

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: ~~YES~~/ NO.

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

(3) REVISED.

DATE 20/06/14 SIGNATURE

20/6/2014

CASE NUMBER: A927/2013

In the matter between:

THABANG HADEBE

APPELLANT

AND

THE STATE

RESPONDENT

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**JUDGMENT**

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LEPHOKO AJ

[1] The appellant was charged and convicted of count 1 in respect of attempted theft of a motor vehicle and count 2 in respect of theft out of a motor vehicle. He was sentenced to 4 years imprisonment on count 1 and 2 years imprisonment on count 2. One year of the sentence on count 2 was ordered to run concurrently with the sentence

on count 1, resulting in an effective term of imprisonment of 5 years. On petition to the Judge President the appellant was granted leave to appeal against the conviction and sentence on count 1, i.e. the charge of attempted theft of a motor vehicle.

[2] At the trial the state called 6 witnesses. The first witness was Ms Rosemary Oxley, the owner of the vehicle that the appellant is alleged to have attempted to steal. Her evidence was briefly that on 13 December 2011 she parked her vehicle in Rothsay Street, Benoni. She used a remote device to lock it and went to a key shop to have some keys cut. Whilst in the shop she was of people breaking into her car. She went out of the shop with Ms. Patience Molaoa, the second state witness. She went to her car and Ms. Molaoa followed the appellant. She saw two people leaving her car and putting the Garmin GPS device on the pavement, which she had left in the cubbyhole of her car. The passenger front door of her car was open but there was no damage to the vehicle. She did not see the faces of the persons who fled from her car. She suspected that the remote of her car had been jammed to prevent the car from locking.

[3] Ms. Molaoa testified that she works at Master Key where Ms. Oxley went to have the keys cut. As she was serving Ms. Oxley she heard people screaming that someone was trying to steal the car. She went out with Ms. Oxley and saw two people getting out of the car. One of the persons who got out of the car was the appellant. The appellant did not run away but continued to walk away from the car. She focused on the appellant, followed him and did not lose sight of him at any stage. She grabbed the appellant with his belt and took him to Master Key and the police were called. She

searched the appellant and found in his possession a set of jewelry, a remote control and an Allen key instrument used to break into cars.

[4] Warrant Officer Shongwe testified that on 13 December 2011 he searched the appellant in the police cells and found a remote control in his possession. The appellant said it was his gate remote control. He tested the remote control on Ms. Oxley's car and it jammed her remote control and prevented her car from locking.

[5] Constable Chetty's evidence was that on 13 December 2011 he found the appellant at Master Key. He was already apprehended and searched at that stage. A bluish gate remote control and jewelry that was found in his possession had already been placed on the counter at Master Key. He handed the items back to the appellant because the appellant had informed him that they were his and the remote control was for his house gate. According to him there was no Allen key in the items that he found.

[6] Warrant Officer Madise testified that he was the investigating officer in the case. He verified the appellant's address. The appellant did not live at the address that he had provided. He tested the remote found in the possession of the appellant on the gate of the property he alleged to live in but it did not work.

[7] Mr. Paul Brent's evidence was that from February 2011 until April 2012 he was the manager of the building where the appellant alleged he lived. He informed the court that the remote that is alleged to have been found in the possession of the appellant

would not work at the building as their system was changed in July 2011, each remote was programmed to the specific gate and linked to a specific unit within the building and could not be cloned. He stated that the remote found in the possession of the appellant could not have worked on their system anyway before July 2011 as it was of a different type.

[8] The appellant testified on his own behalf. His evidence was that on 13 December 2011 he was walking at the corner of Rothsay and Ampthill Street when he saw a man he knew from the township. The man called him and he went to him and as he reached him the man started running. He was approached by a white lady and Ms. Molaoa who grabbed him by his pants took him to Master Key where he was assaulted and his hands and feet tied. He was accused of tempering with the car and attempting to steal it. He stated that vehicle keys and a remote control for the gate of the place where he resided since October 2011 including the time of his arrest were found in his possession. He denied committing any offence.

[9] In *R v Schoombie* 1945 AD 541 at 546 the court stated that attempts to commit an offence seem to fall into the two classes, namely: (a) *Those in which the wrongdoer, intending to commit a crime, has done everything which he set out to do but has failed in his purpose either through lack of skill, or of foresight, or through the existence of some unexpected obstacle, or otherwise,* (b) *those in which the wrongdoer has not completed all that he sets out to do, because the completion of his unlawful acts has been prevented by the intervention of some outside agency.*

[10] In *S v Du Plessis* 1981 (3) SA 382 (A) 399H-400A the court stated that as to whether or not the conduct of the accused constituted an attempt at committing a particular crime was a factual enquiry dependent on the circumstances of the case including *inter alia* whether at the moment of interruption the accused had formed the intention to commit the crime, the extent to which that interrupted conduct would have had a bearing on the final act required for the commission of the crime, and considerations of practical common sense.

[11] In order to secure a conviction of the appellant on the charge of attempted theft of the motor vehicle the state had to prove beyond a reasonable doubt that the appellant had the necessary intention to commit the offence of theft of the motor vehicle and had commenced with steps reasonably necessary to achieve that objective but failed to execute his intention to its final conclusion due to some intervening cause.

[12] None of the evidence of the state witnesses suggested that the appellant made any attempt at stealing the motor vehicle. The appellant testified and his evidence did not advance the state's case. At the end of the appellant's case the state had failed to prove beyond a reasonable doubt that the appellant had attempted to steal the vehicle and the appellant was entitled to an acquittal.

[13] Given the totality of the evidence I find that the trial court erred in finding the appellant guilty of the offence of attempted theft of the motor vehicle.

[14] I do not deem it necessary to deal with the appeal against sentence as I have already found that the appeal against the conviction must succeed.

[15] In the premises I would make the following order:


1. The appeal in respect of the conviction and sentence on count 1 (attempted theft of a motor vehicle) is upheld;
2. The conviction and the sentence imposed by the court *a quo* in respect of that count are set aside;
3. The conviction and the sentence of 2 years imprisonment in count 2 (theft out of a motor vehicle) are confirmed.



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A L C M LEPHOKO  
ACTING JUDGE OF THE HIGH COURT

I AGREE:



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T M MAKGOKA  
JUDGE OF THE HIGH COURT

Heard on: 24 April 2014.

Judgment delivered on: 20 June 2014

For the Appellant: Adv.: W. A Smit

Instructed by: Justice Centre, Pretoria

For the Respondent: Adv M R Molatudi

Instructed by: Director of Public Prosecutions