REPUBLIC OF SOUTH AFRICA

IN THE SOUTH GAUTENG HIGH COURT
(JOHANNESBURG)

CASE NO: A463/2011

(1) REPORTABLE: YES
(2) OF INTEREST TO OTHER JUDGES: YES
(3) REVISED

19 April 2012 FHD VAN OOSTEN

In the matter between

VELI COLLEN MADONSELA **APPELLANT**

and

THE STATE **RESPONDENT**

J U D G M E N T

VAN OOSTEN J:

[1] The appellant, who had been arraigned as accused 6 in the trial court, was convicted the Regional Court, Kempton Park, on two counts of robbery with aggravating circumstances (counts 4 and 5). The two counts were taken together for purpose of sentence and he was sentenced to 15 years' imprisonment and he was declared unfit to possess a firearm.

[2] The appeal is against both conviction and sentence, with the leave of the court a quo.

[3] The robbery referred to in counts 4 and 5 was admitted at the trial. The only dispute concerned the identity of the robbers. Although virtually no evidence was led on the way the robbery was executed, it was common cause that a motor vehicle and a number of further items, were robbed from the two complainants, Ms Rennie (count 4), and her boyfriend, Mr Harding (count 5), in one and the same incident. The lack of evidence concerning the way the robbery was executed, may well have resulted in questions arising such as the possible duplication of convictions (as to which, see *Dlamini v S* (362/11) [2012] ZASCA 26 (27 March 2012), which was in fact raised and addressed in the appellant's heads of argument, but in the view I take of this matter, it is not necessary to consider those.

[4] The appellant's conviction is solely based on the appellant's possession of the robbed motor vehicle, after the robbery (see *R v Tshabalala and Others* 1942 TPD 27 at 30). The robbery occurred on 15 July 2007 at Primrose. On 23 July 2007 the vehicle was found by members of the SAPS, where it was parked at the appellant's premises, in Tembisa. The appellant was present at the time and upon investigation it was established that the vehicle had been fitted with false registration plates and numbers. The appellant explained to the police that the vehicle had been left there by one Sandile. He was however unable to furnish any further particulars concerning what appeared to be nothing but a fictitious person. The appellant's version was correctly rejected as false by the court below.

[5] The question that needs to be addressed on appeal is whether the court a quo correctly invoked the doctrine of recent possession in convicting the appellant of robbery. It is common cause that the appellant was in possession of the stolen vehicle 8 days after the robbery. Can this be regarded as "recent possession"? In *Shabalala v S* [1999] ALL SA 583 (N) 587/8, possession of the stolen vehicle on the day of the robbery or the day thereafter, was accepted as sufficient for the doctrine of recent possession to apply. In *S v Mavinini* 2009 (1) SACR 523 (SCA) Cameron JA, writing for the court, held that the appellant's possession of the stolen vehicle less than 24 hours after the robbery, taken together with his "elusive conduct", overwhelmingly suggested criminal involvement in the robbery. In *S v Matola* 1997 (1) SACR 321 (BPD) 323i-324g, possession of the stolen vehicle a month after the theft, together with the further facts, that the stolen vehicle had been registered in the appellant's name, with false registration numbers, and that the original number

plates of the stolen car had been found on the appellant's property, were held to sufficiently prove that the appellant had played a role in the theft.

[6] The nature of the goods involved, of course, needs to be considered (*Matola* 324e). In the present day and age stolen vehicles do change hands with amazing speed and disingenuousness. In itself possession of the stolen vehicle, a month after the robbery, in my view, is not so closely connected as to warrant the inference of involvement. Other factors need to be considered: in the present matter none of the other robbed items were found, either in the stolen vehicle, or in the appellant's possession. It is true that the appellant's explanation for his possession of the vehicle was dishonest, which is typical of a person disguising or avoiding the truth. But, I do not think that his unsatisfactory explanation, in the absence of any other incriminating evidence, is sufficient for the doctrine of recent possession to find its application.

[7] For all these reasons I conclude that the appellant was wrongly convicted of robbery. The facts of this matter, however, do establish an offence under s 36 of the General Law Amendment Act 62 of 1955, which in terms of s 260 (f) of the CPA, is a competent verdict on a charge of robbery. It follows that the conviction of robbery with aggravating circumstances, on count 5, must be substituted with a conviction of contravention of s 36 of the Act 62 of 1955. In the absence of evidence implicating the appellant concerning the items that were robbed form Ms Rennie, the appellant's conviction on count 4, cannot stand.

[8] This brings me to the sentence which this court is required to consider afresh. The appellant was 32 years old at the time of sentencing. He was then, and still is, serving a sentence of 30 years' imprisonment, which was imposed by the Regional Court, in 2008. The seriousness of the offence and in particular the prevalence of the theft of motor vehicles pestering our country, a long term of imprisonment is warranted. I am however mindful of the long term of imprisonment the appellant is presently serving. I do not think it will serve any purpose to add a further term of imprisonment thereto, as this would merely diminish any prospects of the appellant rehabilitating. I accordingly propose to order concurrency of the sentence I am about to impose, with the sentence the appellant is presently serving.

[9] In the result the following order is made:

1. The appeal against the appellant's conviction is upheld to the extent that:

   1.1 The conviction on count 4 is set aside.

   1.2 The conviction on count 5 is altered to a conviction of a contravention of s 36 of Act 62 of 1955.

2. The sentence imposed by the Regional Magistrate is set aside and substituted with the following sentence, on count 5:

   "The accused is sentenced to 7 years imprisonment.
   It is ordered that the sentence be served simultaneously with the sentence the accused is currently serving."

The effective date of the sentence is 10/03/2011.

FHD VAN OOSTEN
JUDGE OF THE HIGH COURT

I agree.

T P MUDAU
ACTING JUDGE OF THE HIGH COURT

COUNSEL FOR THE APPELLANT	***ADV E TLAKE***
COUNSEL FOR THE RESPONDENT	***ADV MM RAMPYAPEDI***
DATE OF HEARING	***19 APRIL 2012***
DATE OF JUDGMENT	***19 APRIL 2012***