit it on the ground of this section. There is therefore, apart from the fact that there is no annotation of exactly what the accused admitted — something which is desirable in the case of s 220 — no mention thereof that the accused, as should happen, was properly informed regarding his rights with regard to s 220 and the implications of an admission, and the conviction in my opinion, could consequently also not be based on the affidavit in terms of s 220 of the Criminal Procedure Act. See *S v Langa* 1969 (3) SA 40 (N) at 42F.

In the result the conviction and sentence which the magistrate imposed are set aside.

VAN HEERDEN J concurred.