

Reportable:	YES / NO
Circulate to Judges:	YES / NO
Circulate to Magistrates:	YES / NO
Circulate to Regional Magistrates:	YES / NO

IN THE HIGH COURT OF SOUTH AFRICA (Northern Cape Division)

Case Nr: CA&R 15/2009

Case Heard: 25/05/2009

Date delivered: 29/05/2009

In the matter between:

M S Mabelo

PLAINTIFF

and

The State

RESPONDENT

Coram: Lacock J et Henriques AJ

JUDGMENT

Henriques AJ:

1. The Appellant seeks to appeal against his conviction on charges of dealing in 112,15 kilograms of dagga.

BACKGROUND FACTS

2. The Appellant was charged in the Upington Magistrate's Court on charges of dealing in dagga, alternatively possession of dagga. On 25 June 2008 the Appellant was found guilty of dealing in dagga and was sentenced to 6 years imprisonment of which 2 years were suspended for a period of 5 years.

3. It was common cause that on 4 September 2006 whilst performing crime prevention duties members of the Organized Crime Unit, Upington, seized an abandoned vehicle with registration numbers and letters SRB 062 GP. After the vehicle was searched, dagga was found in the vehicle in eleven sealed bags. Fingerprints were found on sellotape which was used to seal one of the bags.
4. The fingerprint expert, A P C Pretorius, identified the Appellant's fingerprints on the sellotape. He further testified regarding the uniqueness of the fingerprints found on the sellotape.
5. During the trial the Appellant who was represented, did not dispute that his fingerprints were found on the sellotape and, his version as to how his fingerprints came to be found on the sellotape only came to the fore during his evidence in chief and was not put to any of the State witnesses specifically the fingerprint expert.
6. The Magistrate convicted the Appellant based solely on the circumstantial evidence.

GROUND OF APPEAL

7. The grounds of appeal upon which the Appellant relies are to be found in the record of proceedings. However, Advocate Cloete in his heads of argument at paragraph 5 referred to the following grounds of appeal namely:

"5.1 Die Verhoorhof het fouteer deur te bevind dat die Staat sy saak bo redelike twyfel bewys het, spesifiek dat die staat

se saak op omstandigheidsgetuienis berus deurdat 'n vingerafdruk van die Appellant op die kleefband gevind is waarmee een van die sakke dagga verseel was.

5.2 Die Verhoofhof het fouteer deur die Appellant se verduideliking van sy vingerafdruk te verwerp as nie redelik moontlik waar nie."

THE LEGAL POSITION IN RELATION TO CIRCUMSTANTIAL EVIDENCE

8. The *locus classicus* in relation to circumstantial evidence is the case of **R v Blom** 1939 AD 228 where Watermeyer JA referred to the "two cardinal rules of logic" which governed the use of circumstantial evidence in a criminal trial. He held as follows:
 - "1. *The inference sought to be drawn must be consistent with all the proved facts. If it is not, then the inference cannot be drawn.*
 2. *The proved facts should be such that they exclude every reasonable inference from them save the one to be drawn. If they do not exclude other reasonable inferences, then there must be a doubt whether the inference sought to be drawn is correct."* (at 202-203)
9. Having regard to the learned authors Hoffman and Zeffert, 4th edition at page 591 the writers were of the view that "*.. the cogency of circumstantial evidence usually arises from a number of independent circumstances which all point to the same*

conclusion". In a criminal case the question is whether "*the evidence as a whole furnishes sufficient proof of guilt*".

10. What is noteworthy in this case is the following:
 - 10.1. The Appellant's explanation as to how his fingerprints came to be found on the sellotape was the fact that he sold vegetables and would often use sellotape and newspaper to pack the vegetables. He recalled lending a friend the sellotape to use to close up a window. This was his explanation which he put forward during his evidence in chief.
 - 10.2. This explanation was never put to the State witness, the fingerprint expert, Pretorius, in cross-examination. Neither was this explanation ever put or suggested to any of the other State witnesses.
 - 10.3. The Appellant also did not identify the person to whom he lent the sellotape. The name of the friend to who he lent the sellotape, Pakkies America, was disclosed in his notice of appeal for the first time.
11. During the course of argument, Advocate Cloete who appeared for the Appellant conceded that the Appellant's explanation was never put to any of the State's witnesses especially the fingerprint expert, Pretorius. He was also constrained to concede that in addition during the Appellant's evidence and cross-examination he could have and ought to have disclosed the identity of the friend to whom he lent the sellotape to.

12. The Magistrate correctly found in my view that the Appellant never denied or placed in dispute that his fingerprints were found on the sellotape. He found that the Appellant could not provide a reasonable explanation as to why his fingerprints were found on the sellotape, and thus came to the conclusion that the Appellant had not provided a version to the Court.
13. He correctly found in my view that it was highly unlikely that the Appellant's fingerprints got onto the sellotape during the normal course of his business, and that the accused's fingerprints could have accidentally landed up on the sellotape.
14. This coupled with the fact that the Appellant's version was never put to the State witnesses, and that he never disclosed the identity of the friend who he lent the sellotape to, I am of the view that the Magistrate correctly found that the only reasonable conclusion one could reach was that the Appellant's fingerprints ended up on the sellotape whilst the Appellant was sealing the black bags containing the dagga.
15. It is for this reason that I am of the view that there is no merit in the appeal and accordingly make the following order:

The appeal is dismissed.

**J I HENRIQUES
ACTING JUDGE
NORTHERN CAPE DIVISION**

I agree:

**H J LACOCK
JUDGE
NORTHERN CAPE DIVISION**

For the Plaintiff:	Adv PJ Cloete
On behalf of:	Legal Aid Board, KIMBERLEY
For the Respondent:	Adv C G Jansen
On behalf of:	National Director of Public Prosecutions, KIMBERLEY