

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

CASE NUMBER: A10/2025

- (1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED

03 September 2025

DATE

SIGNATURE

In the matter between:

PETERSON, CHESTER RASHID

Appellant

and

THE STATE

Respondent

JUDGMENT

YACOOB J: (KUNY J CONCURRING)

- [1] The appellant, Mr Peterson, was charged with robbery with aggravating circumstances. He pleaded not guilty and had legal representation. He was convicted on 31 May 2021 in the Regional Court, Brixton, and sentenced, on 21 June 2021, to 20 years' imprisonment. Mr Peterson appeals both conviction and sentence with the leave of the lower court.

- [2] The complainant, Mr Mafokane, was accosted in his motor vehicle at gunpoint, on 27 February 2020. He was placed in the backseat of his vehicle, and driven somewhere. He was then transferred to another vehicle, apparently amidst a gunfight. He was dropped off in an unknown place, and eventually was assisted by passers-by to contact his family. He was then taken to the place where the vehicle had been hijacked. His evidence was that he did not see and could not identify his assailants.
- [3] None of the other witnesses called by the State could positively identify Mr Peterson. The second witness, Mr Moolman, was a reaction officer employed by a vehicle tracking company to recover stolen and hijacked vehicles. His company received a "look out" for a vehicle, which the company's GPS tracking system showed was moving around Eldorado Park. He and his colleague went to the area, apparently in separate vehicles, and were informed by the control room that the vehicle had stopped "on Itumeleng Street and Robin". They approached the spot, which Mr Moolman reached after his colleague. They saw two vehicles there, one of which was the hijacked vehicle. As they exited their vehicles and approached the hijacked vehicle, Mr Moolman saw four people standing around the hijacked vehicle, and another person getting out of the driver's side of that vehicle. Three of them ran down the street, another one with a firearm ran into a yard, and Mr Moolman chased that person. Mr Moolman also discharged his firearm while in pursuit.
- [4] It was approximately 19h00 and dusk, the sun had just gone down but it was not completely dark. There were streetlights. When Mr Moolman saw the person with the firearm, he was about ten metres away. When asked if he could see that person, he stated that he could see what he was wearing. The person jumped over walls and fled. Mr Moolman came out of the yard and found members of the Johannesburg Metropolitan Police Department ("JMPD") at the scene. He told them the directions in which suspects had fled and the JMPD then continued the search for the perpetrators.

- [5] Mr Moolman told the JMPD that he saw a tall man with a dark jacket and long dark pants. He then continued searching for the person with the firearm and the JMPD went to look for the person he had given the description of. This person was the one who had come out of the driver's seat. They then returned with a person fitting the description, after about 5 minutes. This was Mr Peterson.
- [6] When asked if it was the same person who he had seen, Mr Moolman simply said it matched the description. He was unable to confirm that it was the same person. He stated that he had not seen the suspect's face, only his clothing and height. However, he did not testify that the clothes Mr Peterson wore were the same as the clothes of the person he had seen, simply that it "matched the description". This is clearly far short of a positive identification. Mr Moolman's colleague had left the scene in his vehicle by then, in pursuit of other suspects.
- [7] Mr Moolman testified that he overheard the person saying that he had run from the vehicle and he had been asked to drive the vehicle. He pointed out Mr Peterson in court as the person who had been arrested, of which there was no dispute.
- [8] The next witness was a Mr Rofhiwa, one of the JMPD officers who arrived at the scene. He arrived with his colleague at the identified spot, and found the tracker vehicles and employees on the scene. They also found members of the public. The tracker employees and members of the public informed the JMPD that people who jumped out of the car went to the next street. He and his colleague drove to the next street, and started to look around. They saw a person wearing black clothes "busy jumping walls". They chased after him and caught him. According to him the tracker employees confirmed that the person the JMPD had apprehended had jumped out of the hijacked vehicle. Mr Rofhiwa also testified that Mr Peterson told him he had been fetched by his friends who were driving the hijacked vehicle and he had simply got in. He had been a passenger.

- [9] Notably, this was not the evidence of Mr Moolman. The high point of Mr Moolman's identification evidence was that the person apprehended "matched the description" of the person he had seen. This is a far cry from confirming that it was the person he had seen. Also, according to Mr Moolman, only he confirmed the identity, as his colleague had left by then. In addition, Mr Moolman had testified that the person described had got out of the driver's seat of the car, and he had heard Mr Peterson say that he had been asked to drive the vehicle, rather than that he had been a passenger.
- [10] The State's fourth witness was another official of the JMPD, Mr Daniels. According to him the tracker employees gave a description to the JMPD of a person clad in dark clothing. He said that they saw the suspect in the next street, but he jumped the walls and came back to the street where the vehicle was, where they apprehended him. Mr Daniels testified that Mr Peterson told them that he had been picked up and asked to drive the hijacked vehicle. He also testified that the tracker people had confirmed that it was the same person they had seen.
- [11] An unsuccessful application in terms of section 174 of the Criminal Procedure Act, 51 of 1997, was made on Mr Peterson's behalf. Mr Peterson then testified that he had been walking in the street with his cousin, they heard gunshots and started running. It was while he was running that he was apprehended.
- [12] According to Mr Peterson he informed the police who arrested him that he was running because he heard gunshots. They then dragged him and one of them hit him with a rifle on his chin. He was then handcuffed and taken and thrown on the ground in front of a vehicle. After about 25 minutes he was placed in a police car. The policemen came with another person and asked that person if he, Mr Peterson, was the person, and that person said no. Mr Peterson identified that person as the first witness, Mr Moolman.
- [13] Mr Peterson testified that he had run when he heard the gunshots because he lives in Eldorado Park where people get shot all the time, even from stray bullets. He denied having said anything about having been in the hijacked vehicle, either as driver or passenger. According to him his cousin could not

testify because he was deceased. He had in any event not asked him for a statement because he did not want to involve his cousin who was only a youngster. Mr Peterson testified that that evening he had been wearing dark blue jeans and a dark grey hoodie with yellow writing on the front.

[14] The court *a quo* found that the so-called admission that was made was sufficient to make up for the deficiency in identification. In addition, the court relied on the evidence that Mr Peterson's clothing was dark as described and that he had been jumping from yard to yard. The court also found that Mr Peterson was a dishonest witness, although it is not clear on what basis the court makes this finding. The court does not make a distinction between whether Mr Peterson was allegedly a driver or passenger in the hijacked vehicle, finding that he admitted to one or the other, and apparently using this as a basis to find that Mr Peterson was extemporizing.

[15] However, the contradiction was not in what Mr Peterson said, but in what the State witnesses said he had said. This means the State witnesses contradicted one another, and that the State's evidence is therefore less than watertight.

[16] Considering the various contradictions in the State's evidence, that Mr Peterson admitted to having been a passenger in the hijacked vehicle versus that he admitted to having been the driver, that both tracker employees had confirmed Mr Peterson's identity versus only one tracker employee having still been there, and that Mr Moolman only confirmed that Mr Peterson fit the description, not that he was the person Mr Moolman had seen exiting the hijacked vehicle, there is little reliable evidence that Mr Peterson was involved in the robbery.

[17] In addition, one must take into account that there is no forensic evidence at all placing Mr Peterson in the vehicle.

[18] In those circumstances, it is not even necessary to consider Mr Peterson's evidence. In my view, however, his version that he was running because he had heard gunshots is reasonably possibly true, especially since Mr Moolman

had testified that he had fired his weapon. Mr Peterson's failure to call his cousin cannot be held against him, as it amounts to placing a higher burden on the accused than on the State.

[19] In these circumstances it is clear that the State has not proved its case beyond a reasonable doubt, and that the appeal must succeed.

[20] In all the circumstances, I make the following order:

1. The appeal succeeds.

2. The conviction of Mr Peterson in the Regional Court, Brixton on 31 May 2021 is set aside.



JUDGE S YACOOB
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, JOHANNESBURG

I AGREE.



JUDGE S KUNY
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, JOHANNESBURG

This judgment is handed down electronically by circulation to the parties or their legal representatives by email, by uploading it to the electronic file of this matter on Caselines, and by publication of the judgment to the South African Legal Information Institute. The date for hand-down is deemed to be 03 September 2025.

APPEARANCES

ON BEHALF OF APPELLANT:

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ON BEHALF OF THE RESPONDENT:

AK Mathebula

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