



**IN THE HIGH COURT OF SOUTH AFRICA
NORTH WEST DIVISION, MAHIKENG**

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

Case no: CA 70/2018

Regional Court Klerksdorp: RC5/143/11

In the matter between:

RANTSHO ELIJAH MATEBELE

Appellant

and

THE STATE

Respondent

CORAM: Tsautse AJ *et* Hendricks JP

Date reallocated: 19 March 2026

Date delivered: 05 May 2026

Delivered: This judgment was handed down electronically, circulated to the parties' representatives via email, uploaded to CaseLines, and released to SAFLII. The date and time for the handing down of the judgment are deemed to be 16h00 on 05 May 2026.

JUDGMENT

TSAUTSE AJ

Introduction

[1] This is an appeal against the conviction and sentence imposed on the appellant by the Regional Court for the Regional Division of North West, held at Klerksdorp, under case number RC5/143/11. This appeal was previously allocated to a different panel who failed to deliver a judgment.

[2] On 21 May 2019, the regional magistrate, Mr Melodi, convicted the appellant and his co-accused on charges arising from a cash-in-transit robbery committed on or about 17 March 2011 at or near Reynolds Park, Klerksdorp. On 22 May 2019, he sentenced the appellant to ten (10) years' imprisonment in respect of robbery with aggravating circumstances. Following the sentence, the appellant's attorneys filed an application for leave to appeal against both conviction and sentence in the Regional Court, setting out the reasons for the appeal. The Regional Court dismissed the application for leave to appeal. Thereafter, the appellant petitioned this Court for leave to appeal against both conviction and sentence, together with an application for condonation for the late filing of the petition.

[3] On 4 November 2022, Petersen J (as he then was), together with Acting Justice Reddy (as he then was) granted the appellant condonation and leave to appeal against both conviction and sentence. The appellant thereafter duly complied with the provisions of Rule 67(5) of the Magistrates' Courts Rules. In response, the learned magistrate filed a brief statement in which he simply recorded: "I stand by the reasons given during my judgment." This cursory response, which offers no engagement with the specific grounds of appeal, provides little assistance to this Court in understanding the magistrate's reasoning in light of the challenges raised.

[4] The appeal records run to approximately 1152 pages. This Court has considered the full record, including the transcript and exhibits, together with the grounds of appeal. The factual

averments contained in the grounds of appeal are based on, and broadly reflect, what appears in the record.

The charges and outcome in the court a quo

[5] The appellant and his co-accused were charged with three counts:

Count 1: Robbery with aggravating circumstances, read with section 51(2) of the Criminal Law Amendment Act 105 of 1997, it being alleged that on or about 17 March 2011 and at or near Reynolds Park, Klerksdorp, in the Regional Division of North West, they unlawfully and intentionally assaulted Khambani Kelvin Masilane and with force took from him cash in the amount of R3.6 million, being his property or property in his lawful possession. Aggravating circumstances were alleged in that firearms were used, and the State alleged that the Accused acted in common purpose.

Count 2: Attempted murder, it being alleged that on or about the same date and place the Accused unlawfully and intentionally attempted to kill Masilane by shooting at him with a firearm, again acting in common purpose.

Count 3: Contravention of section 3 of the Firearms Control Act 60 of 2000, read with sections 103 and 121 and Schedule 4 of that Act, and section 250 of the Criminal Procedure Act 51 of 1977, in that on or about 17 March 2011 and at or near Reynolds Park, Klerksdorp, the Accused unlawfully had in their possession four R4 rifles without holding a licence, permit or authorisation issued in terms of the Firearms Control Act.

[6] The magistrate ultimately convicted the appellant of count 1 that is robbery with aggravating circumstances, read with section 51(2) of Act 105 of 1997, and found that the aggravating circumstance was the use of firearms. He sentenced the appellant to ten (10) years' imprisonment on this count. In terms of section 103 of the Firearms Control Act, he declared the appellant unfit to possess a firearm.

Factual background

[7] The State's case was that a G4S armoured vehicle transporting approximately R3.6 million in cash was robbed while on its route and that the appellant, who was a crew member, together

with his co-accused, facilitated the robbery by acting in concert with the perpetrators. It was alleged that the appellant deliberately failed to ensure that the vault was properly locked and that he handed over the vault and padlock keys so that his co-conspirators could gain access to the cash during the staged robbery.

[8] The State relied heavily on the evidence of the driver, Khambani Kelvin Masilane, as well as on pointing-out and alleged admissions attributed to the appellant and his co-accused. The magistrate accepted this evidence, holding inter alia that the appellant “did not close the safe containing the cash completely so that his co-conspirator could have access to the money during the robbery” and that “he handed them the vault key, padlock keys to open it”. According to the magistrate, the appellant “must have foreseen the potential disastrous results of his actions”. There was, however, no conclusive evidence that the appellant had left the safe unlocked or that he had handed keys to the robbers in the manner described.

[9] The appellant pleaded not guilty to all the counts preferred against him and denied any involvement in the robbery. He maintained that he had no control over the locking of the safe at Nedbank, explaining that the keys were retained exclusively by the bank. He further stated that the driver controlled the route, the two-way radio, the G4S cell phone and the immobiliser codes. According to the appellant, any alleged admissions or pointing-out were not freely and voluntarily made, as he had been assaulted and tortured into making them.

Issues on appeal

[10] The grounds of appeal, as grouped in the notice of application, may be distilled into four principal issues:

10.1 The reliability and credibility of the driver, Mr Masilane, whose evidence formed the backbone of the State’s case, notwithstanding the strongly arguable suggestion that he may himself have orchestrated a “fake robbery”.

10.2 The admissibility and evidential weight of the pointing-out and alleged admissions, in the light of language and interpreter irregularities; the failure to involve a magistrate; and the objective medical evidence of assault and torture.

10.3 The reliability of the remaining State witnesses (including police officers and civilians), whose evidence is said to be inconsistent, reconstructed, or suggestive of attempts to “train” them so as to close gaps in the State’s case.

10.4 Gaps and irregularities in the State's proof concerning duplicate keys; the amount of money stolen; control of the scene and money left at the scene; as well as the prolonged delays in the trial and defects in the record.

Summary of the key evidence

The evidence of the driver, Masilane

[11] In his evidence-in-chief, Mr Masilane testified that he was the driver of the G4S vehicle, which was equipped with a bullet-proof cab. He stated that the appellant was repeatedly unwell, complained of stomach pain, and frequently requested that they stop at service stations so that he could use the toilet, thereby allegedly delaying the route. He further suggested that, when they were at Nedbank, it was the appellant's responsibility to lock the safe after the money had been loaded.

[12] Although he emphasised that he drove in a "complete bullet-proof cab" and transported substantial sums of money, his evidence-in-chief did little to explain the detailed G4S operational procedures, including route control, communication with control, code usage and key management. The court a quo was thus not presented with a clear and coherent picture of the operational safeguards, or of who in practice exercised control over them.

Cross-examination: route, phone and delays

[13] Under cross-examination, Mr Masilane conceded that it was the driver who was in charge of, and who decided upon, the route. He also accepted that the official G4S cell phone was in his possession at all material times. Despite his earlier insinuation that the appellant was causing delays by repeatedly stopping for toilet breaks, he never reported any such delays to G4S control using the cell phone. It emerged, instead, that it was the appellant who used the phone to call control to report his stomach problems and, later, to report the robbery.

[14] These concessions materially undermine his earlier portrayal of the appellant as the cause of unnecessary delays and suggest that his evidence-in-chief sought to shift blame onto the appellant in circumstances where he, as driver, retained operational control and failed to report what he later characterised as suspicious conduct.

Keys, safes and the shooting

[15] The narrative concerning the safes and keys also shifted in material respects. In his evidence-in-chief, Mr Masilane created the clear impression that the appellant bore responsibility for locking the safe at Nedbank. Under cross-examination, however, he accepted that the final locking of the safes and vault compartment at Nedbank was performed by bank employees; that the keys were held and controlled at the relevant Nedbank branch; and that no key was left with the appellant, as the next key would be obtained at the next Nedbank branch. This significantly weakens any suggestion that the appellant enjoyed independent control over safe keys outside bank premises.

[16] As to the robbery itself, Mr Masilane stated that shots were fired at his window of the cab. He accepted that the inner window was bullet-proof, yet he elected to bring the armoured vehicle to a halt instead of driving away from the attackers. In the context of an armoured vehicle specifically designed to protect both crew and cash, this decision to stop rather than attempt to escape is counter-intuitive and called for a cogent explanation, which he did not satisfactorily provide.

[17] His reliability on basic factual matters was further called into question. In his evidence-in-chief he suggested that he and the appellant had been working together for only a few months; under cross-examination he conceded that they had, in fact, worked together for approximately four years. When confronted with photographic exhibits, he initially failed to mention a third safe visible in the photographs, together with a broken safe door, and then claimed that he had “forgotten” about it. Given that this omission concerns the very number and configuration of the safes involved, it cannot be dismissed as trivial.

Two-way radio and immobiliser codes

[18] Further improbabilities arose in relation to the two-way radio and the immobiliser codes. Mr Masilane testified that on the day in question the two-way radio, which was only operated by him, was kept on the dashboard along with two bottles of water, and that on the day of the robbery the radio was “not working”. Despite this, he nevertheless proceeded with the cash-in-transit run without ensuring that the defect was properly reported or rectified beforehand. This sits uneasily with the appellant’s uncontested evidence that G4S control

would not permit a vehicle to depart on a run with a defective two-way radio, given its central role in operational safety and communication.

[19] He further stated that when the vehicle is immobilised, he is required to obtain an immobiliser code telephonically from G4S control. Yet he was found in possession of an additional code which he could not satisfactorily explain. He offered no coherent account of how he came to have that extra code without contacting control, as the procedures he described would require. It was put to him that the robbers must have had the means to open the vault, start the truck, activate the relevant button and operate the ten-key mechanism, and he agreed. On the evidence, these are precisely the means and information that fell within his operational control, a factor that materially impacts on the plausibility of his attempt to distance himself and to implicate the appellant.

Nedbank procedures

[20] As to Nedbank, Masilane explained that the G4S vehicle enters a secure area within the bank building, is closed inside, and that bank staff then bring the money on a trolley and load it into one of the safes. The crew and a G4S employee working at Nedbank then go to obtain padlock keys from an office, return to the truck, and a bank supervisor checks that the internal safes are properly closed before the vehicle is allowed to leave.

[21] While he initially floated the suggestion that perhaps a safe was not properly closed, under cross-examination, he conceded that Nedbank security would not allow the vehicle to leave if the safes were not closed. His earlier suggestion was, therefore, speculative and inconsistent with the established procedure he later acknowledged.

Evaluation of the driver's evidence

[22] For the reasons set out above, the cumulative contradictions, omissions and improbabilities in Mr Masilane's evidence – including his shifting account of route control; his use of the cell phone; the alleged delays supposedly caused by the appellant; the safes and keys; his conduct when the vehicle came under attack; the “non-working” radio; the unexplained extra immobiliser code; the true duration of his working relationship with the appellant; and

even the number and condition of the safes – demonstrate that he was not a reliable or credible witness.

[23] The magistrate's judgment does not grapple with these material difficulties in the State's case. Rather, the court *a quo* appears to have accepted the driver's testimony almost wholesale, even where cross-examination revealed fundamental and irreconcilable inconsistencies. The judgment is so silent on the fruits of cross-examination that a reader could be left with the false impression that the appellant had been unrepresented and that the State's evidence was led virtually unchallenged. This failure to account for the impact of cross-examination and the concessions thereby extracted, amounts to an abdication of the judicial duty to evaluate the evidence in a balanced and reasoned manner, and the court's assessment is thereby fundamentally vitiated by misdirection.

The pointing-out and Captain Lebudi

[24] The second major pillar of the State's case consisted of the pointing-out and alleged admissions attributed to the appellant, which were admitted after a trial-within-a-trial. The magistrate records the outcome of that inquiry but provides virtually no reasoning to support the decision to admit this evidence.

[25] Captain Lebudi conducted the pointing-out. He testified that his mother tongue is Setswana, whereas the appellant is a South Sotho-speaker. Despite this, he elected not to use a South Sotho interpreter when explaining the appellant's rights or completing the pointing-out form. He also did not take the appellant before a magistrate to record any confession, even though this would have offered an additional safeguard.

[26] Under cross-examination, a series of irregularities emerged. Captain Lebudi conceded that he had recorded on the form that the appellant said: "I was involved in the robbery because I handed the keys of the truck or votes [sic]", when he in fact meant "vault". He sought to dismiss this as a mere "human error" and said he had corrected it, yet this error strikes at the very admission allegedly implicating the appellant in the robbery. He further admitted to additional mistakes in paragraph 4 of the form, again attributing them to human error.

[27] His evidence about how he came to be involved in the pointing-out was also confused and internally inconsistent. He stated that Captain Dawood had telephoned him to say that there was a person who wished to make a pointing-out about handing keys to “Boiki Matebele”. At the same time, he claimed that he did not know the identity of the person he was to fetch and that he only came to know this at Stilfontein. His attempts to reconcile these versions were unconvincing.

[28] The explanation of rights is particularly troubling. Captain Lebudi testified that he read the appellant’s rights in English and then interpreted them into Setswana, even though the appellant is South Sotho-speaking and he himself is not entirely at ease in English. He initially indicated that he had advised the appellant of his rights at the outset. Under cross-examination, however, he conceded that, according to the form, the appellant’s rights are only recorded at paragraph 19, whereas the incriminating portion appears earlier in the document.

Evaluation of the Capt. Lebudi’s evidence

[29] These contradictions and procedural flaws are not peripheral; they go to the heart of the matter. They bear directly on whether the pointing-out was conducted in a manner that respected the appellant’s constitutional rights and whether any admissions were made freely and voluntarily, in his sound and sober senses and without undue influence. The use of a language that is neither the officer’s nor the accused’s mother tongue, the absence of an independent interpreter, acknowledged errors in recording the alleged admission, and inconsistent evidence about when and how rights were explained all seriously undermine the reliability of both the process and its written record.

[30] The State bears the onus of proving beyond reasonable doubt that any confession or pointing-out was made freely and voluntarily, in the accused’s sound and sober senses and without undue influence. That common-law position, affirmed in *S v Zuma and Others*¹, which is now buttressed by section 35 of the Constitution of the Republic of South Africa, 1996 (Constitution), which guarantees the right to remain silent, the right not to be compelled to make a confession or admission that may be used in evidence, and the right to legal representation. Where there are allegations of assault or coercion, and evident irregularities in

¹ 1995 (2) SA 642 (CC).

the language and recording of a statement, the courts have stressed the need for particularly careful scrutiny of the State's claim that the accused's will was not overborne.

[31] The magistrate's judgment fails to engage with any of these critical concerns. In my view, the failure to address the language barriers, the patent documentation errors, and the irregular sequence in which rights were recorded—especially when weighed against the objective medical evidence discussed below—constitutes a material misdirection. Instead of a reasoned analysis, the magistrate offered only a cursory conclusion to the effect that the appellant's rights had been adequately explained and understood. Such a bare assertion, in the face of the irregularities outlined above, is insufficient. On a proper reassessment of the record, and applying the constitutional and common-law requirements governing the admissibility of confessions and pointing-out, it is clear that the State did not discharge its onus of proving voluntariness beyond reasonable doubt.

Medical evidence and allegations of torture

[32] The appellant's allegations of assault and torture are supported by objective medical evidence. The defence introduced an affidavit deposed to by Dr Mphega, the appellant's general practitioner, together with a J88 compiled by him. In his affidavit, Dr Mphega explained that he had been the appellant's treating doctor for approximately five years and was familiar with his medical history. At the request of the appellant's wife, and not at the behest of the police, he attended at Orkney police station and conducted a full clinical examination.

[33] In that affidavit, Dr Mphega recorded chafe marks and bruises on the appellant's wrists and ankles and noted that the appellant appeared traumatised. He reflected his findings on the J88 and expressly stated that the injuries were consistent with someone who had been tortured. Having read the appellant's medical report, he confirmed that the injuries correlated with the date and method of torture described by the appellant. He further opined that the appellant's medical and emotional condition was such that continued detention would be detrimental to him.

[34] The J88 reflects the following multiple injuries which include amongst others fading bruises on the ankles; abrasions on an elbow; healing bruises consistent with blunt trauma more than one week old; linear and circular bruises consistent with high-impact blunt force;

inflammation of the middle ear; bruises on the lower back consistent with blunt trauma or contact with a hard surface; and multiple soft-tissue injuries of approximately a week's duration, consistent with trauma and torture. These findings materially corroborate the appellant's account.

[35] The pattern, distribution and age of the injuries are fundamentally inconsistent with minor accidental bumps or routine handling. The State led no expert evidence to contradict Dr Mphega's conclusions. Its attempt to discredit him solely because he is a privately-retained practitioner was not supported by any objective deficiency in his methodology or findings. It is trite that expert evidence cannot be rejected merely on account of the expert's status or affiliation; it may only be discounted where there are demonstrable logical flaws, inconsistencies or contradictions in the evidence itself. In these circumstances, the court's dismissal of this uncontroverted medical opinion amounts to a material misdirection.

[36] While a court is not bound to accept expert evidence uncritically, it is equally not entitled simply to ignore or reject such evidence without cogent, evidence-based reasons. The weight to be attached to an expert's opinion depends on its logical coherence, internal consistency and factual foundation. Where expert evidence is properly reasoned, supported by contemporaneous records and remains unchallenged, a court must have compelling, rational grounds before rejecting it, in particular, where the State elects not to call a counter-expert, it is not open to the magistrate to reject the defence expert's evidence on the strength of a lay interpretation of photographs and the mere fact that the expert was privately retained. Absent any objectively identifiable flaw in the expert's reasoning or conclusions, such an approach is insufficient and amounts to a misdirection.

Evaluation of Medical Evidence

[37] Against this background, the magistrate's approach is deeply problematic. His conclusions rested on a lay assessment of photographs taken prior to the pointing-out and on speculation that the doctor may have erred regarding the timing of the injuries. In the absence of any contradictory medical evidence, a judicial officer is not entitled to substitute a personal impression for the opinion of a qualified medical expert. By preferring a lay interpretation of photographic exhibits over undisputed professional evidence, the court committed a material error of both fact and law.

[38] In *S v Gouws*² at 528D, Kotzé J stressed that:

“The prime function of an expert is to guide the court to a correct decision on matters within his specialised field.”

It follows that expert evidence should not be rejected on the basis of the witness’s professional affiliation or the fact that he or she was privately retained. The proper inquiry is directed at the logicity, consistency and objectivity of the evidence, rather than the status of the person presenting it.

[39] When the objective medical evidence is read together with the appellant’s detailed account of assault, it poses a serious challenge to the State’s case. That challenge is reinforced by the appellant’s documented “disappearance”, reflected in his frequent movement between various police stations and the extended periods during which he could not be traced by his family or legal representatives. Such “police-station hopping” and isolation from legal counsel is, in our law, recognised as consistent with attempts to break down an accused’s resistance and may, depending on the circumstances, amount to undue influence capable of rendering subsequent admissions inadmissible. The present facts bear more than a passing resemblance to that pattern.

[40] These features, taken together with the significant procedural defects surrounding the pointing-out already discussed, fundamentally undermine the State’s assertion that the appellant’s admissions were made freely, voluntarily and without undue influence. The magistrate’s failure to afford proper weight to this body of objective and circumstantial evidence constitutes a material misdirection which vitiates the court a quo’s findings on admissibility.

[41] Our courts have repeatedly reaffirmed that the State bears the onus to prove beyond reasonable doubt that a confession or pointing-out was made freely and voluntarily. Where there is a reasonable possibility that the accused was assaulted or unduly influenced, the evidence cannot be admitted. On a proper application of that principle, the decision to admit the pointing-out despite the unexplained injuries, the police-station movements and the procedural defects in the recording process cannot be sustained.

² 1967 (4) SA 527 (EC).

Other anomalies and omissions

[42] The grounds of appeal also identify several further weaknesses in the State's case. There was no clear proof of where, when or even whether the alleged duplicate vault keys were made. Although it was suggested that keys were recovered from the home of accused 2, it was common cause that accused 2 did not work at the bank. The magistrate's judgment accepts this evidence at face value, without engaging with the serious doubts raised in cross-examination as to how accused 2 could legitimately have come into possession of such keys.

[43] The evidence regarding the amount of money stolen and the safeguarding of the money left at the scene was likewise unsatisfactory. Photographs depict bags of money lying around unattended, even when the photographer was present sometime after the robbery. There was little explanation of how the remaining money was secured and properly accounted for, particularly in light of the number of persons who had access to the scene.

[44] The record furthermore shows that the trial was subject to extensive delays, largely attributable to State-related causes. These delays contributed to the withdrawal of the appellant's original attorney, due to the depletion of funds over a prolonged period, and a new attorney had to familiarise himself with a voluminous and, in parts, incomplete record. Portions of the record are marked "distinct", rendering parts of the evidence unclear. While these factors, viewed in isolation, might not suffice to vitiate the conviction, they compound the concerns about the overall fairness and reliability of the proceedings and of the factual findings reached on that basis.

Evaluation of the judgment of the court a quo and lack of reasons

[45] The learned magistrate convicted the appellant and his co-accused and thereafter imposed substantial sentences. Yet, the written judgment is strikingly terse. It does little more than summarise portions of the State's evidence and record that the pointing-outs and alleged confessions were admitted following a trial-within-a-trial, without any meaningful analysis of the defence case. By effectively endorsing the State's version in this uncritical manner, and by failing to engage with the appellant's evidence and challenges, the court committed a material misdirection.

[46] This mode of reasoning stands in clear conflict with the approach articulated in *S v Van der Meyden*³ at 448, where it was emphasised that a court must consider a conspectus of all the evidence and that it is a misdirection to assess the State's case in isolation to see whether it is "strong enough", and then the defence case separately to see whether it is "weak enough". Likewise, in *S v Chabalala*⁴ at para 15, the Supreme Court of Appeal reaffirmed that the proper approach is to weigh all factors pointing towards guilt against those indicative of innocence, taking into account the inherent strengths, weaknesses and probabilities in respect of both the State and the defence. The judgment of the court *a quo* falls short of this standard.

[47] These authorities highlight that a judicial officer may not assess the State's evidence in isolation, but must weigh the totality of the evidence to determine whether the State has proved its case beyond reasonable doubt.

[48] Crucially, the magistrate's judgment fails to engage in any meaningful way with the extensive concessions and material anomalies elicited during the cross-examination of the State witnesses, most notably the driver and Captain Lebudi. It likewise does not grapple with the appellant's own testimony or with the objective medical evidence, which records injuries that are consistent with his allegations of assault and torture. By disregarding these critical components, the magistrate abdicated the duty to evaluate the evidence in its totality and to confront factors that may reasonably sustain doubt as to the appellant's guilt.

[49] In *Phakane v S*⁵ at para 37, the Constitutional Court confirmed that a failure to consider evidence that is central to determining an accused's guilt or innocence amounts to a misdirection. Similarly, in *S v Mpetha*⁶, the court stressed the duty to scrutinise with particular care the voluntariness of admissions where allegations of assault or torture are made, and to assess undue influence with reference to whether the accused was, at the time of making the statement, able to exercise his will freely.

[50] Consequently, the core issues painstakingly articulated in the grounds of appeal remain substantially unaddressed, and this omission amounts to a clear misdirection on both fact and

³ 1999 (1) SACR 447 (W).

⁴ 2003 (1) SACR 134 (SCA).

⁵ [2017] ZACC 44.

⁶ 1983 (1) SA 576 (C).

law. This failure undermines the reliability of the trial court's conclusions, for contradictions and concessions in the State's case must be assessed to determine whether, either individually or cumulatively, they are sufficiently material to generate a reasonable doubt.

[51] As explained in *S v Mkhle*⁷, contradictions in a witness's evidence do not, without more, render that evidence unreliable; their nature, number and significance must be carefully evaluated in order to decide whether they impair the State's ability to discharge its burden of proof beyond a reasonable doubt. This approach is reinforced by *S v Oosthuizen*⁸, where it was emphasised that the mere existence of contradictions is not, in itself, a sufficient ground for rejecting a witness's entire testimony. Not every error affects credibility; rather, the trier of fact must "separate the grain from the chaff" by considering the nature, number and importance of the discrepancies, and their bearing on the evidence as a whole.

[52] Where a trial court fails to engage with material contradictions, ignores significant evidence elicited in cross-examination or omits to consider the defence case in its totality, its evaluation of the evidence is vitiated by misdirection. In such circumstances an appellate court is no longer bound by the trial court's credibility findings and must reassess the record for itself in order to decide whether the State has proved the accused's guilt beyond a reasonable doubt. These misdirections are material and pervasive. In consequence, this court is at large to reconsider the evidence and credibility findings afresh, rather than defer to the conclusions reached by the court a quo.

Misdirection by the court a quo

[53] For the reasons set out above, the magistrate failed to engage with material aspects of the evidence, including the contradictions and improbabilities in Mr Masilane's testimony, the language and procedural irregularities surrounding Captain Lebudi's pointing-out, the objective medical evidence of torture, and the anomalies concerning duplicate keys and money handling.

⁷ 1990 (1) SACR 95 (A).

⁸ 1982 (3) SA 571 (T).

[54] While an appellate court is ordinarily slow to interfere with a trial court's factual and credibility findings, those findings are entitled to deference only in the absence of a material misdirection. Where, as here, the court a quo ignores significant evidence and the fruits of cross-examination, and fails properly to weigh crucial defence material, its evaluation of the evidence is tainted and the appeal court is at large to reassess the record and reach its own conclusions.

[55] In my view, the cumulative effect of these omissions and misdirections is profound. Once this Court re-evaluates the evidence as a whole, the weaknesses in the State's case and the existence of a reasonable doubt as to the Appellant's guilt become plain. This accords with the constitutional approach articulated in *S v Zuma and Others, supra*, which underscores that the State bears the burden of proving guilt beyond reasonable doubt and that, where a reasonable possibility consistent with innocence cannot be excluded, the accused is entitled to the benefit of the doubt.

Conclusion

[56] The State bore the burden of proving the appellant's guilt beyond reasonable doubt. Its case rested principally on two pillars: the evidence of the driver and the pointing-out. For the reasons set out above, neither of these pillars can sustain that burden. The remaining evidence, including the contested evidence regarding duplicate keys, the amount of money stolen and the management of the crime scene, does not remedy these deficiencies and, if anything, reinforces them.

[57] In all the circumstances, I am not satisfied that the State has discharged its onus. On the contrary, a conspectus of the evidence reveals material contradictions, unresolved anomalies and objective indications of coercion, all of which give rise to a reasonable doubt that must inure to the benefit of the appellant. To uphold the convictions in the face of such doubt would be inconsistent with the appellant's right to a fair trial and appeal as protected by section 35 of the Constitution.

[58] The appeal against conviction must therefore succeed. Once the convictions fall, it follows automatically that the sentence must also be set aside.

Order

The following order is made

- 1 The appeal against conviction on count 1 (robbery with aggravating circumstances, read with section 51(2) of Act 105 of 1997) is upheld.
- 2 The conviction and the sentence of ten (10) years' imprisonment imposed on the appellant in respect of count 1, are set aside.
- 3 The declaration that the appellant is unfit to possess a firearm in terms of section 103 of the Firearms Control Act 60 of 2000, is set aside.



T. TSAUTSE
Acting Judge of the High Court
North West Division, Mahikeng

I agree



R. D. HENDRICKS
Judge President of the High Court
North West Division, Mahikeng

APPEARANCES

Counsel for the Appellant: T J Naude
Naude Steyn Inc
74 Du Plooy Street
Potchefstroom

Counsel for the State: No Appearance
The Director of Public Prosecutions
North West Province
Megacity Complex
Mmabatho
2735