

IN THE HIGH COURT OF SOUTH AFRICA
(ORANGE FREE STATE PROVINCIAL DIVISION)

Review No.:1986/2004

In the review between:

THE STATE

versus

JAFTA MATRAS

CORAM: WRIGHT J *et* VAN DER MERWE J

JUDGEMENT: VAN DER MERWE J

DELIVERED ON: 10 FEBRUARY 2005

[1] In this matter the accused was charged with housebreaking with the intent to steal and theft. It was alleged that the accused broke into a shop and stole cigarettes as well as prepaid cell phone cards. However, the accused was found not guilty of housebreaking and theft but convicted of

contravention of Section 1 of the Criminal Law Amendment Act, no. 1 of 1988. The accused was then sentenced to imprisonment for a period of one year.

- [2] The accused pleaded guilty to the aforesaid charge. During questioning in terms of the provisions of Section 112(1)(b) of the Criminal Procedure Act, no. 51 of 1977, the accused admitted that the police found him in the shop in question but added that he drank alcohol as a result of which he was so drunk at the time that he did not know where he was. Accordingly a plea of not guilty was entered in terms of the provisions of Section 113 of Act 51 of 1977. A policeman testified that he was one of four policemen who found the accused inside the shop on the relevant date. He said that the accused was drunk and also violent when they wanted to arrest him. He said however that the accused was aware thereof that the police was going to arrest him and also that the accused was aware of what he was doing. He also testified that the accused was found in possession of cigarettes and prepaid cell phone cards.

Also, boxes of cigarettes, containing packets of cigarettes were found on the outside of the shop. The owner of the shop testified as to how entrance to the shop was obtained, namely that a window was broken which enabled the person to open another window and to so gain entry. He also confirmed that boxes of cigarettes were found outside the shop. None of this was disputed by the accused during cross-examination. When the accused testified he confirmed that the police found him inside the shop and that he broke a window to gain entrance to the shop. He made no mention thereof that his faculties were impaired. During questioning by the court he only said that he drank alcohol and that he knew that the intake of alcoholic beverages may impair the faculties of a human being.

- [3] In these circumstances the accused should in my view not have been convicted of contravention of Section 1 of Act 1 of 1988, but of housebreaking with the intent to steal and theft as charged. Apart from what the accused said when questioned in terms of Section 112(1)(b) of Act 51 of 1977,

which statement does not constitute evidence, there is no indication whatsoever that as a result of intoxicating liquor the faculties of the accused had at the relevant time been so impaired that he could not appreciate the wrongfulness of his act or act in accordance with such appreciation. On the contrary, according to the evidence he deliberately broke into a shop by breaking a window and stole cigarettes and phone cards. Most importantly, the accused made no mention in his evidence of alleged intoxication or that as a result his faculties were impaired to any extent. In my view therefore, the conviction must be set aside and substituted, in terms of Section 304(2)(c)(iv) of Act 51 of 1977, with a conviction as charged, that is of housebreaking with intent to steal and theft.

- [4] In all the circumstances I consider the sentence of one year imprisonment to be appropriate for this offence. The accused is twenty-one years of age and all the stolen items were recovered. He is also a first offender.

- [5] Therefore the conviction is set aside and substituted with a conviction of housebreaking with the intent to steal and theft as charged, but the sentence is confirmed.

C.H.G. VAN DER MERWE, J

I concur.

G.F. WRIGHT, J

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