



IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: ~~YES~~ / NO.

(2) OF INTEREST TO OTHER JUDGES: ~~YES~~ / NO.

③ REVISED.

19/1/2016

DATE

SIGNATURE

A 32 / 2016.

Date: 21 / 01 / 2016

High Court Reference No: 553/15

Magistrates Serial No: 33/2015

Case No: B584/2015

MAGISTRATE

TSHWANE NORTH (held at PRETORIA NORTH)

THE STATE V BRIAAN MABE

REVIEW JUDGMENT

POTTERILL J

- [1] The accused was convicted of theft in the Pretoria North Magistrates Court on his plea of guilty in terms of section 112(1)(b) of Act 51 of 1977. He was sentenced to a fine of R4 000 or 12 months imprisonment of which half was suspended for a period of three years on certain conditions.
- [2] In the accused's guilty plea he explained that he was in actual fact only borrowing the goods and did not have the intention to permanently deprive the complainant thereof.
- [3] I was of the view that the accused had not pleaded guilty as he had pleaded that he had no intention and therefore I referred the matter back to the Magistrate. The Magistrate however persisted that the finding of guilty was correct in that the accused had admitted that he would normally take the clothes in the absence of the complainant and when the complainant came back from Johannesburg unexpectedly found that his clothes were not where they were and that some were missing. This according to the Magistrate proves the intention to steal.

[4] I referred the matter to the Director of Public Prosecutions for their comment. The Director of Public Prosecutions by means of Senior State Advocate A.P. Wilsenach and Deputy Director of Public Prosecutions G.D. Baloyi commented as follows:

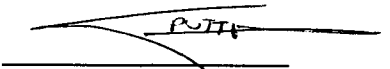
"The magistrate, unfortunately, both makes and then misses the point completely when he states in his reasons and judgment that the accused did not admit the required element of intent and then nevertheless convicted him of theft. The conviction is clearly not in accordance with justice and must be set aside. The magistrate was obliged in terms of section 113(1) to have recorded a plea of not guilty and required the prosecutor to proceed with the prosecution."

It is then submitted by that officials of the DPP that the conviction and sentence be set aside and the matter referred to the Magistrate to be further dealt with in terms of section 113(1) of the Criminal Procedure Act, Act 51 of 1977.

[5] I agree with this view as it is trite that intention must be admitted for a plea of guilty to stand. The Magistrate must take cognisance hereof as it is trite in our law.

[6] I accordingly make the following order:

6.1 The conviction and sentence are set aside.


S. POTTERILL

JUDGE OF THE HIGH COURT

I agree



A.J. BAM

JUDGE OF THE HIGH COURT