IN THE COURT OF APPEAL OF SWAZILAND

HELD AT MBABANE APPEAL CASE NO.2/1987

In the matter between:

ANTHONY THEMBA SIMELANE Appellant

vs

THE KING

CORAM: MELAMET J.P.

KOTZE J.A.

SCHREINER J.A.

FOR APPELLANT: In person

FOR THE CROWN Mr. M.A. Haselden

JUDGMENT

(05/10/87)

Helmet J.P.

The accused was found guilty in the Magistrates Court at Manzini of contravening:

(a) Section l(a) of the Pharmacy Act in that on 8th July 1986 he was in possession of 7,746 Methaquolene Mandrax pills without being the holder of a licence or permit to possess such drugs.

(b) Section 11 of the Arms and Ammunition Act 24 of 1964 in that on 8th July 1986 at or near Casa Minna Manzini flats not being the holder of a licence or permit to possess arms did wrongfully and unlawfully have in his possession 1 pistol serial No.9482 V.

(c) Section 11 of the Arms and Ammunition Act 24 of 1964 in that upon or about 8th July 1986 and at or near Casa Minha flats not being the holder of a licence or permit did wrongfully and unlawfully have in his possession 8 live rounds of ammunition.

On conviction the accused was committed for sentence to the High Court. He was sentenced to four years imprisonment on the first count and on counts two and three which were treated as one for the purposes of sentence he was sentenced to a fine of E250.00 or in default to 3 months imprisonment.

The accused appeals to this Court against both the conviction and sentence.

The accused who wore a maroon jacket and trousers, parked his car in the grounds of a certain

homestead. The accused and the homestead were held under observation by certain police officers. They approached the house with a view to surrounding the house. The accused left the house and as he saw them he ran away. He was chased by Det. Sgt. Hlatshwayo and after running for about 400 yards he dropped a bag - the police sergeant was about 8-10 yards behind the accused. Accused jumped over a fence and disappeared into Casa Minha flats. The sergeant gave up the chase and on turning back picked up the bag which had been carried by the accused and in the bag was found the mandrax pills and the pistol and ammunition. There is no doubt that the pills were proved to be mandrax methaquolene pills and that the ammunition was proved to be live.

The main issue was whether the accused was properly identified as the man who dropped the bag. The evidence in this regard is correctly summarised by the learned Chief Justice in the Court a quo as follows:

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"The evidence that the accused was the man in question was as follows: firstly, there was the visual identification of the Detective Sergeant. He said he first observed the man enter a certain block of flats in Manzini and leave. Some forty minutes later the man returned but when the police went to surround the flats he ran off. The Detective Sergeant gave chase and was able to observe the man's face at a distance of some eight to ten paces. However, the man got away. The Detective Sergeant saw the accused later that day following his arrest and he positively identified him as the man seen earlier.

Secondly, there was evidence of the man's clothing-According to the Detective Sergeant he was wearing a maroon jacket and trousers and according to the officer who arrested the accused a pair of maroon trousers was found beside his bed.

Thirdly, there was evidence that a receipt bearing the accused's name was found in the bag which was dropped together with certain items of electrical equipment. It is not insignificant that the accused was an electrician.

Fourthly, the car being driven by the man was a car which at about that time, though the owner could not be sure of the exact date, had been lent to the accused."

The evidence of the accused was an alibi that he had been at work all day and knew nothing of the bag or the incident and he was supported in this by his wife and a co-worker. It is clear that the onus lies on the Crown to disprove the defence of an alibi. In the present case the Magistrate rejected the alibi as false and did so on the grounds that he was not impressed with the demeanour of

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the accused and his witnesses and the contradictions in their evidence. In my view there is nothing to suggest that the Magistrate erred in so rejecting the evidence tendered on behalf of the accused. It is suggested that he placed too much stress on the retraction or contradiction by the accused in his evidence as to when he first saw the motor car on the day in issue. Alibis, if not genuine are normally well rehearsed and it is on contradictions therein as between witnesses and the evidence for the State that they are tested.

The evidence of the Detective Sergeant who chased the accused is corroborated by other witnesses and objective facts such as receipts in the name of the accused found in the bag. There is no reason why these receipts should be or could have been falsified or brought from elsewhere and placed in the bag by the police.

I have no doubt that the Magistrate was correct in accepting the evidence tendered on behalf of the State and rejecting that of the accused and his witnesses. There are no grounds, in my opinion, to interfere with the convictions of the accused on all three counts.

I am in respectful agreement with the conclusions of the Chief Justice that the quantity of drugs found in the accused's possession can lead to but one inference that the accused was involved in a network of the distribution of drugs. This is a most serious offence and one that can lead to the undermining of the fabric of society. It is understandable therefore that the legislature views it in a serious light prescribing a fine of E15,000 or 15 years for a first offence. It does not follow that because the accused is a first offender he is in all cases to be given the benefit of a fine. When an accused is involved in the distribution of drugs I am of the opinion that although the circumstances of the individual

offender are never to be overlooked, the protection of the interests of society is paramount. The distribution of drugs is not to be countenanced and in my view this can be discouraged only by the imposition of heavy sentences. In the present case apart from the fact that the accused is a first offender and in fixed employment no other mitigating circumstances have been advanced. Having regard to the quantity of drugs in the possession of the accused, I cannot say that a sentence of 4 years imprisonment induces a sense of shock nor can I find any grounds on which it can be said that the Court a quo misdirected itself. There is no basis therefore for inter ference with the sentence by that Court.

In the result appeal against conviction and sentence dismissed.

D.A. MELAMET,

JUDGE PRESIDENT

I agree

G. P. C. KOTZE, J.A.

I agree

W. SCHREINER, J.A.