



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
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STATUS Immediate

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

The State v Schoole (730/13) [2014] ZASCA 155

MEDIA STATEMENT

Today the Supreme Court of Appeal (SCA) upheld the appeal by the State and set aside the order of the South Gauteng High Court, Johannesburg.

The issue for determination was whether the high court was correct in finding that a person found in unlawful possession of a firearm - the serial number of which has been filed off – could only be charged with contravening s 4(1)(f)(iv) of the Firearms Control Act 60 of 2000 (the Act), or whether the State had the discretion to charge such a person with contravening s 3 of the Act. The appeal also raised the question of the discretionary power, which the State had as dominus litis regarding the preference of charges which may be brought against an accused person.

On 25 January 2011 the respondent, Mr Bongani Schoole, was driving a Colt bakkie with three passengers. He was stopped by two police officers of the South African Police Service. Upon questioning the respondent, the police officers became suspicious. They then decided to search the vehicle and its occupants. When asked to alight the vehicle by one of the officers, it was noticed that the respondent attempted to hide his hands in a suspicious manner. When questioned about this, the respondent replied that he could not walk properly as he had been involved in an accident. As the respondent was alighting the officer noticed his right hand moving towards his back whereupon he grabbed the respondent and searched him. The officer found a 9mm Beretta pistol tucked inside the back of the respondent's trousers. The firearm had a magazine containing fifteen rounds of ammunition. The respondent was thereafter arrested. The respondent was sentenced to 10 years'

and 5 years' imprisonment for unlawful possession of a firearm and ammunition, respectively. The sentences were ordered to run concurrently.

The SCA held that courts are not at liberty to interfere with the prosecutor's discretion unless there were truly exceptional circumstances for doing so and further that courts were not at liberty to interfere with the discretion exercised by the prosecution during a trial. The SCA stated that if courts were to decide what charges an accused should face and dictate to the State when and how an accused should be charged, this would undermine the independence of the prosecution as provided for in s 179 of the Constitution.

The SCA found that the State's decision to prosecute the respondent under s 3 of the Act did not warrant the court to interfere and be prescriptive regarding the charge that was preferred in a case where a firearm was unlawfully possessed.

The SCA found further that the high court erred in acquitting the respondent and in holding that the State should have charged the accused under s 4 and not s 3 of the Act; it remitted the matter back to the South Gauteng High Court for a de novo hearing on the respondent's appeal.

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