

SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN SUPREME COURT OF APPEAL

FROM: The Registrar, Supreme Court of Appeal

DATE: 22 SEPTEMBER 2009

STATUS: Immediate

Please note that the media summary is intended for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal.

*HERMAN ZÜRICH v THE STATE*

[1] In a judgment delivered on 22 September 2009, the Supreme Court of Appeal dismissed an appeal against the conviction of Mr Zürich in the Regional Court Upington on one count of being an accomplice to the commission of the offence of unlawful dealing in two ivories. The appellant's conviction was based on the evidence of one Jaco Oberholzer who was an undercover police agent in a covert operation called operation Rhino. The necessary authority for this covert operation in terms of s 252(A) of the Criminal Procedure Act 51 of 1977 (CPA) had been granted by the office of the Director of Public Prosecutions, Kimberley (DPP).

[2] On appeal the admissibility of Oberholzer's evidence was challenged, not in terms of s 252(A)(1) of CPA or 35(5) of the Constitution of the Republic of South Africa (the Constitution) but on the basis that the evidence was tainted by an abuse of the legal process when the police, in order to clothe Oberholzer with a more convincing credibility, staged a bogus arrest of Oberholzer, which resulted in Oberholzer appearing in the Magistrate Court, Upington on false charges

of unlawful dealing in diamonds. This bogus arrest afforded Oberholzer the opportunity of establishing a relationship with the appellant which culminated in the appellant introducing Oberholzer to the seller of the two ivories.

[3] On appeal the SCA held that, although the investigative methods used by the police are unacceptable, such was not unlawful against the appellant and further that it did not render the trial unfair. The conviction on one count of being an accomplice to the unlawful dealing in two ivories was upheld.