IN THE SUPREME COURT OF SOUTH AFRICA

APPELLATE DIVISION

In the matter between:

RAYMOND WILLIAM COPLAND Appellant

and

THE STATE Respondent

Coram: RUMPFF, C.J., HOLMES et MILLER, JJ.A.

Heard: 27 August 1976.

Delivered: 14 - 9 - 1976.

J U D G M E N T

MILLER, J.A.:

On Friday, 7th March 1975, two officials employed by the State in its Department of Inland Revenue at Bellville, left their place of employment at about 3 p.m. with the object of depositing in a bank at Bellville, money and

cheques.../2

cheques, the property of the Department. They were Mr. Laing, a senior revenue inspector, and Mrs. Spreeth, a cashier. Each carried a leather case containing some of the money and cheques. The case carried by Mr. Laing contained (in round figures) R15 000 in cash, and cheques representing R26 000. They made the journey to the bank by motor car, driven by Laing, who for some distance before they reached the bank was aware of a green Volkswagen motor car travelling closely behind them. Having parked the car nearby they entered the banking hall, Mrs. Spreeth preceding Laing in order to select the most convenient counter for the purpose of making the deposit. Laing stood near the street entrance to the bank, his back to the door, only a few feet within the banking hall. Suddenly, he felt the case being tugged and immediately thereafter it was plucked from his grasp. On turning round he saw a man running out onto the street with the case in his hand. He shouted an alarm and gave chase but could not catch the thief. He followed fairly closely behind him, however, and was able to see him enter a green

Volkswagen.../3

Volkswagen car, similar to the one which he had observed behind him while driving to the bank, which was double-parked not far from the bank. This car pulled off swiftly. It carried at its rear what Laing described as a "cardboard" number plate, which he unsuccessfully attempted to pull off the car as it commenced to speed away. He saw the car move with increasing speed down the street, turn left and then disappear from view.

Some months later, the appellant was charged in the Cape Provincial Division with the theft of the leather case and its contents. He appeared before VAN WINSEN, J., sitting with two assessors, pleaded not guilty but was nevertheless convicted and sentenced to three years imprisonment, half of which was conditionally suspended for three years. With the leave of the trial Judge, he comes on appeal against the conviction.

The commission of the offence charged is not in dispute. Somebody snatched the case carried by Laing and made off with it. The only question before the Court is

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whether it was proved beyond reasonable doubt that the appellant was the person who did so.

The Court a quo relied, inter alia, on the evidence of one Du Plessis, who happened at the relevant time to be walking on the side-walk of the street along which the thief, pursued by Laing, ran from the bank to the green Volkswagen car. Du Plessis, who impressed the trial Court as a careful, precise and credible witness, claimed to have had a good frontal view of the thief as he came towards him from the opposite direction and also a good view of his profile when he turned towards the green car. After the thief had driven off, Du Plessis went directly to the bank to inquire about what had happened. He there spoke to Laing and left his name and address so that he might be approached, if need be, to testify to what he had witnessed. Shortly after the appellant had been apprehended by the police, during July, an identification parade was held at which Du Plessis identified the appellant as the thief he had seen on 7th March. It appears from the evidence that subject

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to one particular incident which I shall shortly describe, the parade was properly and efficiently conducted by the police, under the supervision of Major Acker, in accordance with the customary procedure designed to ensure that identifying witnesses receive no unfair aid in their task of identification.

The incident in question arose when Du Plessis was ushered into the room in which the parade, consisting of a line-up of sixteen men, including the appellant, was formed. One of the men stepped out of line to greet and exchange some words with Du Plessis. It appears that they had many years past been at school together. Their meeting on this occasion was obviously by chance. Mr. Veldhuizen, who appeared for the appellant on appeal, contended that this constituted an irregularity which served to invalidate the identification thereafter made by Du Plessis. Implicit in this contention is the suggestion that Du Plessis might have been given some clue or indication by his school-friend concerning the identity

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of the man suspected by the police. There is no evidence to suggest, even remotely, that any such indication was given to him, but counsel contended that it was for the State to establish that Du Plessis gained no information which might have been prejudicial to the appellant. It was not suggested to Du Plessis under cross-examination that he gained any such information from the man who spoke to him. Major Acker was questioned about this incident; he remembered that it had occurred but said that he could not recall what exactly was said and that it appeared to him that it was simply a case of two men recognizing one another unexpectedly. The notion that in those circumstances and in the very brief exchange of greetings between the two men in the presence and hearing of the police, information prejudicial to the appellant might have been passed on to Du Plessis, is fanciful. There is nothing in the evidence to suggest it and there was, in the circumstances, no call upon the State to disprove a mere speculative conjecture. The point was also raised at the trial, by counsel who then appeared for the appellant, and

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was considered by the trial Judge who concluded, in effect, that although it was unfortunate that the incident had occurred, it was really of no consequence - a conclusion with which I fully agree. It appears to me that, at most, this strange encounter may have reduced the number of men eligible for identification by Du Plessis from sixteen to fifteen, which is hardly a circumstance serving to invalidate the proceedings or to detract from the evidential value of the identification made.

Mr. Veldhuizen also attacked the reliability of Du Plessis' identification of the appellant. He emphasized that Du Plessis had had only a limited opportunity of observing the thief on 7th March and that he purported to recognize him four months thereafter. Moreover, that it was clear from the description given by both Du Plessis and Laing that the thief wore dark sun-glasses throughout the time he was seen by them and that this must necessarily

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have hindered full observation of his facial features and appearance. All these considerations possibly affecting the reliability of the identification were put to Du Plessis in cross-examination but they obviously caused him no misgivings. He remained unshaken in his firm conviction that the man he identified at the parade was the man he had seen running with a leather case in his hand on 7th March. He claimed to have a good memory for faces and he is obviously, as the Court a quo found, an observant person; he gave a detailed description of how the thief was dressed, which coincided in most material respects with Laing's description and it must be remembered that he realized, if not at the very time of seeing the thief in flight, very shortly indeed thereafter, that he might one day be called upon to testify to what he had observed. He was very careful in making the identification. His evidence, supported by Major Acker, is that when, in the course of walking down the line of men on parade. he came to the appellant, he

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stopped opposite him but did not immediately point him out. After passing about four men thereafter, but before reaching the end of the line, he again stopped, looked back at the appellant and then retraced his steps to place his hand very firmly on the appellant's shoulder. He explained that it was unnecessary for him to complete his inspection of the men lined up because he had no doubt whatever that the appellant was the man. It was contended that his failure immediately to identify the appellant when he stopped opposite him was indicative of some uncertainty in his mind; it appears to me, in the light of his evidence, that it is at least equally indicative of extreme care. He wished to observe the appellant from a different vantage point before making a final identification and having so observed him, he was completely satisfied.

All the factors which might operate adversely to a reliable identification were present to the minds of the learned trial Judge and the assessors. They clearly had

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no doubts concerning the credibility and sincerity of Du Plessis and were, as I have already mentioned, very favourably impressed by him. Careful reading of his evidence serves only to confirm the trial Court's assessment of him. He appears to have been frank, forthright and fair throughout and there is no justification whatever for doubting the sincerity of his unshaken belief that the appellant is the man he saw running towards and entering a green car on 7th March at Bellville.

The honesty of an identifying witness does not, however, of itself justify acceptance that his identification is correct. The reasonable possibility of bona fide error must also be excluded. Where, as in this case, the identifying witness appears to be not only honest but also keenly observant and possessed of a good memory, the margin of possible error is narrowed, although not necessarily entirely obliterated. Despite counsel's strictures regarding the limited opportunity which Du Plessis had of

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observing the thief, it cannot be gainsaid that he saw him in broad daylight, at fairly close quarters and for an appreciable, albeit not a long, period of time. The circumstance that Laing, Mrs. Spreeth and a woman who apparently also claimed to have witnessed the incident on 7th March (but who was not called as a witness at the trial) failed to identify the appellant at the parade, does not detract from Du Plessis' identification. Laing saw the thief only from behind, while he was pursuing him. Mrs. Spreeth had only a glimpse of him, when she turned round upon hearing Laing's shout in the bank. Moreover, she was shocked and distressed by what happened. Nothing is known of the circumstances in which the fourth person who was asked to make an identification at the parade saw the thief. In all the circumstances, despite the fact that Du Plessis did not claim to recognize the appellant by any particular feature or mark but by his face and general appearance, it appears to me that his evidence is cogent and strongly persuasive. The

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trial Court accepted Du Plessis' evidence of identification "as being reliable". If this were the only evidence of the appellant's guilt, I am not convinced that it would have been proper to convict him, not because of any doubt as to the honesty of Du Plessis or the firmness of his belief, but because of the caution with which the Court must approach the question of proof when it depends upon the evidence of a single witness who claims to recognize one whom he saw as a stranger, for a short time, several months before. (Cf. S. v. Mthetwa, 1972 (3) S.A. 766 (A.D.) at p. 768).

The evidence of Du Plessis is, however, by no means all that the Court had before it, relative to the identity of the thief. It appears that during 1974 the appellant became associated with a married woman, Mrs. Kimber. They fell in love with one another and a result of their association was that Mrs. Kimber became pregnant by the appellant, who acknowledged paternity of the unborn child. Shortly after the theft on 7th March, which received

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publicity in the press, the appellant discussed a press report with Mrs. Kimber and said to her that he had been involved in the theft and that the report was inaccurate in certain respects. When she asked him in what way he had been involved, he said that he had committed the theft. Mrs. Kimber regarded this as a joke - she said in evidence that the appellant was flippant when he told her this and spoke jokingly. The theft was discussed by them on more than one occasion, the appellant apparently initiating the discussions. Although there was conflict between the evidence of Mrs. Kimber and the appellant regarding the time and place of such discussions and the details of what was said with reference to the theft, appellant did not deny that he "jokingly" identified himself with it in conversation with her. According to Mrs. Kimber, the appellant told her, inter alia, that he had driven a car to the place where the theft was committed, left it in the street with the engine running, gone in to the bank, taken

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the case and driven off again. He also said that he had gone to Bellville that day on business and that the press had wrongly reported that the car carried a T.J. number plate. Mrs. Kimber admitted under cross-examination that much of what she gleaned about the theft and of which information she said the appellant was the source, was also contained in the press report and that she was to some extent confused as to precisely what information she obtained from the press report and what from the appellant. It is clear, however, that she could not have gleaned from the press report that the appellant went to Bellville that day on matters of business or that the press report as to the number plate was erroneous, which, apparently, it was.

Prior to this, the appellant had given Mrs. Kimber to understand that his financial position was not good and that he found it difficult to pay the school fees for his/two daughters (who, it is common cause, were at an expensive school). He also mentioned to her the possibility of his

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earning more money through a friend named Taylor. Only a few weeks after 7th March, appellant made her a present of R1 000 in cash. She was reluctant to accept it but he insisted, explaining that he wished her to have the money available for her use in case of need. In the circumstances she kept the cash and some time later, on 24th April, deposited it in a bank. This sum still stood to her credit in the bank at the time of the police investigation. Mrs. Kimber, who admitted that she had for some time before the advent of the appellant been unhappy with her husband and had on occasions left him because of his treatment of her, later felt impelled, in circumstances which it is not necessary to describe, to confess to her husband her relationship with the appellant and that he had given her R1 000. She also divulged to him what appellant had said concerning the theft. Acting under strong pressure by her husband, she later made a report to the police. It is probable that it was her report to the police that led to the arrest of

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the appellant.

The Court a quo found that Mrs. Kimber was "a most reluctant witness against the accused", that she was visibly under stress while giving her evidence and that she "tried to present as favourable a picture as possible of the accused's actions". It accepted her version of the conversations with appellant as being substantially correct, in preference to appellant's version, and expressed the view that although she at first believed that the appellant was indeed joking when he told her that he had been involved in the theft, it was probable that she later suspected that he had not been joking and that she associated the gift of R1 000 in bank notes with the theft. Mr. Veldhuizen attacked the trial Court's finding as to the credibility of Mrs. Kimber mainly on the ground that, as he contended, the trial Judge misdirected himself in that he regarded the report made by her to the police as corroboration of what she said in Court. This contention sprang from an observation

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in the judgment that Mrs. Kimber was "prepared in the main to abide by her report to the police". There is no substance in the contention that the trial Judge misdirected himself in this respect. Read in the context of the judgment as a whole and the facts of the case, it is very clear that the import of what the trial Judge said was that Mrs. Kimber, after reporting the matter to the police, regretted having done so and would probably gladly have undone what she had done, but despite this inclination (reflected by her apparent reluctance to damnify the appellant when giving evidence) she nevertheless abided by her earlier decision to say what she knew. The observation was no doubt made because at the trial, it was suggested to Mrs. Kimber in cross-examination that she was acting in a spirit of vindictiveness against the appellant, the suggestion being, apparently, that her evidence was therefore untrue or strongly coloured against the appellant. The trial Judge did not have the statement she made to the police before him; he did not know what exactly she had

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told the police and the notion that he regarded her statement to the police as corroboration of the details of her evidence in Court is wholly untenable. There appears to me to be no reason whatever for interfering with the trial Court's finding as to Mrs. Kimber's credibility and her evidence was properly taken into account by the Court a quo.

The donation of a large sum in cash to Mrs. Kimber was by no means the only cash disbursement made by the appellant in the weeks and months immediately following the date of the theft of some R15 000 in cash from the possession of Laing. The evidence established that on 18th March, appellant paid R600 in cash to the school attended by his daughters. This payment was partly in respect of current school fees and partly in respect of arrear fees from the previous year. It will be remembered that prior to the 7th March, the appellant had told Mrs. Kimber that he had difficulty in meeting the school fees. That difficulty was clearly dissipated, because not only did the

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appellant pay the R600 in March, but he also paid to the school, in cash, R200 on 10th April and R200 on 12th May. In August he paid the school R675 by cheque. That the appellant had a large amount of cash at his disposal is further evidenced by his payment to one Neill, who owned a business known as "Craft Cast", of R1 250 in cash on 23rd May, in respect of the purchase of 500 ornamental plaques which he had intended selling at a profit. This payment was followed by a further payment, in respect of the purchase price, of R2 000 in cash on 2nd June. During April, appellant purchased a second-hand motor car from one J.B. van Niekerk for R1 250, in respect of which he paid a deposit of R450 in cash. During the period extending from about the beginning of April to 2nd June, therefore, the appellant disbursed in cash (including the donation made to Mrs. Kimber) a total of R5 700. Thereafter he paid, during September or October, R750 in cash to the witness,

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Mrs. Binnington, as the purchase price of a car he bought from her. And, as I have already said, he paid the school a further sum of R675 by cheque (which has not been included in the above-mentioned sum of R5 700).

The appellant was from 20th February 1975 employed by Sonstraal Motors, at Somerset West, as a salesman. The J.B. van Niekerk to whom I have referred was the sales manager of that business. The evidence shows that the total of the appellant's nett income from his employment, in respect of salary and commission from 20th February to 31st May, was R1 363. Moreover, van Niekerk said that at the end of February, after he had been employed for only about ten days, the appellant asked him when he would be receiving his salary as he was "broke", not having been paid any salary by his previous employers for some three months. It is not irrelevant to mention, too, that van Niekerk said that there was available to the appellant, for use, a green Volkswagen motor car.

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The disparity of money received by the appellant from his employment and money disbursed by him during the period from April to June, is striking. The appellant was asked in evidence to explain it. He attempted to do so but the Court a quo regarded him as an unimpressive and sometimes evasive witness. In brief, the appellant said that he successfully indulged in speculation and that during February 1975, he had R1 800 in cash, which he kept, wrapped in brown paper, in a caravan, despite the fact that he had a bank account. He explained that he did not use this money for paying arrear school fees, because he preferred to keep it intact for purposes of speculation. He claimed to have told Mrs. Kimber of this cache but she certainly had no recollection thereof, nor of ever seeing the money. He also, as the Court a quo correctly observed, gave very little information concerning his speculation and mentioned only one specific transaction, relating to the purchase and sale of a boat which yielded a profit of R150. Even if it were

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to be accepted that the appellant supplemented the income he received from employment by means of transactions of a speculative nature, his evidence falls very far short of explaining the ready availability to him of the large sums of cash disbursed during April and May. Moreover, the retention in a caravan of R1 800 in cash at a time when the school fees for his daughters, to whom he was devoted and for whose welfare he was clearly concerned, were in arrear, was not only not reasonably satisfactorily explained by him but appears to be inexplicable and his evidence in that regard false, especially when the evidence of what he said to Mrs. Kimber and van Niekerk concerning his strained financial position is borne in mind.

When there is super-imposed on the evidence of Du Plessis these additional factors relating to what the appellant told Mrs. Kimber and to his considerable cash resources after 7th March, the case against him assumes oppressive weight. True, Mrs. Kimber's evidence is that he "jokingly" told her that he had committed the theft but it

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is more than passing strange that he should, not once, but on three occasions, have mentioned the theft to her and to have associated himself with it. His explanation that he was merely indulging his sense of humour is, in the circumstances, not worthy of credence. And it is of significance that some of the information which Mrs. Kimber received from him concerning the theft was information which he could not have obtained from the press reports. Mr. Veldhuizen contended, virtually as a last resort, that the evidence showed the appellant to be a man fully aware of his responsibilities towards his daughters and towards Mrs. Kimber, who was carrying his unborn child, and that when Mrs. Kimber told him that she was to give evidence, he did not try to dissaude her but said she was simply to tell the truth. It was suggested that these virtues were incompatible with the commission by the appellant of so audacious a crime as that with which he was charged and that they tended to show the improbability of his having committed it. I accept that the evidence tends to show that the appellant has the virtues

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attributed to him by counsel but they are ineffectual against the weight of the direct evidence. The audacious theft appears to have been an act of desperation. It was also contended that the theft occurred at a time when the appellant was fetching his daughters from school, but the evidence which tended to show that he ordinarily fetched them on Fridays at about 3 p.m., did not relate to the particular Friday in question.

In the result, I consider that the cumulative effect of all the evidence is such as properly to induce in the Court what Wigmore (3rd Ed. Vol. 9, section 2497 at p. 325) has described as an "intensity of human belief" in the guilt of the appellant, and that it therefore cannot be said that the Court a quo erred in finding that it had been proved beyond reasonable doubt that the appellant committed the offence charged. It was not, nor could it reasonably be, contended that the sentence imposed is excessive. By suspending half of the sentence the

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learned Judge a quo gave full recognition to the circumstance that the appellant was a first offender and to other factors emerging from the evidence.

The appeal is dismissed.

S. MILLER.
JUDGE OF APPEAL.

RUMPFF, C.J.)
HOLMES, J.A.) Concur.