

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO.: A210/2016

20/2/2017

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES / NO
(3)	REVISED: YES / NO
20/2/2017 DATE	
<i>[Signature]</i> SIGNATURE	

In the matter between:

SALIE CLIFFORD MAREDI

Appellant

and

THE STATE

Respondent

Date heard:

Date delivered:

J U D G E M E N T

DE VOS J:

- [1] The appellant was convicted by the Regional Court, Benoni, on six counts, to wit:
- 1.1 Count 1: Attempted housebreaking with intent to steal and theft;
 - 1.2 Count 2: Possession of housebreaking implements;
 - 1.3 Count 3: Pointing of anything which is likely to lead a person to believe it is a firearm (C/S 120(6)(b) of Act 60 of 2000);
 - 1.4 Count 4: Assault with intent to do grievous bodily harm;
 - 1.5 Count 5: Assault with intent to do grievous bodily harm;

1.6 Count 6: Assault with intent to do grievous bodily harm.

[2] The appellant was sentenced as follows:

- 2.1 Count 1: Four years' imprisonment;
- 2.2 Count 2: Two years' imprisonment;
- 2.3 Count 3: Three years' imprisonment;
- 2.4 Count 4: Three years' imprisonment;
- 2.5 Count 5: One year imprisonment;
- 2.6 Count 6: Three years' imprisonment.

The court ordered that the sentence imposed on count 2 was to run concurrently with the sentence imposed on count 1; the sentence imposed on count 3 was ordered to run concurrently with the sentence imposed on count 4; and the sentence on count 5 was ordered to run concurrently with the sentence imposed on count 6. The effective sentence is ten years' imprisonment.

[3] The appellant was granted leave to appeal against his sentence on 05 February 2016.

[4] The facts pertaining to the conviction on counts 1 and 2 can be briefly summarised as follows. On the 10th March 2011, at or near Etwatwa, the appellant wrongfully and intentionally attempted to break open and enter the business premises of Mr Motha by removing the iron sheets covering the roof of the business. On the same day the appellant was arrested and found in possession of implements or objects to wit a side cutter, pliers and a screwdriver, in respect of which there is a reasonable suspicion that it had been used or is entitled to be used to commit housebreaking, of which the appellant was unable to give a satisfactory account of it. It is common cause that Mr Motha, the complainant on count 1, is the owner of a bottle store as referred to above. At about 23h45 at night, a nearby neighbour, Mr Bangiso, saw the accused and another person on top of the roof, removing the corrugated sheets. Although it was dark there was an Apollo light which illuminated over the bottle store. The Apollo light was about 10 metres away. Mr Bangiso's house is about 15 – 20 metres away from the particular bottle store. He tried to phone the Police but they did not respond. Another Police vehicle, which was patrolling in the area, then went past his house and he stopped them and reported what he saw. When the Police approached the house, the appellant apparently spotted them, he jumped from the roof and jumped over the gate. He also tried to shoot at them and then the two suspects ran into different directions. The Police gave chase and the appellant was arrested. At the time the appellant was arrested, he was still wearing

“handyman” gloves, which he was wearing whilst trying to break into the shop. The owner of the bottle store, Mr Motha, testified and confirmed that after he was alerted he went to his business and he found the Police and Mr Bangiso at the scene with the arrested appellant. He testified that the damage caused by the appellant and his accomplice was about R4 600.

- [5] Counts 3, 4 and 5 were committed on the 22nd April 2011, also near Etwatwa, when the accused assaulted Nosiphiwe Mtebele and her sister, Thuli Mtebele. Count 6 relates to an incident that occurred on the 21st May 2011 when the accused again assaulted Nosiphiwe Mtebele. The complainant in counts 4 and 6, Nosiphiwe Mtebele, is the former girlfriend of the appellant. She testified that the appellant is the father to her child. They are no longer involved. On the 22nd April 2011 she was coming from church when the appellant phoned her. The appellant requested her to go outside her house with her sibling. He then told her that they must meet at the garage as he wanted to give her money for the child. However, he did not hand the money to her, but gave it to the sibling directly. He told her that he wanted to talk to her. At that stage he was carrying a firearm; the firearm was placed on his waist. She then said that she wanted something to drink and he told her to take some of the money that he handed to the sibling to go and buy herself something to drink at the garage. At that stage he accused her that she has given her cell number to another man called Cheese. She refused to go with him as she was afraid of him. He then started hitting her with a fist on the bridge of her nose, she started bleeding and he insisted that they must go. She still refused. When people approached them he decided to place the firearm that he has taken from his waist, back on his waist. The people then reprimanded him and pleaded with him to leave her. When she broke loose from him, he grabbed her by the trousers. She, however, managed to break loose again and ran to the neighbours. She learnt later that the appellant also assaulted her sister Thuli Mtebele (the complainant in count 5) who was pregnant at the time. An ambulance had to be called to take her sister to hospital. She also testified that the appellant had pointed the firearm at her chest area as he was standing just in front of her and he held her by the collar of her clothes and he struck her with a fist which made her nose bleed. As a result of the assault her face became swollen up, her eyes were red and she sustained what is normally called “black eyes” on both sides. Her sister was taken by ambulance to the hospital. After examination at the hospital she was discharged.

- [6] Count 6 relates to an incident that occurred on the 21st May 2011 between the appellant and his ex-girlfriend Nosiphiwe Mtebele. Although the charge sheet alleges that it also happened on the 22nd April 2011, according to the evidence the date should read 21st May 2011.

Nosiphiwe Mdeble testified that on that day and after work she and Sweetness, her friend, went to buy bunny chow at a certain premises. They then met the appellant. The appellant then called her a bitch and told her not to go to that place. He then approached her. She refused to listen to him. The appellant walked across the street and hit her with a beer bottle to such an extent that she felt dizzy. He then grabbed her and pushed her against a wall. When she fell down, he kicked her. She grabbed his legs and managed to stand up while he was still continuing hitting her. He hit her several times on her head with fists while she was pleading with him that he should leave her. He left her but then again started to hit her. The appellant then disappeared when the Police emerged. She was bleeding to such an extent that the Police took her to hospital and there she received stitches on her head and also on her ear, which was cut. She then went back to the Police station to lay charges.

- [7] Thuli Mtebele, the complainant on count 5, also testified. She confirmed that her sister was beaten on 22 April 2011 and when she rushed to the scene to see what was happening the appellant told her that it is none of her business. She also confirmed that the appellant had a firearm and that he held it in his right hand whilst he was busy hitting her sister. She then tried to intervene, which gave her sister a chance to run away. The appellant then pushed her and kicked her while her sister was running away. When he pushed her she fell down, and he then kicked her on her stomach, although she was clearly pregnant at that time.
- [8] Constable Lesiba Lekoto also testified and confirmed that on the 11th March he arrived at the bottle store and arrested the appellant while he was fleeing from the scene. They also found a pair of side cutter pliers as well as a screwdriver and gloves and a woollen hat which were in the possession of the appellant. He further confirmed that he personally saw the appellant on the roof of the bottle store when they arrived at the scene. He further confirmed that they arrested the appellant approximately 30 metres away from the bottle store as he was trying to run away.
- [9] The appellant's version denying that he attempted to break into the bottle store was rejected by the court a quo. According to the appellant he was coming from a tavern when the police stopped next to him because he had dumpies in his hands. The other person who accompanied him ran away because he was scared that he may be arrested for public drinking. He also denied that he had any housebreaking equipment in his possession. He also denied committing the offences of assault or having a firearm in his possession. The Magistrate rightfully rejected the appellant's version.

- [10] On behalf of the appellant it is argued that the court failed to treat the appellant as a first offender and therefore should have imposed a lesser sentence. It is quite clear from the judgement on sentence that the Magistrate recorded that the previous conviction has got no relation to the present offences. It can therefore be accepted that it had no influence on the Magistrate when he sentenced the appellant.
- [11] The second ground of appeal is that the court overemphasised the seriousness of the offence and the prevalence of the offence. It is contended that the Magistrate, without any evidence, concluded that the appellant wanted to steal whatever was inside the store. It is contended that this is an assumption. A person removing the roof sheets of a bottle store at 3 o' clock in the morning clearly has the intention to break into that bottle store and to remove whatever is inside. There is no merit in this argument. I
- [12] It is further contended that the Magistrate also overemphasised that the appellant had no respect for other human beings. The facts of the matter speak for itself. The appellant had no hesitation to assault the mother of his child, as well as her obviously pregnant sister. The way he acted proves beyond a reasonable doubt that he has an aggressive nature and does not hesitate to inflict injury on whoever crosses his way.
- [13] It is further contended that the court paid lip-service to the personal circumstances of the appellant. A list of personal circumstances was then tabulated in appellant's heads of argument. It is clear from the judgement that all these personal circumstances were duly considered by the Magistrate.
- [14] It is further submitted that the court overemphasised the nature of the offence and the interests of society at the expense of the personal circumstances of the appellant. In my view there is no merit in this argument. The court a quo carefully weighed up the personal circumstances of the appellant against the merits of the case.
- [15] A person going around at night, breaking into business premises, can and will never be tolerated by this society. When the same person walks around carrying a firearm, which he is prepared to point at people, and use brutal force against undefended women, he should not expect any leniency from the courts.
- [16] It is contended that the appellant can be rehabilitated. I find it extremely difficult to

understand how it can be said that a person can be rehabilitated if he denies all the allegations against him. Rehabilitation can only work if a person confesses to his wrongdoings and is prepared to change his ways.

[17] Having regard to the cumulative effect of all the sentences imposed, and the deterrent effect sought by the court a quo, there is no room for a lesser sentence to be imposed. Despite overwhelming evidence against him, the appellant failed to take responsibility for what he had done and he sought to make the witnesses liars.

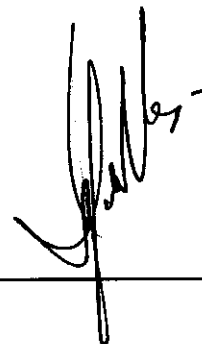
[18] There can be no doubt that the offences, especially counts 1 and 2, were carefully planned and the appellant, knowing that there will be obstacles in his way to succeed in his evil deeds, came prepared with all the necessary tools at hand to execute his crime. There is furthermore no link between the appellant's personal circumstances and the commission of the crimes. In the light of the cumulative effect of all the aforementioned factors, the court a quo did not act unreasonably in imposing the sentence it did.

[19] The appellant was arrested on counts 1 and 2 on 10 March 2011. He was released on bail, but failed to appear in court and his bail was therefore forfeited. The appellant was then re-arrested in December 2012 and was in custody until his date of conviction. The appellant awaited trial for 18 months. It is contended that the date of sentence should be antedated to the date of his arrest. I disagree with this submission. The Magistrate was entitled to ignore such fact, as it played no role to rehabilitate the appellant and can safely be ignored.

Accordingly, and in my view, the appeal against sentence should be dismissed.

I THEREFORE PROPOSE THE FOLLOWING ORDER:

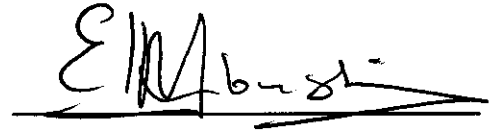
- 1) The appeal against sentence is dismissed.



DE VOS J

JUDGE OF THE GAUTENG DIVISION
OF THE HIGH COURT OF SOUTH AFRICA

I agree.

A handwritten signature in black ink, appearing to read 'E M Bushi', is written over a horizontal line.

KUBUSHI J

**JUDGE OF THE GAUTENG DIVISION
OF THE HIGH COURT OF SOUTH AFRICA**

It is so ordered.