



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 **30 September 2016**
STATUS Immediate

Gumede v The State (800/15) [2016] ZASCA 148 (30 September 2016)

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.

Today the SCA upheld an appeal by Mr Trevor Gumede against his conviction on one count each of murder, robbery and possession of an unlicensed firearm and ammunition.

During the morning of 13 April 2000, a pension pay-out point at Klaarwater Community Centre was attacked by a group of armed men during which approximately R460 000 was taken. In the course of the robbery, the perpetrators opened fire and as a result, one of the security guards at the scene was fatally wounded and dispossessed of his firearm with ammunition. The perpetrators fled the scene of the crime and no one at the scene was able to identify them.

A month later, on 16 May 2000 at about 01h00 Mr Gumede was arrested at his home on the strength of the information the police received from a police informer. The police, without a search warrant, gained entry into the house by forcing open the front door. Once they were inside the house they conducted a search, during which a 9mm pistol was found under the appellant's pillow. After Mr Gumede's arrest he was interrogated by the police at 03h00 and by 04h00 he was ready to participate in a pointing out. Some few hours later he participated in a pointing out during which he pointed out to a police Captain certain spots and made certain statements to him, amounting to a confession. Mr Gumede's contention was that the evidence which the State tendered, was inadmissible. This was rejected by the Durban High Court and it convicted him on all of the counts. His appeal to the Full Court in Pietermaritzburg was dismissed.

The SCA held that the evidence on which the State relied should have been ruled inadmissible as it was obtained through the violation of his constitutional right to privacy and his right against self-incrimination. The police evidence of what transpired from the time Mr Gumede was arrested until he arrived at a confessing state of mind was unclear and far from being satisfactory. Our Constitution, stated the SCA, now requires criminal trials to be conducted in accordance with notions of basic fairness and justice. In terms of s 35(5) of the Constitution: 'evidence obtained in a manner that violates any right in the Bill of Rights must be excluded if the admission of that evidence would render the trial unfair or otherwise detrimental to the administration of justice.' The SCA found the admission of the evidence concerned to have been detrimental to the administration of justice.

The SCA concluded that as the evidence ought not to have been admitted, Mr Gumede should not have been convicted. Mr Gumede's convictions were accordingly set aside.

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