REPUBLIC OF SOUTH AFRICA

IN THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

Case number: **107/2000**

In the matter between:

MAGRIETA ELIZABETH VAN NIEKERK Appellant

and

THE STATE Respondent

CORAM: **SCHUTZ JA, MELUNSKY and MTHIYANE AJJA**

HEARD: **15 FEBRUARY 2001**

HANDED IN: **28 FEBRUARY 2001**

REASONS FOR JUDGMENT

MELUNSKY AJA:

[1] The appellant was convicted in the Uitenhage Magistrate's Court of stealing a pair of stockings, a bottle of hair conditioner and a box of Grand-Pa powders, valued at R32,51, from the Despatch branch of Shoprite. Her conviction was confirmed by the Eastern Cape Division of the High Court (Liebenberg J and Rushmere AJ) and she appealed to this Court after successfully petitioning the Chief Justice for leave. On 15 February 2001 her appeal was dismissed and it was intimated that reasons would follow. These are the reasons.

[2] The appellant was a customer at Shoprite, Despatch, on 7 August 1997. After she had completed her shopping she went to her motor car carrying a number of Shoprite packets and her handbag. At her car she was requested by two employees of Shoprite, Strydom (the brach manager) and Dickson (the sales manager), to accompany them to Strydom's office and to bring her handbag with her. She did so. In Strydom's office the aforesaid items were found in her handbag. It is not disputed that the articles in question were the property of Shoprite and that the appellant had not paid for them when she paid for the other goods which she had purchased.

[3] At the trial, and apparently before the court *a quo*, there were two issues that

had to be established by the State - whether it was the appellant who had put the goods into her handbag and, if so, whether she did so with the intention of stealing them. In this Court counsel for the appellant conceded, quite correctly, that the appellant herself must have put the items into her handbag. He submitted, however, that she had done so inadvertently and that she did not intend to steal them. It is common cause that the appellant's handbag was in the Shoprite basket which she was carrying while doing her shopping and that it was not closed at the time, apparently because the clasp was broken. The appellant testified that she was under considerable stress and was emotionally upset at the time due to the deaths of two people close to her and because she had to purchase groceries for her ailing father in addition to making purchases for her own household. She said that she had no recollection of putting any goods into her handbag. She added that it was possible that she put the items into her bag while she was in deep thought because of the emotional stress under which she laboured but she denied having the intention of stealing them.

[4] Counsel for the appellant submitted that, given the circumstances, it was reasonably possible that she might have mistakenly put the items into her bag instead of the basket and that she might have been unaware that there were goods

in her bag when she paid for the articles in her basket at the check-out point. He argued that she had R300 in cash and her husband's blank cheque to pay for her shopping and that there was no need for her to steal articles having a trivial value.

[5] It is hardly necessary to emphasise that the State must discharge the onus of proving the intention to steal beyond reasonable doubt and that the onus will not be discharged if the appellant's explanation may reasonably be true.

[6] On a proper appreciation of the evidence, there are certain improbabilities in the appellant's version. One of these is that it is unlikely that she would have placed three separate items - all, apparently, from different shelves in the shop - into her bag in an absent-minded way. It is also unlikely that she would not have noted the presence of these items in her bag when she paid for the other goods at the check-out point. What is crucial, however, is the appellant's failure, according to her own evidence, to ask Strydom or Dickson why she was required to accompany them to Strydom's office. She said that she believed that there might have been some query about her husband's cheque with which she had paid. On the other hand both Strydom and Dickson testified that when they approached the appellant at her motor car, she was immediately remorseful and said that she was sorry for what she had done. This the appellant denied.

[7] Now it is true, as counsel for the appellant submitted, that there were contradictions between the evidence of Strydom and Dickson. There is no need to detail these. They are the kind of differences that are not of great significance in the overall picture. Nor should too much significance be placed on variations between the police statements and the evidence of the witnesses. The court of first instance was aware of all of the discrepancies but was nevertheless satisfied that the State witnesses were honest, that they harboured no ill-feelings towards the appellant and that there was no reason why they would want to implicate her falsely. No satisfactory grounds were advanced for this Court to interfere with the trial court's evaluation of the evidence and we are unpersuaded that we should do so.

[8] It is necessary to deal with one aspect that counsel for the appellant called the "crux of the case". This was the fact that after being asked to accompany Strydom and Dickson to the former's office, the appellant left her handbag in the car and had to be expressly requested to bring it with her. Counsel argued that this clearly showed that she had not, as it were, confessed to the crime. He submitted that if she had already confessed she would not have left her handbag in the car and it would not have been necessary for the Shoprite employees to require her to

bring it with her. The answer to this submission appears to be that the appellant's expression of regret at what she had done was made only after she was requested to bring her handbag with her. This, at any rate, was the evidence of Strydom, although Dickson appeared to be somewhat uncertain on this point. In all events, it is difficult to accept that Strydom or Dickson would have fabricated their evidence to the effect that the appellant expressed regret at what she had done.

[9] On an assessment of the evidence as a whole, therefore, the appellant's explanation cannot reasonably be true and her guilt was established beyond reasonable doubt.

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L S MELUNSKY AJA

SCHUTZ JA I AGREE _____
W P SCHUTZ JA

MTHIYANE AJA I AGREE _____
K K MTHIYANE AJA