

REPUBLIC OF NAMIBIA



HIGH COURT OF NAMIBIA NORTHERN LOCAL DIVISION
HELD AT OSHAKATI

REVIEW JUDGMENT

Case No: CR 41/2018

In the matter between:

THE STATE

v

PAULUS GOTLIEB

ACCUSED

(HIGH COURT NLD REVIEW CASE REF NO: 119/2017)

Neutral citation: *S v Gotlieb* (CR 41/2018) [2018] NAHCNLD 90 (21 September 2018)

Coram: TOMMASI J *et* JANUARY J

Delivered: 21 September 2018

Flynote: Criminal law — Possession of goods without reasonable explanation therefor in contravention of s 6 of General Law Amendment Ordinance 12 of 1956 — Must be reasonable suspicion which is based on facts that goods stolen at the time the accused is found in possession — In *casu* no facts which objectively prove a reasonable suspicion goods were stolen.

ORDER

The conviction and sentence are hereby set aside.

JUDGMENT

TOMMASI J (JANUARY J concurring):

[1] This matter came before me on automatic review. The accused was convicted of contravening s 6 of General Law Amendment Ordinance 12 of 1956 i.e. having been found in possession of stock other than “stock” or “produce” as defined in the Stock theft Act, 12 of 1990 in regard to which there was a reasonable suspicion that the goods had been stolen.

[2] The accused, a passenger in a vehicle, was found at a roadblock at around 22h45 with grocery items and liquor. He pleaded not guilty and his plea explanation was that the goods belonged to him but he is unfortunately unable to produce the receipts.

[3] The evidence of the police officers who found the accused in possession of these goods may, be summarised as follow: They received a report from a police officer at the charge office to stop a certain vehicle which was suspected to convey stolen property; the accused who was a passenger in the vehicle admitted that the property belonged to him; the accused was unable to provide receipts for the groceries and liquor and this lead them to suspect that the groceries were stolen.

[4] The accused testified that he purchased the items from different shops and stored it at a shack until such time as he had enough stock to sell. His agreement with the owner of the shack was that he would pay rental once he starts selling the stock. The owner demanded rental for storing the goods and he was unable to pay the owner. He decided to take the goods to his village. He testified that the receipts were old and faded and most of the items had a price sticker on them. He called a

witness who testified that the accused asked her to write the items in a book and that she had sight of the faded receipts. She was unable to recall the time she was requested to do this.

[5] The learned magistrate found that the accused was honest and admitted that the property was his. She convicted the accused because he failed to produce the receipts for the goods he had in his possession despite the fact that he has had ample opportunity to do so. The reason for conviction was thus his failure to give a “reasonable satisfactory” account for such possession.

[6] Section 6 of the General Amendment Ordinance 12 of 1956 provides as follow:

‘Any person who is found in possession of any goods, other than stock or produce as defined in section *one* of the Stock Theft Law Amendment Ordinance, 1935 (Ordinance 11 of 1935), in regard to which there is reasonable suspicion that they have been stolen and is unable to give a satisfactory account of such possession, shall be guilty of an offence and liable on conviction to the penalties which may be imposed on a conviction of theft. [my emphasis]’

[The Stock Theft Law Amendment Ordinance, 1935 (Ordinance 11 of 1935) has been replaced with Stock Theft Act 12 of 1990]

[7] The learned magistrate found that the accused was found in possession of the stock and that he was unable to give a satisfactory account of his possession. It is glaringly obvious that the court gave little or no consideration to the element of whether there was a reasonable suspicion that it was stolen.

[8] It is an essential element of this crime that there must be a reasonable suspicion that the goods were stolen. The reasonable suspicion that the stock has been stolen must exist at the time, or virtually at the time, that the accused was found in possession thereof (see *S v Silas* 2013 (3) NR 760 (HC)). It is also trite that a reasonable suspicion must be based on reasonable grounds. The person who holds this suspicion must be able to set out the grounds or facts on which the suspicion is based.

[9] In this case the accused transported groceries and liquor in a vehicle at night time and failed to provide receipts for the groceries and liquor. Objectively these

facts do not constitute a reasonable basis to form a suspicion that the goods were stolen. It is not unlawful to transport groceries without receipts. The one who suspected that the goods were stolen, was the charge office police officer who instructed the other police officers to stop and search the vehicle. This witness was not called to testify and give account of the facts on which he/she based the suspicion. There was therefore no evidence adduced in respect of the facts which formed the basis for the suspicion that the goods were stolen.

[10] In light of the above failure by the State to prove this element and the magistrate's failure to consider this element, it cannot be said that the conviction was proper. The learned magistrate ought to have found the accused not guilty.

[11] The proceedings are found not to be in accordance with justice. The conviction and sentence stand to be set aside.

[12] In the premises the following order is made:

The conviction and sentence are hereby set aside.

MA TOMMASI
JUDGE

I agree

HC JANUARY
JUDGE