

SOUTH AFRICA / JUDGMENT

Strauss v S (A47/2008) [2008]

ZAWCHC 95 (8 August 2008)

[2008] ZAWCHC 95

COURT

Western Cape High Court, Cape Town

BEFORE

Ndita, Van Heerden

CASE / FILE NUMBER

A47/2008

Source: saflii.org · Research copy typeset by Esheria. Not court-issued or certified.

JUDGMENT

IN THE HIGH COURT OF SOUTH AFRICA

(CAPE OF GOOD HOPE PROVINCIAL DIVISION)

CASE NUMBER: A47/2008

DATE: 8 AUGUST 2008

In the matter between:

GAVIN STRAUSS APPELLANT

and

THE STATE RESPONDENT

NDITA, J:

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.

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 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 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 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. 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. NDITA, J I Agree VAN HEERDEN, A J

In that statement it is clear that the appellant took the DVD player in order to draw the attention Inspector Cady regarding 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 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.

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.

NDITA, J

I Agree

VAN HEERDEN, A J

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.saflii.org/za/cases/ZAWCHC/2008/95.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/strauss-v-s-unknown-topic-awchc-2008>

Prepared on 9 October 2026 · Esheria