



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: 09 December 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

Minister of Police v Shawn Bosman & Others (1163/2020) [2021] ZASCA 172 (09 December 2021)

Today, the Supreme Court of Appeal (SCA) upheld with costs, including the costs of two counsel, an appeal brought by the appellant, the Minister of Police. The appeal was against the judgment and order of the Eastern Cape Division of the High Court, Grahamstown (Mapoma AJ, with Revelas J concurring, sitting as a court of appeal) (the high court), in which the arrest and detention of the respondents, Shawn Bosman (first respondent), Tanushka Dawson (second respondent), Serano Dawson (third respondent), Brenda Claasen (fourth respondent), Cheslyn Foster (fifth respondent), Grant Markley (sixth respondent), Denver Lackay (seventh respondent), Chine Jass (eighth respondent) and Mornay Jass (ninth respondent), were confirmed to be unlawful and unjustified, and the award for damages payable by the appellant upheld. The SCA thereby set aside the order of the high court, and dismissed the respondents' claims with costs, including their claims for damages.

The appeal raised the issues as to whether the arrests of the respondents and their subsequent detention were unlawful, including the issue of the awards made to them with regard to damages.

The facts of the matter were briefly as follows. On or about 31 December 2013, and at around 20h00 - 21h00, the respondents were travelling together in a black Nissan bakkie, being driven by the first respondent, Shawn Bosman. On the same night, warrant officer Deon Goeda, employed with the South African Police Service (SAPS), was on duty, performing crime prevention duties, in Port Elizabeth. He received information at around 20h00 from radio control that a shooting incident had occurred in Malabar, Extension 6, and that the suspects had fled in a black Nissan bakkie. Goeda came upon and pursued the fleeing bakkie, which ignored the sirens and the blue lights and kept on driving at a high speed, ignoring a number of traffic lights. During the high speed chase, Constable Schoenie, who accompanied him, informed Goeda that something had been thrown out of the window of the bakkie. A firearm with live ammunition was later found pursuant to a search in the area where Schoenie had seen an object being thrown from the bakkie. Ultimately, the respondents were arrested and charged with the illegal possession of a firearm and ammunition. They were then detained at the Gelvandale police station, in Port Elizabeth. Aggrieved by their arrest and detention, the respondents instituted civil proceedings against the Minister of Police in the Port Elizabeth Regional Court (the trial court) on the grounds that the arrest without a warrant and subsequent detention were wrongful and unlawful.

The SCA found that assessed objectively, in consideration of the totality of the information available at the time of the arrest, the arresting officer, Goeda, entertained a reasonable suspicion which led to the lawful arrest and detention of the respondents. In the circumstances the arrests of all the respondents were lawful, including that of the fourth respondent, Ms Claasen, who was a minor (16). The respondents, including Ms Claasen, were in a bakkie fleeing from the police with occupants who were suspected of having been involved in the shooting incident at Malabar. During the pursuit, an object that was thrown from the bakkie, in which she was also an occupant, turned out to be a firearm. Like the other occupants, she was equally suspected of being in possession of an illegal firearm and/or involved in the shooting incident. In the circumstances no criticism could be levelled against the police for also arresting the fourth respondent for further investigation. Goeda's conduct in arresting all the respondents was eminently reasonable, lawful and justifiable in the circumstances.

The SCA found that the jurisdictional facts for the arrest of the respondents in terms of the subparagraphs in s 40(1) of the Criminal Procedure Act 51 of 1977 (CPA) were present, and therefore a discretion arose. This discretion was, on a conspectus of all the evidence, properly exercised, in good faith, rationally and not arbitrarily. In this matter, the decision to arrest and detain the respondents could not, on the basis of the factual circumstances of this case be wrong or inequitable. There was no basis to suggest that Goeda or any of the other police officers involved in the arrest or further detention had had an ulterior motive, acted irrationally and arbitrarily. There was no mala fides in detaining them for further investigation. The respondents were released from custody when during the further investigation, it appeared that the arrested persons could not be linked to the commission of the crime. The respondents were in custody for less than 48 hours. The conduct of the police was within the lawful parameters of detention, as provided for in the legislation (s 50 of the CPA). Therefore, it could not be said that the appellant had failed in its duty to secure the earlier release of the respondents, as 1 January 2014 was a public holiday.

The SCA thus held that both the arrest and detention of the respondents by the SAPS were lawful, beyond reproach and justified. It followed that the order of the trial court had to be set aside, including the award of damages to the respondents.

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