



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

JUDGMENT

Case no: CR: 32/2013

In the matter between:

THE STATE

and

HANSEN ANDREW

ACCUSED

(HIGH COURT MAIN DIVISION REVIEW REF NO. 518/2013)

Neutral citation: *State v Andrew* (CR 32/2013) [2013] NAHCMD 120 (03 May 2013)

Coram: HOFF J and UNENGU AJ

Delivered: 03 May 2013

Summary: Questioning by magistrate in terms of section 112(1)(b) of Act 51 of 1977 incomplete – Magistrate did not question the accused in respect of the element of intention – Conviction and sentence set aside and matter referred back to magistrate to question accused on the issue of intention.

ORDER

- (a) The conviction and sentence are set aside.
- (b) The matter is referred back to the magistrate to deal with the element of intention.
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JUDGMENT

HOFF J (UNENGU AJ concurring):

[1] The accused was convicted of the crime of housebreaking with intent to steal and theft and sentenced to a fine of N\$1500 or 6 months imprisonment.

[2] The accused pleaded guilty and was questioned pursuant to the provisions of section 112 (1)(b) of Act 51 of 1977.

[3] During the questioning the accused indicated that he took the item, a playstation, from the room of the complainant, the complainant being his lessee, since the complainant owed him N\$1000 being the equivalent of rent for two months.

[4] I directed the following query to the magistrate:

‘Did the questioning in terms of section 112(1)(b) of Act 51 of 1977 exclude the possibility that the property was removed not with the intention to deprive the owner thereof, but in order to compel the complainant to settle his debt with the accused person ?’

[5] The magistrate in his reply conceded that it appears that the accused took the item in order to exert pressure on the complainant to pay his debt to the accused.

[6] In this case the questioning of the magistrate was incomplete since he did not deal with the element of intention.

[7] In the result the following orders are made:

(a) The conviction and sentence are set aside.

(b) The matter is referred back to the magistrate to deal with the element of intention.

E P B HOFF
Judge

E P UNENGU
Acting Judge