

Supreme Court of Appeal of South Africa

MEDIA SUMMARY– JUDGMENT DELIVERED IN SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

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Status: Immediate

Please note that the media summary is intended for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal

Balkwell and ano v The State [2007] SCA 91 (RSA)

In a judgment delivered today, the Supreme Court of Appeal has dismissed the appeal of two men who were convicted in the Regional Court, Durban of culpable homicide and sentenced to seven years' imprisonment.

Much of the evidence was common cause and the point of dispute related to the nature and extent of the assault the two appellants inflicted on Mr Michael Burke (the deceased). On 1 November 1999 the deceased misappropriated a sum of R17 000 and business keys from the first appellant's photo-lab at which he was employed a sales representative. The first appellant conducted a search for the deceased and on 2 November, on learning that he was hiding at a friend's flat, enlisted the assistance of the second appellant, who was a bouncer at a local night club, to recover the stolen items from the deceased. When confronted, the deceased readily handed over the keys and promptly made arrangements with his brother in law to repay the money. The appellants nevertheless assaulted the deceased both at the flat and at the parking lot as they were making their way to meet his brother in law. The deceased died shortly thereafter. The first appellant subsequently threw his body down a gorge. The body was found about a week later. As a result of its advanced state of decomposition, the post mortem which established certain injuries, including a broken nose, could not establish the cause of death

conclusively. It was, however, common cause that but for the assault, the deceased would not have died.

In dismissing the appeal, the SCA found that it was beyond question on the evidence that the assault, which was planned and of a serious nature, was the *sine qua non* of the death and further that the appellants ought reasonably to have foreseen that the deceased could die from the assault. The SCA concluded that the sentences of seven years' imprisonment, although robust, were not so inappropriate as to warrant interference by a court of appeal having regard to the particularly aggravating features such as the premeditated and gratuitous nature of the assault, the callous disposal of the deceased's body, the first appellant's unyielding refusal to reveal the deceased's whereabouts despite repeated entreaties from the deceased's mother and their lack of candour in court.