



**IN THE HIGH COURT OF SOUTH AFRICA
EASTERN CAPE DIVISION, MAKHANDA**

**NOT REPORTABLE
Case No: CA&R 83/2024**

In the matter between:

GREGORY DAVID EVANS

Appellant

and

THE STATE

Respondent

APPEAL JUDGMENT

ELLIS AJ:

INTRODUCTION

[1] The appellant was convicted on 13 February 2023 in the District Court, Makhandá, on three counts as follows:

- 1.1 possession of two Mandrax tablets (“count 1”);
- 1.2 assault (“count 2”); and

1.3 negligent driving (“count 3”).

[2] He was cautioned and discharged in respect of counts 1 and 2 and fined R2 000.00 or six months imprisonment in respect of count 3. An amount of R1 500.00 or five months imprisonment was suspended for five years.

[3] Leave to appeal against the convictions on count 1 and count 2 was granted by this court after the court *a quo* refused leave to appeal against all three convictions. At the hearing of the matter, Mr McConnachie argued that this court can also decide on appeal in respect of count 3, *mero motu*, in the exercise of this court’s inherent discretion.

BACKGROUND FACTS

[4] The three counts originated from a sequence of events that happened on the late afternoon or evening of 5 January 2021. The appellant pulled up alongside the police vehicle of one Constable Matroos (“Matroos” or “the complainant”) at the intersection of New and Hill Streets, Makhanda, complaining of an incident of racism unrelated to the complainant. The appellant then pursued Matroos with his vehicle, and events culminated in front of the SAPS station yard in Beaufort Street with the search and arrest of the appellant. The appellant was charged with the possession of two Mandrax tablets, assault by threat and negligent driving. The appellant pleaded not guilty and gave a plea explanation to the extent that should the evidence establish any of the conduct relating to counts 2 and 3, he was not in his proper senses due to psychological and other factors (not drugs), and that he was not able to appreciate the wrongfulness of his actions, alternatively, that such ability was diminished. In respect of count 1, the accused tendered a bare denial.

[5] The trial court had to decide whether the State’s evidence proved that the appellant drove negligently; whether the appellant assaulted Matroos by threat and whether he was found in possession of two Mandrax tablets.

THE STATE’S EVIDENCE AT TRIAL

[6] The State relied on the evidence of two witnesses at the trial. Matroos, as complainant, testified as did Constable Johnson ("Johnson"). The State also produced documentary evidence, being a psychiatric report obtained from Fort England Hospital, and a photo album forming part of the exhibits which are still photographs extracted from a video of the events in front of the station yard. The psychiatric report and photo albums were admitted into evidence without objection.

[7] The relevant evidence is summarised as follows:

7.1 On 5 January 2021 Matroos was driving his police vehicle. He was approached by the appellant, in his vehicle, an Isuzu bakkie, at a stop sign at the intersection of New and Hill Streets. The appellant was swearing at Matroos, showing signs, and pointing at him, clearly upset. Matroos drove off and the Appellant followed in hot pursuit. The two vehicles proceeded through the streets, in a built-up area and at times exceeding the speed limit. Matroos was heading back to the station and disobeying a stop street in the process, all to get away from the appellant. Matroos drove into the station yard (the police station parking lot for police vehicles) and the appellant was unable to follow. The photographs extrapolated from the video showed that the appellant made more than one U-turn in front of the police station and then parked his vehicle in front of the station. The appellant alighted from his vehicle and approached in the direction of the front doors of the station. The appellant's demeanour was angry and upset. On his way in, three persons met the appellant namely Matroos, Johnson and a Constable Manyonta. They apprehended and restrained the appellant, including the use of pepper spray. The appellant was taken inside the building where he was searched and Matroos found two Mandrax tablets in the appellant's left shorts pocket. The appellant was processed and detained in a cell, swearing at Matroos throughout the process. At this stage Matroos suspected drug use and transported the appellant to the hospital, but no drug test could be performed. They returned to the station.

7.2 Johnson testified that on 5 January 2021 he was on duty with Constable Manyonta and that they were patrolling. The two of them had just returned to the station and were still in the station yard when he observed Matroos pulling in. Matroos informed him that he was being pursued by a white male in an Isuzu bakkie. The occupant of the Isuzu (who is the appellant here) parked in front of the police station and approached the front doors, while they were also approaching the appellant. Matroos and Johnson apprehended the appellant, took him to the ground and restrained him. The appellant was then taken inside. Matroos searched the appellant and found two Mandrax tablets. The appellant continued his aggressive attitude towards the officers throughout and it was decided to transport the appellant to the hospital to have his blood drawn. No drug test was done, and they returned to the station.

7.3 A psychiatric report by Fort England Hospital Forensic Service concluded with a diagnosis of substance use disorder and further concluded that at the time of the offence the appellant was able to appreciate the wrongfulness of the act in question and able to act in accordance with such appreciation of wrongfulness.

EVIDENCE BY THE APPELLANT

[8] The appellant called Dr Berenisco to testify in connection with the injuries sustained by the appellant in the so-called take down of the appellant in front of the station. In my view, nothing turns on this evidence.

[9] The appellant testified in his own defence.

9.1 On 5 January 2021 he purchased items at Spar where he was confronted with racial remarks made by an employee of Spar. He testified that he observed Matroos in the Spar but could not say if Matroos overheard any of the remarks. The appellant left the shop but

had to turn back for certain items, at which time he saw Matroos driving. Still aggrieved by what he perceived to be a lack of assistance from the police in the alleged racial incident, he then made a U-turn to follow Matroos and pulled up alongside him and attempted a conversation. The appellant called Matroos a criminal. Matroos did not engage and drove off. The appellant followed: *“And then he sped off at a high speed and I followed him down”*.

9.2 When asked about his state of mind he said *“so I was high, so I had just come from the dentist, so I was really high I was highly upset.”* Later, repeating *“I was highly upset with the police officer.”* He testified that he was driving at about 70km/h and Matroos at 80km/h or 90km/h but *“I would not say chasing, but I was driving in very close proximity behind the police car”*.

9.3 He arrived at the station in Beaufort Street and parked his vehicle. He described himself as calm when he approached the police station. He testified that officers Manyonta, Johnson and Matroos were the perpetrators of an assault against him, including the use of pepper spray, and that they were the aggressors in the narrative. After he was pepper-sprayed he was disorientated and could not see much. He testified that he felt himself being pulled into the police station but that he was not offering resistance nor being aggressive. He recalled that he was searched, however, he testified that it was only to retrieve his car keys from his pocket. The appellant’s version is that he was transported to hospital, but that no drug test was performed, and they returned to the station. He denies that drugs were found in his possession and testified that he only heard about the drugs after their return from the hospital.

GROUND OF APPEAL

[10] The appellant’s grounds of appeal are formulated as follows. In respect of count 1 it is alleged that the Magistrate erred in finding corroboration for the evidence

that the appellant was found in possession of two Mandrax tablets in the fact that the police took him to Settler's Hospital for drug testing, despite it being common cause that no testing was done. Further, the Magistrate ought to have accepted the appellant's version that he was only found in possession of the drugs only after their return to the police station.

[11] In respect of count 2, the appellant alleges that the Magistrate ought to have rejected the evidence of Matroos and Johnson regarding what occurred after the appellant parked his vehicle, as this was contradicted by the video material and still-photographs, as these images had shown Manyonta to be the aggressor and it also further showed the assault upon the appellant resulting in his injuries as testified about by Dr Berenisco.

[12] The Magistrate also alleged to have erred in not drawing an adverse inference against the State for their failure to obtain a witness statement from Manyonta.

APPEALS AGAINST CONVICTIONS: APPLICABLE PRINCIPLES

[13] The question on appeal regarding the appellant's conviction is ultimately whether the evidence in the trial is sufficient to prove the guilt of the appellant beyond a reasonable doubt; this being the State's burden of proof. In this regard, Plasket J (as he then was) in *S v T*¹ held that:

“The State is required, when it tries a person for allegedly committing an offence, to prove the guilt of the accused beyond a reasonable doubt. The high standard of proof – universally required in civilised systems of criminal justice – is a core component of the fundamental right that every person enjoys under the constitution, and under the common law prior to 1994 to a fair trial. It is not part of a charter for criminals, and neither is it a mere technicality. When

¹ 2005 (2) SACR 318 (E) at para 37.

a court finds that the guilt of an accused has not been proved beyond reasonable doubt, that accused is entitled to an acquittal, even if there may be suspicions that he/she was, indeed, the perpetrator of the crime in question. That is an inevitable consequence of living in a society in which the freedom and the dignity of the individual are properly protected and are respected. The inverse – convictions based on suspicion or speculation – is the hallmark of tyrannical systems of law. South Africans have a bitter experience of such a system and where it leads to.”

[14] In *S v Zuma*² the aforesaid principles were restated as follows:

“The presumption of innocence is infringed whenever the accused is liable to be convicted, despite the existence of a reasonable doubt.”

[15] In summary, *S v Van der Meyden*³ emphasizes that while the onus of proof in a criminal case is discharged by the State if the evidence establishes the guilt of the accused beyond reasonable doubt, the corollary is that an accused is entitled to be acquitted if it is reasonably possible that the accused might be innocent.

[16] The question, otherwise cast, is therefore whether, at the end of the trial, the evidence presented at the trial is, as a whole, sufficient to ground the conviction of the appellant. As adopted and affirmed by the Supreme Court of Appeal in *S v Van Aswegen*⁴ the evidence in the trial as a whole must be considered. The overall picture is therefore of central importance. It is also critical to remember that an appeal court is not a trier of fact at first instance; that is the function of the trial court.

² [1995] ZACC 1; 1995 (1) SACR 568 (CC) at paras 25 and 33.

³ 1999 (1) SACR 447 (W) at 448 F – G.

⁴ 2001 (2) SACR 97 (SCA).

[17] The fundamental principle on the evaluation of evidence on appeal is that an appeal court will not be inclined to disturb the findings by the trial court on the evaluation of evidence. This is borne by the fact that it is difficult to surpass the advantage of seeing and hearing witnesses. The appeal court will only interfere if there was a clear misdirection, and the findings of the trial court are declared erroneous⁵. This was reiterated by the Supreme Court of Appeal in *AM and Another v MEC Health, Western Cape*⁶, where the court stated the following:

‘Such findings are only overturned if there is a clear misdirection or the trial court’s findings are clearly erroneous. That has constantly been the approach of this court and the Constitutional Court as reflected recently in the following passage from *ST v CT*:

“In *Makate v Vodacom (Pty) Ltd* the Constitutional Court, in reaffirming the trite principle outlined in *Dhlumayo*, quoted the following dictum of Lord Wright in *Powell & Wife v Streatham Nursing Home*:

Not to have seen the witnesses puts appellate judges in a permanent position of disadvantage as against the trial judges, and unless it can be shown that he has failed to use or he has palpably misused his advantage, the higher court ought not to take the responsibility of reversing conclusions so arrived at, merely on the result of their own comparisons and criticisms of the witnesses and of their own view of the probabilities of the case”.

WAS THE APPELLANT CORRECTLY CONVICTED?

⁵ R v Dhlumayo 1948 (2) SA 677 (A)

⁶ (1258/2018) [2020] ZASCA 89

[18] In my view this question must be answered in the affirmative. The salient evidence was evaluated by the Magistrate and the evidence of Matroos was materially corroborated by Johnson. Moreover, considering that the appellant was on his own version in a heightened emotional state the appellant was an unreliable witness. The discrepancies between the evidence of Matroos and Johnson as far as the sequence of events and arrest of the appellant are concerned were not material. The Magistrate correctly found that Matroos found the tablets in the appellant's possession when the appellant was searched. The suggestion that Matroos had handy two Mandrax tablets in the very unlikely event of Matroos being pursued by an unknown person with the sole purpose of later planting the drugs on this unknown person stands to be rejected.

[19] As for count 2, the threat of assault meets the threshold of a conviction if it creates a reasonable fear of imminent harm. The appellant's own testimony in this regard is telling and seen holistically with his behaviour in driving and pursuing the complainant, and his own evidence of his heightened emotional state, there is no material misdirection of fact by the Magistrate.

[20] In respect of count 3, there is no authority to support the submission that this Court can interfere in a conviction if leave to appeal against such a conviction was not granted. It would set a dangerous precedent to do so.

CONCLUSION

[21] The evidence in the trial was found to be sufficient to prove the guilt of the appellant beyond a reasonable doubt. The over-all picture of the evidence does not support the reasonable possibility that the accused might be innocent. The appeal court will not be inclined to disturb the findings of the trial court on the evaluation of evidence unless the appellant shows that there is a clear misdirection of fact by the Magistrate. There was no such misdirection and as such this court will not interfere with the findings of the Magistrate in the court *a quo*.

Accordingly, I make the following Order:

ORDER

1. The appeal is dismissed.

L ELLIS
ACTING JUDGE OF THE HIGH COURT

GOVINDJEE J: **I agree.**

A GOVINDJEE
JUDGE OF THE HIGH COURT

Appearances:

For the appellant: Advocate McConnachie

For the respondent: Advocate S Hendricks

Date heard: 12 March 2025

Date delivered: 29 July 2025