



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: 23 NOVEMBER 2021

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

Brits v Minister of Police & Another (759/2020) [2021] ZASCA 161 (23 November 2021)

Today the Supreme Court of Appeal (SCA) handed down judgment upholding, with costs, an appeal against a decision of the Limpopo Division of the High Court, Polokwane (the high court).

The issue before the SCA was whether the second respondent, Col Espach, had acted wrongfully and unlawfully when he arrested the appellant, Mr Christiaan Brits, without a warrant at the latter's business premises, a dealership in second hand goods and scrap metal, on suspicion of being complicit in the offence of possession of property suspected to be stolen.

The background facts, in a nutshell, were that on the morning of 4 July 2014, the appellant received a text message (SMS) from his former employee, Mr Dube, informing him that he had copper for sale. Seeing that all business transactions were done at his business premises, the appellant sent Mr Dube an SMS informing him to take the copper to his shop. The appellant subsequently received a call from the manager of his business, Mr Mashapu, who told him that the police were at the business premises and required his presence. Upon the appellant's arrival at the shop, Col Espach told him that Mr Mashapu had purchased stolen copper and that he (the appellant) would therefore be arrested. The appellant professed his innocence and

informed Col Espach about the SMS he had received from Mr Dube that morning. He also offered to assist Col Espach to locate Mr Dube. After reading the SMS exchange, Col Espach confiscated the appellant's cellphone and then arrested him. He was detained from about 12h00 and subsequently released on bail the following day, 5 July 2014, at about 13h00.

The respondents' pleaded case was that the appellant had been found in possession of property suspected to be stolen and that the arrest without a warrant was justified. The SCA held that the appellant had never been shown to have exercised any control over the illicit goods. It found that, contrary to the high court's finding, the appellant had never admitted to knowing that the copper cables were stolen. It noted that Col Espach's own version was that the bag containing the copper cables was still on the counter when he entered the shop and had not been locked away. Under those circumstances, the SCA found that the appellant had never exercised direct control over the copper cables. It was also not persuaded that Mr Mashapu ever assumed possession thereof. The SCA therefore held that Col Espach acted wrongfully and unlawfully when he arrested the appellant without a warrant. In respect of the quantum of damages, the SCA considered an amount of R70 000 to be an appropriate award of damages for the appellant's unlawful arrest and detention.

~~~~ends~~~~