IN THE HIGH COURT OF SOUTH AFRICA,

FREE STATE DIVISION, BLOEMFONTEIN

Reportable:	**YES/NO**
Of Interest to other Judges:	**YES/NO**
Circulate to Magistrates:	**YES/NO**

Appeal No.: A141/2013

In the appeal between:-

LEON LAMPRECHT Appellant

and

THE STATE Respondent

CORAM: MUSI, AJP *et* RAMPAI, J

HEARD ON: 13 MARCH 2017

JUDGMENT BY: MUSI, AJP

DELIVERED ON: 16 MARCH 2017

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[1] The appellant, who was accused number 2 in the Bloemfontein regional court, was convicted of theft (count 1), defeating the ends of justice (count 2) and 4 counts of fraud (counts 3 to 6). The appellant was sentenced as follows:

Counts 1, 3 and 6 three years' imprisonment on each count.

Count 2 two years' imprisonment.

Counts 4 and 5 one years' imprisonment on each count.

The regional magistrate ordered that all the above sentences should run concurrently to such an extent that the appellant should serve 6 years' imprisonment. The appeal is only against the conviction on count one. This judgment is therefore limited to the facts and findings with regard to count one only.

[2] On 11 July 2001 a Mazda 4x4 pickup (vehicle) belonging to Mr Willem Hendrik Kruger was stolen at Generaal De Wet Drive, Bloemfontein. The value thereof was plus minus R 50,000. During 2001 Mr Carl Dominique Darow (Darow) accompanied accused 1 to Lesotho. Accused 1 communicated via cellular phone with an un-known male in that country. They later met with a male person who was driving the vehicle. Accused 1 gave the unknown male and amount of money in exchange for the vehicle. Darow drove the vehicle to South Africa.

[3] Mr Dirk Cornelius Heymans (Heymans) was the appellant's friend. Unbeknown to the appellant he was also a police informer. During 2001 the appellant approached him and asked him to make a hot car, cold. This means to unlawfully legalize a stolen car. He informed his handler, Captain Aldrich, about the appellant's request. They decided to adhere to the request. He informed the appellant that he would be able to execute the request. The appellant informed him that the vehicle is standing in front of Standard Bank, Ladybrand. Captain Aldrich went to Ladybrand to fetch the vehicle. A few days later he was contacted by his handler and informed that South African Police Vehicle Identification Numbers (SAPVIN) have been engraved on the vehicle's engine. Captain Gerber changed the information on the police's computer system to indicate that the vehicle was stolen and recovered.

[4] He met Aldrich outside Ladybrand where he took possession of the vehicle. He informed the appellant that the vehicle is back. The appellant was unfortunately

not available, but requested him to park the vehicle in his (appellant's) garage. He obliged and handed the keys to the appellant's domestic worker.

[5] Mr Johan Jagga (Jagga) testified that, during 2001, he was attached to the motor vehicle theft branch at Ladybrand. Accused 1 approached him with a vehicle's engine and chassis number. Accused 1 requested him to check whether the vehicle was a stolen vehicle. He complied and ascertained that the vehicle, a Mazda 4x4, was indeed reported as stolen. He communicated this information to accused 1. Accused 1 later approached him again with the particulars of the same vehicle. He again informed accused 1 that the vehicle is a stolen vehicle. He informed accused1 that he can arrange for accused 1 to receive informer's fees should he give the police information as to the whereabouts of the Mazda 4x4. Accused 1 did not give him any further information about the vehicle. On 1 October 2001 he saw one of accused 1's employees changing a wheel of the vehicle, in Prinsloo Street Ladybrand.

[6] Accused 1's son, Thomas, explained that the vehicle belongs to his father. He requested Thomas to accompany him to the police station. He checked the vehicle and ascertained that it had a SAPVIN. He checked behind the rear light for the secret chassis numbers. He ascertained that it was indeed the same numbers that accused 1 enquired about. The information on the computer, this time around, showed that the vehicle was recovered by its owner. He contacted Kruger who informed him that his vehicle was uninsured and never recovered. He arrested accused 1.

[7] The appellant testified that accused 1 bought the vehicle with the assistance of Darow. The appellant was at that stage in the business of registering cars in both South Africa and Lesotho. He befriended Heymans in Bethlehem after the latter was released from prison. He moved to Ladybrand for business reasons. Heymans followed him and he got Heymans a job at a Pub in Ladybrand. He initially did some of the vehicle registrations with Heymans. He thereafter requested Heymans to do registrations on his behalf. He would then give

Heymans the full fee which he charged the client. He has done this on approximately 6 to 8 occasions.

[8] Accused 1 approached him and requested him to register the vehicle on his behalf. He went to Lesotho where he checked in their registers whether the vehicle was ever registered in Lesotho. He also checked whether the vehicle was a stolen and recovered vehicle in that country and sold on auction. He could not find any trace of the vehicle in that country's books. He requested Heymans to take the vehicle for engine clearance as the first step towards the registration of the vehicle. He had no papers for the vehicle. He also did not have a receipt to prove that accused 1 bought the vehicle. Heymans agreed. He arranged for accused 1 to park the vehicle opposite Standard Bank where it was collected by Heymans. After Heymans was done with the police clearance, the appellant called accused 1 and made arrangements for the vehicle to be returned to accused 1. Accused 1 was subsequently arrested for theft of the vehicle. He arranged with Heymans to have accused 1 released from prison. They paid Heymans R500 to arrange his release.

[9] The regional magistrate found that the state proved beyond reasonable doubt that accused 1 was guilty of theft of the vehicle on the basis that he was in possession thereof, shortly after it was stolen and he could not give a reasonable explanation for his possession. He found that the appellant new that the vehicle was stolen and that he assisted accused 1 in order to register the vehicle in his name.

[10] Mr Van der Merwe contended that the appellant was not properly convicted because the doctrine of possession of recently stolen property was not applicable to him. It was pointed out to him that the basis on which the appellant was convicted was that he was an accessory to theft and therefore as guilty of theft as the thief himself. Having realized the fallacious basis on which he based his argument he conceded that the appellant was indeed guilty of theft.

[11] It is clear from the totality of the evidence that the appellant is guilty of theft on two bases. Firstly the testimony of Heymans, which was accepted by the regional magistrate, directly implicated the appellant in the commission of the offence. We are bound by the regional magistrate's factual finding. Courts of appeal are generally reluctant to interfere with the factual findings made by the trial court unless the trial court's findings were clearly wrong. See **R v Dhlumayo** 1948 (2) SA 677 (A) at 702; **S v Naidoo** 2003 (1) SACR 347 (SCA) at para 26. The regional magistrate's finding in relation to Heymans' testimony has not been challenged. I could also not find any basis upon which to doubt the regional magistrate's finding. It was not a wrong finding.

[12] Secondly, on the appellant's own version it is clear that he is guilty of theft. According to him, he wanted Heymans to register the vehicle and earn money for the registration. He was however centrally involved in arranging with accused 1 to drop the car off outside Standard Bank and to go and fetch the car there. There is no rational explanation why he could not let Heymans do all the work. He enquired in Lesotho about the status of the car. He did not do so here in South Africa. No explanation is given as to why he did not inquire about the status of the vehicle in South Africa. The manner in which the car was dealt with speaks volumes. The appellant did not have a single document relating to the registration past or present of the vehicle. It can only be because the car was a hot car or at the very least he should have suspected that it is a stolen car and he did not care; he wanted to assist accused 1 by all means necessary. Even his actions after accused 1 was arrested clearly shows that he wanted to assist accused 1 in connection with this vehicle. His evidence was a weak attempt at putting distance between him and this vehicle. Unfortunately for him the surrounding circumstances and direct evidence points incriminatingly at him being instrumental in having the stolen vehicle registered. It is improbable that Heymans would engrave SAPVIN on the engine without permission or without informing his principal.

[13] Theft is a continuing crime. CR Snyman in Criminal Law 5th Ed at 509 to 510 sets out the two important effects of the rule that theft is a continuing crime. The second manifestation of the rule is on point in this case. He says:

> "The second effect of the rule that theft is a continuing crime is that, generally speaking, our law draws no distinction between perpetrators and accessories after the fact. As pointed out above, an accessory after the fact is somebody who helps the perpetrator at a stage when the original crime has already been completed. Since theft is a continuing crime, the person who after the commission of the theft assists the thief (who is still in possession of the property) to conceal the property does not qualify as an accessory after the fact, because his assistance is rendered at a time when the original crime (theft) is still uncompleted. The person rendering the assistance is therefore guilty of theft, and not merely of being an accessory after the fact."

[14] In an endeavor to assist accused 1 to conceal the theft by registering the vehicle with SAPVIN the appellant committed theft. The regional magistrate's finding is therefore unassailable. The appeal ought to be dismissed.

[15] I accordingly make the following order:

The appeal, against the conviction of theft, is dismissed.

C.J. MUSI, AJP

I agree.

M.H RAMPAI, J

On behalf of Applicant:	Mr. P van der Merwe Instructed by Legal Aid SA BLOEMFONTEIN
On behalf of Respondent:	Adv. A. van Wyk Instructed by Director Public Prosecutions BLOEMFONTEIN