

**THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE HIGH COURT, CAPE TOWN)**

Case No.: A186/2011

In the matter between:

ALFONZO MAY

Appellant

And

THE STATE

Respondent

JUDGMENT DELIVERED ON 12 AUGUST 2011

MANTAME, AJ

[1] Appellant appeals against judgment handed down on the 28 January 2011 by the Regional Court Magistrate Ms P Naidoo in Cape Town. Appellant was charged with three counts, that is, theft of a motor vehicle, robbery with aggravating circumstances and kidnapping. He was then acquitted on the charge of theft of motor vehicle, that is count 1 and convicted on charges of robbery with aggravating circumstances and kidnapping, that is count 2 and 3 respectively. He was sentenced to fifteen years imprisonment on the charge of robbery with

aggravating circumstances and ten years on the charge of kidnapping. The Regional Magistrate ordered that the period of ten years imprisonment run concurrently with the fifteen years imprisonment.

[2] Appellant is appealing against conviction and is represented by Advocate Mahlasela and the State is represented by Advocate Tsheole.

[3] Appellant applied for condonation for late filing of his application for leave to appeal his conviction. Condonation was then granted on the 1 March 2011.

[4] It is common cause that the Appellant was legally represented at all times during the trial and he pleaded not guilty to all charges.

[5] For purpose of this judgment, I will only deal with the evidence relating to charges 2 and 3 on which Appellant has been convicted on. As such I will deal with evidence starting from witness no.2.

[6] Warrant Officer Danie Botha testified that he is a police officer with the South African Police Services stationed at Maitland with the Flying Squad Unit. On 13 January 2005 in the afternoon, he was patrolling on the N2 with female Constable Bailey when they saw a blue VW Polo Sedan with registration number RRW 143 GP standing next to the road. They stopped their vehicle and made enquiries when they found Appellant sitting on the driver's seat and his girlfriend

on the passenger seat. Appellant informed them that the car was broken and Chris Thretewaey was coming to tow them.

[7] Warrant Officer Botha proceeded to test the car in the computer. He found out that the car belonged to Chris Thretewaey who owned a dealership in Durbanville. It was registered as a 2004 model whilst in his own assessment it appeared as a 2002 model. He became suspicious and called a backup and Constable Japhta arrived. Thretewaey arrived thereafter in his red Toyota Tazz and confirmed that he lent the car to the Appellant. The car was then towed to the police impound for further investigations with the same Toyota Tazz. Appellant and his girlfriend were cuffed together and went with the police to the police impound.

[8] Whilst the police were busy investigating the car at the impound a coloured man by the name Jerry Claassen approached Warrant Officer Botha and Japhta and advised that he came to identify his car and pointed out the Appellant as the person who hijacked him the previous week. The Appellant had a cut on his ear.

[9] Mr. Claassen testified that he was a complainant in count 2. On the night of the 8 January 2005 at about 22h00 he was driving from his work at Foreshore, Cape Town. He was driving his Opel Astra with registration number CY 209481. His car window was half open as he was smoking a cigarette. He stopped at a red robot in Woodstock, and a man with a gun approached him and instructed

him to open the driver's door and to move to the passenger seat. He robbed him of his personal belongings, that is, a Nokia Cell phone, CD's, a gold ring, a jacket, a windbreaker, pink shirt, two pairs of takkies and two bank cards and their pin numbers and took control of his vehicle. Visibility in the car was good because of the street lights. Appellant drove the car and told the complainant to change gears while Appellant was holding a gun in one hand and steering wheel with the other. He had all the opportunity to see him. The car headed to the Table View, Atlantis and Morning Side direction and at some point back to Woodstock. Appellant, apparently drove with the complainant for some time. At some stage, he stopped the car and instructed him to go to the boot and later they changed to another vehicle and he was blind folded and his hands tied at the back. A cloth was put over his face when he was in the other vehicle, but he could still catch a glimpse of the appellant and where he was being driven to.

[10] During this driving around, Appellant demanded some money. Although Mr. Claasen told Appellant that he overdrew for the day he drove with him around until the next day, so as to be able to withdraw money once more. Appellant withdrew some cash from his bank account as he gave him his pin number on demand and used the money to fill petrol. At the end of this driving around, he was pulled out of the car and instructed to roll towards the fence with his hands still tied at the back. Whilst still there, managed to get the attention of a passing vehicle. He was then taken by this vehicle to Philadelphia Police station, where he was picked up by his father and taken to Woodstock Police Station to report the incident. He gave the police the following description of the person that

hijacked him. He said the face was longish, the person had a thick hissing voice, a scar on the left ear that appeared pierced. During the incident, Appellant was wearing nothing on his head.

[11] During his testimony in court, he described the appellant as having a round face and as having an ear where a part of the lobe was cut out. He was cross examined on these differences in description. His response was that he was traumatised. This is clearly a reasonable explanation when one bears in mind that he had been driven around and threatened with death for approximately 7 hours before he gave his statement. Furthermore, police statements do not generally elicit the amount of detail from a witness that evidence in court produces.

[12] A week after the incident, he was called by Warrant Officer Bailey to Stikland impound to identify his vehicle. It was not difficult to identify the Appellant as the incident was still fresh in his mind and had happened 5 days before. Further, he spent about 7 hours with the Appellant driving around. The complainant remembered that the Appellant was speaking a gangster language during this ordeal.

[13] Warrant Officer Japhta also testified and corroborated the evidence of Warrant Officer Botha.

[14] Appellant's submission in respect of count 2 and 3, was that, he confirmed that Jerry Claassen accused him of robbing and kidnapping him and was arrested as a result. He disputed ever being in Woodstock on the day in question. He denied robbing Jerry Claassen. He did not dispute the fact that Jerry Claassen came to Stikland to identify his car. Appellant agreed that his ear was cut off as a result of an accident in 1988. Though he gave the Atlantis address he was staying in Eerste River. On the day of this robbery and kidnapping that is alleged by Jerry Claassen, he was attending a party and went clubbing with, his friends, Trevor Cupido, Kevin Titus and Ruan Smith.

[15] The court *a quo* convicted the Appellant taking into account the nature of the offences he committed, the interest of the community as against the Appellant personal circumstances. Though the evidence of Jerry Claassen was the evidence of a single witness, I cannot find fault with conclusion of the court *a quo* that indeed Appellant was guilty and therefore convicted.

[16] In my view, the evidence of Mr. Claassen was not challenged in a manner which could cast reasonable doubt on his version of events. He clearly had ample opportunity to identify and observe the appellant when the latter drove his vehicle and he was only required to change the gears, when the appellant put him in his car boot and he lay there with his back to the back seat and his front facing the door of the boot in front of which the appellant stood while removing the complainant's shoes and closing the boot ,when the appellant made him smoke some dagga and while he was being driven around in the other car he

was also able to catch a glance of the appellant. It is correct that evidence of Mr Claassen was that of a single witness and therefore should be treated with caution¹. However sufficient support for his evidence can be found in the broad description that he gave the police of his attacker and in the fact that he was able to instantly identify the appellant 5 days later at the police vehicle pound in Stikland without any prompting by anyone. Be that as it may, he kept on repeating the phrase that “he was 100% sure that it was him” during his testimony.

[17] Also in the evidence of Christopher Davids of SAPS, whose evidence I have not dealt with in detail as it relates to count 1. He testified that on the day Appellant’s arrest in Stikland, he was busy making a call in one of the offices, and he saw the Appellant running down the stairs with his hands handcuffed behind his back. He gave chase and apprehended the appellant who was clearly trying to escape the arrest. An inference could be drawn that Appellant saw that he was in trouble and was positively identified by the complainant, Jerry Claassen and therefore wanted to run away or escape from arrest. In any event, he was not charged for that offence, though he denied the escape.

[18] The court *a quo*, also found that the evidence of Christopher Davids corroborates that of Jerry Claassen in that, the car was found abandoned in Woodstock on the 11 January 2005. Woodstock is one of the areas significant in these proceedings in that, it is where the hijack of Mr. Jerry Claassen took place.


¹ R v Mokoena 1932 OPD 79 at 80

[19] In turn, the evidence of the evidence of the Appellant in the court *a quo* was, found not to be detailed and very much evasive. When the Magistrate weighed the evidence of the state and the Appellant, the evidence of the state far outweighs that of the Appellant.

[20] Taking into account the above, I am of the view that the Magistrate did not err in any way in arriving at her decision to convict.


[21] Consequently, I would make the following order:-

The conviction by the court *a quo* is confirmed and the appeal is dismissed.



MANTAME, A J

I agree. It is so ordered.



ALLIE, J