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IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: A324/24

HEARD ON: 20 May 2026

JUDGMENT: 26 May 2026

(1) REPORTABLE: YES / NO

(2) OF INTEREST TO OTHER JUDGES: YES / NO

(3) REVISED

DATE : 26 May 2026

SIGNATURE

In the matter of:

SANDILE HLATSWAYO

APPELLANT

AND

THE STATE

RESPONDENT

JUDGMENT ON APPEAL

Strijdom, J (Baqwa J concurring):

INTRODUCTION

- [1] The appellant, Mr Sandile Hlatswayo, appeals to this court against his conviction and sentence imposed upon him by the Regional Court, Benoni, on 4 September 2024. He was convicted on one count of theft of a motor vehicle and sentenced as follows:
- 1.1 Eight (8) years' imprisonment, of which four (4) years are suspended for five (5) years on condition that the accused is not convicted of motor vehicle theft committed during the period of suspension.
- [2] The appellant was legally represented throughout the trial proceedings and pleaded not guilty to the charge preferred against him.
- [3] Leave to appeal have been granted after appellant petitioned the Judge President of this Court.

MATERIAL BACKGROUND FACTS

- [4] The facts which emerge from the evidence are, for the greater part, not contentious. During the early hours of 18 October 2020, Johnny Edward van Rensburg, a recovery agent for Cartrack Vehicle Recoveries, received information from their control room via telephone about an Audi A4, silver in colour, with registration number R[...], that was allegedly hijacked in Cullinan. The information was shared with Captain Van Niekerk of the Benoni Flying Squad. The vehicle was tracked until Kingsway Road, Daveyton turnoff, where it was stopped and the appellant was arrested.
- [5] **Grant Kenneth van Niekerk**, a captain in the South African Police Service attached to the Benoni Flying Squad, testified that he was part of the tracking group on his cell phone. Whilst he was on duty in the early hours of 18 October 2020, the tracking company posted a message indicating they were tracing a vehicle that was hijacked in the Cullinan area. He followed on the messages and found the alleged hijacked vehicle a couple kilometres before the Daveyton turnoff. He pulled in front of the vehicle, a silver Audi A4. The tracking people had found one suspect that was standing outside the vehicle. He then arrested the appellant.

- [6] He established from the owner of the vehicle, an Indian gentleman, who arrived plus minus 45 minutes later in the company of Cullinan police officials that the vehicle was not hijacked but stolen. Upon being asked for how long had the appellant and the vehicle been at the place where he found them, his response was “not even a minute, seconds. What happened is when the tracking company saw my blue lights coming, they stopped the Audi.”
- [7] Captain van Niekerk asked the appellant whose vehicle he was driving. The appellant said it was his brother’s vehicle. The complainant was asked if the appellant is his brother and he said no.
- [8] **Johnny Edward van Rensburg** testified that he is a recovery agent for Cartrack. On 18 October 2020, he was on duty and received a call from the control room about a vehicle that was hijacked, an Audi A4 silver with registration number R[...]. He started moving from Rosslyn going to Mamelodi where he met up with Cullinan SAPS also searching for the vehicle. The Audi A4 was then moving 10 kilometres in front of them. He started giving chase. He received information from the control room that the vehicle is now stationary in Daveyton. When they arrived on the scene, SAPS Flying Squad, had already pulled over the vehicle and arrested the suspect.
- [9] **Karel Dreyer Rothmann** testified that he is a Fleet Tracking Manager at Cartrack, and that the complainant, Mr Abdul Mushawar, is a contract holder in respect of the vehicle, an Audi A4 with registration number R[...].
- [10] He compiled a trip report (Exhibit “A”) in respect of the Audi A4 as a result of a complain that Cartrack received on 18 October 2020. He explained that the said vehicle starts in Refilwe at 01:35 from there the vehicle goes into Premier Diamond Mine, Cullinan. Then it goes onto the R515. Then it gets off at Welbekend on Pretoria road. It stays on Pretoria Road until it gets to Geldenhuys Road in Benoni. Then it goes onto Kingsway Avenue, Benoni and then Kingsway Avenue goes into Daveyton and the ignition is turned off at approximately 02:26.

- [11] A statement by the complainant was admitted into the record Exhibit “B” after the State applied for the re-opening of its case and admission of the statement in terms of section 3(1)(c) of the Law of Evidence Amendment Act 45 of 1988. The contents of the statement reveals that the vehicle in question was stolen and Mr Abdul Mushawar is the owner of the vehicle.
- [12] The appellant testified in his defence without calling any witnesses. His version was that he does not know, owing to drunkenness, how he got into the vehicle and he was surprised when he was woken up by the police inside the vehicle. He denied stealing and driving the said motor vehicle.

THE COMMON CAUSE FACTS

[13] The following are common cause facts or not seriously disputed:

13.1 That Cartrack received information about an alleged hijacked/stolen Audi A4 at Cullinan.

13.2 That the said Audi A4 was tracked by the vehicle tracking recovery agents moving from Cullinan until Kingsway and Daveyton turnoff where it was stopped.

13.3 That after the vehicle was stopped the appellant was arrested.

LEGAL ARGUMENTS ON CONVICTION

- [14] The appellant’s grounds of appeal, as argued by Mr Botha, centre on the contention that the trial court erred in not finding that the appellant wasn’t the driver of the stolen vehicle and that his version is reasonably possibly true.

[15] It was further argued that the circumstantial evidence does not prove the guilt of the appellant. It is not the only reasonable inference that can be drawn from all the proven facts and it does not exclude all other inferences and specifically the appellant's version.

LEGAL PRINCIPLES

[16] The principles governing an appeal against conviction and sentence are well established.

[17] A court of appeal is not at liberty to depart from the trial court findings of fact and credibility, unless they are vitiated by irregularity, or unless an examination of the record of evidence reveals that those findings are patently wrong. The trial court's findings of fact and credibility are presumed to be correct, because the trial court, and not the court of appeal, has had the advantage of seeing and hearing the witnesses, and it is in the best position to determine where the truth lies.¹

[18] In **S v Isaacs**,² the court per Navsa JA stated the following:

*“Courts should always consider the cumulative effect of items of circumstantial evidence. In Scwickard and van der Merwe – Principles of evidence 3rd ed (2002) p537-538, the learned authors point out that this approach can also be summarised as follows:- The State must satisfy the court, not that each separate items of evidence is inconsistent with the innocence of the accused, but only that the evidence taken as a whole is beyond reasonable doubt inconsistent with such innocence.”*³

[19] Sentencing is pre-eminently a matter for the discretion of the trial court.

[20] A court of appeal will not erode that discretion and will only interfere if the trial court did not exercise its discretion judicially and properly. This would be the case if the

¹ **S v Leve** 2011 (1) SACR [ECG] **R v Dlumayo and Another** 1948 SA 677 (A) at 668.

² 2010 (4) ALL S 481 (SCA)

³ See also: **S v Reddy and Others** 1996 (2) SACR 1 (A) at 9e. **R v Blom** 1939 AD 288, **S v Cooper** 1996 (2) SA 875 (T).

sentence is vitiated by an irregularity or misdirection (or if it is disturbingly inappropriate.⁴

[21] The court *a quo* concluded that:

“If one look at the totality of the evidence of the State, one cannot fault any of the witnesses who testified, but the accused on the other hand was contradicting himself on several occasions.”

[22] The court *a quo* found that the appellant’s version is inconsistent with the objective facts presented by the state and that the only reasonable inference to be drawn from the circumstantial evidence is that the appellant stole the vehicle in question and that he was the driver of that vehicle when the vehicle was stopped by the tracking guys.

[23] The court *a quo* found that a person who is heavily intoxicated who could not even account for what has happened, cannot drive a motor vehicle in such a perfect way without any accident from where the vehicle was stolen up to where the appellant was found inside the motor vehicle.

[24] The court *a quo* allowed the State to reopen its case and to submit a statement of the complainant in terms of section 3(1)(c) of Act 45 of 1988. The court *a quo* concluded that ownership of the vehicle is not in dispute, and the appellant cannot be prejudiced. The defence had no objection to the handing in of the said statement.

THE SENTENCE

[25] At the commencement of the appeal, counsel on behalf of the appellant, abandoned the appeal against sentence and concede that the sentence is not disproportionate to the crime the offender and the interest of society.

CONCLUSION

⁴ See **S v Rabie** 1975 (4) SA 855 (A) and **S v Packereysammy** 2004 (2) SACR 169 (SCA)

- [26] In my view, the trial court weighed up all the elements which points towards the guilt of the appellant against all those which are indicative of his innocence, taking proper account of inherent strengths and weaknesses and probabilities on both the state and defence sides.
- [27] I conclude that the balance weighs so heavily in favour of the State so as to exclude any reasonable doubt about the accused's guilt.
- [28] Having weighed all the factors, I am not persuaded that the trial court misdirect itself on the facts and the law.
- [29] The trial court properly considered the personal circumstances of the appellant and balanced them against the seriousness of the offence, the interests of society and in particular the interest of the victim.
- [30] This is not a sentence that induces a sense of shock, rather it is a sentence that reflects the gravity of the offence and the legitimate outrage of the community. The sentence is proportionate to the crime committed.

ORDER:

The following order is made:

- [1] The appeal against conviction and sentence is dismissed.

Strijdom JJ

Judge of the High Court, South Africa

Gauteng Division, Pretoria

I agree, and it is so ordered.

Baqwa J

Judge of the High Court, South Africa

Gauteng Division, Pretoria

REPRESENTATIVES:

For the Appellant:
Mr MG Botha (Attorney)

Instructed by:
Legal Aid Board

For the Respondent:
Adv K.M. Mashele

Instructed by:
Office of the Director of Public Prosecutions, Pretoria