

IN THE HIGH COURT OF SWAZILAND

CRIM. APPL. NO.16/85

In the appeal of:

SUPERVISOR CETSHWAYO MAZIBUKO

VS

THE QUEEN

CORAM: WILL, C.J.

FOR THE APPELLANT: MR L. MALINGA

FOR THE CROWN: MR A. CELE

JUDGEMENT

(30/8/85)

Will, C.J.

The Appellant who was a security guard employed by the Royal Swazi Sun was convicted of the theft from his employer of a raincoat, valued at E24-95, which had been lent to him by his employer for use in the course of his employment. He was fined E20 or 20 days imprisonment. He has appealed against his conviction only.

It is common cause that a rain-coat was issued to night-watchmen including the Appellant, that it was not returned by the Appellant and that it was found in his possession when his house was searched. The circumstances of this case on the facts found proved by the Magistrate, the Appellant's failure to return the rain-coat amounted to conduct on his part which demonstrated an intention permanently to deprive his employer of the possession of the raincoat.

The following factors were relied upon by the Magistrate in establishing such an intention on the part of the Appellant:

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- (a) Prior to 11th September 1984 all the security guards were directed to hand in their raincoats.
- (b) By that date the Appellant had failed to do so. Richard Dlamini told him to hand it in.
- (c) The Appellant went off but returned with a greatcoat. There was little, if any, reason to doubt that the Appellant knew that it was the raincoat, and not the greatcoat, which had to be returned although the Appellant denied that he knew it was the raincoat which was required.
- (d) Nkosana told the Appellant that it was the raincoat and not the greatcoat which was required. The Appellant told Nkosana that he did not have a raincoat,
- (e) On 2nd October the Appellant was summoned by Eric Dlamini, the Security Manager, who asked him about the raincoat and the Appellant told him that he had given it to one of the Occurrence Book Clerks whose name he had forgotten.
- (f) The matter was reported to the police who asked the Appellant about the raincoat. He said he did

not have it.

(g) The police and Eric Dlamini went to the Appellant's house to search it. They say the Appellant endeavoured to hide a bag containing something. They took possession of the bag and found that it contained the missing raincoat.

These were the facts found proved by the Magistrate and I am satisfied that he was justified in finding that they had been proved. The Appellant stated that he misunderstood the instructions which had been given and thought that he was required to return the greatcoat; but when it was made clear to him that the

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raincoat was required he falsely told one witness that he had handed it in, and he falsely told another that he did not have it in his possession. It was however found on his premises when he was endeavouring to hide it. The Appellant's main defence appears to have been that there was bad blood between him and Eric Dlamini but even if that were so that fact does not account for the evidence given against him by the other witnesses and in particular, by the police officer.

On appeal the only ground argued was that the Magistrate should have found that all the Crown witnesses, including the police officer, had lied. The police officer, it was submitted, even lied when he stated in evidence that:

"Before we went to the house I asked the Accused if the raincoat was with him and, if it was, he should return it instead of being charged with such a small case and losing his job."

The police officer, of course, went on in his evidence to say that the Appellant "told him he had never taken the raincoat and that he had returned the one which he had been given". The witness further stated that he saw the Appellant in possession of a bag which he appeared to be trying to hide. The police officer found the raincoat in it.

It was asked on appeal, to find that the Crown witnesses had lied. I was asked to do so on the ground that, so it was submitted, there were inconsistencies in the Crown case. I was referred to certain alleged inconsistencies which, in the context, were either not inconsistencies at all or were minor. They were certainly not of a nature to entitle me to say that the Magistrate was wrong in his findings on facts.

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I dismissed the appeal and stated that I would file my reasons. These are my reasons.

D.D. Will

CHIEF JUSTICE