

IN THE HIGH COURT OF SOUTH AFRICA

(CAPE OF GOOD HOPE PROVINCIAL DIVISION)

CASE NUMBER: A47/2008

DATE: 8 AUGUST 2008

5 In the matter between:

GAVIN STRAUSS APPELLANT

and

THE STATE RESPONDENT

10

JUDGMENT

NDITA, J:

15 This is an appeal from the judgment of the magistrate sitting in Goodwood in which the appellant was convicted of theft and sentenced to eight months imprisonment, which was wholly suspended on the regular conditions.

20 The factual background is briefly as follows. The allegation of theft against the appellant was that he stole out of the car a DVD player belonging to Mercia Lawrence. On 12 May 2006, he pleaded guilty to the charge. His legal representative handed in a document purporting to be a statement in terms of
25 Section 112(2) of the Criminal Procedure Act 51/1977,

whereupon the Court convicted him on his plea.

In that statement it is clear that the appellant took the DVD player in order to draw the attention Inspector Cady regarding
5 payment of a sum of R50 000 which had been deposited in his account. Upon the advice of the police the appellant had in fact returned the DVD.

The magistrate misdirected himself by convicting the appellant
10 on the basis of the statement, which clearly does not sufficiently establish that the appellant had the necessary *mens rea*. The conviction should therefore, be set aside and Section 113 should have been applied in these proceedings.

15 In the circumstances the following order will issue. In terms of Section 212 of the Criminal Procedure Act, the conviction and sentence imposed by the magistrate is hereby set aside. The matter is remitted to the magistrate to comply with the provisions of Section 113.

20

25



INDITA, J

5

I agree

10

VAN HEERDEN, A J