



## THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

### MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

**From:** The Registrar, Supreme Court of Appeal

**Date:** 1 December 2022

**Status:** Immediate

*The following summary is for the benefit of the media in the reporting of this case and does not form part of the judgments of the Supreme Court of Appeal*

*Zwelithini Maxwell Zondi v The State (1232/2021) [2022] ZASCA 173 (1 December 2022)*

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The Supreme Court of Appeal (SCA) upheld an appeal against the judgment of the Gauteng Division of the High Court, Johannesburg, sitting as a full court, which dismissed an appeal against the conviction and sentence of the appellant, Mr Zwelithini Maxwell Zondi, on two charges of murder, three counts of attempted murder as well as unlawful possession of firearm and ammunition, respectively. No order was made as to costs.

The background facts of the matter were as follows. On 3 July 2016, in the early evening at approximately 18h00, a group of men arrived at the Mall of Africa taxi rank in Midrand in a white VW Polo motor vehicle and fired gunshots at the taxi drivers/owners who were waiting to load passengers. The appellant was alleged to be amongst the four occupants of that VW Polo and was the one who purportedly fired gunshots at the witnesses and the deceased. The state witnesses testified that the appellant was the one who fired gunshots at them and that they were certain about his identity, as they were not seeing him for the first time on the day of the shooting. They stated that they had seen him on 27 June 2016, approximately six days prior to the shooting of 3 July 2016, during which a verbal altercation ensued between them and the appellant was alleged to have uttered some threatening words.

The appellant pleaded not guilty to all the charges and proffered a plea explanation of an alibi, contending that he was nowhere near the scene of crime on the day as alleged, but was at his home with his girlfriend. He was convicted on all counts as charged and, effectively, the appellant was to serve a term of life imprisonment.

The issues to be decided in the appeal were whether the witnesses' identification of the appellant was credible and reliable; whether the appellant's alibi and his denial of complicity in the commission of the offences were reasonably possibly true.

The SCA found that bearing in mind the version of the state witnesses that they saw the appellant for the first time on 27 June 2016 as well as the circumstances pertaining to the day of the shooting, of a moving scene akin to a war zone, the reliability of their identification of the perpetrator was doubtful. As such, the SCA found that the court below ought to have entertained serious reservations as to the reliability of the identification of the appellant as the perpetrator, especially where the identifying witnesses had initially indicated their inability to identify the perpetrator. Their bald statements that the appellant was the person who committed the crime was not enough. In this regard, the SCA found that the state witnesses' credibility was destroyed when they admitted to knowing the appellant as well as

his name prior to the incident on 3 July 2016 and yet failed to disclose his identity at the earliest opportunity to the police. That, in the SCA's view, was fatal to the State's case.

The SCA found further that there was no justification for the rejection by the trial and the full court of the appellant's alibi, purely from the alleged failure to disclose the presence of the tracking device in the appellant's vehicle. The appellant had disclosed his defence timeously. There was no duty on him to prove his alibi. The SCA found that in the light of the uncontroverted evidence that the police had knowledge of the fact that a white VW Polo was involved and that the appellant owned a white VW Polo, it was then incumbent upon them to properly investigate this aspect so as to exclude the appellant's alibi defence. Moreover, they were informed about this tracking device, yet they did nothing to investigate this aspect. Neither did the State lead any evidence linking the white VW Polo that was at the scene to the appellant.

Accordingly, the SCA held that on a conspectus of all the evidence in the matter, the State failed to discharge the burden of proof beyond reasonable doubt that the appellant was the one who fired gunshots at the deceased and the witnesses. There was, thus, no justification for rejecting the appellant's alibi. As such, the SCA found that it also could not be said that the appellant's alibi was not reasonably possibly true. On this basis, the SCA held that the accused had to be given the benefit of doubt and the appeal succeeded.

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