

CASE NUMBER: CC113/13

**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG, PRETORIA)**

In the matter between:

**THE DIRECTOR OF PUBLIC
PROSECUTIONS, NORTH GAUTENG**

APPLICANT

And

OSCAR LEONARD CARL PISTORIUS

RESPONDENT

INDEX

The Applicant (the State) files the following documents:

- A – Filing sheet for leave to appeal the sentence
- B – Application for leave to appeal the sentence
- C – Application for leave to appeal certain aspects of the law
- D – Record of the judgment
- E – Record of the sentence

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OSCAR LEONARD CARL PISTORIUS

RESPONDENT

FILING SHEET

The Applicant herewith files its:

Notice of Application for Leave to Appeal

Notice in terms of section 316B(1) of Act 51 of 1977

Copy of the charge sheet and transcript of the judgment and sentence

TO: THE REGISTRAR OF THE HIGH COURT
PRIVATE BAG X67
PRETORIA
0001

3 X COPIES

AND TO: ADV BARRY ROUX SC
SANDOWN VILLAGE CHAMBERS
SANDOWN

BY HAND

AND TO: BRIAN WEBBER
RAMSAY WEBBER INC.
269 OXFORD ROAD
ILLOVO

BY HAND

**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG, PRETORIA)**

In the matter between:

**THE DIRECTOR OF PUBLIC
PROSECUTIONS, NORTH GAUTENG**

APPLICANT

and

OSCAR LEONARD CARL PISTORIUS

RESPONDENT

**NOTICE OF APPLICATION FOR LEAVE TO APPEAL IN TERMS OF SECTION
316B(1) OF ACT 51 OF 1977**

TO: THE REGISTRAR OF THE HIGH COURT
PRIVATE BAG X67
PRETORIA
0001

3 X COPIES

AND TO: ADV BARRY ROUX SC
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SANDOWN

BY HAND

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RAMSAY WEBBER INC.
269 OXFORD ROAD
ILLOVO

BY HAND

1.

PLEASE TAKE NOTICE THAT we, **G C NEL** and **A JOHNSON**, Deputy Directors of Public Prosecutions, intend bringing an application in the Gauteng High Court, Pretoria, for leave to appeal in terms of Section 316B(1) of Act 51 of 1977 against the sentence imposed by The Honourable Judge Masipa in the Gauteng High Court held in Pretoria in case number CC113/13 on 21 October 2014.

2.

PLEASE TAKE FURTHER NOTICE THAT the grounds of appeal are the following:

- 2.1 The sentence of 5 years imprisonment in terms of section 276(1) (i) of Act 51 of 1977 for the murder of Reeve Steenkamp in the circumstances of

this case is shockingly light, inappropriate and would not have been imposed by any reasonable court.

2.2 The honourable trial judge failed to sufficiently consider that, having been convicted of culpable homicide;

- where the accused acted with gross negligence
- which bordered on Dolus Eventualis and
- where the accused fired not one but four shots
- using a lethal weapon, a firearm loaded with Black Talon ammunition
- through a locked door into a small toilet cubicle, from which there was no room to escape
- by an accused trained in the use of firearms, the accused

is liable to a term of imprisonment other than 5 years in terms of Section 276(1)(i) of Act 51 of 1977.

2.3 The honourable judge erred in over-emphasising the personal circumstances of the accused and the fact that the accused was suffering from Post-Traumatic Stress, was anxious and "seems remorseful".

2.4 The honourable judge erred in not appropriately taking into account the consequences of the accused's actions. Not enough emphasis was placed

on the horrendous manner in which the deceased died coupled with the gruesome injuries she sustained when the accused shot and killed her.

- 2.5 The honourable judge, although correctly indicating that "an appropriate sentence should neither be too light, nor too severe" erred in overemphasising the purpose of rehabilitation and reformation at the cost of retribution.
- 2.6 The sentence imposed is shockingly inappropriate for the accused that armed him, with the intention to shoot, walked to the bathroom and fired four shots, knowing that there was a human being behind the door of the toilet.
- 2.7 We will argue that the sentence is inappropriate and shockingly light for someone that killed an innocent person with gross negligence where his conduct bordered on Dolus Eventualis.
- 2.8. In terms of section 73(7)(a) of the Correctional services Act, No. 111 of 1998 " a person sentenced to incarceration under section 27691)(i) of the Criminal Procedure Act, must serve at least one sixth of his /her sentence before being considered for placement under correctional supervision, unless the court has directed otherwise." In effect the sentence imposed on the accused means that he will qualify to be released on correctional supervision after serving a mere 10 months. This in our submission,

renders the sentence shockingly light, considering that a life has been lost in circumstances as described above.

- 2.9 That there is a reasonable prospect that another court may come to a different finding with regards the sentences imposed by this court and may in fact over turn the sentences imposed.

3.

ALSO TAKE NOTICE THAT a notice in terms of section 316B of Act 51 of 1977 will be served on the respondent as soon as a date for the hearing of this application has been allocated.

4.

FURTHER TAKE NOTICE THAT a copy of the transcript of the judgment and the sentence are attached hereto.

SIGNED at PRETORIA on this 3rd day of November 2014.

GC NEL

DEPUTY DIRECTOR OF PUBLIC PROSECUTIONS

GAUTENG, PRETORIA

A JOHNSON

DEPUTY DIRECTOR OF PUBLIC PROSECUTIONS

GAUTENG, PRETORIA.

CASE NUMBER: CC113/13

**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG, PRETORIA)**

In the matter between:

THE STATE

And

OSCAR LEONARD CARL PISTORIUS

**APPLICATION FOR THE RESERVATION OF QUESTIONS OF LAW IN
TERMS OF SECTION 319 OF THE CRIMINAL PROCEDURE ACT, ACT 51 OF
1977**

The Applicant herewith files its:

Notice of Application for reservation of questions of law in terms of the provisions
of Section 319 of the Criminal Procedure Act, 51 of 1977.

TO: THE REGISTRAR OF THE HIGH COURT

PRIVATE BAG X67

PRETORIA

3 X COPIES

0001

BY HAND

AND TO: ADV BARRY ROUX SC

SANDOWN VILLAGE CHAMBERS

SANDOWN

BY HAND

AND TO: BRIAN WEBBER

RAMSAY WEBBER INC.

269 OXFORD ROAD

ILLOVO

BY HAND

**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG, PRETORIA)**

In the matter between:

The STATE

and

OSCAR LEONARD CARL PISTORIUS

**APPLICATION FOR THE RESERVATION OF QUESTIONS OF LAW IN
TERMS OF SECTION 319 OF THE CRIMINAL PROCEDURE ACT, ACT 51 OF
1977**

PLEASE TAKE NOTICE THAT the prosecutors will make application to her Ladyship, the Honourable Justice Masipa on a date to be arranged with the Registrar of the above Honourable Court, requesting her to reserve questions for the Supreme Court of Appeal of South Africa relating to her judgment delivered on 11 and 12 September 2014 in this matter.

2.

PLEASE TAKE FURTHER NOTICE THAT the grounds for such reservation are the following:

1. **WHEREAS** the accused was charged with the following counts:

- a. Count 1 Murder
- b. Count 2 Contravention of Section 120(7) of the
Firearms Control Act 60 of 2000 (with alternative counts)
- c. Count 3 Contravention of Section 120(7) of the
Firearms Control Act 60 of 2000 (with alternative counts)
- d. Count 4 Contravention of Section 90 of the Firearm
Control act 60 of 2000

2. **AND WHERAS** the judgement of the court was:

- a. Count 1 "Murder ... the accused is found not guilty and
discharged. However he is found guilty of culpable homicide"
- b. Count 2 "...the accused is found not guilty and
discharged"
- c. Count 3 "the accused is found guilty of the second
alternative that is contravention of Section 120(3)(b)
- d. Count 4 "... the accused is found not guilty and
discharged"

3. **AND WHEREAS** the State is entitled to request that questions for consideration of the Superior Court of Appeal/Appellate Division should be reserved

4. **AND WHEREAS** the prosecutors are of the opinion that questions pertaining to the charge of Murder and Count 4 should be reserved

5. **AND WHEREAS** in relation to the charge of Murder the following factual findings were made:

- a. The court summarised the common facts on page 3288. The relevant facts being that the deceased was shot and killed whilst inside the toilet subsequent to her locking the door from the inside
- b. That the accused armed himself with a loaded firearm and approached the toilet ready to shoot (page 3316)
- c. That the accused wanted to use the firearm and the only way he could use it was to shoot at the perceived danger (p3317)
- d. The accused walked from the bedroom to the bathroom
- e. That the accused knew that there was a person behind the toilet door and chose to use a firearm which was a legal weapon
- f. The accused was competent in the use of a firearm
- g. The accused fired not one but four shots into the toilet door (p3810)

h. The toilet was a small cubicle and there was no room for escape for the person behind the door

6. **AND WHEREAS** it was not in dispute that the deceased was standing upright facing the door when she was shot.

7. **AND WHEREAS** the accused, on his own version, realised that a shot could ricochet and even hit him standing 5 metres away from the shower

8. **NOW THEREFORE the question should be posed if the court correctly applied the principles of Dolus Eventualis to the accepted facts**

9. **AND WHEREAS** the court dealt with the circumstantial evidence individually and excluded circumstantial evidence relied on by the State as not crucial and even referred to circumstantial evidence as "aspects which do not make sense", without rejecting such evidence

10. **AND WHEREAS** the court did not discuss, accept or reject the circumstantial evidence rendering the version of the accused impossible.

11. NOW THEREFORE the question should respectfully be posed if the court correctly applied the legal principles pertaining to circumstantial evidence

12. **AND WHEREAS** the Court correctly found that the accused presented the court with a "plethora of defences"

13. **AND WHEREAS** his defences were mutually destructive and irreconcilable

14. **AND WHEREAS** the court correctly found that "the accused was a very poor witness"

15. **AND WHEREAS** the court correctly found that "if the accused never intended to shoot anyone, he cannot rely on a defence of putative private defence"

16. **AND WHEREAS** the accused, ably defended and well informed of his rights, argued and presented a version that he never intended to shoot or never intended to shoot anyone

17. **AND WHEREAS** the court found; "The accused had intention to shoot at the person in the toilet but states that he never intended to kill that person. In other words he raised the defence of putative private defence"

18. **AND WHEREAS** the accused on his version cannot rely on the defence of private defence

19. **AND WHEREAS** the intention to shoot and not to kill does not equate to a defence of putative private defence

20. **AND WHEREAS** the court in relation to the same incident and action (shooting into the door at the person behind the door), rejected his version about the intention to shoot but accepted his version that he never intended to kill

21. **AND WHEREAS** the court accepted his defence as that of putative self-defence, against his evidence and argument.

22. **NOW THEREFORE** the questions should respectfully be reserved if a court should trawl through a "plethora of defences" and pick one for the accused or should the Court have rejected his evidence on the finding that he was untruthful and had more than one defence.

23. **AND/OR** Does the principle that an accused's version can be accepted even if the court did not believe him apply where an accused has more than one mutually destructive defence particularly if those were not elicited through cross examination but presented as such.

24. **AND/OR** accepting that the State bears the onus, should the State lead evidence and deal with every possible defence that the accused

can raise during the trial, even if irreconcilable, or should the State deal with the “preferred” defence and rely on the courts to make negative inferences where an accused proffered more than one mutually destructive defence.

25.AND/OR in this matter where the accused raised two mutually destructive defences should his evidence not have been rejected and reliance placed on the objective facts.

26.**AND WHEREAS** the Court correctly identified that on the accepted facts the accused acted in error in objecto/persona

27.**AND WHEREAS** the Court correctly found that an error as to the identity of the deceased/victim is immaterial and irrelevant to establishing criminal liability

28.NOW THEREFORE a question should be reserved as to the correctness of the court’s application of the principles of Dolus Eventualis by referring to – and taking into account - the accused’s belief of where the deceased was at the time.

COUNT 4:

29. **WHEREAS** the finding of the court as to the requirements of unlawfully possessing ammunition in contravention of Contravention of Section 90 of the Firearm Control act 60 of 2000 (the Act), has wide implications for both legal and illegal gun owners

30. **AND WHEREAS** it is in the interest of justice to clarify if only the “possession” of ammunition, for your own purposes, or which is your own, is prohibited in contravention of the provisions of the Act

31. **AND WHEREAS** the court recognised that intention is required for the requirement of possession, the court did not address what form of fault (intention/negligence), if any, is required for liability under Sec 90 of the Act

32. **NOW THEREFORE a question should be reserved to establish, what form of fault is required for liability under Sec 90 of the Act, if any, and if the court correctly found that possession and/or holding of ammunition for and/or on behalf of someone else, or which belongs to someone else, does not contravene Section 90 of the Act.**

33.NOW THEREFORE a question should be reserved to establish whether the State must prove possession of the ammunition for a purpose or just unlawful possession where the accused had no licence, permit or firearm for the ammunition.

34.We submit that there are reasonable prospects that another court may come to a different conclusion.

35.We further submit that there are special circumstances for the court to grant leave to appeal for these questions of law to be reserved, namely the huge public interest in the case both locally and internationally as well as the far reaching precedent it will set in our legal system.

SIGNED AT PRETORIA ON THIS 3RD DAY OF NOVEMBER 2014

GC NEL

DEPUTY DIRECTOR OF PUBLIC PROSECUTIONS

GAUTENG, PRETORIA

A JOHNSON

DEPUTY DIRECTOR OF PUBLIC PROSECUTIONS

GAUTENG, PRETORIA.