

96/84

CASE NO. 472/82
/CCC

IN THE SUPREME COURT OF SOUTH AFRICA

(APPELLATE DIVISION)

In the matter between

LIZO LUKE SKWEYIYA

APPELLANT

and

THE STATE

RESPONDENT

CORAM: WESSELS, BOTHA JJA et ELOFF AJA

HEARD: 31 August 1984

DELIVERED: 11 SEPTEMBER 1984

J U D G M E N T

ELOFF/

ELOFF, AJA

The appellant was charged before a Regional Magistrate with housebreaking with intent to steal and theft. He was convicted and sentenced to 3 years' imprisonment. An appeal to the Cape of Good Hope Provincial Division was dismissed. Leave to prosecute a further appeal to this Court was refused by the Provincial Division. Thereafter such leave was granted to the appellant pursuant to a petition therefor addressed to the Chief Justice.

On Friday 6 June 1980, at about 10:30 in the evening, a motor car driven by the

appellant/

appellant was stopped at a road block in Koeberg Road in Milnerton. In the locked boot of the motor car there were inter alia two Sanyo Hi-Fi sets, one double bedspread, and two empty cartons for the conveyance of Telefunken portable Television sets. These items were part of a large quantity of goods with a total value of R5 325,38 which were stolen during the night of 21 May 1980, when the business premises of a firm in Worcester known as "Leaders" was broken into. The value of the items in the boot of appellant's motor car was R338,40. The appellant was asked by the constable in charge

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of the road block to open the boot. He replied that he did not have the key. The motor car was thereupon taken by the police to the Milnerton police station where the boot was forced open, and the stolen goods found. The appellant was asked to account for the presence of the goods. He explained that he had purchased the motor car from a person in Worcester, a fortnight before, and that the latter was not able to provide the appellant with a key for the boot. He was - so he told the police - unaware of the presence of the goods in the boot. The explanation was false; the motor car in question belonged to the

appellant's/

appellant's mother, and he was driving it with her

permission. At the subsequent trial before the Regional

Magistrate the appellant gave a different explanation

for his possession of the goods in the motor car and

for his professed inability to produce the key of the

boot. He said that he had chanced on the goods in the

vicinity of a house in Guguletu where his girl friend

lived. This happened early in the morning of the day

when he was stopped at the road block. He assumed that

the goods had been left by their owner at the place where he

found them. As the owner might return to the spot to

look for them, he asked his girl friend to keep them in

the meantime. She was unwilling to do so, and suggested

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that he should keep them in the boot of his motor car. She would make enquiries during the day concerning the identity of the owner. When he came to visit her that evening she would tell him what she had ascertained. He agreed with this suggestion, put the goods in the boot of the motor car and drove to his place of work. After work, while driving to the home of his girl friend, he was stopped at the road block.

This explanation of the appellant was rejected by the Regional Magistrate. Neither at the hearing of the unsuccessful appeal to the Provincial Division, nor in argument before us, did Counsel for the appellant/

appellant criticise that finding. The main burden of the argument presented to us was that notwithstanding the falsity of appellant's evidence, the circumstances which I have outlined do not attract as the only reasonable inference the conclusion that the appellant was one of the participants in the burglary on 21 May 1981. It was contended that the circumstances do not exclude the reasonable possibility that the appellant might have obtained the goods found in his possession from the thieves or from a receiver.

It is necessary firstly to say a few words concerning one aspect of the inferential reasoning method, commonly described as the "doctrine"

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of recent possession of stolen goods, which was adopted by the Regional Magistrate. (As to the so-called

"doctrine", see S v Parow 1973(1) SA 603(A) at 604 B-E)

It is the requirement that the goods must have been

recently stolen. The nature of the stolen article is

an important element in the determination of what is

recent. (R v Mandele 1929 CPD 96 at p. 98; R v Morgan

1961(2) SA 377(T) at p. 378(B-D)). If the article

stolen is of the type which is usually and can easily

and rapidly be disposed of, anything beyond a relatively

short period will usually not be recent. The Court has

accordingly to ask itself -

"... is the article one which could easily pass from hand to hand, and was the lapse of time so short as

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to lead to the probability that this particular article has not yet passed out of the hands of the original thief."

(Mandele's case (supra) at p. 98).

The reasoning of Rumpff JA in S v Rama 1966(2) SA 395 (AD) at p. 400 illustrates the importance of the nature of the goods. In that case two cases containing 189 watches were stolen. Within 14 days thereafter the appellant in that case was proved to have been in possession of two of the stolen watches. He falsely denied possession of those watches. In concluding that the trial Court could not be faulted for finding that the theft of the two cases of watches was sufficiently recent, Rumpff JA placed emphasis on the/

the fact that -

"The watch is an unusual and expensive watch and the learned trial Judge found that it would not pass readily from person to person."

(See p. 400 C-D)

In the present case the Regional Magistrate made no finding that the goods stolen were of the sort which do not pass easily and quickly from hand to hand, nor was there any evidence to that effect. The articles stolen were mostly electrical equipment and household goods. There were 44 items. No single item was given a particularly high value - only one T V set was accorded a value of R379. There does not appear to me to be any reason to conclude that it is unlikely that

the/

the articles were stolen with the object of disposing of them as quickly as possible, and that there is a ready market for such goods. I accordingly think that the matter should be viewed on the basis that the thieves had sufficient opportunity to and may well have disposed of the stolen goods before appellant was stopped at the road block.

In the Court below reliance was placed on the following passage in the judgment of Beadle CJ in R v Samson 1969(4) SA 158 (RAD) at 159 (C-D):

"It appears from these cases that where, fairly shortly after a house-breaking, the accused is found in possession of some of the articles which were stolen at the time and

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does not give the explanation that he received the stolen goods from a third party who may have stolen them, the court is perfectly justified in finding him guilty not only of the housebreaking but also of the theft of all the articles stolen at the time when the housebreaking occurred."

With respect, I think that the fact that an accused person in the position of the present appellant did not give the explanation that he received the articles from the thieves, may be due to reluctance to admit that he was in possession of goods which he knew were stolen. The absence of such an explanation is of course a relevant consideration, but it is not conclusive.

In my view the possession by the appellant
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of three of the stolen articles was not sufficiently recent to justify the conclusion that he was one of the thieves, and he should not have been found guilty as charged.

His Counsel conceded however - in my opinion correctly - that all the circumstances clearly establish that he knew that the goods were stolen. The correct verdict should accordingly have been guilty of receiving two Hi Fi sets, one bedspread and two cartons knowing that they were stolen.

It remains to deal with the sentence to be imposed for the lesser offence. I believe that we are sufficiently informed of the relevant considerations

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to impose sentence ourselves.

It seems to me that the imposition of a fine will be proper in all the circumstances of the case. The appellant had a clean record, and he was in steady employment. He earns a good salary and he is in a position to pay a relatively substantial fine of the order of R500. I think that a suspended sentence of imprisonment should also be imposed by way of a deterrent.

In my judgment the appeal succeeds to the extent that -

1. The conviction is set aside and there is substituted therefor one of receiving two Hi Fi sets, one bedspread and/

and two cartons knowing that they were stolen;

2. The sentence is set aside and there is substituted therefor a fine of R500 or in default of payment, one year's imprisonment; and one year's imprisonment suspended for three years as from the date of delivery of this judgment, on condition that the appellant is not found guilty of theft or any offence of which he may be convicted on a charge of theft, if committed in the period of suspension.

ELOFF, AJA

WESSELS, JA)
) CONCUR
BOTHAS, JA)