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(1) REPORTABLE. YES/NO.	
(2) OF INTEREST TO OTHER JUDGES YES/NO.	
(3) REVISED	
18 Feb 2013	<i>[Signature]</i>
DATE	SIGNATURE

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IN THE HIGH COURT OF GAUTENG NORTH, PRETORIA
REPUBLIC OF SOUTH AFRICA

High Court Ref: 160

Magistrate's serial No:02/2013

21/2/2013

In the matter between:

THE STATE

and

FUNNI ISAAC MOTSOAI

REVIEW JUDGMENT

Ismail J:

[1] The accused, Mr Isaac Funni Motsoai, was charged with the offence of theft of certain listed items which were allegedly stolen from the complainant according to the charge sheet on 02 July 2012. He was convicted by the magistrate after evidence was led and the matter was then postponed in order to obtain a pre sentence report.

[2] Pursuant to the conviction and prior to sentence the magistrate went through his notes and he came to the conclusion that his findings on conviction were incorrect. Consequently he addressed a letter to this court requesting that the conviction be set aside.

[3] It would be prudent for a proper understanding of this matter to refer to the magistrate's reasons that the matter should be dealt with by way of a special review.

[4] The special review sought by the magistrate reads as follows:

“ INTRODUCTION

The accused, Funni Isaac Motsoai, was charged with theft out of a motor vehicle alternatively contravention of section 66(1) Act 93 of 1998.

.....

However, when going through the record of proceedings and my notes for the purpose of sentencing, I am no longer of the opinion that the accused's conviction is safe or that the state proofed (sic) its case against the accused beyond a reasonable doubt.

I therefore humbly request that the accused's conviction is set aside

SUMMARY OF EVIDENCE

The state called two witnesses, Rudolf du Tiot (sic) (the owner of a scrapyard) and Abram Kgalane (complainant)

Rudolf du Toit testified that on the 4 April 2011 various items from the accused. The items included an aluminium top, sink cover carburetor and a battery. When selling the items the accused signed a declaration that the property was his and a copy of his ID document was made. The property was photographed by a police approved security system.

Later, the complainant, Abram Kgalane arrived and identified the aluminium top and carburetor as his property. The police was summoned and the complainant again identified the property in their presence as his. The complainant, Abram Kgalane, testified that a top, four pistons, a radiator and five wheels was stolen from a motor vehicle which he borrowed from (sic) one Gapiso. He testified that he passed by Rudolf's place, to see whether or not someone sold his stolen(sic) property to the

scrapyard.

The complainant identified the top with the two new valves that he inserted and carburetor by the bolts where someone tried to close the holes.

The accused denied selling complainant's aluminium top, sink carburetor and a battery to the first state witness, Rudolf du Toit. However, he testified that on the 4 April 2011 he sold a Passat enjin (sic), gearbox, two wheels and an old battery to the scrapyard. The court was satisfied that the state proved its case beyond reasonable doubt and the accused was convicted.

REASONS FOR SPECIAL REVIEW

According to the charge sheet the offence was committed on the 2 July 2012. This is clearly incorrect. According to the J15 the docket was opened in January 2011 and the accused was arrested on 21 of June 2012. The complainant didn't testify about the date on which his motor vehicle parts were stolen, however, the scrapyard owner witness testified that he bought the items from the accused on the 4 April 2011. Given the time delay between January 2011 and April 2011 the doctrine of recent possession is not applicable. I therefore, humbly request that accused conviction dated 12/09/2013(sic) be set aside

Dated at Nebo this 10 th day of January 2013.

(sgd)

Add Magistrate : : ”

[5] In the light of the magistrate's request and after having read the record of proceedings it is clear that the actual date of the theft was not given by the complainant. Furthermore the date of the alleged theft as appears on the charge sheet, is the 2 July 2012. This cannot be correct because the goods which the complainant identified at the scrapyard was done a few days after the 4 April 2011, that is too say before the goods were apparently stolen, according to the charge sheet.

[6] No amendment was ever sought and the record as it stands is completely out of kilter as far as the date of theft, and date the items were identified does not make sense.

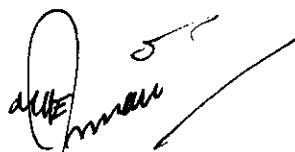
[7] The reason proffered by the magistrate that the accused could not be convicted by virtue of the doctrine of recent possession is also tenable as the period of several months elapsed between the date the offence was noted to the police and the goods being sold at the scrapyard.

[8] Accordingly I am of the view that the magistrate's reasons in seeking

that the conviction be set aside as the state failed to establish beyond reasonable doubt that the accused was guilty has merit.

[9] Accordingly I make an order to the following effect:

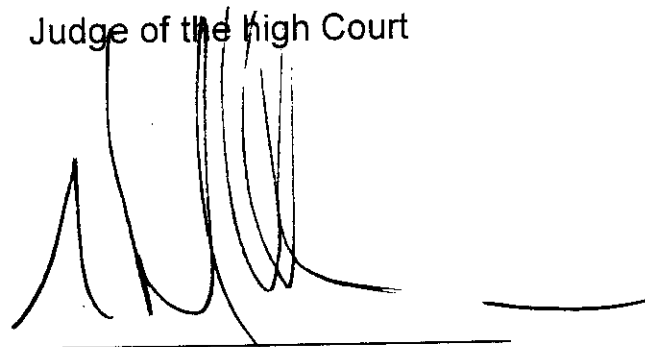
- (1) the conviction noted by the court dated 12 September 2012 is hereby set aside.



M H E Ismail

Judge of the High Court

I agree,



H Alberts

Acting Judge of the High Court