

REPUBLIC OF NAMIBIA

NOT REPORTABLE



HIGH COURT OF NAMIBIA NORTHERN LOCAL DIVISION, OSHAKATI

JUDGMENT

Case no: CR 01/2013

In the matter between:

THE STATE

and

KATRINA VAN SCHALKWYK

ACCUSED

High Court NLD Review Case Ref No.: 24/2013

Neutral citation: *The State v Van Schalkwyk* (CR 01/2013) [2013]
NAHCNLD 09 (01 March 2013)

Coram: LIEBENBERG J and TOMMASI J

Delivered: 01 March 2013

Flynote: **Criminal Procedure** – Plea of guilty – Questioning in terms of s 112 (1)(b) of Act 51 of 1977 – When questioning an accused pursuant to this section – Court may only convict if satisfied that accused admits all the elements of the offence charged.

Summary: The accused pleaded guilty on a charge of assault with intent to do grievous bodily harm. When questioning the accused pursuant to the provisions of s 112 (1)(b) the court omitted to enquire into the accused's intent at the stage of committing the offence. An essential element of the crime was not admitted by the accused, accordingly the conviction and sentence set aside.

ORDER

In the result the following orders are made:

1. The conviction and sentence are set aside.
2. The matter is remitted to the trial magistrate in terms of s 312 of the Criminal Procedure Act, 51 of 1977 directing the magistrate to comply with the provisions of section 112 (1) (b) of the Act.

JUDGMENT

LIEBENBERG J (TOMMASI J concurring):

[1] The accused appeared in the magistrate's court for Oshakati on a charge of assault with intent to do grievous bodily harm (read with the provisions of Act 4 of 2003), to which she pleaded guilty. Having questioned the accused

pursuant to the provisions of s 112 (1)(b) of the Criminal Procedure Act 51 of 1977, the court convicted the accused, as charged, and sentenced her to a period of 12 months' imprisonment, wholly suspended on conditions of good conduct.

[2] When the matter came before me on review, I directed a query to the learned magistrate enquiring from her on what basis she convicted the accused of having acted with the intent to cause grievous bodily harm to the complainant, as no question to that effect was put to the accused when questioned by the court. In her reply the magistrate conceded that she failed to question the accused on her intention at the time of committing the assault.

[3] The magistrate correctly concedes that she had erred; hence the conviction and sentence stand to be set aside. The court may only have convicted the accused of the offence charged if satisfied that she admitted the allegations in the charge. Although the accused admitted having assaulted the accused by hitting him once in the face with her cell phone, she did not admit that she had the required intent to cause him grievous bodily harm. An element of the offence has thus not been admitted and the court could not have been satisfied that the accused was guilty of the offence to which she pleaded. The accused must be brought before the court in order to be questioned on her intent at the time of committing the offence.

[4] In the result, the following order is made:

1. The conviction and sentence are set aside.
2. The matter is remitted to the trial magistrate in terms of s 312 of the Criminal Procedure Act, 51 of 1977 directing the magistrate to comply with the provisions of section 112 (1)(b) of the Act.

JC LIEBENBERG
JUDGE

MA TOMMASI
JUDGE