



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

JUDGMENT

**Not Reportable
Case No: A134/25**

In the appeal between:

TRESLINE FLORENCE

First Appellant

JUSTINE ALBERTUS

Second Appellant

and

THE STATE

Respondent

JUDGMENT

Coram: RALARALA J *et* NJOKWENI AJ
Heard on: 10 OCTOBER 2025
Delivered on: 8 DECEMBER 2025

Summary: Criminal law – Robbery with aggravating circumstances – Appeal against conviction only – recognition evidence – dock identification – cautionary rule evaluation of evidence – *alibi* improbable and rejected. No misdirection by the trial court. Conviction upheld

ORDER

The appeal against conviction is dismissed.

JUDGMENT

NJOKWENI AJ:

INTRODUCTION

[1] This matter is an appeal against conviction from the Wynberg Regional Court. The appellants, Mr. Tresline Florence and Mr. Justine Albertus were convicted on one count of robbery with aggravating circumstances, arising from the robbery of a couple Mr. Jacobs and Ms. Sackim (“the complainants”). The appellants pleaded not guilty and had legal representation throughout the trial. The appeal is with the leave of the Court *a quo*.

RELEVANT FACTS

[2] The incident occurred on 22 January 2023, between 9:00pm and 10:00pm, during load shedding. The complainants, left their home to buy milk and bread, using a mobile phone flashlight as a source of light due to the darkness.

[3] While walking, they noticed two men approaching. Sensing danger, they changed their route. The second appellant then approached with a gun, while the first appellant showed a knife and searched the complainants. The attackers referenced a rival gang, and one took Ms. Sackim's phone just as electricity returned and streetlights came on, causing the attackers to flee.

[4] Mr. Jacobs recognised the first appellant from previous encounters and identified the second appellant by distinctive physical features. After the incident, the couple informed their neighbour, Faizel, who suggested that they look for the suspects. The next day, they saw the first appellant and, without revealing their recognition, questioned him. He denied any involvement but offered to lead them to the second appellant. Both appellants blamed each other when confronted and refused to disclose the phone's location. Police arrested both men, and a knife fell from the first appellant's pocket during the arrest.

[5] The appellants denied involvement, providing separate alibis: the first appellant said he was with his girlfriend; the second appellant claimed that he was at a pub. The second appellant admitted drug use ("Tik") and explained his facial marks as a result.

[6] In court, the complainants gave specific descriptions of both appellants. The lower court emphasised the need for cautious evaluation of identification evidence, referring to ***S v Mthetwa*** 1972 (3) SA 568 (A). The lower court found the State's witnesses corroborated each other. Lighting was considered sufficient for identification. The court found no motive for false implication and noted that the appellants' versions partially corroborated each other as they blamed one another.

[7] The court concluded there was overwhelming evidence against the appellants, with identification supported by opportunity, distinctive features, and corroboration between witnesses.

The State's case

Mr. Jacobs (Complainant)

[8] Mr. Jacobs's testimony can be summarised as follows:

- a. On the night of 22 January 2023, during load shedding, Mr. Jacobs and Ms. Sackim left their home to buy milk and bread, using the flashlight on Ms. Sackim's phone.
- b. While walking, they saw two men approaching. Sensing danger, they changed their route to avoid them.
- c. The second appellant approached with a gun, prepared to fire, while the first appellant showed a knife and searched Mr Jacobs before turning to Ms. Sackim. Mr. Jacobs made eye contact with the armed attacker during the robbery. One of the attackers mentioned a rival gang, and the attackers seemed to know about the phone because they had seen it earlier.
- d. As the second appellant took the phone from Ms. Sackim, electricity was restored and the streetlights came on, causing the attackers to flee.
- e. Mr. Jacobs observed that one attacker wore school pants and recalled seeing the second appellant previously give a gun to a schoolchild.
- f. He recognised the second appellant from several previous encounters (such as on his way to work) and identified the first appellant by his distinctive physical features.
- g. After the incident, the couple told their neighbour Faizel, who advised them to look for the suspects. The next day, they encountered the first appellant because they remembered him and questioned him (without revealing their recognition). He denied involvement but offered to take them to the second appellant.
- h. When the complainants confronted both appellants, the two blamed each other for the robbery and refused to reveal the phone's location. Police were called and arrested both men; a knife fell from the first appellant's pocket during the arrest.

[9] Mr. Jacobs's account was clear, detailed, and included reasons for his identification of the attackers, based on prior knowledge and observations during the incident.

Miss Sackim (Complainant)

[10] Ms. Sackim's evidence can be summarised as follows:

- a. On 22 January 2023, during load shedding, Ms. Sackim and Mr. Jacobs left their home in the dark to buy milk and bread, using her mobile phone's flashlight for light.
- b. While walking, they noticed two men approaching. Sensing danger, they changed their route.
- c. The second appellant approached, drew a gun, and prepared it to fire. The first appellant showed a knife and searched Mr. Jacobs, then turned to Ms. Sackim.

- d. During the robbery, the gun was pointed at Mr. Jacobs, and one attacker mentioned a rival gang. The attackers seemed to know about Ms. Sackim's phone, likely from earlier observation.
- e. As the second appellant took her phone, the electricity returned and the streetlights came on, causing the attackers to flee.
- f. After the incident, Ms. Sackim and Mr. Jacobs immediately told their neighbour, Faizel. He suggested they try to find the suspects themselves.
- g. The next morning, they went looking for the suspects and saw the first appellant. Without revealing that they recognised him, they told him they were looking for "Tamati." The first appellant denied involvement but offered to help find the second appellant.
- h. Later, accompanied by Faizel, they confronted both appellants, who then blamed each other for the robbery. When the appellants refused to say where the phone was, Faizel flagged down a police van, and both appellants were arrested. During the arrest, a knife fell from the first appellant's pocket.
- i. In court, Ms. Sackim gave a specific description of both appellants, noting that one was tall and the other short, and pointed out distinctive features such as a scar and visible skin problems.
- j. Ms. Sackim's evidence corroborated Mr. Jacobs's account on all material aspects, particularly regarding the events of the robbery, the identification of the attackers, and their actions following the incident.

The defence case

Treslin Florence (the first appellant)

[11] Mr. Florence, the first appellant's testimony can be summarised as follows:

- a. He denied involvement in the robbery, stating he was not present at the scene.
- b. On the night in question, he claimed to be walking home alone from his girlfriend's house. He stopped to talk to a friend in a passage near her house, and then spent about two hours with his girlfriend. Afterward, he again saw his friend in the passage, which was when Faizel's vehicle appeared and he was confronted about the robbery.
- c. He stated that the complainants never mentioned the electricity being restored at the time of the incident.
- d. He admitted to having a knife at the time of his arrest but did not deny its possession.
- e. According to his account, he was invited into Faizel's car, only to be accused of a robbery he insisted never happened.
- f. He claimed that, before being picked up by Faizel, he was simply standing outside his own house.
- g. The first appellant also argued that the identification process was improper, as the police showed the complainant photos of the suspects.

- h. He could not suggest any reason why the complainants would falsely accuse him and confirmed that the first complainant was not a gang member.
- i. He acknowledged being a member of a gang (the Americans) but explained that if he had operated in the area of the robbery without permission, rival gangs would have attacked him.
- j. The first appellant also admitted to having a knife when arrested but denied committing the robbery.
- k. He attempted to explain any marks or scars on his face as a result of scratching while under the influence of the drug "Tik."
- l. In summary, the first appellant's version was a denial of any involvement, an alibi that he was elsewhere with his girlfriend, an admission to carrying a knife, and a claim that he was falsely implicated for no apparent reason.

Mr. Justin Albertus (the second appellant)

[12] Mr. Albertus' evidence can be summarised as follows:

- a. He denied any involvement in the robbery and claimed he was not present at the scene.
- b. On the night in question, he stated that he was at a pub called "The Kitchen" in Wynberg, drinking with friends and then went to his mother's house to sleep.
- c. He admitted to using the drug "tik" and said this caused marks and sores on his face, which the complainants described in their identification.
- d. He claimed not to know the complainants prior to the incident and denied ever robbing anyone with the first appellant.
- e. The second appellant asserted that when confronted by the complainants and Faizel, he was simply standing outside his mother's house.
- f. He insisted that he had no knowledge of the stolen phone and had not seen it.
- g. Like the first appellant, he could not provide any reason why the complainants would falsely implicate him.
- h. The second appellant disputed the reliability of the identification evidence against him, suggesting that the complainants may have been mistaken or influenced by his facial features, which were affected by his drug use.
- i. In summary, the second appellant presented an alibi, denied participation in the robbery, and questioned the identification process – particularly in relation to his distinctive facial features, which he attributed to drug use rather than involvement in the crime.

[13] In essence, both appellants denied their involvement in the robbery and provided alibis to support their claims.

Grounds of appeal on conviction:

[14] The grounds of appeal are directed at the Court a quo's factual findings. The following is the summary of the principal contentions:

- a. The primary form of their identification was done by means of dock identification, which is generally treated with extreme caution by courts as it carries little weight unless supported by independent preceding identification.
- b. The trial court erred in accepting the evidence of the complainants as credible and reliable regarding their identification.
- c. The identification evidence was not sufficient to prove their guilt beyond a reasonable doubt.

ISSUES

[15] After I read the facts, judgment of the Court below and grounds of appeal, I found that this appeal turns on identification of the Appellants by the state complainants. Thus the issue for determination has crystallised to a very narrow point of identification of the Appellants as the perpetrators of this robbery and is dispositive of the appeal.

THE LAW

The approach on appeal:

[16] The approach of a court of appeal to factual findings is trite. In ***R v Dhlumayo and Another 1948 (2) SA 677 (A)***, the emphasis on the fact that an appellate court will not lightly interfere with the factual findings of a trial court, which had the advantage of seeing and hearing the witnesses, is always placed. Only where there has been a material misdirection is interference warranted, or where the evaluation of the evidence is so clearly wrong that the Court cannot reasonably support it.

[17] In ***S v Hadebe and Others 1997 (2) SACR 641 (SCA)***, the Court emphasised consideration of evidence in toto, not piecemeal. The enquiry is whether the trial court's conclusion was one which a reasonable court could reach on the evidence.

APPLICATION OF THE LAW TO THE FACTS

[18] The second appellant was known to both Mr. Jacobs and Ms. Sackim. Mr Jacobs has frequently seen the second appellant on his way to work prior to this incident. Further, Mr. Jacobs and Ms. Sackim had seen the appellant few weeks before this incident handing over a gun to a young schoolboy in the area. Thus, as regards to the second appellant, this case does not involve stranger identification but what the Supreme Court of Appeal in ***Abdullah v S* 2022 ZASCA 33 (25 March 2022)** described as recognition evidence, which is inherently more reliable when the witness knows the person well. Simply put, the complainants did not need to identify the second appellant because they knew him and he has distinct facial pimples. So, when the complainants saw the second appellant during the robbery they immediately recognised him. The flashlight from Ms Sackim provided sufficient light on the face of the second appellant. More so when the electricity came back and streetlights were switched on, they had sufficient lighting and time to recognise him. Accordingly, there can be no mistaken identity when it comes to the second appellant. In ***S v Dladla* 1962(1) SACR 450 (A)**, it was held:

“if the witness knows the person well or has seen him frequently before, the probability that his identification will be accurate is substantially increased.”

[19] Apropos the identification of the first appellant, the complainants did not know him prior to this incident. However, during the robbery, they had sufficient time to observe him because Ms. Sackim shone the flashlight of her phone on his face and noticed that he had a distinct scarring on his face. Even when the streetlights were switched on upon return of electricity, they had ample time and opportunity to see his face. This is evidenced by the fact that they independently recognised the first appellant the morning following robbery when the complainants went to Tamatie’s house (as the American gang leader to which the appellants are members) to plead for him to persuade the appellants to return Ms. Sackim’s cell phone.

[20] The appellants’ counsel argued that the appellant’s were identified through dock identification. Dock identification occurs when state witnesses identify the accused person for the first time while they are sitting in the dock during the trial.

Such identification must be treated by the court with extreme caution, as it generally carries little weight unless it is shown to be sourced in independent preceding identification. However, in this case, the complainants did not identify the appellants for the first time in the dock. Their identification was based on prior observations, face-to-face identification under sufficient lighting, prior knowledge of the first appellant, and recognition of physical features such as scarring and clothing. Therefore, the identification in this case was not solely reliant on dock identification.

[21] It appears from the record of the proceedings from the court *a quo* that the magistrate applied the cautionary rule on the identification evidence. The regional magistrate's reasons for finding both complainants as reliable and credible witnesses cannot be faulted. Thus, it seems to me that the criticism of the appellants 'identification' evidence advanced on appeal amounts to an invitation to this Court to reweigh credibility afresh. That is not the function of an appeal court in the absence of misdirection. This Court can find none. The appellants' own evidence, by contrast, boils down to a bare denial.

[22] The regional magistrate's rejection of the appellants' *alibi* does not amount to an impermissible reversal of the onus. She had already found the State's evidence compelling. In that context, the regional magistrate's testing of the appellant's version against the inherent probabilities is legally permissible.

CONCLUSION

[23] Considering the whole matrix of the evidence, this Court is unable to fault the regional magistrate's conclusion that the State discharged its onus. The direct evidence of the complainants paints a consistent picture of the appellants as the perpetrators of this robbery with aggravating circumstances beyond a reasonable doubt. The appellants bare denial is not reasonably possibly true.

[24] There is accordingly no basis for this Court to interfere with the conviction. The appeal against the conviction cannot succeed.

[25] For these reasons, I would dismiss the appeal against conviction.

Order

[26] Wherefore, I propose to make the following order:

1. The appeal against conviction is dismissed.

P. NJOKWENI
ACTING JUDGE OF THE HIGH COURT
WESTERN CAPE

I agree, and it is so ordered.

N.E. RALARALA
JUDGE OF THE HIGH COURT
WESTERN CAPE

Appearances:

For Appellant: Ms. S Kuun

Instructed by: Legal Aid South Africa

For Respondents: Ms. C Blankenberg

Instructed by: Director of Public Prosecutions