

SPEAR MWANZA v THE PEOPLE (1981) Z.R. 232 (S.C.)

SUPREME COURT
GARDNER, AG.D.C.J., CULLINAN, J.S., AND MUWO, AG. J.S.
20TH OCTOBER,
(S.C.Z. JUDGMENT NO. 22 OF 1981)

1981

Flynote

Evidence - Registered mail - Identification - Proper procedure in adducing evidence passed through the post.

Evidence - Fingerprints - Necessity to identify impression lifted from accused.

Headnote

The applicant was convicted of burglary and theft. The evidence against the applicant was an impression of his fingerprints lifted from a pane of glass, broken in the burglary in a flat in a nurses hostel. The investigating officer who lifted the fingerprint impressions sent them to a fingerprint expert in Lusaka for identification purposes by registered mail. There was no proof that the letter he posted was the one received by the fingerprint expert.

Held:

- (i) Where fingerprint evidence is adduced by the prosecution, then the chain of evidence identifying the impression lifted as being that of the accused person must be very carefully established.
- (ii) Where registered mail is utilised, the registered number, the date of postage and any other identifying marks of the postal packet should be stated.

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CULLINAN

JS

For the applicant: In person
For the respondent: N. Sivakumaran, State Advocate.

Judgment

CULLINAN, J.S.: delivered the judgment of the Court. The applicant was convicted of burglary and theft.

The learned State Advocate Mr Sivakumaran has indicated that the State does not support the conviction. The only evidence against the applicant was that an impression of his fingerprints was lifted from a pane of glass, broken in the burglary in a flat in a nurses hostel. The investigating officer who lifted the fingerprints testified:

"I got fingerprint impressions from inside the window. I lifted this on a piece of folien, which I sent to Lusaka for identification purposes. I sent it by registered mail."

A fingerprint expert at the Police Force Headquarters testified that he received

"registered letter No. 251 from Zambia Police, Chipata, securely sealed with serial No. 178. This is the envelope I received marked ID. 1. I produced it (P1). In the envelope there were three pieces of folien. I examined the folien and on one piece of folien, which I now produce (P2), I found a finger impression."

On subsequent comparison, exhibit P2 was found to bear the fingerprints of the applicant. The investigating officer further testified:

"I am able to identify the folien on which I lifted a fingerprint. It bears my name and signature. I can see this folien. It is the one I lifted from window pane at that number 3 nurses hostel."

The investigating police officer did not give the registered number, or serial number, or date of posting of the registered letter. There was no proof therefore that the letter he posted was the one received by the fingerprint expert. Further, the investigating police officer made reference to only one folien: there were three in the letter received by the fingerprint expert, which could well have been connected with different cases. Again, the investigating police officer, failed to identify positively, by way of exhibit number, the folien which bore the prints taken from the scene of the crime as being one and the same folien which was found by the fingerprint expert to bear the fingerprints of the applicant.

It is a matter for query that an impression of the applicant's fingerprints were found on a folien received from the police at Chipata. That folien however could have been connected with another case, in respect of which the applicant might well innocently have been involved. In passing we wish to say that where fingerprint evidence is adduced by the prosecution, then the chain of evidence identifying the impression lifted at the scene of the crime as being that of the accused person, must be very carefully established. In particular where registered mail is utilised, the registered number, the date of postage and any other identifying marks of the postal packet, should be stated. As to the present

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case, we consider that such a chain of evidence was not established and that the fingerprint impression found at the scene of the crime, was not proved beyond reasonable doubt to be that of the applicant.

Under the circumstances we consider it would be unsafe to allow the conviction to stand. The application is allowed and will be treated as the hearing on appeal. The appeal is allowed, the conviction is quashed and the sentence is set aside.

Application allowed
