e-MANTSHI

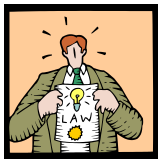
A KZNJETCOM Newsletter

July 2024: Issue 209

Welcome to the two hundredth and ninth issue of our KwaZulu-Natal Magistrates' newsletter. It is intended to provide Magistrates with regular updates around new legislation, recent court cases and interesting and relevant articles. Back copies of e-Mantshi are available on http://www.justiceforum.co.za/JET-LTN.ASP. There is a search facility available on the Justice Forum website which can be used to search back issues of the newsletter. At the top right hand of the webpage any word or phrase can be typed in to search all issues.

"e-Mantshi" is the isiZulu equivalent of "electronic Magistrate or e-Magistrate", whereas the correct spelling "iMantshi" is isiZulu for "the Magistrate". The deliberate choice of the expression: "EMantshi", (pronounced E! Mantshi) also has the connotation of respectful acknowledgement of and salute to a person of stature, viz. iMantshi."

Any feedback and contributions in respect of the newsletter can be sent to Gerhard van Rooyen at gvanrooyen@justice.gov.za.



New Legislation

1. The Minister of Trade, Industry and Competition published the Policy Implementation Actions on Measures to Restrict and Regulate Trade in Ferrous and Non-Ferrous Metals Waste, Scrap and Semi-Finished Ferrous and Non-Ferrous Metal Products to Limit Damage to Infrastructure and the Economy (the "Policy"). In the Policy, the Trade Minister set out various interventions which are to be implemented in what may broadly be described as a three-phased approach and proposed that the enhancement of the regulation of the scrap and waste metal trade through amendments to the Regulations published under the Second-Hand Goods Act, (Act No. 6 of 2009) (the "SHGA"), which will bolster the applicable metal trading registration regime, be implemented as part of Phase 2. A number of changes are being considered to these Regulations. As an invitation, draft regulations amending the Regulations for Dealers and Recyclers, 2012, in terms of section 41(1) of the Second-Hand Goods Act, 2009 (Act No. 6 of 2009), has been published for public comment. The notice to this effect was published in

Government Gazette no 50929 dated 12 July 2024. The proposed regulations can be accessed here:
https://www.gov.za/documents/notices/second-hand-goods-act-regulations-dealers-and-recyclers-amendments-12-jul-2024

2. *Act No. 15 of 2024:* Independent Police Investigative Directorate Amendment, Act, 2024 was published in Government Gazette no 50990 dated 30 July 2024. The purpose of the amendment Act is amongst others that the Independent Police Investigative Directorate must investigate any deaths or allegations of rape caused by the actions of any member of the South African Police Service or a member of a municipal police service whether such member was on or off duty. The act will come into operation on a date to be determined by the President. The Act can be accessed here:

https://www.gov.za/documents/acts/independent-police-investigative-directorate-amendment-act-15-2024-english-isizulu

Recent Court Cases

1. Dlamini v Ntuli and Others (D4845/2015) [2024] ZAKZDHC 46 (19 July 2024)

The facts of this matter could have been taken from a popular television series, such as 'CSI'. They have the hallmarks of a work of fiction that have been brought into existence by the creative mind of a screenplay writer. But they are entirely true.
PERSONAL INJURY – Unlawful arrest and detention – *Malicious prosecution* – Plaintiff arrested and prosecuted for murder – Deceased had committed suicide – Jurisdictional requirements – Reasonable grounds for suspicion – No direct evidence that deceased had been murdered – Evidence that deceased committed suicide present – Evidence insufficient to justify arrest – Insufficient cause to prosecute – Arrest and detention unlawful – Maliciously prosecuted – Claim succeeds.

This Judgment can be accessed here:
https://www.saflii.org/za/cases/ZAKZDHC/2024/46.html

2. Bangane v S (CA38/2023) [2024] ZANWHC 200 (30 July 2024)

One of the issues in this matter was that there was no complete record of the proceedings. Although this was admitted by the state the court relied on *S v Chabedi* [2005] ZASCA 5, where it was stated: "*[T]he requirement is that the record must be adequate for proper consideration of the appeal; not that it must be a perfect recordal of everything that was said at the trial. The question whether defects in a record are so serious that a proper consideration of the appeal is not possible, cannot be answered in the abstract. It depends, inter alia, on the nature of the defects in the particular record and on the nature of the issues to be decided on appeal.*"

This judgment can be accessed here:
https://www.saflii.org/za/cases/ZANWHC/2024/200.html

From The Legal Journals

Kruger, H

Safeguarding the Rights of Children Living in Kinship Care in South Africa

***PER / PELJ* 2024(27)**

Abstract
By the early 2000s the practice of using the foster care system as a measure to subsidise the income of families who cared for the children of relatives was firmly entrenched in South Africa. This caused a rapid rise in the number of children receiving the foster child grant. By 2010 more than 500 000 foster child grants (FCGs) were in payment. The foster care system could not cope with this pressure, resulting in the lapsing of more than 110 000 foster child grants between April 2009 and March 2011.

The High Court intervened at the request of the Centre for Child Law in Pretoria, placing a moratorium on the lapsing of foster care orders and giving the Department of Social Development (DSD) until December 2014 to come up with a "comprehensive legal solution" to solve the foster care crisis. The December 2014 deadline was extended four times, eventually until December 2022. The "comprehensive legal solution" that the North Gauteng High Court tasked the minister with in 2011 required amendments to both the Social Assistance Act 13 of 2004 and the Children's Act 38 of 2005. The first of these amendments, the Social Assistance Amendment Act 16 of 2020, came into effect on 30 May 2022 and the second, the Children's Amendment Act 17 of 2022, on 8 November 2023. This article considers the question whether the department's response to the so-called "foster care crisis" as contained in these Amendment Acts and their regulations complies with South Africa's obligations in terms of international law and the Constitution of the Republic of South Africa, 1996.

This article can be accessed here:
https://perjournal.co.za/article/view/16680

Hoctor, S

Clarifying the Law of Complicity:S v Mbuyisa [2023] ZAKZPHC 132; 2023 JDR 4950 (KZP)

OBITER 2024 29

This article can be accessed here:

https://obiter.mandela.ac.za/article/view/19084/21565

The latest edition of the ***South African Judicial Education Journal Vol. 5 - Issue 1, 2022*** has been published and contains the following articles:

Refreshing and Enhancing Judgment Writing Skills - Justice Leona Theron

The Building of South Africa's Constitution on the Ruins of its Past: The Indigenising of Public Law in Post-Apartheid South Africa - Justice Steven Majiedt

Ending Early/Child or Forced Marriage in Malawi: The Role of the Judiciary Justice - Fiona Atupele Mwale

Weakening Collective Bargaining and Industrial Action In South Africa: Problematising the Risks of Rewarding Non-Strikers - Dr Nombulelo Lubisi

Sleepwalking with a Stochastic Parrot – Ensuring Accuracy when Using Generative Artificial Intelligence in Legal Research - Dr Arthur Van Coller

Law Clerks' Origins and their Duties - Adv Sechaba Mohapi

The journal can be accessed here:
https://www.judiciary.org.za/index.php/news-category/968-south-african-judicial-education-journal-vol-5-issue-1-2022

(Electronic copies of any of the above articles can be requested from gvanrooyen@justice.gov.za)

Contributions from the Law School

Section 219, 219A Criminal Procedure Act precluding admission of confession or admission by co-accused or third party against the accused.

In *S v Murphy and others* 2023 (2) SACR 341 (WCC), the question to be decided was whether the contents of a written statement made by an accused person, who subsequently elects to testify as state witness in terms of s 204 of the Criminal Procedure Act 51 of 1977, but who recants the contents of the statement at trial, can be admitted as hearsay in terms of s 3 (1)(c) of the Law of Evidence Amendment Act 45 of 1988, or whether s 219 of the CPA precludes the admission of the statement if it is a confession (para [1]).

Wenn was caught red-handed packing 'Tik.' She was arrested and charged with drug dealing. The charge against her was withdrawn since she became a section 204, Criminal Procedure Act 51 of 1977 state witness (para [2]). Wenn testified for the state at the trial of the accused, who were charged with drug dealing and being in contravention of the Prevention of Organised Crime Act 121 of 1988. Wenn, however, departed materially from her section 204 statement and she was declared a hostile witness and discredited in cross-examination (para [4]).

Relying on *S v Rathumbu* 2012 (2) SACR 219 (SCA) and *S v Mathonsi* 2012 (1) SACR 335 (KZP), the state, at the close of its case, successfully applied for the admission of

Wenn's section 204 statement in terms of the interests of justice test in section 3 (1)(c) of the Law of Evidence Amendment Act 45 of 1988 (para [6], [8]). In both *Mathonsi* (para [39] read with paras [47]-[48]) and *Rathumbu* (paras [15] – [16]) the court admitted previous inconsistent statements by hostile witnesses as the truth of their contents in terms of section 3 (1) (c) Law of Evidence Amendment Act 45 of 1988. *Mathonsi* and *Ratumbu* were distinguishable from the instant case in that the witnesses were never co-accused (*Murphy* para [17]).

The hearsay ruling was interlocutory in nature and so could be revisited (*S v Melozani* 1952 (3) SA 639 (A) at 644E, *S v Steyn* 1981 (3) SA 1050 (C) at 1051F, *S v Leepile* (2) 1986 (2) SA 346 (w) at 348G – 350 C), particularly if it was based on an incorrect interpretation of a statute (*Zondi v MEC, Traditional and Local Affairs* 2006 (3) SA 1 CC, *Murphy* para [12]). The defence asked for a reconsideration of inter alia, the hearsay ruling at the close of its case (para [9]) on the basis, inter alia, that the section 204 statement was inadmissible against the co-accused in terms of section 219, CPA as it amounted to a confession. This was the first time this point had been raised (para [11]). The state did not contest that the statement amounted to a confession and also contained admissions (para [5]).

The court started by outlining that at common law, admissions and confessions were only admissible against their makers (*Murphy* para [13], *R v Moore* (1956) 40 Cr App Rep 50 CCA; *Surujpaul (called Dick) v R* [1958] 3 All ER 300; *R v George Cecil Rhodes* (1960) 44 Cr App Rep 23; *Rex v Nkosi and Zulu* 1959 P.H.H. 91 (A.D.); *R v Matsitwane* 1942 AD 213; *R v Baartman* 1960 (3) SA 535 (A)). This position was changed in the seminal case of *S v Ndhlovu* 2002 (2) SACR 325 (SCA) where the court decided that the extra curial admissions of a co-accused could be admitted against a co accused, even if disavowed at trial (*Murphy* para [14]). This was as a hearsay statement admitted in the interests of justice. The court thus interpreted section 3 (1) (c) of the Law of Evidence Amendment Act 45 of 1988 as changing the common law position. There were mixed reactions to the *Ndhlovu* decision (N Whitear "The Admissibility of Extra-Curial Admissions by a Co-Accused: A Discussion in the light of Ndhlovu, Litako and Mhlongo/Nkosi cases and international law" 2017 134:2 SALJ 244-262 at 245-246) but in *S v Litako* 2014 (2) SACR 431 (SCA) the SCA criticized the decision in *Ndhlovu* saying, inter alia, that there were good reasons underpinning the common law rule, namely the inherent dangers of allowing one co-accused's statement to be admitted against another, being the conflict of interest between co-accused which gave rise to the cautionary rule attaching to co-accused evidence and the fact that the right to challenge evidence as enshrined in the Constitution would be rendered nugatory (*Litako* paras [51]-[65], *Murphy* paras [19] – [21]). The SCA also believed that the provisions of section 3 (2) of the Law of Evidence Amendment Act 45 of 1988, which provides that 'the provisions of sub section (1) shall not render inadmissible any evidence that is inadmissible on any ground other than such evidence is hearsay evidence' had been glossed over (*Litako* para [50], *Murphy* para [19]). This approach was later vindicated by the Constitutional Court in *Mhlongo/Nkosi* (*S v Mhlongo; S v*

Nkosi 2015 (2) SACR 323 (CC)). The Constitutional Court took a different approach from the SCA in *Litako*. While the SCA had focused on the right to a fair trial, the Constitutional Court did not consider it necessary to consider trial fairness instead focusing on the right to equality before the law for accused implicated by admissions and those implicated by confessions (N Whitear "The Admissibility of Extra-Curial Admissions by a Co-Accused: A Discussion in the light of Ndhlovu, Litako and Mhlongo/Nkosi cases and international law" 2017 134:2 SALJ 244-262 at 248, *Mhlongo/Nkosi* para [50]).

The *Mhlongo/Nkosi* decision, restoring the common law position prior to *Ndhlovu*, that confessions and admissions are admissible only against their makers, was affirmed in *S v Khanye* 2017 (2) SACR 630 (CC) (paras [22]-[23]) and *S v Makhubela, S v Matjeke* 2017 (2) SACR 665 (CC) (paras [29] – [30]; *Murphy* para [26]).
Subsequent cases dealing with a disavowed confession and admissions, and a disavowed section 112(2) CPA statement by accomplices respectively, and finding that they were inadmissible against co accused, include *S v Ngubane* [2018] ZAKZHC 2 (AR 158/2017, 2 March 2018) and *S v Mabaso* [2021] ZASCA 98 (9 July 2021). In the case of *Mabaso* the court confirmed that the confession made by the hostile witness was inadmissible against the accused and so were the admissions made by him, following *Makubela/Matjeke's* case.

In the case of *S v Makhala* 2022 (1) SACR 485 (SCA), a section 204 witness made extra curial statements implicating the accused, but he turned hostile at the trial. The majority and the minority of the court distinguished *Litako* from the case before it on the grounds that the person making the extra curial statements was not a co-accused who could not be compelled to testify, thus compromising the accused's fair trial rights, but was an ordinary section 204 witness who had testified fully on the merits. On this basis the minority held that the previous inconsistent statement was not even hearsay evidence (*Makhala* para [69]). The majority held that it was hearsay evidence and that the safeguards inherent in section 3 (1) (c) of the Law of Evidence Amendment Act 45 of 1988 should properly be applied to protect the fair trial rights of the accused whose right to challenge the evidence might be compromised where he disavows his statement at trial (*Makhala* para [114], *Murphy* paras [40] – [41]). Significantly the arguments premised on section 219 and 219A of the CPA were not raised in oral argument nor considered in this case (*Murphy* para [40]). Neither did the court in *Makhala* consider the Constitutional cases of *Mhlongo/Nkosi* or *Makubela/Matjeke*, which were followed in *Mabaso*.

Accordingly, the court in *Murphy* concluded that the court in *Mhlongo/Nkosi* had established the following authoritatively:
"the Hearsay Act did not alter the common law in relation to the admissibility of extracurial (sic) statements (viz that they are only admissible as evidence against the maker;

S 3 (2) of the Hearsay Act provides that s 3 (1) cannot render admissible hearsay statements which are inadmissible on other grounds (such as the aforesaid common law rule, or the provisions of a statute such as the CPA;
The interpretation of the Hearsay Act adopted in Ndhlovu was at odds with the prohibition in s 219A of the CPA, which expressly allows an admission to be admitted only against its maker (para [46]).”

The court held further that since the Constitutional Court in *Mhlongo/Nkosi* rejected the admission under s 3 (1) (c) of an admission against the accused on the grounds that it was prohibited under s 219A of the CPA, it must follow that the admission in terms of s 3 (1) (c) is also precluded since s 219 expressly prohibits the admission of a confession against anyone but its maker (para [47]).

Davis AJ further opined that the statutory prohibition on the use of extra curial confessions and admissions against anyone but their maker (contained in ss 219 and 219A CPA) are not confined to the confessions or admissions made by a co-accused in criminal proceedings. The prohibition also operates in circumstances where the admission or confession was made by an accomplice who was never charged and became a state witness in terms of s 204 as happened in *Makhala*, or where the confession or admission was made by a co-accused who subsequently pleads guilty and testifies against his co-accused as happened in *Mabaso*, or by a former co-accused who turns state witness and where the charges against him as withdrawn, as happened with Wenn in the *Murphy* case (para [48]).

In order to admit Wenn’s statement on the strength of *Makhala*, the explicit wording of ss 219 and 219A would have to be interpreted narrowly as ‘against a co-accused’ instead of ‘against any person’ which would be contrary to section 39 (2) of the Constitution which enjoins courts interpreting legislation to promote the spirit, purport and objects of the Bill of Rights by constricting the accused’s right to challenge evidence (para [49]). Further, section 3 (2) of the Law of Evidence Amendment Act 45 of 1988 expressly states that section 3 (1) shall not render admissible any evidence that is inadmissible for a reason other than it being hearsay – ss 219 and 219A being such other grounds (para [50]). Ss 219 and 219A were not based only on the evidence being hearsay evidence but also on the cautionary rule applicable to accomplices and the fair trial rights of the accused, being founded as they were on the common law (*Litako* para [51], *Mhlongo/Nkosi* paras [27] and [35], *S v Halpezula* 1965 (4) SA 439 (A), *Murphy* para [51]).

Davis AJ adverted to the fact that there ‘may be cogent reasons for revisiting what appears to be a blanket prohibition in ss 219 and 219A of the CPA, s 3 (1) of the Hearsay Act notwithstanding.’ He was perhaps referring to the majority decision in *Makhala* which recognized that the effectiveness of the cross-examination of a state witness who denies having made the previous inconsistent statement, or cannot recall having made it, may be compromised in some cases (*Makhala* para [114]), and that a

court seized with an enquiry in terms of s 3 (1) of the Hearsay Act is empowered in terms of s 3 (1) (c) (vii) to take into account any other factor which in the opinion of the court should be taken into account, in determining whether the interests of justice require the admission of the hearsay evidence, which would include trial fairness (para [50]), together with the challenges posed by witness tampering in organized crime cases (para [53]). Davis AJ concluded that 'it may well be that legislative intervention is called for to amend ss 219 and 219A of the CPA and s 3 (2) of the Hearsay Act' but he believed that it was not within the court's purview to ignore the express words of those sections (para [53]). He accordingly revised the earlier ruling admitting Wenn's statement as proof of its contents, stating that it was inadmissible in terms of ss 219 and 219A of the CPA (para [55]).

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Matters of Interest to Magistrates

Distinguishing between common assault and intent to inflict grievous bodily harm

The crime of common assault and assault with the intent to do grievous bodily harm is sometimes one of small margins. In simplifying the crime, the courts have developed some indicators or principles to assist when it must conclude whether the person is guilty of common assault or whether the accused had an intent to cause more serious harm.

Principles for aiding the court in assault with the intent to do grievous bodily harm cases

In *S v Oosthuizen and Another* 2020 (1) SACR 561 (SCA) at para 21 the court held that the crime of assault consists of '(a) conduct which results in another person's bodily integrity being impaired (or the inspiring of a belief in another person that such impairment will take place); (b) unlawful and (c) intention'. The court at para 22 was in agreement with CR Snyman *Criminal Law* 5ed (Durban: LexisNexis 2008), which held

that in addition to the above-mentioned elements of assault, 'there must be intent to do grievous bodily harm'. The next question is how does one infer that the accused had the necessary intent? At para 22 the court answers this question when it held that it can be inferred from the nature of the weapon that was used, the way it was used, the degree of violence, the part of the body aimed at, the persistence of the attack and the nature of the injuries inflicted. The nature and kind of injuries are an indication that a physical attack must have taken place and caused serious injury to the victim. The question now follows, is it possible for a prosecution to be successful without a physical attack having taken place?

Can the crime of assault with the intent to do grievous bodily harm only be caused by inflicting actual harm or injury to the body of a person?

The court in *Oosthuizen* pronounced on this burning question whether actual violence that is inflicted can be regarded as a measuring stick for this crime to be committed. The court in *Oosthuizen* answered this question in the negative where it held at para 22, while citing the case of *S v Mtimunye* 1994 (2) SACR 482 (T) where that court held: 'Often the intention of the perpetrator of an assault is inferred from the act by which a physical assault is carried out. Where an assault consists of a threat, there can be no reason why the intention cannot be inferred from the contents of the threat, unless, obviously, it appears that the perpetrator does not have the intention or the ability to carry out the threat.' The court in *Oosthuizen* was in agreement with the dictum cited in *Mtimunye*. It appears that it is not only the degree of violence or seriousness of the injuries recorded in the medical report that will be an indication of whether a person is guilty of this crime or not, but the necessary intent by the accused when he threatens serious bodily harm on the person of another. In *S v September* 2023 (1) SACR 662 (WCC) the appellant was found guilty of two counts of assault with the intent to cause grievous bodily harm and one count of contravention of a protection order committed on his elderly mother and two elderly male friends when they tried to intervene. In the one count of assault with intent to do grievous bodily harm, he pushed an elderly man off a chair. At para 23 the court held that: 'This type of offence is inherently aggravating, because of the frailty of the victim, the victim's inability to defend him or herself … .' In dismissing his appeal the court at para 24 held that: 'The mere fact that the complainants have not sustained any serious physical injuries, cannot detract from the seriousness of the offence.' The court in *September* confirmed the *Oosthuizen* decision that assault with the intent to do grievous bodily harm can be committed without actual serious injuries, and if the intent is present to cause said serious injury you can be convicted for this offence.

Important development involves the crime of assault with the intent to do grievous bodily harm

In *Lelaka v The State* (SCA) (unreported case no 409/15, 26-11-2015) (Ponnan, Shongwe, Petse and Mathopo JJA and Van der Merwe AJA) the complainant and the

appellant in this appeal visited a tavern. The complainant took a bottle of liquor from the appellant and the applicant was unhappy about this. The appellant showed his displeasure by striking the complainant in the face and he was charged with assault with the intent to do grievous bodily harm. On 14 February 2013, the appellant was found guilty because the magistrate was satisfied that he admitted to all the elements of the crime. The state applied for a remand to obtain the appellant's previous convictions. The matter was postponed to 28 February 2013 for that purpose, the appellant's bail was cancelled due to his conviction. The court was informed that the complaint passed away on 15 February 2013. The post-mortem report indicated that the cause of death was 'severe blunt force head trauma', sustained at the hand of the appellant. The new legal representative of the appellant urged the court to sentence the applicant in terms of his plea of guilty. However, the court was confronted with the fact that it already found the applicant guilty of assault with intent do to grievous bodily harm. The court at para 6 held that it is a general rule of common law that a person may not be punished for the same offence twice. It also held that this rule is entrenched in s 35(3)(*m*) of the Constitution. However, the court at para 7 held that 'our law has long recognised that a plea of *autrefois convict* is not available when it was impossible at the previous trial to prefer the more serious charge later presented.' The court went further at para 7 where it held that: 'It follows that a conviction for assault is no bar to a prosecution for murder or culpable homicide where the victim has died since the conviction "for the fact of the death has altered the essential nature of the crime."' The Supreme Court of Appeal remitted the matter back for sentencing and if the state so elected it could charge the accused with a more serious charge.

Chapter 26 of the Criminal Procedures Act and the *Mazomba a*ssault case

Section 270 of the Criminal Procedure Act 51 of 1977 (CPA) which deals with competent verdicts, was used to its full effect in *S v Mazomba* (ECB) (unreported case no CA&R2/09, 31-3-2009) (Zilwa AJ, Dhlodhlob ADJP). The accused was charged with contravention of a protection order. In terms of the provisions of the protection order, he was prohibited from entering the residence of the complainant and to refrain from insulting, assaulting or abusing the complainant; physically and emotionally. The accused submitted that he did sign something but he was not aware that it was a protection order. He alleged that the content of the protection order was never explained to him when he was served with the document. The court at para 11 held that the prosecution should have called the officer and rebutted the contention by the accused that he did not have knowledge of the protection order in which case the protection order would have been valid. As the state failed to rebut the accused's contention that the protection order was properly served on him, the court held that he could not be convicted for breaching the provisions of the protection order. The court at para 12 held that: 'This, however, does not mean that the accused stands to be acquitted if there is tangible evidence that he did commit an offence on that day.' The court held that s 270 of the CPA provides that 'if the evidence on a charge for any offence not referred to in the preceding sections of chapter 26 thereof (which deals with

competent verdicts) does not prove the commission of the offence so charged but proves the commission [of] an offence which by reason of the essential elements of that offence is included in the offence so charged, the accused may be found guilty of the offence so proved.' The court in *Mazomba* at para 12 held that contravention of protection order did fall within the ambit of s 270. When relying on s 270 the prosecution must at the very least have led evidence to the effect that the accused assaulted or had the intention to cause grievous bodily harm if they are faced with a charge that related to contravention of the protection order. To rely on s 270 as a 'competent verdict', the essential elements of that crime should be canvassed in the examination of the witnesses and the version must be put to the accused if he elects to testify so that he can have an opportunity to rebut the allegations against him that he for example had the intention to cause serious bodily harm to the complainant. The court at para 15 held that 'since there is compelling evidence that the accused did assault the complainant on the day in question, we are off the view that the accused should have been convicted of common assault'. Even with the assistance from s 270 a good case can be unravelled by an experienced defence attorney who can exploit the inconsistencies or contradictions in the witness' testimony pertaining to who actually assaulted the complainant.

Contradictions or discrepancies during testimony

The alleged assault on the complainant may be perpetrated while there was alcohol involved, complainant might be a single witness, the incident might have happened during loadshedding or in circumstances where the witnesses could not give an accurate account of the whole incident. The court in *Naidoo v S* (SCA) (unreported case no 333/2018, 1-4-2019) (Majiedt, Van der Merwe and Mocumie JJA and Carelse and Matojane AJJA) at para 22 held that: 'In evaluating the evidence, the court must account for all the evidence tendered irrespective of the nature and quality of such evidence.' The court referred in the same paragraph to *S v Van der Meyden* 1999 (1) SACR 447 (W) where that court held that: 'Some of the evidence might be found to be false; some of it might be found to be unreliable, and some of it might be found to be only possibly false or unreliable, but none of it may simply be ignored.' The court in *S v Pistorius* 2014 (2) SACR 314 (SCA) at para 27 held that 'it is trite that contradictions per se do not necessarily lead to the rejection of a witness' evidence. It is essential that proper weight be accorded to the number, nature, importance and their bearing on the other evidence.' The court in *Maila v S* (SCA) (unreported case 429/2022, 23-1-2023) (Mocumie, Carelse and Mothle JJA and Mjali and Salie AJJA) at para 18 held that: 'Satisfactory in all respects' should not mean the evidence line-by-line. But, in the overall scheme of things, accepting the discrepancies that may have crept in, the evidence can be relied upon to decide upon the guilt of an accused person.' The fact that evidence seems inconsistent when cross-examined on and the fact that discrepancies occurred does not mean the evidence cannot be relied on.

Conclusion

It is not in dispute that assault matters are being dealt with daily by our courts. The guidelines by the courts are to bring uniformity in the decision-making and to give the public the sense of confidence in the criminal justice system.

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(This article was first published in *De Rebus* in 2024 (July) *DR* 24).

A Last Thought

The Judiciary Annual report for the period 2022/23 has been published and can be accessed here:
https://www.judiciary.org.za/index.php/news-category/969-judiciary-annual-report-2022-23