IN THE SUPREME COURT OF SOUTH AFRICA

(APPELLATE DIVISION)

In the matter between:

SIKINDER HASSIM ..... appellant

and

THE STATE ..... respondent

Coram: CORBETT et MILLER, JJA, et TRENGOVE AJA

Date of appeal: 3 November 1978

Date of judgment: 24 November 1978

J U D G M E N T

CORBETT JA:

This is a case involving the use of a police trap. The appellant was charged in the Magistrate's Court held at Brits with dealing in dagga in contravention of sec. 2(a) of Act 41 of 1971, alternatively, with being in possession of dagga in contravention of sec. 2(b) of the Act.

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Initally there were six co-accused (in addition to appellant), but at the commencement of the trial the charges against four of them were withdrawn by the prosecutor. The case proceeded against appellant (as accused no 1) and two co-accused, Johannes Nkosi and Nazier Amed Hassim (the brother of appellant) to whom I shall refer respectively as accused nos 2 and 3. They all pleaded not guilty. Accused no 3 was acquitted at the end of the State case and at the conclusion of the trial appellant and accused no 2 were found guilty on the main charge, i.e. dealing in dagga. They were each sentenced to 5 years imprisonment. Appellant alone appealed to the Transvaal Provincial Division against his conviction, but his appeal was dismissed. With leave of the Court a quo he now appeals to this Court.

At the trial the State case against appellant rested entirely on the evidence of the police trap, one Robert Mokhulalo (whom I shall call Robert), and the members of the Police Force who operated the trap. Apart from one

or two minor matters, to which I shall refer later, the evidence of these witnesses is mutually consistent. The story which they tell, supplemented by certain non-controversial defence evidence, is the following.

Appellant and accused nos 2 and 3 worked in a shop in the location at Brits. The business evidently belonged to another brother of appellant's. There was also a store in Van Deventer Street, Brits, which was used by the business, mainly for the storage of sacks. On 19 November 1976, the date upon which the offence is alleged to have been committed, Robert was taken by certain members of the Police, including Const. Van Rensburg and Sgt. De Beer, to a certain spot in the vicinity of the shop. There he was searched by Van Rensburg, two R5 notes (the numbers of which had been noted by Van Rensburg) were handed over to him and he received certain instructions from Van Rensburg, viz. to purchase dagga from "sekere Indiërs" (a clear reference in the circumstances to appellant and his brothers). He then proceeded

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to the shop itself on foot. De Beer and another policeman followed in a vehicle belonging to De Beer to keep him under observation. Van Rensburg himself stayed behind because he feared recognition. It was about 11 a.m. At the shop he (Robert) approached appellant and asked appellant to sell him some dagga. The appellant told him that he (the appellant) did not have any dagga at that stage and that he should return at 3.30 p.m. Robert left and rejoined the police who had accompanied him. They then all returned to Van Rensburg in De Beer's vehicle. He was again searched by Van Rensburg, who found the same two R5 notes in his possession. Robert made a report to Van Rensburg. They all then departed.

At 3 p.m. the same day Robert came to Van Rensburg's home. De Beer, Botha and a student constable, one Venter, also arrived there in private vehicles. From there they drove towards the shop in the location where appellant worked. Appellant went in a vehicle driven by Botha, in which Venter was also a passenger, while Van Rensburg went in a vehicle

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driven by De Beer. On the way there they met a large truck travelling in the opposite direction. It was being driven by appellant and carried several passengers, including accused no 2. The police vehicles turned and followed the truck. It stopped in front of the store in Van Deventer Street. The police drove past and stopped near Van der Merwe's garage, on the corner of Van Deventer Street and Hendrik Verwoerd Avenue, about 130 metres from the store. There Van Rensburg again searched Robert, found nothing, gave him the same two R5 notes and instructed him to walk in the direction of the location if he had been successful in his mission. Botha and Venter remained at Van der Merwe's garage, while Van Rensburg and De Beer drove around the block and took up an observation position in Van Deventer Street about 50 metres from the store. In the meanwhile Robert walked from Van der Merwe's garage to the store. Botha and Venter kept him under observation all the time. When Van Rensburg and De Beer arrived at their observation

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point, Robert was about 10 to 15 metres from the store. They kept him under observation thereafter. At about 3.30 p.m. Robert entered the store.

About 15 minutes later Robert was seen to emerge from the store. He then walked in the direction of the location, the pre-arranged signal. De Beer went to fetch him in his vehicle and picked him up after he had walked about 40 metres. The police witnesses and Robert then converged on the store, arriving there more or less simultaneously. They entered, and near the entrance encountered appellant and accused no 2. There were also four Black employees on the premises. Eventually they were all arrested and these Black employees later figured as accused nos 4 to 7, against whom the case was withdrawn, as I have already mentioned. Accused no 3 was not present on the premises. Shortly after entering, Van Rensburg searched Robert in the presence of the police witnesses and all the accused. From under his shirt emerged a parcel wrapped in newspaper,

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which was found to contain 25 dagga cigarettes ("zolle"). Robert made a report to Van Rensburg in the presence of appellant and accused no 2 and pointed out appellant and accused no 2. Van Rensburg asked them for an explanation, but they denied all knowledge of the dagga. Van Rensburg then warned the two of them according to Judges' Rules and again asked for an explanation, adding that he intended to search the premises and that if he found the money or any dagga he would arrest them. Appellant replied that Van Rensburg could search the premises: there was no dagga or money. Accused no 2, however, voluntarily reported, in the presence of appellant, that there was dagga in a room at the back. They all, apart from Venter who was left in control of the entrance, proceeded to this back room, which turned out to be an old rest-room and was filled with sacks. There Botha climbed on top of the sacks and after searching for a while, with further directions from accused no 2, discovered a parcel

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contained in a white plastic bag, on top of a wall of the back room. This was found to contain 435 dagga "zolle", similar in appearance and packaging to the 25 "zolle" which had been in the possession of Robert. The total weight of the dagga, apart from its wrappings, was 239 grammes. At some stage before they went to look for the dagga in the back room the police searched all the accused.

In the back room accused no 2 made a further report to the police about money. He said it was to be found hidden among sacks piled up near the entrance. They then returned to the front of the store where accused no 2 pointed out the pile of sacks. The same spot was also pointed out by Robert. Botha was instructed to search for the money, which he did. He thereupon found two R5 notes in a plastic bag, similar to those used by banks. A comparison of the numbers of the notes established that they were the ones given to Robert by Van Rensburg at Van der Merwe's Garage. Van Rensburg then again asked appellant and accused no 2 for an explanation, but appellant merely repeated his denial of all knowledge of the dagga and money. All the accused, i.e. all persons

present in the store, were then arrested.

Thus far, the events recounted appear from the evidence of Robert and the police witnesses. As regards what happened in the store itself between the time that Robert was seen by the police to enter the store and later when he was seen to emerge therefrom, there is, on the other hand, only the evidence of Robert, as far as the State case is concerned. Because of certain criticisms levelled at his evidence by appellant's counsel, I shall initially set forth what Robert stated in evidence-in-chief and later refer to other statements made by him in cross-examination.

Robert's version of what happened after he entered the store is recorded by the Magistrate in summary form as follows (appellant being referred to as "besk. 1"):

> "Ek het na besk. 1 gegaan. Besk. 2 en ander Bantoeseuns was by hom. Besk. 3 was nie teenwoordig nie. Ek het hul aangetref waar hul besig was om sakke te skud binne n gebou. Hulle was besig om sakke op die grond te plaas. Dit was leë sakke. Ek het na besk. 1 gegaan en hom gesê ek het gekom - ek dink die tyd is al verstreke. Ek het

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> vir hom gesê sal dit reg wees en hy sê ja. Ek het die geld aan hom gegee. Dit is die 2 x R5.00 note. Besk. 1 het toe vir no. 2 eenkant geroep en hulle het gepraat en hulle is toe weg na ander kamer in gebou. Ek het nie gehoor wat hulle praat nie. Besk. 1 het teruggekeer met 25 zolle dagga. Hy het die dagga aan my gegee en ek het dit voor in my hemp geplaas. Besk. 2 het teruggekeer en was besig om die leë sakke te skud."

Robert then left the store. It appears from his evidence that the place pointed out by accused no 2 and himself and where the money was found was close to where he and appellant had been standing while talking to one another and concluding the transaction.

I now turn to the defence case. Both appellant and accused no 2 gave evidence at the trial. Appellant stated that he was 22 years of age. He admitted having had a conversation with Robert during the morning of 19 November 1976 at the shop in the location. He described it as "n informele gesprek..... n dood normale gesprek". He also conceded that at about 3 p.m. the same day Robert came to the store in Van Deventer Street while he and others were

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busy unloading sacks from the truck and packing them away in the store. Robert spoke to him about football. They were both football players who normally played for different teams. Robert asked him (appellant) whether he would play for Robert's team on the coming Sunday. Appellant explained that he could not do so because he had a team for which he played. While he was conversing with Robert he heard some of his workmen who were carrying sacks to the back room making a noise in the back room. Accused no 2 was one of them. He walked to the back room, leaving Robert near the entrance where they had been talking, and remonstrated with the workers in the back room. He told them to get on with their work. He then returned to where Robert was. Robert then told him that if he could not play for Robert's team, that was "all right". He then left. Shortly thereafter the police arrived, together with Robert.

I do not propose to detail appellant's evidence as to what happened after the arrival of the police. Apart

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from one matter, it does not differ very materially from the version given by the police witnesses themselves, viz. Van Rensburg, Botha and De Beer. The Magistrate accepted the evidence of the police witnesses (though he expressed some reservations about De Beer's account of the events and considered that his memory had let him down slightly). In my view, the Magistrate's assessment of these three witnesses cannot be faulted and I did not understand appellant's counsel really to argue the contrary. The one material respect in which appellant's evidence conflicted with the police evidence - and that of Robert for that matter - related to the pointing out of the dagga and the money by accused no 2. Appellant denied that accused no 2 did so. Accused no 2, incidentally, also denied having done so. This is important because if the police evidence on the point is accepted, it follows that appellant was deliberately untruthful as to a material matter. There is no room for

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error on his part. For the reasons already indicated, I think that the police evidence in this regard should be preferred to that of the appellant. Appellant's counsel did not argue for the rejection of the police evidence, but merely contended that it did not clearly appear from the record that appellant had denied the pointing out. This contention is without substance, as the following passages from the verbatim evidence of appellant demonstrate. (I might just interpolate that at a certain stage in the evidence of Robert a switch was made to a mechanical recording of the evidence.) During his evidence-in-chief appellant was asked about the alleged pointing out of the money. His answer is not altogether clear and does not seem to be quite pertinent to the question put. The passage in the evidence reads:

> "Nou sê net vir my, daar is n bewering deur sekere van die mense dat beskuldigde 2, die man wat daar sit, het die geld nie noodwendig uitgewys nie, maar hy het aangedui waar die geld is?-- Nee, ek het geen aanduiding gegee dat beskuldigde 2 die geld uitwys nie."

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Under cross-examination by counsel for accused no 2 appellant gave the following evidence:

> "Beskuldigde 2 het op geen stadium daar aan die polisie gesê hy weet van die dagga en dat die dagga daar agter is nie?-- Hy het hulle niks vertel nie, want ek het niks gesien nie en ook niks gehoor nie.
>
> Ja. En dis eintlik die polisie lokvink wat n sekere plek daar uitgewys het, sakke, en gesê dat jy en hy het daar gestaan en die geld moet net daar rond wees, hulle moet daar soek, nê?-- Ja.
>
> En dit is hoekom die geld gekry is?-- Ja.
>
> No. 2 het nie die plek daar in die groot stoor uitgewys en gesê die geld is daar nie?-- Nee.
>
> Beskuldigde 2 het ook nie die dagga uitgewys aan die polisie, daar uitgewys in die klein kamer nie?-- Nee."

The point was also canvassed by the prosecutor in cross-examination, as the following passage indicates:

> "Het beskuldigde 2 op enige stadium iets gepraat daar binne met die polisie?-- Nie van wat ek gehoor het nie. Of wat ek gesien het nie.
>
> As hy gepraat het sou jy dit gesien het of gehoor het?-- Ja.
>
> So, hy het nie?-- Ja.
>
> Jy is daarvan seker?-- Ja.
>
> Het die polisie nooit met hom gepraat nie?-- Ek het hom..... nee, hulle het hom gevra waar die.... waar is die dagga. Hulle het ons almal gevra wie se dagga is dit, waar

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is die geld. Ons het almal gesê ons weet nie van dit nie."

Appellant's evidence, therefore, clearly amounted to a denial that accused no 2 ever pointed out the dagga and the money to the police or ever gave information to the police in regard thereto. As I shall later show, this untruthful denial is of some importance in an overall assessment of the case.

In this Court the argument of appellant's counsel consisted, in the main, of a concerted attack upon the credibility of the witness Robert and upon the acceptance of his evidence by the Magistrate. It was pointed out by appellant's counsel that it is the practice of the courts to treat the evidence of police traps with caution. This is perfectly correct (see S v Tsochlas, 1974 (1) SA 565 (AD) at p. 574 C), the reason being that traps, when giving evidence, may have motives to favour the prosecution and in doing so to depart from the truth. (See also S v Chesane, 1975 (3) SA 172 (T), at p. 173 G - H and the cases there cited). It is clear

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the Magistrate's reasons for judgment that he was well aware of this rule of practice and that he did in fact approach the trap's evidence with caution. There was accordingly no misdirection on this score. Moreover, in his reasons the Magistrate discussed the various criticisms advanced by the defence against Robert's testimony and having considered them nevertheless decided that the evidence should be accepted. The main argument on appeal was that having regard to these criticisms the Magistrate ought not to have accepted Robert's evidence.

A further submission made by appellant's counsel was that Robert was a single witness in terms of section 256 of the Criminal Procedure Act, No 56 of 1955 (the trial was held prior to the new Act coming into operation), whose evidence was uncorroborated, and that, therefore, the appellant should not have been convicted unless Robert's evidence was

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"clear and satisfactory in every material respect" (see remarks of DE VILLIERS JP in R v Mokoena, 1932 OPD 79, at

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p. 80). It is not necessary to consider how or to what extent the words of DE VILLIERS JP in Mokoena's case (supra) have subsequently been explained or possibly qualified by what was said by this Court, for example in R v Mokoena, 1956 (3) SA 81 (AD), at pp. 85 F to 86 G, and S v Webber, 1971 (3) SA 754 (AD), at pp. 758 F to 759 F, for, in my opinion, there was a measure of direct corroboration for the evidence of Robert and in addition the evidence of Robert did not stand alone inasmuch as the testimony of the police witnesses wove a web of circumstantial evidence which strongly pointed to the guilt of the appellant.

I deal first with the criticisms of Robert's evidence. The first criticism was that Robert stated unequivocally that he was taken to Van der Merwe's garage in a vehicle driven by De Beer and searched by him there, whereas it appears from the police evidence that he travelled with Botha in a vehicle driven by the latter and was searched

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by Van Rensburg. It is true that there is this conflict in the evidence in regard to the person with whom Robert travelled, but I can find no support in the passages from the record cited by counsel for the suggestion that Robert said that he was searched by De Beer. As far as this conflict is concerned the Magistrate (rightly in my view) accepted that the police witnesses were correct and Robert wrong. I do not regard this as being a criticism of any substance. At the most it points to a faulty recollection on a point of no importance. Bearing in mind that Robert did a fair amount of travelling in vehicles with police officers that day and had in fact earlier been driven in De Beer's vehicle, I do not regard his evidential slip in this regard as in any way affecting his general creditworthiness as a witness.

At this point it is necessary to stress that the essential issue turns not on the reliability of the trap's powers of observation or recollection, but rather on his veracity. Either he transacted a purchase of dagga with

appellant and accused no 2 or he did not. He could not be mistaken about it. Identity is not in issue. Consequently criticisms which merely bear upon his ability correctly to observe and later recall what happened are not particularly pertinent and, therefore, are not of much assistance to the defence.

Next, it is said that the trap unequivocally stated in evidence-in-chief that when De Beer picked him up after the alleged sale he was searched and nothing was found upon him. The Magistrate's summary of the evidence itself, taken in its context, reads as follows:

> "Die dagga zolle is getel en terug in die sak geplaas en besk. 1 het die winkel toegemaak. Daar waar Konst. De Beer my opgelaai het, het die Polisie my deursoek en hulle het niks by my gevind nie. Die Polisie - Konst. Chris Van Rensburg, het die goed wat ek gekoop het gevat. Hulle het die dagga in die gebou uitgehaal van my voor die ander gekry is. Dit was voor besk. 1 en 2 en die ander seuns en mnr. De Beer en die ander. Ek is binne die gebou deursoek, dit is voor ons die gebou verlaat het."

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The Magistrate considered this criticism, which is based on the second sentence in the above-quoted passage, but dismissed it on the ground that the trap had misunderstood the prosecutor and had thought that the question which elicited the answer contained in this sentence related to the events of the morning. I have no doubt that the Magistrate, who actually heard the evidence, is correct. The evidence in the second sentence comes out of sequence and, unless the Magistrate's interpretation is correct, would manifestly appear to have been contradicted by the evidence which immediately followed it, as recorded in the remainder of the above-quoted passage. Moreover, when asked about this in cross-examination Robert denied having stated that he was searched by De Beer when the latter picked him up in the afternoon when he emerged from the store. To these considerations may be added the fact that De Beer did in fact pick up Robert after the morning's unsuccessful foray. Consequently there is also no substance in this criticism.

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The following criticism relates to the trap's evidence in regard to how the sale of the dagga was actually transacted and the precise roles played therein by appellant and accused no 2. His evidence-in-chief on this topic appears from the passage quoted earlier in this judgment from which it appears that after he had handed over the money appellant called accused no 2 to one side; they talked to one another; and then they went to the back room. Appellant returned with 25 "zolle", which he gave to Robert. Accused no 2 also returned and busied himself with shaking sacks. It is argued that under cross-examination Robert varied this story and advanced three further contradictory accounts of what occurred. These alleged variations are:

(1) That accused no 2 came out with the dagga and that appellant took the dagga from accused no 2 and handed it over to Robert.

(2) That appellant and accused no 2 went to the back room; after a while appellant came to Robert without

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dagga; and that they both then went to meet accused no 2 and obtained the dagga from him. (After stating this the trap went on to say that appellant took the dagga from accused no 2 and gave it to him.)

(3) For the third variation I quote the verbatim evidence, as recorded by the Magistrate:

"V. Stel Johannes Nkosi was nooit in die groot stoor waar jy met no. 1 gepraat het terwyl jy met hom gepraat het. Hy was altyd agter - nooit in die gedeelte terwyl jy daar was nie.

A. Ek het daar aangekom en no. 1 het no. 2 geroep en hulle het eenkant gestaan en praat, no. 1 het teruggekeer en na my gekom en ons het toe gepraat oor die voetbal.

V. En toe het 2 alleen na agter kamer gegaan.

A. No. 2 was reeds weg.

V. No. 1 was nooit weg na agter en hy praat voetbal.

A. Ja.

V. Jy is nou besig om leuens te vertel - leunagtige polisie lokvink.

1. Voor ete ontken jy het oor voetbal gepraat.

2. So pas gesê no. 1 en 2 het agter na die stoorkamer gegaan.

A. Ek bevestig dit.

V. Wat.

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A. Beide is na agterkamer en een het terug-gekeer.

V. Stel no. 1 sal sê hy het voetbal met jou gesels.

A. Ek het gesê ek gaan Sondag speel en as ek nie die goed het nie kan ek nie speel nie. No. 1 het niks gesê van voetbalhuis."

In regard to this aspect of the matter and the criticisms based on these alleged contradictions the Magistrate said in his reasons:

> "Die getuie se getuienis op hierdie aspek in hoof het nie in soveel detail ingegaan nie en kan daar nie gesê word dat dit die getuienis in hoof oor hierdie aspek weer-spreek nie en die enkele weersprekings onder kruisverhoor beskou die hof nie as ernstig nie, om redes wat reeds genoem is."

The reasons already mentioned ("redes wat reeds genoem is") appear to be that the witness had been under cross-examination for a very long time and had been absolutely peppered with questions.

There is no doubt that there are apparent contradictions in this evidence, but in my view it can be misleading to consider individual questions and answers in isolation.

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For example, the question and answer in the above-quoted portion of the evidence -

> "V. No 1 (i.e. appellant) was nooit weg na agter en hy praat voetbal.
> A. Ja." -

might be read as an averment that appellant at no stage went to the back room. If the quoted evidence is read as a whole, however, it is clear that appellant did not intend to convey this. The question is of course a double-barrelled one, which may have caused confusion, but in any case what I think the witness meant was that after appellant had returned from the back room and before accused no 2 returned appellant did not go to the back room.

I am, nevertheless, inclined to view these apparent contradictions somewhat more seriously than the Magistrate appears to have done. It is true that this aspect of the matter may not have been canvassed in detail in evidence-in-chief, but the contradictions under cross-examination point at least to a measure of uncertainty on Robert's part (when giving evidence at any rate) as to the movements of

appellant and accused no 2, and the roles played by them, in the fetching and handing over of the dagga. It is clear, however, that on Robert's evidence, whatever precise version he accepted, both appellant and accused no 2 (and only they) were directly involved in the transaction.

Another criticism of Robert's evidence is that at one stage he denied that he and appellant spoke about football, whereas, as indicated by the above-quoted evidence, he later admitted having done so. The earlier evidence, as recorded, read simply:

> "V. Toe jy met no. 1 die middag praat het jy gepraat or sokker - voetbal?
> A. Nee."

This denial may well have been prompted by the witness understanding that the questioner meant that all that was discussed that afternoon was football. This was in fact the defence case. In that event, the denial would have been correct and no material contradiction arises.

Bearing in mind the cautionary rule as applied

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to the evidence of police traps, these blemishes in Robert's evidence are undoubtedly factors of importance to be considered in weighing the evidence as a whole and deciding whether it establishes appellant's guilt beyond a reasonable doubt. Had Robert's evidence stood virtually alone, I would have had some difficulty in sustaining the conviction, but as I shall show it does not stand alone. There is the circumstantial evidence to which I have referred. And, in my view, the inferences and probabilities to be derived from this evidence strongly support the evidence of Robert and provide a measure of corroboration for it.

In the first place, as I shall show, the evidence establishes beyond all doubt that Robert entered the store without any dagga and purchased dagga in the store using the police money. There was some faint suggestion in cross-examination and in argument that Robert might have come into possession of a parcel of 25 "zolle" after being searched and while walking to the store entrance or after emerging from it. This

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suggestion is devoid of merit. Robert was closely observed by the police while walking to and from the store; and, in any event, the close resemblance between the 25 "zolle" later found in Robert's possession and the 435 "zolle" discovered in the back room and the circumstances generally point irresistibly to the 25 having come from a common pool which included the 435. Further, if Robert obtained the 25 "zolle" in the store, then the probabilities are overwhelming that he purchased them there. Dagga is not normally given away gratis in such quantities and the finding of the money secreted in the store tends to confirm the inference that a sale took place. The police evidence as to this and as to the fact that the money was that previously given to Robert is significant corroboration of Robert's evidence.

Proceeding on the premise that Robert did purchase 25 "zolle" in the store at a cost of R10, the only question which remains is whether the circumstantial evidence sufficiently establishes or confirms appellant's participation in the transaction. It was strenuously argued by appellant's

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counsel that, since there were a number of persons in the store at the time, any one of them could have been the seller. This proposition requires analysis. In this connection it must be borne in mind that appellant denied all knowledge of such a transaction having taken place.

It is common cause that on entering the store Robert immediately approached appellant and spoke to him. Prior to that he had no opportunity to have any dealings with any of the other persons on the premises - certainly not without the knowledge of appellant. According to appellant he (appellant) went off to the back room to still the noise and was away two or three minutes. Robert remained behind where they had been conversing near the entrance. This is the only time when Robert could have purchased dagga from someone else, for after appellant's return to the front of the store there was no further opportunity. This hypothetical person would have had to have been someone who during this time was in the vicinity of where Robert remained near the entrance or who came to

Robert there. This rules out accused no 2 since, according to appellant, accused no 2 remained in the back room all the time that he (appellant) was there. This was conceded by appellant's counsel. (If on this postulate one rules out accused no 2, one wonders incidentally how he would have known about the two R5 notes and where they were hidden.) This leaves one of the other persons who originally figured as accused nos 4 to 7. The evidence indicates that one or more of them were present near the entrance while appellant went to the back room, but the probabilities are strongly against one of them having transacted the sale of dagga during this period. Not only was the available time very short, but again it is difficult to see how such a transaction could have taken place without appellant's knowledge. The store of dagga was in the back room where appellant was during the time that he was away from Robert. Having regard to where the dagga was hidden, it seems improbable in the extreme that in the time available and without appellant's knowledge this hypothetical person could have

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come from the front of the store to the back room (having already discussed the deal with Robert), have climbed up to the place where the dagga was hidden, counted out 25 "zolle", returned to the entrance, handed the "zolle" over to Robert, received the money from Robert and hidden it.

Appellant's counsel, appreciating these practical difficulties, suggested that the hypothetical seller might have already taken dagga from the main supply and had it on his person when Robert first entered the store. This suggestion is also fraught with improbability. It appears from the police evidence that when they entered the store a few minutes later all the persons present were searched and that none of them had dagga on his person. Robert wished to purchase a specific amount of dagga, viz. what he could buy for R10, which was evidently 25 "zolle". That one (only) of the persons present in the store should have had precisely 25 "zolle" on his person when Robert entered the store and that he should have been one of those working

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near the entrance, in my view, severely strains limits of coincidence.

The practicalities of the situation thus tend strongly to rule out, on appellant's version, a sale by someone other than appellant himself. In addition, however, there are, in my opinion, certain cogent factors which point to appellant (and accused no 2) as having been the likely sellers of the dagga. These are:

(a) The fact that appellant was one of the persons whom the trap was instructed to approach in order to purchase dagga. In fact he was the only one of such persons present in the store at the time. It was argued by appellant's counsel, relying on the authority of Rex v Sassin, 1919 AD 485, that evidence of the instructions given to police traps is inadmissible. As I read Sassin's case, all that was there decided was that in that case the evidence was not relevant and, therefore, inadmissible.

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Non constat that if it is relevant it is still inadmissible; and I can think of no good reason why, if relevant, it should be excluded. In the particular circumstances of this case the evidence that the trap was instructed to approach, inter alios, the appellant is, in my opinion, relevant. As I have shown, it has been proved that he did in fact purchase dagga in the store and the only question is: from whom? He says he approached appellant and purchased from him (with the participation of accused no 2). His instructions render it probable that he would do this and not purchase from someone else on the premises. Indeed, on appellant's evidence the trap never even broached the subject of dagga in conversation, which in view of his instructions does seem unlikely.

(b) The police evidence as to the pointing out of the dagga and the money by accused no 2 has been detailed.

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It has not been refuted. His pointing out, particularly, of the money is a clear indication that he was at least aware of the dagga transaction having taken place. On appellant's evidence, as I have indicated, it is difficult to see how he could have been aware of the transaction, and appellant not. This circumstance raises a strong probability that appellant's evidence was untrue; that accused no 2 was party to the dagga sale; and that appellant also participated therein.

(c) Appellant untruthfully denied that accused no 2 gave any information to the police or pointed out the dagga and the money to them. This has already been demonstrated. Not only does this adversely affect appellant's credibility, but because of the considerations mentioned in para. (b) above it also to some extent points to guilty knowledge on appellant's part. He probably realised that this pointing out by accused no 2 was not readily reconcilable with

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innocence on his own part: hence the denial.

(d) The fact that the money was found hidden in a plastic bag close to where Robert and appellant had been talking to one another is also a significant factor. Its presence in the plastic bag indicates that the money was put there by someone other than Robert himself; and the proximity of the spot to where, on both versions, he and appellant had stood while conversing points to appellant as having been the probable recipient of the money.

Taking the cumulative effect of all these items of circumstantial evidence and the other factors and probabilities mentioned above, I am satisfied that, despite the imperfections of the trap's evidence, the guilt of appellant was established beyond a reasonable doubt and that he was rightly convicted.

The appeal is dismissed.

M.M. CORBETT

MILLER JA: Concur
TRENGOVE AJA: