IN THE HIGH COURT OF SOUTH AFRICA
[WESTERN CAPE: HIGH COURT CAPE TOWN]

CASE NO: A288/2008

In the matter between:

M. MINNIES	First Appellant
IEKERAAM HINI	Second Appellant
MARK J ADAMS	Third Appellant
LINFORD PILOT	Fourth Appellant

vs

THE STATE	Respondent

JUDGMENT DELIVERED ON 15 SEPTEMBER 2008

HJ ERASMUS, J:

[1] The appellants were charged in the Specialised Commercial Crime Court in Bellville for contravening section 34(1)(b) of the South African Reserve Bank Act 90 of 1989 ('the Act") read with section 2 of the Prevention of Counterfeiting of Currency Act 16 of 1965. The appellants were on 25th February 2008 found guilty as charged and on 27th February 2008 sentenced as follows:

The first appellant was sentenced to 5 (five) years imprisonment of which 2 (two) years are suspended for 5 (five) years on appropriate conditions.

The third appellant was sentenced to 5 (five) years imprisonment of which 3 (three) years are suspended for 5 (five) years on appropriate conditions.

The second and fourth appellants were sentenced to 2 (two) years imprisonment of which 1 (one) year is suspended for 5 (five) years on appropriate conditions.

[2] The appellants appeal against both conviction and sentence.

[3] The Regional Magistrate in the court *a quo* summarised and analysed, the evidence relating to the factual background in great detail. For purposes of this judgment, it will be sufficient to refer only in broadest outline to the most important of the salient facts.

[4] Mr Alfred Laidlaw ("Laidlaw"), the principal witness for the prosecution, and the first appellant were known to each other. Many years ago, they worked for the same employer for a period of three to four years. They renewed their acquaintance under circumstances which are in dispute. They met on two occasions after they had renewed their acquaintance, on 12 July 2006 and on 19 July 2006. On the second occasion, the four appellants were arrested by the Police.

[5] Laidlaw says that the first appellant phoned him, having obtained his information from his stepfather. After the initial call, the first appellant phoned him on several occasions. Laidlaw says that when the

first appellant realised that he, Laidlaw, had made substantial financial progress in life, the first appellant told him that he had been making counterfeit money at a house in Mitchell's Plain and that he was looking for a buyer for the counterfeit notes.

[6] The first appellant's version is set out as follows in the judgment of the magistrate:

> Subsequent contact was 8 to 10 years later when he had obtained Mr Laidlaw's phone number from his step dad and he had contacted Alfred Laidlaw. He testified that in the course of their conversations Mr Laidlaw had informed him that he had a smallholding, he also owns a shop in Kraaifontein and that he had been doing particularly well financially. He had testified that he had never seen the shop of Mr Laidlaw, that when Mr Laidlaw had proposed certain transactions he was informed that Mr Laidlaw was looking for counterfeit monies because he dealt in uncut diamonds and that he was looking to pay foreign Africans who supplied him with uncut diamonds by way of counterfeit monies as these people would not be in a position to do anything about that fact. Mr Laidlaw had asked if he, accused 1, knew anyone who could obtain counterfeit notes and he said that he was a family man, he was not involved in this kind of deal and that he did not know anyone involved but Mr Laidlaw raised the subject on numerous occasions and eventually Mr Minnies testified that he met Mr Laidlaw in Kraaifontein at the Mini Market parking lot. The meeting was to chat and to show Mr Minnies the shop, etc. Mr Laidlaw was desperate to get counterfeit monies and there was no further meeting for one to two months until Mr Laidlaw eventually phoned him again. At that stage accused 1 testified that he was working for Credit and Financial Services in Cape Town and through a colleague he met a person who lives in Belhar by the name of Wayne and Wayne coincidentally had counterfeit notes. Accused 1 indicated that he could introduce Wayne to somebody who was interested in obtaining counterfeit notes and that person would have been Mr Laidlaw. Eventually accused 1 put the deal together.

> Wayne did not want any contact with Mr Laidlaw, he wanted the accused to in fact be the go between and to put the entire deal together. He indicated that Wayne was suspicious because the prospective buyer was a white person and that he could not trust a white person in those circumstances. Mr Laidlaw persistently called him about this counterfeit notes, indicated that there would be no trouble as they were only dealing with African nationals and accused 1 eventually agreed because Mr Laidlaw had stated to him that he would make it worth his while. It was agreed between Wayne and accused 1 that Wayne would be paid R50 for each counterfeit R100 note. Accused 1 informed Mr Laidlaw of this requirement and the deal was struck telephonically because Mr Laidlaw agreed to pay that price.

[7] It is common cause that Laidlaw and the first appellant met in the parking lot at the Kraaifontein Mini Market. Laidlaw said that three people were with the first appellant in a VW Citi Golf, viz. the second and fourth appellants and another person he was unable to identity. Laidlaw says that he was shown a R100 counterfeit note. There is some discrepancy in the evidence as to whether he took the note away with him. Laidlaw said that, playing for time, he informed the first appellant that he knew a prospective buyer in Johannesburg who would be coming to Cape Town.

[8] Laidlaw then approached the Police and it was decided to set up an operation in terms of section 252A(1) of the Criminal Procedure Act 51 of 1977. The necessary leave was obtained and the "trap" was set for the 19th July 2006 in the parking lot of the Good Hope Centre. A police constable played the role of the "buyer" under the name Nduduza. Once the appellants had revealed the presence of the counterfeit money on the scene, a signal was given and the Police closed in. The four appellants were arrested and in the car in which they were travelling, was found a

bag containing what appeared to be counterfeit money. Forensic examination of the contents of the bag revealed that there were 3648 counterfeit R100 notes in the bag, 1163 of the notes bore the serial number CS 1406440D; 963 bore the serial number DV 8861250D and 1522 bore the serial number DV 3503930D.

[9] The appellants initially raised two grounds of appeal in their appeal against conviction. The first was that the conduct of Laidlaw and the Police went beyond providing an opportunity to commit an offence in contravention of the provisions of section 252A of the Criminal Procedure Act 51 of 1977. This ground of appeal was not persisted with at the hearing of the appeal. The second ground of appeal relates to various factual issues in regard to the events on 19 July 2006 which led to the arrest of the appellants. A third ground of appeal was subsequently added. It is contended that in law the conviction of the appellants was not competent. Mr Van der Berg submitted on behalf of the appellants that this ground is decisive of the appeal. It will be convenient to deal at the outset with this third ground of appeal.

[10] Section 34(1)(b) of the Act provides as follows:

> Subject to the provisions of s 2 of the Prevention of Counterfeiting of Currency Act 16 of 1965, any person who –
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> ….
>
> (b) utters, tenders or accepts any such note or a coin which has been forged, altered or unlawfully issues, knowing it to be forged, altered or unlawfully issued,
>
> shall be guilty of an offence and liable on conviction [*to fifteen years' imprisonment*].

[11] In Snyman *Criminal Law* 5th ed (2008) 543 it is said that –

> Uttering consists in unlawfully and intentionally passing off a false document to the actual or potential prejudice of another.

In *S v Latib* 1968 (1) SA 177 (T) it was held that the handing over of a forged document to an accomplice does not constitute uttering that document, because there is no attempt to make the receiver thereof believe that the document is valid. It was accordingly held (at 179A) that "oorhandiging van 'n vervalste stuk aan 'n medepligtetige is dus geen misdaad nie". This approach was followed in *S v Modisakeng* 1998 (1) SACR 278 (T), also a matter involving a trap, in which Kirk-Cohen J (Daniels J concurring) said (at 282e) that "a necessary element of uttering is that the person to whom a document is handed believes it to be genuine".

[12] Mr Van der Berg submitted that Laidlaw knew that the currency in question was counterfeit – he did not believe it to be genuine – and that on that ground alone a conviction for uttering cannot stand. Mr Van der Berg further submitted that "uttering" includes "tendering" and that a conviction for "tendering" was therefore also incompetent.

[13] In *S v Modisakeng* 1998 (1) SACR 278 (T) Kirk-Cohen J in considering the distinction between "uttering" and "tendering" said (at 282f—h):

> It is to be noted that the offence under consideration is committed by any one who 'utters' or 'tenders' any such note which has been forged knowing it to have been forged. The Afrikaans version of the words 'utter' and 'tender' is 'uitgee' en 'aanbied'. The legislature could not have intended that these two

> words have the same meaning. If that were the case, only one word would have been used. An analysis of the judgment of Hiemstra J in *Latib's* case at 178F—179A demonstrates that the learned Judge was dealing only with the word 'uitgee' or 'uitgifte' (uttering). What is of relevance in the present case is the word 'tender' ('aanbied'). In my view that word is used as being sifferent from the concept of uttering. It connotes a mere delivery of a false note, and on this ground it is distinguishable from the facts in *Latib's* case. In *Latib's* case the appellant handed to an accomplice forged passports. That was held not to be uttering, because the handing over simply was not intended to deceive anybody.
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> ….. Having regard to the meaning an object of the Legislature, I am of the view that it cast the net in s 34(1)(b) as widely as possible, and the delivery of the note to mans amounted to tendering. As already found, the appellant knew well that it was a false note. It does not matter that Mans knew or suspected that the note was forged. In my view there is no merit in the appeal on conviction. The word 'tender' as used in the Act covers what the appellant in this case did.

Mr Van der Berg invited us not to follow this decision. This is a course that this Court will follow only if we are satisfied that the decision is clearly wrong. We are not so satisfied. On the contrary, in our view, the decision is, with respect, correct.

[14] The remaining ground of appeal pertains to factual issues. In essence it is contended that Laidlaw was not a credible witness, that there are discrepancies between his evidence and that of Captain Purchase, and that there was no incriminating evidence against the second, third and fourth appellants.

[15] In his judgment, the magistrate evaluates the contrasting versions of the initial contact between and first meeting of Laidlaw and the first appellant in a manner which I find convincing:

> [*The first appellant*] concedes that but his version is that during the course of conversations it was Mr Laidlaw who then initiated the discussions relating to the counterfeit monies and -
>
> 1. the Court must ask itself why accused 1 would have pursued this approach to the accused 1 if in fact the relationship had turned sour some 10 years ago and they had lost contact with each other. The second question relating to the version of the accused is -
> 2. if in fact the meeting on 12 July 2006 was for the purpose of inspecting the shops and the business of Mr Laidlaw, why in the first place was the meeting arranged for the parking lot outside the Mini Market in Old Paarl Road, Kraaifontein. Clearly if it was to visit the shop or the smallholding or the house of Mr Laidlaw the meeting would have been held there. So to arrange a meeting under those circumstances in a public place immediately arouses suspicions and the aspect of the sample note was raised. Now under cross-examination -
> 3. the State witness was not challenged with regard to his having examined the sample. Quite correctly it was disputed that a R100 counterfeit note was given to him to take away but with the aspect of whether the sample was in fact examined by him he was not seriously challenged on that version -
> 4. he was not challenged on the version that in fact the accused told him he had a further R50 000 worth of counterfeit notes -
> 5. he was not challenged on the version that in fact these notes were being manufactured at a house in Mitchell's Plain.

[16] There are indeed discrepancies and contradictions in the evidence relating to the sequence of events on 19 July 2006, on the precise role played by some of the participants. Such contradictions and discrepancies are, within limits, to be expected when different witnesses experience and observe fast-moving events, each from his or her perspective. Certain features of the events are beyond dispute: the meeting was arranged in a public parking lot; the Police were forewarned and on the scene; the four appellants tried to make their get-away when they realised things had gone wrong, and upon their arrest a bag containing a large number of counterfeit notes were found in the car in which they were travelling. On the evidence, it is clear that the four appellants participated in the events leading up to their arrest, but that their roles differed. The magistrate was aware of this and his assessment of the differing roles of the appellants found expression in the sentences he imposed.

[17] In my view, the magistrate's comprehensive and detailed analysis of the evidence cannot be faulted.

[13] As to the appeal against sentence, the power of this court to intervene is limited. The court *a quo* took into account the seriousness of the offence, and that any offence relating to the counterfeiting of money must of necessity involve a measure of planning. The maximum sentence is fifteen years' imprisonment. The magistrate took into account the personal circumstances of each of the accused. In this regard, the magistrate also took cognisance of the fact that the first, second and third appellant have substantial incomes, and that it was a case of greed and not need. Bearing in mind the tests laid down in regard to a court of appeal interfering with a sentence imposed by a trial court, I cannot find that

there is a startling disparity between the sentence imposed by the court *a quo* and the sentence which this Court would have imposed.

[14] The appeal of the four appellants against both conviction and sentence is dismissed.

HJ ERASMUS, J

I agree

MATOJANE, AJ