

IN THE HIGH COURT OF SOUTH AFRICA
(CAPE OF GOOD HOPE PROVINCIAL DIVISION)

CASE NO:

A445/2007

DATE:

7 MARCH 2008

5 In the matter between:

JOHN DANIELS

Appellant

and

THE STATE

Respondent

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J U D G M E N T

BUDLENDER, AJ:

[1] On the evening of 15 October 2003 two robberies took
15 place at Plumstead in Cape Town. The first robbery was
at the home of the Clase family at No. 1 Pier Lane,
Constantiaberg Close. The second robbery took place
shortly thereafter at the home of the Bird family which
was across the road from the Clase home. Each of the
20 robberies was carried out by three men.

[2] The appellant and another man, Chantino Solomons,
were arrested and prosecuted on a variety of charges
arising from the two robberies. Mr Solomons was
25 acquitted. The appellant was convicted on the first,

second and fourth charges, each of which was a charge of robbery with aggravating circumstances. He was sentenced to 10 years' imprisonment on each charge. The Court ordered that the sentences on the first and second charges were to run concurrently. The result was that the effective sentence imposed upon him was imprisonment for 20 years. The appellant appeals against both his conviction and the sentences imposed upon him.

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[3] The evidence against the appellant comes down to three things. First, identification evidence at an identity parade which was held; second, the finding of his fingerprints at the Claase home; third, the inference that the persons who robbed the Bird home were the persons who had robbed the Claase home.

[4] The identification evidence was not strong. The learned magistrate correctly, in my view, placed no reliance on the identification evidence of Mr Bird and Mrs Bird. In assessing the evidence of Aidan Claase, who identified the appellant at the identity parade, the learned magistrate pointed out that he had also identified two persons who were not suspects and who, one must assume, were innocent. Mr Claase also very fairly

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conceded under cross-examination that it was possible that he had made a mistake as far as accused number 1 was concerned. The learned magistrate correctly found that the evidence of Aidan Claase standing alone was not a sufficient basis for a conviction.

[5] However, the learned magistrate found corroboration for the identification evidence of Mr Claase in the form of the fingerprint of the appellant which was found on a candle box in the bedroom of Ms Farrell Claase on the night of the incident. The appellant was unable to provide any explanation of how his fingerprint had come to be on an item in the house in question on the night in question. The evidence was that the robbers had been into the bedroom of Farrell Claase during the robbery. Under the circumstances it is impossible to avoid the inference that the appellant was one of the robbers who entered the Claase home on the night in question. No other reasonable explanation, not even the most speculative, has been suggested.

[6] As I have said, the identification evidence was weak. However, it does add some limited weight to the fingerprint evidence. Aidan Claase had adequate opportunity to observe the robbers. If the appellant was

not at the scene of the crime it would be a remarkable coincidence if Mr Claase just happened to identify a person whose fingerprint was found on an object found at the scene of the crime.

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[7] Standing together, in my opinion, these elements of the evidence lead one to the conclusion that it has been shown beyond a reasonable doubt that the appellant was one of the robbers who entered the Claase home on the night in question. From this it follows that the appellant was correctly convicted on the first and second charges.

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[8] The next question is whether it has been proved that the appellant was one of the robbers who robbed the home of the Bird family. There is neither reliable identification evidence nor any extrinsic evidence such as fingerprint evidence in that regard. The evidence shows:

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1. The robbery at the Claase home took place at about 6:45 on the evening of 15 October 2003.

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2. It lasted for about 10 to 15 minutes.
3. The robbery at the Bird home took place at about 7pm.
4. The Bird home is across the road from the Claase home.

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5. Mr Bird saw the third robber running across the road from the home of his neighbours.

6. Shortly after the robbers had left the Claase home, the members of the Claase family heard a gunshot outside the house.

7. One of the robbers fired a shot at Mrs Bird outside her house during the course of the robbery at the Bird home.

All of this leads to the irresistible inference that the robbers who robbed the Bird home were the same men as those who had shortly before robbed the Claase home. That being so, it must follow that the appellant, who has been proved to be one of the men who robbed the Claase home, was also one of the men who robbed the Bird home.

[9] Under the circumstances it must follow that the appellant was correctly convicted on the fourth charge and, in my opinion, the appeals against the conviction must therefore be dismissed.

[10] When it came to sentence, the magistrate pointed out that the prescribed sentence for robbery with aggravating circumstances is a minimum sentence of imprisonment for 15 years. He further pointed to the cumulative effect

of imposing the prescribed sentence on the appellant on each of the three counts, which would amount to 45 years, which he found would be disproportionate. On this basis he was satisfied that there were substantial and compelling circumstances which justified a departure from the prescribed sentence. He accordingly sentenced the appellant to 10 years' imprisonment on each of the offences and thereafter ordered that two of them were to run concurrently.

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[11] With due respect to the learned magistrate, it seems to me that he did not approach the sentencing task correctly. His first task was to determine an appropriate sentence in respect of each of the charges standing apart from the others. I do not think it can be said that the sentences of 10 years on each of the charges of armed robbery were in any way shocking or disproportionate and, in my view, those sentences were properly imposed.

20 [12] The learned magistrate's next task was to consider the cumulative effect of the sentences in order to decide whether any of them or any part of them should be served concurrently. That was the appropriate stage at which to weigh up the cumulative effect. The learned
25 magistrate concluded that the sentences in respect of the

first and second offences should run concurrently. The net effect of this is a total period of imprisonment of 20 years.

5 [13] The first and second offences were both committed in the course of the robbery at the Claase home. They are so closely connected that in my view, even without regard to the cumulative effect, it would be inequitable to order that the sentences be served separately, and I agree that

10 they should be ordered to run concurrently. It seems to me, however, that the cumulative effect of the third sentence on the fourth charge, namely an effective imprisonment of 20 years, is excessive under the circumstances. Armed robbery is a serious offence and

15 should be treated as such by the courts. However, in my view, justice would be done if seven of the 10 years imposed in respect of the fourth charge were to be served concurrently with the sentences imposed on the first two charges so that the net effect of the sentences

20 would be a period of imprisonment for 13 years.

[14] Under the circumstances I would order as follows:

1. The appellant's appeal against his convictions is dismissed and the convictions are

25 confirmed.

2. The appeal against sentence succeeds to the extent that the sentence is altered to read as follows:

“1. On charge 1 the accused is sentenced to

imprisonment for 10 years.

2. On charge 2 the accused is sentenced to imprisonment for 10 years.

3. On charge 4 the accused is sentenced to imprisonment for 10 years.

4. It is ordered that:

(i) the whole of the sentences on charges 1 and 2 is to run concurrently;

(ii) seven years of the sentence imposed in respect of charge 4 are to run concurrently with the sentences imposed in respect of charges 1 and 2.

3. The net result is that the appellants will serve an effective period of imprisonment for 13 years.



BUDLENDER, A.J.

5 MOTALA, J.: I agree and it is so ordered.

MOTALA, J