



**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

Reportable

Case No: A123/2025

In the matter between:

MZIKAYISA VINJWA

Appellant

and

THE STATE

Respondent

Coram: VAN ZYL, AJ (RALARALA, J concurring)

Heard on: 24 October 2025

Delivered on: 7 November 2025

Order: The appeal is dismissed.

Summary: Criminal appeal against conviction – identification of appellant by complainant – reliability where complainant and appellant had known each other before incident – conviction upon evidence of single witness – no reason to interfere with conviction

JUDGMENT

VAN ZYL AJ:

Introduction

1. On 29 June 2023 the appellant was convicted in the regional court for the division of the Western Cape, held at Knysna, on a count of housebreaking with the intent to steal (count 1), and a count of robbery with aggravating circumstances (count 2). The charge of robbery with aggravating circumstances was read with section 51(2) Part 2 of Schedule 2 of the Criminal Law Amendment Act, Act 105 of 1997.

2. The appellant was legally represented throughout the trial, and had pleaded not guilty to both counts.

3. On 27 July 2023 the appellant was sentenced to three years imprisonment on count 1, and nine years imprisonment on count 2, of which four years were suspended for a period of five years on condition that he was not convicted of robbery with aggravating circumstances, robbery or theft which is committed during the period of suspension. The sentences were to run concurrently, in terms of section 280 of the Criminal Procedure Act 51 of 1977 (CPA).

4. The regional court refused the appellant's application for leave to appeal against the conviction on 16 May 2024. A petition to the High Court was, however, successful, and on 19 March 2025 leave to appeal was granted in relation to the conviction.

5. It appears from the record that the appellant has been, and remains, in custody.

The state of the record

6. It is necessary, at the outset, to address the fact that portions of the appellant's cross-examination in the regional court, as well as the parties' closing arguments, are missing from the appeal record.

7. The importance of a proper record of the trial proceedings was reaffirmed by the Constitutional Court in *S v Schoombee & another*:¹

"[19] ... an accused's right to a fair trial encompasses the right to appeal. An adequate record of trial court proceedings is a key component of this right. When a record "is inadequate for a proper consideration of an appeal, it will, as a rule, lead to the conviction and sentence being set aside...."

8. In *S v Chabedi*² the Supreme Court of Appeal held as follows:

"[5] On appeal, the record of the proceedings in the trial court is of cardinal importance. After all, that record forms the whole basis of the rehearing by the court of appeal. If the record is inadequate for a proper consideration of the appeal, it will, as a rule, lead to the conviction and sentence being set aside. However, the requirement is that the record must be adequate for proper consideration of the appeal; not that it must be a perfect record of everything that was said at the trial. ...

[6] The question whether defects in a record are so serious that a proper consideration of the appeal is not possible, cannot be answered in the abstract. It depends, inter alia, on the nature of the defects in the particular record and on the nature of the issues to be decided on appeal."

9. Counsel were agreed at the hearing of the appeal that the record as it stood sufficed for the proper determination of the appeal, and that the missing portions did not detract from the appellant's right to a fair trial. The issue for determination on appeal is narrow, and the regional court dealt with the relevant aspects in some detail in its judgment. In the exercise of the Court's discretion in this respect,³ the hearing proceeded on the information available to the Court.

This Court's approach on appeal

10. A court of appeal will not easily interfere with the trial court's factual findings unless such findings are clearly wrong, or where there is a material misdirection

¹ 2017 (2) SACR 1 (CC) para 19.

² 2005 (1) SACR 415 (SCA) paras 5-6.

³ See also *Machaba and another v S* 2016 (1) SACR 1 (SCA) paras 4-5.

evident on the record. The reason for this is obvious: the trial court has the advantage of seeing, hearing, and appraising witnesses. A court of appeal would therefore only interfere with the trial court's evaluation of oral evidence in exceptional circumstances.⁴ In *S v Francis*⁵ it was held that:

"The powers of a court of appeal to interfere with the findings of fact of a trial court are limited. In the absence of any misdirection the trial court's conclusion, including its acceptance of a witness' evidence, is presumed to be correct. In order to succeed on appeal, the appellant must therefore convince the court of appeal on adequate grounds that the trial court was wrong in accepting the witness' evidence – a reasonable doubt will not suffice to justify interference with its findings. Bearing in mind the advantage which a trial court has of seeing, hearing and appraising a witness, it is only in exceptional circumstances that the court of appeal will be entitled to interfere with a trial court's evaluation of oral testimony."

11. As regards the evaluation of the evidence, it was held as follows in *KS v S*:⁶

"[29] This court must determine on the strength of the evidence as a whole, if the State proved the guilt of the appellant beyond reasonable doubt. The approach to be adopted is to weigh up all the elements which point towards the guilt of the appellant against all those which are indicative of his innocence, taking proper account of inherent strengths and weaknesses, probabilities and improbabilities on both sides and, having done so, to decide whether the balance weighs heavily in favour of the State as to exclude any reasonable doubt about the guilt of the appellant ...

[30] In the absence of an irregularity or misdirection, a court of appeal is bound by the credibility findings of the trial court, unless it is convinced that the findings are clearly incorrect...."

12. I consider the appellant's case against this backdrop.

⁴ *S v Monyane and others* 2008 (1) SACR 543 (SCA) para 15.

⁵ 1991 (1) SACR 198 (A) at 198j-199a. See also *S v Hadebe* 1998 (1) SACR 422 (SCA) at 426a: "... there are well-established principles governing the hearing of appeals against findings of fact. In short, in the absence of demonstrable and material misdirection by the trial court, its findings of fact are presumed to be correct and will only be disregarded if the recorded evidence shows them to be clearly wrong. The reasons why this deference is shown by appellate courts to factual findings of the trial court are so well known that restatement is unnecessary."

⁶ [2025] ZANWHC 89 (27 May 2025) paras 29-30.

The grounds of appeal

13. The single issue for determination by this Court relates to the identification of the appellant as a perpetrator of the crimes. The appellant contends that there has been a substantive misdirection by the regional court in its evaluation of the evidence in this respect.

14. According to the appellant, the regional court thus misdirected itself in respect of the identification of the appellant and the accuracy with which the complainant was able to identify the appellant, erred and misdirected itself in accepting the evidence of a single witness regarding the appellant's identity, because the complainant's evidence was unreliable, and erred in not giving the appellant the benefit of the doubt.

Was the appellant properly identified?

15. In the words of Marais JA in *S v Hadebe*⁷ one "*looks in vain for any such misdirection*" on the part of the regional court.

The relevant facts

16. The complainant, Mr. Shelton Jantjies, testified that he and the accused had known each other since childhood, having grown up together.

17. Upon his return from work on 14 September 2019, the complainant noticed that the gate to the property where he lived was open, and the door to his bungalow was ajar – the lock had been broken. The complainant's bungalow is situated on the premises of his mother's property, with his mother residing in the main house. The complainant's mother, Ms. Annie Hartnick, possessed a key to the bungalow and had accessed it during the day to clean. She confirmed that she locked the premises upon completion.

18. Upon entering the bungalow, the complainant noticed that his Wi-Fi router,

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Supra at 426c.

which was usually placed on the table, was missing. This prompted him to inspect the remainder of the bungalow. Upon drawing back the curtain separating the kitchen and lounge area from the bedroom, he observed the accused, whom he knows by the nickname "Skollie", standing in front of him, accompanied by an unidentified male who was crouching and growling in the bedroom. The complainant had left the kitchen light on when he departed for work, which illuminated the bedroom area when the curtain was opened.

19. The unidentified male tackled the complainant to the ground. A physical altercation ensued, but the complainant managed to push the assailant away. During the struggle, the appellant had shouted at the unidentified male, instructing him to shoot the complainant. After successfully freeing himself, the complainant noticed that the appellant had a knife. Fearing for his safety, he fled the bungalow and sought refuge at his mother's house. He told her immediately that "Skollie" and another male were inside the bungalow, and had attempted to rob him. His mother activated the panic button to alert the security company, who in turn contacted the South African Police Service. The complainant and his mother secured themselves inside her residence and awaited the arrival of the police.

20. Approximately two weeks later, the police brought the appellant to the complainant's residence and requested him to identify the suspect. The complainant confirmed that the individual was the person who had broken into his bungalow, known to him by the nickname "Skollie."

21. Under cross examination, the complainant added that light from the lounge area illuminated part of the bedroom. The appellant was standing approximately an arm's length away from the complainant, directly facing him in the lit portion of the room. A streetlight illuminated the front of the main house but did not reach the complainant's bungalow.

22. The physical altercation with the unknown male lasted only a few seconds. After disengaging from the unknown male, the complainant saw the appellant with a knife, prompting him to flee the bungalow. The complainant denied having informed the police that he had come from a tavern that evening or that he had seen the

appellant wearing a red top. He further denied hesitating during the identification of the appellant due to uncertainty. He clarified that he paused momentarily to compose himself, as he was becoming frustrated with the police repeatedly asking whether he recognised the appellant.

23. The second State witness was Ms. Hartwick, the complainant's mother. She corroborated his evidence. She stated that she was asleep at home when she heard the complainant knocking urgently. Upon opening the door, he informed her that "Skollie", whom she also knew, and another individual were inside his bungalow committing a robbery. Ms. Hartnick confirmed that they activated the panic button to alert the security company, and that the police arrived shortly thereafter.

24. The appellant confirmed that he knew both the complainant and his mother, and described the complainant as a friend. He stated that he was at home with his children after his girlfriend left the house following an argument on the evening in question.⁸ The police arrived the following morning and arrested him. They took him to the complainant, who then identified him as the suspect.

Identification

25. A court is careful when evidence of identification of an accused is presented. The possibility exists that a witness, although he is *prima facie* appearing to be honest, can falsely incriminate the accused because of prejudice, revenge, or some other motive.⁹ The complainant in the present matter had no such motive, and there was no evidence of bias or bad blood between him and the appellant. On the contrary, the appellant regarded the complainant as a friend.

26. In *S v Mthetwa*¹⁰ it was stated that:

"Because of the fallibility of human observation, evidence of identification is

⁸ It is not necessary to consider the evidence relating to the appellant's alibi defence, save to mention that the appellant's girlfriend was unable to indicate whether the appellant had been at her house on the day of the incident.

⁹ *R v Mokoena* 1958 (2) SA 212 (T) at 215C.

¹⁰ 1972 (3) SA 766 (A) at 768A-C. See also *S v Mehlahe* 1963 (2) SA 29 (A).

approached by the Courts with some caution. It is not enough for the identifying witness to be honest: the reliability of his observation must also be tested. This depends on various factors, such as lighting, visibility, and eyesight; the proximity of the witness; his opportunity for observation, both as to time and situation; the extent of his prior knowledge of the accused; the mobility of the scene; corroboration; suggestibility; the accused's face, voice, build, gait, and dress; the result of identification parades, if any; and, of course, the evidence by or on behalf of the accused. The list is not exhaustive. These factors, or such of them as are applicable in a particular case, are not individually decisive, but must be weighed one against the other, in the light of the totality of the evidence, and the probabilities; ... "

27. A distinction should be made between the reliability of a witness' evidence and his credibility. The honesty and conviction of a witness must never influence the separate investigation into the reliability of the identification by that witness.¹¹ There is, in the present matter, no reason to doubt the complainant's credibility as a witness. The regional court's finding that his identification of the appellant was reliable can also not be faulted.

28. The fact that the witness knew the accused beforehand is an important consideration in applying the cautionary rule.¹² The extent of the witness's prior familiarity with the accused significantly reduces the likelihood of mistaken identity and strengthens the reliability of the identification. In *Abdullah v S*¹³ the SCA held as follows:

"[13] The appellant contends that Mr Carelse did not have the opportunity to properly observe and identify the gunmen. Much was made of the fact that Mr Carelse only had between 2-4 seconds in which to observe the appellant. Had the appellant been a stranger to him, this could have been a significant factor. However, when seeing a person who is known to you, it is not a process of observation that takes place but rather one of recognition. This is a different cognitive process which plays a vital role in our everyday social interaction. The time necessary to recognise a known face as opposed to identifying a person for the first time, is very different. It has been

¹¹ *S v Khumalo* 1991 (4) SA 310 (A) at 328D.

¹² *S v Dladla* 1962 (1) SA 307 (A): "If the witness knows the person well or has seen him frequently before, the probability that his identification will be accurate is substantially increased." See also *Cupido v S* [2024] ZASCA 4 (16 January 2024) paras 24-26 in relation to photo identifications.

¹³ [2022] ZASCA 33 (31 March 2022) paras 13-15. My emphasis.

recognised by our courts that where a witness knows the person sought to be identified, or has seen him frequently, the identification is likely to be accurate.

...

[15] This Court reaffirmed this principle more recently in Machi v The State where the witnesses stated that they knew the appellant and he too admitted that he knew them. The court said in these circumstances there is no room for mistaken identity."

29. Thus, where a witness knows a person, questions of identification, of facial characteristics, and of clothing are of much less importance than in cases where there is no previous acquaintance with the person sought to be identified. What must be tested is the degree of previous knowledge and the opportunity for a correct identification, having regard to the circumstances in which the identification was made.¹⁴

30. The appellant in the present matter challenges the reliability of the complainant's identification of the accused, arguing that the lighting conditions during the incident were inadequate and that the events unfolded too quickly for a positive identification to be made. In my view, however, the way in which the complainant described his encounter with the appellant during the incident leaves little room for doubt, let alone reasonable doubt. There are various factors which support the reliability of the complainant's identification of the appellant.

31. The complainant had left the lounge light on, which illuminated part of the bedroom. Upon drawing the curtain, the complainant immediately saw the appellant - whom he knew well - standing directly in front of him, within arm's reach, and in the lit area of the room. The light from the lounge area shone directly onto the appellant's face when the curtain was opened, further supporting the reliability of the identification. After being tackled by the unknown male and pushing him away, the complainant observed the appellant draw a knife.

32. The complainant promptly informed his mother that "Skollie" and another individual were inside the bungalow. When the police later brought the appellant to

¹⁴ *R v Dladla* 1962 (1) SA 307 (A) at 310C-E; *Arendse v S* [2015] ZASCA 131 (28 September 2015) paras 10-11.

the complainant for identification, he confidently confirmed the appellant's identity.¹⁵ The complainant provided a detailed and coherent account of the actions of both the appellant and the unknown male, including the weapons involved. The evidence of both the second and third State witnesses, as well as the appellant himself, confirmed that the complainant was well acquainted with the appellant. The complainant's evidence is further substantiated by his mother, whose account of the events aligns with his, thereby lending credibility to his version.

The evidence of a single witness

33. Section 208 of the CPA provides that an accused may be convicted on the evidence of a single and competent witness. This does not displace the principle that the evidence of a single witness should be approached with caution. Before the court can place any reliance thereon, the evidence of a single witness must be clear and satisfactory in every material respect. In other words, the evidence must not only be credible but must also be reliable.

34. The exercise of caution should, however, not replace the exercise of common sense.¹⁶ In *Chowe v S*¹⁷ the Court held as follows:

"Where the identity of the accused person depends on the evidence of a single witness, it is trite that the evidence of that single witness must be approached with caution. Generally, the evidence of a single witness is accepted if such evidence is satisfactory in all material respects or there is corroboration, and the witness is truthful. It is important to look at, inter alia, the opportunity the identifying witness has had to see the identified person, whether the identified person is known to the identifying person, the illumination and the prevailing circumstances. One must also look at whether there is a real risk of error by the identifying witness. The evidence of

¹⁵ The purpose of this identification was to confirm the correctness of the arrest based on prior recognition, not to conduct a suggestive identification procedure: see, by way of analogy, *Cupido v S* *supra* para 25: "Showing a victim a photograph of a suspect who is not only known to the victim, but who has already been identified by some other description, is a process through which the police want to ensure that the right person is arrested. In the present case, Mr Brown had already positively identified the perpetrator to the police. The alleged perpetrator was not a stranger to him and there was no evidence indicating that the police influenced him to point out the appellant...."

¹⁶ *S v Artman and another* 1968 (3) SA 339 (A) at 341C.

¹⁷ 2010 (1) SACR 141 (GNP) para 9.

the appellant requires an objective assessment."

35. The complainant was a single witness in respect of the identification of the appellant at the scene of the crime. His evidence is, however, corroborated by the other facts placed before the regional court. In *S v Sauls and others*¹⁸ it was held that:

"There is no rule of thumb test or formula to apply when it comes to a consideration of the credibility of a single witness. The trial judge will weigh his evidence, will consider its merits and demerits and having done so, will decide whether it is trustworthy and whether despite the fact that there are shortcomings or defects or contradictions in the testimony, he is satisfied that the truth has been told ... It has been said more than once that the exercise of caution must not be allowed to displace the exercise of common sense."

36. In my view, the regional court gave due regard to the fallibility of identification, and sufficiently addressed the manner in which the appellant was identified. The regional court further gave proper consideration to the fact that the complainant was a single witness in relation to the identification. The facts indicate that the complainant was familiar with the appellant. He had known him for years prior to the day of the incident, and recognized him instantly. The complainant was certain about the identification of the appellant when he confirmed it to the police. There was no hesitation on his part. He remained clear and consistent in this respect even under cross-examination.

37. The regional court, in a detailed judgment, duly considered the aspects relevant to evidence of identification, in particular where such evidence comes from a single witness. On the evidence as a whole, the regional court's conclusions on the complainant's identification of the appellant as one of the perpetrators, and the reliability of the complainant's evidence in this respect, cannot be faulted.

Order

¹⁸ 1981 (3) SA 172 (A) at 180F-H.

38. In the circumstances, I suggest that the appeal be dismissed.

P. S. VAN ZYL
Acting Judge of the High Court

I agree, and it is so ordered.

N. E. RALARALA
Judge of the High Court

Appearances:

For the Appellant: Ms. P Andrews, Legal Aid South Africa

For the Respondent: Ms. C Smit, Directorate of Public Prosecutions, Western
Cape