



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG**

CASE NO: SS 40/2006

(1) REPORTABLE: YES
(2) OF INTEREST TO OTHER JUDGES: YES
(3) REVISED. YES

21 JULY 2017

.....

SIGNATURE

THE STATE

v

PORRITT, GARY PATRICK

Accused no. 1

BENNETT, SUSAN HILARY

Accused no. 2

JUDGMENT OF 21 JULY 2017

ENQUIRY RE MR PORRITT'S FAILURE TO ATTEND

UNDER SECTION 67 OF THE CPA

SPILG, J:

INTRODUCTION

1. This is an enquiry under s 67 of the Criminal Procedure Act 51 of 1977 as a consequence of Mr Porritt's failure to attend court. He failed to attend court on 12 June and on 13, 14, 19, 20 and 21 June which were the subsequent dates set

down for the hearing. Porritt admitted that these dates had been allocated for trial. It is common cause that he was in court when I made the order that the trial would proceed on each of these dates. It is also common cause that he had only be warned to attend on 12 June although all the other dates had been agreed at the hearing of 5 June by the State and Bennett and to which the court was amenable. Porritt however wished the trial to resume only on 1 August. I rejected his submissions and made the order of 5 June in the terms which are set out later.

Unless otherwise mentioned all references to sections in legislation are to the Criminal Procedure Act.

2. There are two orders relevant to Porritt's non-attendance in court on the dates referred to earlier.
3. The first was handed down on 5 June where the following was made an order of court in the presence of the accused:
 1. *The contempt of court hearing pertaining to Accused 2 be postponed sine die;*
 2. *Dr Maria Dobрева is excused from further attending court;*
 3. *Dr Henning is excused from further attending court;*
 4. *The matter is postponed for continuation of the trial to 06 June 2017.*
 5. *The matter shall further continue on the following agreed dates:*
 - 5.1. *06 – 09 June 2017. Court to adjourn at 13:00 on 09 June 2017.*
 - 5.2. *12 – 14 June 2017. Court to adjourn at 13:00 on 14 June 2017*

- 5.3. *19 – 22 June 2017. Court to adjourn at 13:00 on 23 June 2017.*
 - 5.4. *01 – 04 August 2017. Court to adjourn at 13:00 on 04 August 2017.*
 - 5.5. *7th, 8th, 10th, and 11th August. Court to adjourn at 13:00 on 11 August 2017.*
 - 5.6. *21 – 25 August 2017. Court to adjourn at 13:00 on 25 August 2017.*
 - 5.7. *04 to 08 September 2017. Court to adjourn at 13:00 on 08 September 2017.*
 - 5.8. *11 to 15 September 2017. Court to adjourn at 13:00 on 15 September 2017.*
 - 5.9. *18 to 20 September 2017. Court to adjourn at 13:00 on 20 September 2017.*
 - 5.10. *26 to 28 September 2017. Court to adjourn at 13:00 on 28 September 2017.*
 - 5.11. *02 to 06 October 2017. Court to adjourn at 13:00 on 06 October 2017.*
6. *The Accused are to launch any application pertaining to legal representation and/or other matters pertaining to the continuation of the trial on or before 01 August 2017. The State to file their answering affidavit by 18 August 2017. The Accused to reply by 01 September 2017. Heads of Argument to be submitted on behalf of the Accused by 08 September 2017. The State to submit Heads of Argument by 15*

September 2017. Argument in respect of the said application to be heard on 05 and 06 October 2017.

4. Both accused were warned to attend on 12 June and the consequences of their failure to attend were repeated, as they had been on every remand since I was seized of the matter.
5. The hearing dates through to 6 October were carefully selected so as to accommodate Bennett and her alleged state of health without the need to determine the issue and the non-hearing dates were constructed around the court's own availability and made to coincide with other part-heards that had already been set down.

The last paragraph of the order was formulated to ensure that the continuation of the evidence, at this stage being still the evidence in chief of Mr Milne, would not be interrupted by any applications (which would be a parallel process).

6. The second relevant order was issued on 12 June when Porritt failed to appear. Bennett implored the court not to issue a warrant of arrest and the State acceded, requesting only that a warrant be authorised but not issued. The order that I was prepared to make sought to take into account the possibility that Porritt's admission at Mediclinic may be prolonged. This was the court's experience when Bennett claimed to have had a medical condition which was said to be psychiatric related or aggravated by the stress levels, with or without a pre-existing medical condition, and which it was said at some stage required continued observation.

The order of 12 June reads:

1. *A warrant for the arrest ("the warrant") of Accused no 1, Mr G Porritt, is authorised*
2. *Accused no 1 ("Porritt") is to show cause on Monday, 19 June 2017 at 10 am why the warrant should not be issued and his bail be estreated.*

3. *Porritt shall obtain a written report from Dr Mugabi or a specialist which is to be forwarded to the parties and the court by no later than 14h00 on 15 June 2017 with regard to whether or not he is able to attend court on 19 June 2017 and, if not, to provide a date by when Porritt will be discharged from hospital and whether there is any medical condition that precludes him:*

a) from appearing in court on 19 June 2017; or

b) once in attendance on 19 June 2017, from being able to participate in the continuation of the trial

and, if applicable, for how long is it expected that he will be unable to so participate.

7. The court was obviously concerned about whether Porritt would remain in hospital through to the following week or any other permutation which may result in him not attending court on 19 June. For this reason the court fashioned the order in the form it did and which it believed would be fair to Porritt while serving the interests of justice- particularly bearing in mind that no evidence had been led since December last year because the court was engaged in establishing why Bennett, who is Porritt's co-accused, did not attend court. This eventually resulted in agreement between the State and Bennett and after dismissing Porritt's objection led to the previous order of 5 June.

8. Porritt failed to appear on 19 June. Bennett who had been warned to appear applied for a postponement until 31 July 2017. The application was supported by an affidavit deposed to by her which went into detail regarding Porritt's alleged condition. The application was dismissed. It is evident that Bennett had received Porritt's backing to bring the application albeit that it was only brought in her name.

9. On 20 June an application for leave to appeal the order of 19 June¹ was brought by both Porritt and Bennett. I notified the parties that I would hear it on 21 June. Porritt was still in Pietermaritzburg at Mediclinic. The State opposed the application and submitted in its written heads that the matter was not appealable.

Adv van den Heever who now represented Porritt conceded the point. Bennett was in court since she had been warned to attend after the previous adjournment. However she was no longer represented by Adv van den Heever, it being recalled that she was only on a *pro bono* brief, in terms of the Pretoria Bar program, to represent Bennett in relation to the enquiry as to why Bennett was not in court on 30 January and her related health issues. Bennett was therefore again acting in her own defence. She opposed the application and submitted that certain paragraphs of the notice of appeal concerned her. The state opposed the application. After hearing argument I gave an *ex tempore* judgment dismissing Bennett's application for leave to appeal. That was on the 21st.

10. Porritt was arrested in Pietermaritzburg on the same day. He was transported to Johannesburg and appeared in court on 22 June. The matter was postponed to the 23rd and Porritt then requested that the s 67 enquiry be adjourned to 27 June. The enquiry proceeded on 27 June. It continued on 28, 29 and 30 June and into the recess, the court sitting on 4, 5, 7 July and also on Saturday 8 July as I was unavailable the following week.
11. Porritt accepted that he would testify first. He was led in-chief on the 27th and 28th. It was however necessary to intersperse his testimony with that of Dr Mugabi from Mediclinic Pietermaritzburg on the 29th. This was when Dr Mugabi produced not only his report and records but also the entire set of original hospital records of Mediclinic and the documents of certain other medical practitioners who had attended on Porritt at Mediclinic in respect of the two periods that Porritt was admitted at the clinic; being from 10 to 14 June and again from 20 to 21 June 2017. This was the first time that the court saw the hospital records. They had been produced pursuant to a subpoena *duces tecum*

(although the hospital records *per se* and those of the other treating medical practitioners were not pertinently identified; only Dr Mugabi's records).

12. All these records were accepted into evidence as exhibits in the series B to H and were admitted as being what they purported to be. They were relied on by both parties; Porritt being asked to deal with their contents during his evidence.

The records brought by Dr Mugabi were admitted as exhibits in the series B to H. Until then only the documents that Bennett had attached to her affidavit or which were previously received had been produced in court under exhibit A while some additional documents had already been placed in the exhibit B series.

Dr Mugabi then testified after Porritt had completed his evidence-in-chief. Dr Pillay was also interspersed.

13. Dr Mugabi together with Dr Pillay and Dr Brown had been subpoenaed *duces tecum* by the court under s 67(3). However Dr Brown was overseas and in the end was not called; the decision was taken after both parties advised that they did not wish to call her. The court considered it unnecessary to call her having regard to the evidence already before the court at that time and the delay if she was to be called, which could only be sometime later upon her return from overseas.

14. Aside from his own testimony, Porritt sought to rely on two affidavits which were handed up, one by Mr Heenen, a car guard at the pub where Porritt alleged he had his blackouts on 9 June. The affidavit was deposed to on 22 June. The other was the affidavit of Ms Govender a waitress at that pub. Her affidavit was deposed to on 20 June.

THE LAW

15. Section 67 reads as follows:

Failure of accused on bail to appear

(1) If an accused who is released on bail-

- (a) fails to appear at the place and on the date and at the time-*
 - (i) appointed for his trial; or*
 - (ii) to which the proceedings relating to the offence in respect of which the accused is released on bail are adjourned; or*
- (b) fails to remain in attendance at such trial or at such proceedings,*

the court before which the matter is pending shall declare the bail provisionally cancelled and the bail money provisionally forfeited to the State, and issue a warrant for the arrest of the accused.

- (2) (a) If the accused appears before court within fourteen days of the issue under subsection (1) of the warrant of arrest, the court shall confirm the provisional cancellation of the bail and the provisional forfeiture of the bail money, unless the accused satisfies the court that his failure under subsection (1) to appear or to remain in attendance was not due to fault on his part.*
- (b) If the accused satisfies the court that his failure was not due to fault on his part, the provisional cancellation of the bail and the provisional forfeiture of the bail money shall lapse.*
- (c) If the accused does not appear before court within fourteen days of the issue under subsection (1) of the warrant of arrest or within such extended period as the court may on good cause determine, the provisional cancellation of the bail and the provisional forfeiture of the bail money shall become final.*

(3) The court may receive such evidence as it may consider necessary to satisfy itself that the accused has under subsection (1) failed to appear or failed to remain in attendance, and such evidence shall be recorded.

16. It is evident from Porritt's bail conditions that s 66 does not apply because none of the bail conditions required Porritt to attend court on the dates set down for hearing. It is also to be noted that s 66 can only be triggered if the prosecution makes the application. This is understandable if regard is had to the general conditions that are imposed when an accused is released on bail, since the failure to meet those conditions does not occur in the presence of the presiding officer.

17. This court is concerned with Porritt's failure to appear in court on the date to which the proceedings relating to the offence were adjourned. It is common cause that he was warned to appear on that date and that he failed to do so.

One of the questions which must be considered is whether s 67 (1) (a) (ii) requires that the accused be warned to appear, and if so whether the warning is for a specific date or whether "*the date ... to which the proceedings ... are adjourned*" includes every date which the court has ordered that the matter will be heard and not necessarily the first of those dates. A further issue that may arise is whether s 67 (1) (a) is intended to refer to only the first day that trial proceedings are to commence; being the date when the accused is usually brought to court and is required to plead under s 105 as read with s 106 (subject of course to the special provisions under ss 77, 85 and 105A).

18. The constitutionality of s 67 has not been determined. However the case of an accused who is released on warning in lieu of bail under s 72, and who fails to attend court on the designated date after being warned to do so, has been.

19. In *S v Singo* 2002 (2) SACR 160 (CC) at para 39, read with point 3 of the order at para 44, the court held that in order to save s 72 (4) from constitutional invalidity it

was necessary to read into the section a requirement which had due regard to the nature of the criminal sanction that would be imposed on the accused. In order to appreciate the significance of s 72(4) in regard to the argument presented by the State it is necessary to set out the relevant provisions of s 72 as a whole:

Accused may be released on warning in lieu of bail

(1) Subject to section 4 (2) of the Child Justice Act, 2008, if an accused who is eighteen years or older is in custody in respect of any offence and a police official or a court may in respect of such offence release the accused on bail under section 59 or 60, as the case may be, such police official or such court, as the case may be, may, in lieu of bail and if the offence is not, in the case of such police official, an offence referred to in Part II or Part III of Schedule 2-

(a) release the accused from custody and warn him to appear before a specified court at a specified time on a specified date in connection with such offence or, as the case may be, to remain in attendance at the proceedings relating to the offence in question, and the said court may, at the time of such release or at any time thereafter, impose any condition referred to in section 62 in connection with such release.

(2) (a) An accused who is released under subsection (1) (a) and who fails to appear or, as the case may be, to remain in attendance at the proceedings in accordance with a warning under that paragraph, or who fails to comply with a condition imposed under subsection (1) (a), shall be guilty of an offence and liable to the punishment prescribed under subsection (4).

.....

(4) The court may, if satisfied that an accused referred to in subsection (2) (a) ..., was duly warned in terms of paragraph (a) or, as the case may be,

paragraph (b) of subsection (1), and that such accused or such person has failed to comply with such warning or to comply with a condition imposed, issue a warrant for his arrest, and may, when he is brought before the court, in a summary manner enquire into his failure and, unless such accused or such person satisfies the court that his failure was not due to fault on his part, sentence him to a fine not exceeding R300 or to imprisonment for a period not exceeding three months.

20. There has been some legal writing on whether *Singo* also applies to s 67. In Du Toit et al *Commentary on the Criminal Procedure Act* the view is that:

*“The reverse onus provision contained in s 67(2) is probably unconstitutional. It might on constitutional grounds be necessary to interpret s 67 (2) as containing a mere burden of rebuttal.”*²

21. Hiemstra’s *Criminal Procedure* is more ambivalent:

“It is arguable that the burden now, in the light of constitutional norms, has to be interpreted restrictively as merely a duty of rebuttal, by analogy with the view of the majority in S v Manamela 2000 (5) BCLR 491 (CC), 2000 (3) SA 1 (CC).

*On the other hand it can be argued with more conviction that one is here not concerned with the presumption of innocence and the risk of a guilty finding despite the existence of reasonable doubt; one is concerned with an interim arrangement. All the information about non-appearance falls within the accused’s knowledge.”*³

22. I would prefer to take a more cautious approach. My concern relates more to the consequence of the deprivation of liberty that arises if a court is not satisfied under s 67 that an accused fails to satisfy the court that the failure to appear was not due to his or her fault. While Hiemstra focuses on categorising the nature of

² At 9-106

³ At 9-28

the sanction being a criminal conviction as the potentially more attractive argument I would suggest that it is the consequence of failing to do so that should inform a court.

The substance of the enquiry is to determine whether or not an accused should be held in custody as an awaiting trial prisoner as a consequence of having his or her bail withdrawn. Incarceration, whatever its form amounts to an institutionalised deprivation of liberty (and I am alive to the fact that it remains open for the accused to reapply for bail).

If one has regard to the provisions of s 72 read in the context of the only situations in which an accused may be released from custody either by a court or a police official then it appears that s 72 should be construed as the legislature's attempt to deal with the case of a release on warning in contradistinction to a release on bail. It appears that the substance of both sections seeks to deal with the consequence of a failure to appear in court by an accused who has been released from custody.

23. *Adv. Coetzee* for the State submits that the provisions of s 67 (2) (a) are distinguishable from s72 (4) based on the second argument raised in *Hiemstra*; namely that the former does not result in a conviction and therefore the presumption of innocence and the right to remain silent are not applicable. I accept that *Singo* confined itself to evaluating s 72 against these constitutionally protected rights⁴. Nonetheless the key extracts of the judgement which deal with the purpose of s 72 and the consequences of a failure to attend court (both from the perspective of the due administration of justice and the sanction resulting from a failure to attend court) in my respectful view support applying the rationale underlying *Singo* to the constitutionally protected right under s 12(1) (which itself secures the enjoyment of most of the other rights) and also under s 35(1) (f)⁵.

⁴ At para 31

⁵ 12. Freedom and security of the person

(1) *Everyone has the right to freedom and security of the person, which includes the right-*
 (a) *not to be deprived of freedom arbitrarily or without just cause;*
 (b) *not to be detained without trial;*
 (c) *to be free from all forms of violence from either public or private sources;*

24. It would also impact on the protected right under s 35(1)(e) of the Constitution (the right “*at the first court appearance after being arrested, to be charged or to be informed of the reason for the detention to continue, or to be released*”) and on an application of a holistic and purposive approach to interpreting the sub- paras of s 35 as instances of the broader rights, based on the presumption of innocence, afforded a person once arrested to be released pending the outcome of the case.

This would also be consistent with the provisions of s 60 which provide that bail should be granted unless the interests of justice indicate otherwise (pursuant to the first significant amendment passed in 1995 in order for the section to comply with s 25 (2) (d) of the Interim Constitution). The corollary must necessarily be that bail should only be withdrawn if the interests of justice require it and in considering this question it is necessary to have regard to the accused’s right to his or her personal freedom.

While I accept that s 60(11), which relates to an accused who is facing a Schedule 5 or 6 offence, places a burden on the accused to adduce evidence the onus is discharged on a balance of probabilities. In *S v Dlamini; S v Dladla and others; S v Joubert; S v Schietekat* (1999) SA 6 (CC) the Constitutional Court held that the provisions of s 36 saved subsection (11) from constitutional invalidity since the curtailment of the right to be released on detention was justified. I would prefer to adopt a cautious approach in the present case.

25. Accordingly I believe that the following extracts from *Singo* should be applied when interpreting s 67;

-
- (d) not to be tortured in any way; and
 - (e) not to be treated or punished in a cruel, inhuman or degrading way.

35 Arrested, detained and accused persons

- (1) Everyone who is arrested for allegedly committing an offence has the right-

.....

- (f) to be released from detention if the interests of justice permit, subject to reasonable conditions.

a.

“[33] The importance of effectively prosecuting conduct that hinders the administration of justice cannot be gainsaid. Failure to appear in court manifestly hinders the administration of justice. It has the potential to undermine it too. This may well result in the public losing confidence in the system of criminal justice. The ensuing consequences may be far-reaching. The State's effort to fight crime would be undermined and the public may well take the law into their hands. It is therefore essential that courts be equipped with the power to deal effectively with any conduct that threatens the smooth running of the administration of justice. In this respect the impugned provision pursues a pressing social purpose.

[34] The purpose behind the provisions of s 72 is to facilitate the release of accused persons, including youthful ones. The further purpose is to induce, by way of criminal sanction, the accused who has been so released to obey the warning and to stand trial. As regards guardians of youthful accused persons, the purpose is to induce them to obey the warning and to ensure that the youthful accused does likewise. If the praiseworthy purpose of s 72(1) is not to be abused and if the smooth functioning of the courts is to be ensured and their disruption, which so often leads to injustice of another kind is to be avoided, the effectiveness of the sanction is crucial. By the same token, the procedure for imposing the sanction must be effective. In order to be effective and to avoid the very delay and disruption which the sanction is intended to prevent in the first place, the enquiry must be simple, flexible and speedy. This is achieved by authorising a summary enquiry in s 72(4).

[35] The limitation to the rights of a fair trial serve the public interest in two important respects: First, it enables an accused to be released from custody without bail pending his or her trial. This advances the human dignity and freedom of accused persons. It is further in the public interest that persons who abuse the benefit be dealt with swiftly and effectively. Second, the summary enquiry further serves the purpose of dealing with conduct which strikes at the very authority of the courts. By its nature, disobedience to a warning hinders the smooth running of the court's trial process. In order to ensure the proper administration of justice, such conduct must be dealt with swiftly and effectively.

[36] It is also important to bear in mind that the reason for failure to appear in court is ordinarily solely within the knowledge of the accused. It would be unfair to expect the State to establish this fact. Reasonable presumptions are required to assist in the effective prosecution of conduct that threatens the administration of justice. Indeed in S v Zuma the Court observed that:

'Some [presumptions] may be justifiable as being rational in themselves, requiring an accused person to prove only facts to which he or she has easy access, and which it would be unreasonable to expect H the prosecution to disprove. Or there may be presumptions which are necessary if certain offences are to be effectively prosecuted, and the State is able to show that for good reason it cannot be expected to produce the evidence itself.'

[37] Having regard to the importance of dealing effectively with conduct that hampers the administration of justice, the incursion into the right to silence is justifiable in the present case. But the same cannot be said of the legal burden which requires a conviction despite the existence of a reasonable doubt.

[38] Section 72(4) also limits the right to be presumed innocent. As the Court observed in S v Zuma, these rights 'are fundamental to our concepts of justice and forensic fairness.' Our conception of justice and forensic fairness demands that an accused person be presumed innocent until proved guilty and that the State be required to establish his or her guilt beyond a reasonable doubt. Section 72(4) demands the opposite. It presumes the accused guilty and it requires the accused to establish his or her innocence on a balance of probabilities. It carries a risk that an innocent person may be sent to jail. That this may be a rare occurrence matters not. Once it is established that such a risk exists, a fundamental principle of our criminal justice system has been offended.

[39] It is true that the section requires the accused to prove only those facts which are within his or her knowledge. However, it is one thing to require the accused to produce evidence that raises a reasonable doubt but quite another to require the accused to establish his or her innocence on a balance of

probabilities, and if he or she fails to do so, to convict the accused despite the existence of reasonable doubt. There are no particular circumstances here which suggest that the State cannot achieve its objective by imposing merely an evidentiary burden. That burden, while requiring the accused to prove facts to which he or she has access, is also faithful to the presumption of innocence. The imposition of such a burden would equally furnish the reason for failure to appear in court.

[40] Having regard to the importance of the right to be presumed innocent in our criminal justice system and the fact that the State could have achieved its objective by using less intrusive means, the imposition of the legal burden upon an accused has a disproportional impact on the right in question. In these circumstances the risk of convicting an innocent person is too high. It outweighs the other considerations in favour of the limitation. There are no compelling societal reasons in this particular case that will justify imposing this legal burden on the accused. I conclude therefore that the limitation is not justified.

Appropriate remedy

[41] In considering the appropriate remedy it is important to bear in mind the following considerations. First, s 72(4) pursues a pressing social concern. It is aimed at preventing conduct that hinders or threatens to hinder the administration of justice. Second, the section only requires the accused to establish facts which he or she knows. Third, if the offending phrase were to be struck down, there would be no means of dealing with the kind of case that is before us. Fourth, the State can equally achieve its objective by the imposition of an evidentiary burden on the accused to raise a reasonable doubt. In these circumstances striking down the offending phrase in s 72(4) without more, is not an appropriate remedy. Some other remedy is called for.

[42] The authority of this Court to read in words in a statute as appropriate relief is now settled. “

26. In my respectful view the parallels are evident as is the purpose of a provision such as s 72. It is for these reasons that I have quoted extensively from the judgment. I have also done so because Ncgobo J (at the time) spelt out the store the courts place on the smooth running of the administration of justice and how it is impacted if an accused fails to attend court on the trial date.

27. Applying *Singo*, s 67(2)(a) will therefore be read as follows;

“The court shall confirm the provisional cancellation of the bail and the provisional forfeiture of the bail money unless the accused satisfies the court that there is a reasonable possibility that his failure... to appear or to remain in attendance was not due to fault on his part.”

Similarly s67 (2) (b) will read;

“If the accused satisfies the court that there is a reasonable possibility that his failure was not due to fault on his part, the provisional cancellation of the bail and provisional forfeiture of the bail shall lapse.”

The added words are underlined.

28. Accordingly while the accused may wish to exercise a right to silence he or she must nonetheless “*produce evidence that raises a reasonable doubt*” that the failure to appear was not due to his or her fault.

29. As to the meaning of “*fault*”

In *Savoi and Others v National Director of Public Prosecutions and Another* 2014 (5) SA 317 (CC) the Constitutional Court said at paras 86 and 87;

“[86] The general rule of our common law is that criminal liability does not attach if there is no fault or blameworthy state of mind. This is expressed by the maxim: actus non facit reum nisi mens sit rea (an act is not unlawful

unless there is a guilty mind). The fault element may take the form of either intention or negligence. This is true of both common law and statutory offences. Thus a statute creating a criminal offence cannot be invalidated simply on the ground that it identifies negligence for the fault element. That is a choice that lies within the purview of the legislature's competence, and parliament must be given the necessary leeway. Of course, that does not mean the legislature is given free rein to choose the negligence standard as it pleases and under whatever circumstances — not in a constitutional democracy like ours. Pronouncing both on the need for flexibility and the constitutional curb, O'Regan J said in Coetzee:

'(T) he appropriate form of culpability may well be affected by the nature of criminal prohibition as well as other factors. In addition, it should be borne in mind that significant leeway ought to be afforded to the Legislature to determine the appropriate level of culpability that should attach to any particular unlawful conduct to render it criminal. It is only when the Legislature has clearly abandoned any requirement of culpability, or when it has established a level of culpability manifestly inappropriate to the unlawful conduct or potential sentence in question, that a provision may be subject to successful constitutional challenge.'

30. It also appears that s 67 has in mind culpability in the form of intent and not negligence.

In this regard I refer to *S v Coetzee and others* 1997 (3) SA 527 (CC) where O'Regan J said at paras 162:

"I turn then to a consideration of s 11. The general principle of our common law is that criminal liability arises only where there has been unlawful conduct and blameworthiness or fault (the actus reus and mens rea). This principle is ordinarily expressed in the Latin maxims actus non facit reum nisi mens sit rea and nulla poena sine culpa. At common law, the fault requirement is generally met by proof of intent (dolus) in one of its recognised forms, and, in

rare circumstances, by the objective requirement of negligence (culpa). As Kentridge AJ has mentioned in para [94] of his judgment, the requirement of fault or culpability is an important part of criminal liability in our law. This requirement is not an incidental aspect of our law relating to crime and punishment, it lies at its heart. The State's right to punish criminal conduct rests on the notion that culpable criminal conduct is blameworthy and merits punishment. This principle has been acknowledged by our Courts on countless occasions. For example, in R v Wunderlich 1912 TPD 1118, De Villiers JP held that:

'There is no doubt that as a general rule a person is not criminally liable unless he has what is called mens rea. This is usually expressed by the maxim: actus non facit reum nisi mens sit rea. This is a sound rule, for a person is not to be subjected to the stigma and other consequences of a crime unless he had what is sometimes called a guilty mind. And from this it follows that in general a person is not criminally liable for an act or omission, unless he himself has committed or omitted the act or has authorised it.'

(At 1121...)

31. In the context of s 67 I believe that the requirement of fault resulting in the cancellation of bail and forfeiture of the bail money will arise in the circumstances of this case if;

- a. Porritt fails to satisfy the court that his non-appearance was not due to circumstances which reasonably prevented him from appearing; and
- b. the court is satisfied that he intended to avoid attending court for the purpose of frustrating the case from either continuing or being postponed to another suitable date.

While this may overstate the position I would prefer to give Porritt the benefit of such a broad interpretation.

32. The interpretation of a number of other words contained in s 67 has been raised in argument by both counsel. They include the meaning to be given to the phrase “*appointed for his trial*” in s 67(1)(a)(i), the words “*on the date... to which the proceedings... are adjourned*” in subsection (a)(ii), the words “*fails to remain in attendance...at such proceedings*” in s 67(1)(b) and the word “*satisfy*” in s 67(2)(a).

33. The State argued that s 67 provides for three alternative situations, namely; a failure to appear on the date appointed for the trial, on a date to which proceedings are adjourned and a failure to remain in attendance.

34. It was further argued that the word “*appointed*” has the following dictionary meaning:

*“...to determine by authority or agreement, fix, set
... determine or decide on (a time or place), decree ”*

Adv. Coetzee relies on the Oxford South African Concise Dictionary (2nd ed) 52 and also the website www.dictionary.com/browse/appointed.

35. The State also relies on the Afrikaans version of s 67 since it was signed into law by the then State President and is therefore decisive for purposes of interpretation.

The significant phrase in s 67(2)(a) is:

“tensy die beskuldigde die hof oortuig dat sy versuim om ingevolge subartikel (1) om te versuim of aanwesig te bly nie te wyte was aan skuld aan sy kant nie”

Adv Coetzee argues that the word “*skuld*” includes *dolus* and *culpa* and that fault in this context includes an intentional or deliberate decision not to appear (*dolus*) as well as *culpa levissima* (negligence arising from the slightest negligence).

He also points out that “*bepaal*” means “*vasstel, noukeurig aangee (betekenis van ‘n woord) deur ondersoek vasstel; beslis nader omskryf; (taalk.) hom beperk tot, vestig op*” and refers to *Verklarende Afrikaanse Woordeboek* (5th) 2nd column at p 66

36. In my view there is an overarching provision governing bail under Chapter 9 of the CPA that does not find a counterpart under Chapter 10, which deals with an accused who is released on a warning under s72. Section 58 is an umbrella provision which, in its terms, expressly governs all the sections relating to bail. It provides:

“Effect of bail

The effect of bail granted in terms of the succeeding provisions is that an accused who is in custody shall be released from custody upon payment of, or the furnishing of a guarantee to pay, the sum of money determined for his bail, and that he shall appear at the place and on the date and at the time appointed for his trial or to which the proceedings relating to the offence in respect of which the accused is released on bail are adjourned, and that the release shall, unless sooner terminated under the said provisions, endure until a verdict is given by a court in respect of the charge to which the offence in question relates, or, where sentence is not imposed forthwith after verdict and the court in question extends bail, until sentence is imposed: Provided that where a court convicts an accused of an offence contemplated in Schedule 5 or 6, the court shall, in considering the question whether the accused's bail should be extended, apply the provisions of section 60 (11) (a) or (b), as the case may be, and the court shall take into account-

(a) *the fact that the accused has been convicted of that offence;*
and

(b) *the likely sentence which the court might impose.”*

(emphasis added)

37. The legislature has expressly required through s 58 that all the sections within Chapter 9 are to be read as incorporating its provision. In short; there is no requirement that an accused on bail must be warned to appear provided the court has directed the date or dates on which the trial will commence or continue. This interpretation is reinforced by the exclusion of the requirement of a warning which is a necessary precondition to an enquiry under s 72.

38. The release of an accused under s 72 is intended to be confined to a person who has committed what may be described as a “*non-serious*” offence and presumably is a matter confined to a day’s hearing at a time. If s 67 is to be interpreted to require the accused to be warned for each day that the court orders a matter to be set down for hearing then two things will follow: Either the court cannot continue with the current practice of only authorising or issuing but not executing a warrant of arrest for non- appearance⁶ or else the court must warn the accused prior to the next set of hearings that have been ordered to appear on each of the days that have been set down, which in this case would have required a warning for the whole set of dates that were ordered at the hearing of 5 June.

This would create a problem if there was some inability to commence on any of the days, as it would be necessary to undo the warning or issue a warning subject to the possibility that the matter may not proceed, in which case the accused would be informed in some way or another. However this in turn would negate the clear wording of s 58.

39. In my view, unlike s 72, for s 67 to be triggered an accused must have been properly notified of the date or dates to which a case has been remanded, and by reason also of s 58, no warning need be given or repeated ⁷. In the present case notification was by way of an order given in open court in the presence of the accused.

⁶ A position endorsed by Foxcroft J in *Terry v Botes And Another* 2003 (1) SACR 206 (C) at 211b and c

⁷ This is also borne out by the need for consistency of application in respect of the various subsections to s 67(1) where it is self-evident that subsection (a)(i) would not necessarily be preceded by a warning whether in open court or otherwise.

40. For the purposes of this case I will deal with the matter at two levels. Firstly on the basis that my view is incorrect and that s 67 can only apply in respect of the failure to appear in court on 12 June. The other will be on the basis that the interpretation I have adopted is correct.

41. In *Singo* the court did not consider it necessary to tamper with the phrase “*the accused satisfies the court*”. In its context *Singo* would therefore indicate that there remains an evidential burden on the accused to satisfy the court that there is a reasonable possibility that the failure to appear or remain in attendance was not due to his or her fault.

42. It appears that in applying *Singo* the accused must demonstrate a lack of culpability which, depending on the circumstances that resulted in the failure to attend, will either mean the absence of an intention to deliberately avoid being in court when in the circumstances there is no reasonable explanation for such failure, or that there is a reasonable possibility that there can be no blame attributed to the accused for not being in court.

While there may be a degree of overlapping, the former covers the case of involuntary incapacity where the accused has no say or exerts influence which leads to the inability relied upon. The case of a motor accident which renders the accused physically incapacitated on the trial date would be one in point.

The latter case, although also covering an unanticipated event, involves a conscious choice made by the accused not to attend court, or whose conscious acts influence the decisions of others. It arises where the accused takes decisions, after weighing competing considerations, which in all the circumstances amounts to an explanation from which the reasonable possibility arises that the failure to appear was not due to fault on his or her part.

Moreover a court would be adopting an unacceptable armchair approach if it were to simply replace its own view of what is reasonable conduct in the

circumstances; the context in which the words “*a reasonable possibility*” have been inserted by *Singo*, into a reading of the section indicates as much.

43. It is interesting to note that in *Pillay v Krishna and Another* 1946 AD 946 at 952-953 the court in referring to onus said that in its true and original sense it means;

“... the duty which is cast on a particular litigant , in order to be successful, of finally satisfying the court, that he is entitled to succeed on his claim, or defence, as the case may be, and not in the sense merely of his duty to adduce evidence to combat a *prima facie* case if his opponent.”

44. This case was referred to in the majority judgement of *Brooks and Another v National Director of Public Prosecution* 2017 (1) SACR 701 (SCA) at para 75 against footnote 92. This is particularly relevant where, as stated in *Singo* the facts that are relevant in a s72 enquiry (and by necessary application a s 67 enquiry) would be peculiarly within the knowledge of accused if not entirely a matter that concerns a determination of the accused’s state of mind. Regard should also be had generally to *S v Manamela* 2000 (1) SACR 414 (CC).

45. In *S v Theko* 2010 (2) SACR 339 (GNP) at para 10 the full bench held that the onus is on an accused to convince the court on a balance of probabilities that the failure to appear was not due to his fault. This passage was however not necessary for the purposes of the case and reliance was placed on *S v Cronje* 1983 (3) SA 739 (W)⁸. Both *Du Toit et al* at 9-106 to 9-107 and *Hiemstra* at 9-28 consider that *Cronje* might be problematic and that there may be a mere burden of rebuttal, *Hiemstra* relying on the analogous situation identified in *Manamela*.

46. At this stage I believe it is unnecessary to suggest anything more than that this court should apply *Singo*, particularly at para 39, and that the court is concerned with an evidential burden.

⁸ *Cronje* at 741G. See also *S v Theko* 2010 (2) SACR 339 (GNP) at para 10

47. In this regard it is also of significance that the term “*reasonable possibility*” does not appear to entail a full burden of proof but may be equated with a “*fair probability*” as that term was adopted in the case cited by Adv. Van der Heever of *Die Afrikaanse Pers Bpk v Naser* 1948 (2) SA 295 (C). In *Afrikaanse Pers* at 297 the court said:

“Satisfy” does not mean “prove.” I take “satisfy” to mean therefore that the court must feel that there is a fair probability that the defendant’s defence is a good one, at any rate that it is bona fide.”

48. The term “*reasonable possibility*” appears, with respect, to have been deliberately selected by *Singo* in contradistinction to a “*reasonable probability*”. In the later case of *Oakdene Square Properties (Pty) Ltd and Others v Farm Bothasfontein (Kyalami) (Pty) Ltd and Others* 2013 (4) SA 539 (SCA) the court found that applying it would be too onerous in the context of business rescue legislation. Although in a different legal field I believe that the following passages from paras 29 and 30 are relevant:

[29] This leads me to the next debate which revolved around the meaning of ‘a reasonable prospect’. As a starting point, it is generally accepted that it is a lesser requirement than the ‘reasonable probability’ which was the yardstick for placing a company under judicial management in terms of s 427(1) of the 1973 Companies Act (see e.g. Southern Palace Investments 265 (Pty) Ltd v Midnight Storm Investments 386 Ltd 2012 (2) SA 423 (WCC) para 21). On the other hand, I believe it requires more than a mere prima facie case or an arguable possibility. Of even greater significance, I think, is that it must be a reasonable prospect — with the emphasis on ‘reasonable’ — which means that it must be a prospect based on reasonable grounds. A mere speculative suggestion is not enough. ...

[30] Self-evidently it will be neither practical nor prudent to be prescriptive about the way in which the appellant must show a reasonable prospect in every case. Some reported decisions laid down, however, that the applicant must provide a substantial measure of detail about the proposed

plan to satisfy this requirement (see e.g. Southern Palace Investments 265 (Pty) Ltd paras 24 – 25); Koen and Another v Wedgewood Village Golf & Country Estate (Pty) Ltd and Others 2012 (2) SA 378 (WCC) paras 18 – 20). But in considering these decisions Van der Merwe J commented as follows in Propspec Investments (Pty) Ltd v Pacific Coast Investments 97 Ltd and Another 2013 (1) SA 542 (FB) para 11:

'I agree that vague averments and mere speculative suggestions will not suffice in this regard. There can be no doubt that, in order to succeed in an application for business rescue, the applicant must place before the court a factual foundation for the existence of a reasonable prospect that the desired object can be achieved. But with respect to my learned colleagues, I believe that they place the bar too high.'

And in para 15:

'In my judgment it is not appropriate to attempt to set out general minimum particulars of what would constitute a reasonable prospect in this regard. It also seems to me that to require, as a minimum, concrete and objectively ascertainable details of the likely costs of rendering the company able to commence or resume its business, and the likely availability of the necessary cash resource in order to enable the company to meet its day-to-day expenditure, or concrete factual details of the source, nature and extent of the resources that are likely to be available to the company, as well as the basis and terms on which such resources will be available, is tantamount to requiring proof of a probability, and unjustifiably limits the availability of business rescue proceedings.'

49. The term has been used in a number of contexts; from the test for negligence (which appears to be inappropriate in the context of s 67) to the reasonableness of a decision taken which appears more in point. See in this regard the cases of *National Commissioner of Police v Southern African Human Rights Litigation*

Centre and Another 2015 (1) SA 315 (CC) at para 78 and *Tantoush v Refugee Appeal Board and Others* 2008 (1) SA 232 (T) where Murphy J said at para 97

*“The RAB's finding that the applicant was required to prove a real risk on a balance of probabilities is not correct. The appropriate standard is one of 'a reasonable possibility of persecution' - see *Immigration and Naturalization Service v Cardoza-Tonseca* 480 US 421 (1987) at 440. Two decisions of this division have concluded similarly, namely *Fang v Refugee Appeal Board and Others* 2007 (2) SA 447 (T) and *Van Garderen NO v Refugee Appeal Board* (supra). In the latter Botha J stated:*

In my view by simply referring to the normal civil standard, the RAB imposed too onerous a burden of proof. It is clear . . . that allowance must be made for the difficulties that an expatriate applicant may have to produce proof. It is also clear that there is a duty on the examiner himself to gather evidence.

Later in the judgment the learned judge added:

All this confirmed my view that the normal onus in civil proceedings is inappropriate in refugee cases. The inquiry has an inquisitorial element. The burden is mitigated by a lower standard of proof and a liberal application of the benefit of doubt principle.”

50. In my respectful view this also answers the question of whether it is sufficient to simply rely on hearsay evidence or be content with an affidavit. Each case must be decided on its own facts as to whether an affidavit by a person not subjected to what I will refer to as cross-examination by the party against whose position the evidence is tendered will satisfy the requirement or whether it is necessary to lead viva voce evidence. In *Terry v Botes and another* 2003 (1) SACR 206 (C) the facts were objectively determinable and did not require an engagement into the accused's mental state.

PORRITT'S EVIDENCE IN CHIEF

51. Porritt claims that on the night of 9 June 2017 he went to the local pub at about eight in the evening. He had drunk a glass of whisky at home. At the pub he said that he had a “very big” eisbein which is pork knuckles and very rich. He had a glass of wine before the meal came.⁹ After finishing the meal but while still seated Porritt became light headed. He described it as similar to the sensation when one gets up too quickly.

52. This surprised him and he decided to go to the toilet. However when he got there he did not feel like urinating and as he turned to leave something occurred and the next thing he knew was that he “*felt a hell of a crack*” on his head¹⁰ and that two men who he could not identify were “*helping me up and saying, are you okay, are you okay. I was frankly quite embarrassed and I got up as quickly as I could and I said I am fine, I am fine.*”¹¹ He then “*rushed out the gents*”¹². A short while later during his evidence in chief Porritt claimed that he felt perfectly lucid after this episode, and re-joined “*the people at the bar, as though the incident had not occurred.*”¹³

53. On returning to the bar Porritt mentioned that he had blacked out. Adv van den Heever expressly asked: “*Who did you mention this to?*” Porritt replied “*I was with a friend at the bar and I mentioned to her that I had blacked out and I was in a bit of shock about it.*”¹⁴ Counsel did not ask Porritt to mention the name. This will become significant later. Porritt however said that he felt a 100 percent. With hindsight his impression is that he had blacked out for a split second, hit the floor, woke up, jumped up and rushed out. He however then said that while his impression was that he had blacked out for a fraction of a second it might have

⁹ 27/6 vol 1 p 58

¹⁰ 27/6 vol 1 p59

¹¹ 27/6 vol 1 p59

¹² 27/6 vol 1 p60

¹³ 27/6 vol 1 p 62

¹⁴ 27/6 vol 1 p60

been “for a lot longer, because those guys were standing over me and actually in a bit of a panic.”¹⁵

54. On returning to his barstool he apparently just tipped backwards off the stool.

Porritt claimed to have had no warning- he was rendered unconsciousness and when he came to he found himself lying on the floor in front of the bar with a crowd of people around him. He volunteered that on this occasion the blackout occurred in the main public area. He also said that, unlike the previous episode he was shaken and had tremendous muscle fatigue. He described feeling “as though I had run the comrades marathon without training”.¹⁶

55. The next portion of the questions asked by his counsel and the answers given by Porritt are relevant and will be quoted:

“Can I ask you at this point, did you ask, or did anybody tell you what happened to you whilst you were seated on the bar chair? ---

Yes. When I was helped up, a couple of people took me outside to get some fresh air and again, I felt I recovered well. But they told me that I was as white as a ghost and I was freezing cold and that apparently I had been out for a few minutes, twitching on the ground and some patrons thought that I may have been suffering an epileptic fit.

I realised then that something was drastically wrong and I had better get home. So I went back inside and I asked for my bill, which I then settled and I left. I walked across the parking yard and as I got to the car and, I again got lightheaded, dizzy spell and I reached out to steady myself on the car. Apparently I again passed out, the next thing I knew, I do not know how long I was down that time, the next thing I knew, the car guard and another fellow were picking me up off the ground.

¹⁵ 27/6 vol 1 p61

¹⁶ 27/06 vol 1 p62

...

At that time, my recovery was entirely different (to the two previous occasions), I could not stand properly and I knew that there was no prospect of driving. I was fuzzy, I got into the passenger side of the vehicle and I could not sit up properly, to see where I was going."¹⁷

(emphasis added)

56. It is evident that Porritt described these events in a manner which led one to believe that but for the third incident he would have driven himself home and that no-one was accompanying him at that stage

57. A short while later Porritt explained how he felt on this occasion:

"... not only was my body broken, but all my mental faculties were severely impaired. A friend drove me home; I missed the turn at the traffic light and I overshot my house."¹⁸

58. He also related that he was terrified to drive and that the person who drove him home knew "*more or less, but not exactly*" where he stayed. He had missed the turn-off because he could not keep his head up to give directions. Porritt thought that his head was below the dashboard. He even overshot his house and had to turn back.

59. When he arrived at home he had great difficulty walking; he could not stand up straight and had to be helped up the stairs. He said that he virtually crawled up the stairs. He had great difficulty walking when he reached his home.

60. He again proffered an unsolicited explanation:

"I have been asked subsequently, by various people, why I did not go to a hospital. I have a phobia of hospitals and I avoid doctors, I have not been to

¹⁷ 27/06 vol 1p62

¹⁸ 27/06 vol 1 p 63

my family doctor, I do not think in 10 years. And when this happened, I just wanted to get home, to my bed.”¹⁹

61. There are two observations which should be made at this stage in anticipation of evidence that was elicited during his cross-examination. Firstly, Porritt gave the distinct impression that he met his friend after he arrived at the pub and that when he decided to pay the bill and leave after the second attack he had left his friend inside the pub and walked out alone resulting in the further distinct impression that someone else who was not familiar to him had driven him home—either in his car, or that his car was left at the pub. Secondly the friend who was at the bar was identified as having been informed of the first episode but was not mentioned at all as having been among those who observed the second or had helped him at any stage from the time he fell until he walked out the pub on his own after settling the bill.
62. The next morning (Saturday the 10th) he felt broken; his whole body was aching. Not only did he still feel as though he had run the comrades but also as if a herd of cattle had trampled over him. He just lay in bed and at about midday received a call from Bennett, who at that stage was in Knysna. Porritt claimed that she immediately realised from his voice that something was seriously wrong. She asked what the matter was and she “*had a fit*” because Porritt had not been to see a doctor. The State pertinently raised the challenge of hearsay when Adv van den Heever advised that she was not going to call Bennett, who was in court. Adv Van den Heever then accepted that the evidence was inadmissible. Porritt proceeded to relate that as a consequence of their conversation he was persuaded to phone his wife, from whom he is separated.
63. Porritt’s wife expressed shock when he related what had occurred, but because she was out to lunch with some people she would fetch him within the hour. She however forewent her lunch and rushed him to the emergency ward at Mediclinic in Pietermaritzburg. All this is used to explain why he had not contacted his family doctor, Dr Richard Anderson, who he also volunteered, would have knocked off

¹⁹ 27/06 vol 1 pp63-64

by then. Porritt explained that he was still very shaken, that his mental faculties were not what they should have been and that accordingly he was not in a position to read the hospital forms and left it for his wife to complete.

The hospital records which were subsequently brought by Dr Mugabi under a subpoena duces tecum reflect that Porritt was admitted into emergency at 14:43 on Saturday the 10th.

64. It is evident that Porritt was not admitted as a consequence of any referral. It also appears from the admission documents that someone had mentioned syncope since the words “*Syncope and collapse*” were written on the admission form that was printed out at that time (i.e. at 14:43). The admission form was one of the original hospital records produced the following day by Dr Mugabi under the subpoena.

Porritt volunteered that he had never seen the word before and only subsequently after doing a bit more investigation was he told that it was a collapse due to unconsciousness.²⁰

65. As a result of the history he related, as set out above, Porritt was admitted through the emergency room where he was examined by the senior doctor on duty and put on a drip. An ECG was also done because of concerns that he was suffering from a heart condition. The hospital records reflect the following:

“Refer Doc: NO REFERRING DOCTOR

Family Doc: NO FAMILY GP²¹

Admit Doc: Dr Manzi

66. Porritt testified that he told the emergency room doctor, who would have been Dr Manzi, that he had to travel to Johannesburg for business reasons on the following day and therefore needed to be treated speedily. He explained that he

²⁰ 28/06 vol 2 pg 112.

²¹ *Prima facie* this is at odds with later testimony that Dr Anderson was the family doctor who he then tried to contact, albeit that he had not needed any doctor for a very long time.

did not feel that it was necessary to say that it was for a court case; he just wanted them to know that he had *“urgent issues to attend to in Johannesburg”* and needed to be there. According to Porritt she immediately responded: *“No, no, that is not going to happen.”* ²²

67. He was then referred to a specialist, Dr Ingles. When Porritt raised his concerns about traveling to Johannesburg, the specialist also said *“no ways”*. Dr Ingles picked up an irregular heart rhythm and said that although it may not be serious, it needed to be thoroughly investigated.

68. Dr Ingles informed Porritt that he would be placed under the care of Dr Mugabi, a specialist cardiologist. Apparently Dr Mugabi was not available at that time. He was then wheeled through to the cardiology ward. His headboard was marked *“high fall risk”* and he was given strict instructions that under no circumstances was he to get off the bed on his own. He was told to ring the bell for assistance if he needed to go to the bathroom.

69. Dr Mugabi came at about 23:00 in the evening. Porritt related what had happened and Dr Mugabi explained the procedures that he was undertaking: They included continuous blood pressure monitoring, ECGs and an angiogram. Dr Mugabi also said that he may have to refer Porritt to a neurologist depending on the outcome of the heart tests. The ECGs and blood pressure monitoring had already been implemented by Dr Mugabi before Porritt physically saw him. Dr Mugabi was quite shocked that he had suffered three blackouts in less than half an hour.

70. On Sunday night Porritt realised that *“they were not going to get me out of hospital in time to get to court on Monday”* and *“requested a letter from the doctors that had admitted me, explaining the position so that I could apprise the court appropriately as soon as possible”* ²³

²² 27/06 vol1 p 71

²³ 28/06 vol 2 p 94

71. He made the request to Dr Ingles who was the emergency specialist. Dr Ingles in turn referred him to Dr Mugabi as the responsible doctor. Porritt then obtained a note from Dr Mugabi on the Sunday night. It is A4 in the bundle of documents. Dr Mugabi's handwritten note is on the stationary of Mediclinic and reads:

“

- *This is to certify that Mr Gary Porritt is presently an in-patient at the Mediclinic Hospital Pietermaritzburg*
- *He was admitted on 2017/06/10*
- *He is being evaluated for a problem of syncope*
- *He shall be an inpatient for at least the next 3-5 days*

Sincerely Dr A Mugabi (Cardiologist)

72. Porritt stated that his general physical condition was not good on the 11th.

Several tests were done on the Sunday and on Monday the 12th. He was again asked if the issue of potentially being discharged from hospital was discussed with Dr Mugabi on either the Sunday or the Monday. Porritt answered that it was discussed and Dr Mugabi informed him that the tests would take at least three to five days depending on what was found. Porritt personally felt that he certainly could not go to court and attend the proceedings.

73. Porritt said that he had seen the neurologist, Dr Yacoob, on Tuesday 13 June.

The neurologist's report was clear. Porritt said that he was somewhat distressed by this because *“they had not found the cause of my problem”*. He then claims that he related to the neurologist the story of a friend of his who had gone through a similar experience during a very stressful period of her life which resulted in blackouts and after all the tests came back clear from the neurologist and cardiologist she died suddenly in her sleep despite no diagnosis picking up that there was anything wrong with her.²⁴ Porritt told Dr Yacoob that there was a belief that she had suffered from continual adrenalin excretion which allegedly results in drops in the blood pressure.

²⁴ 28/06 vol 2 p 98

Dr Yacoob replied that this was out of his field and that Porritt would need to see a clinical psychologist who would know about these issues. Since he was under the control of Dr Mugabi, Dr Yacoob could not make the recommendation and that Dr Mugabi would have to do the referral.

74. Some of Porritt's testimony was not led chronologically. However it was common cause that Warrant Officer Harding served the court order of 12 June personally on Porritt sometime during the day of Tuesday 13 June. While Porritt does not claim to have received any advance notice of it from Bennett or attorney Frank Cohen, it is evident that during the course of Tuesday Porritt knew the terms of the order of the 12th June.

75. W/O Harding had deposed to an affidavit and in it he mentioned that Bennett was sitting next to Porritt at the time of service. Porritt replied "*She never came to Mediclinic or Pietermaritzburg during that period ... from the 10 to 14 June*".²⁵ According to Porritt the person sitting next to him at the time the order was served on him was Vanessa Pretorius. This was the first time that her name was mentioned by Porritt in evidence. Porritt did not believe that she had made the remarks which Harding had attributed to the person he claimed was sitting next to Porritt²⁶

76. Porritt spoke to Dr Mugabi about this late on Tuesday when the doctor came through on his rounds. Dr Mugabi however said that he had already arranged for Porritt's discharge by noon on the following day. This took Porritt by surprise since "*they had not determined the cause of my problem which was the whole purpose I went to hospital*". While Porritt accepted that the tests done up to the time Dr Mugabi said that he was ready to be discharged showed no heart issue, "*or one of the brain issues that could have been determined on the few tests they did*" it is evident that Porritt believed that not all tests to eliminate a neurological issue had been done. He was however relieved that test for carotid arteries was negative which meant that he "*did not have silted up carotid arteries like Ms Bennett*"

²⁵ 28/06 vol 2 p107-108

²⁶ 28/06 vol 2 p109

77. According to Porritt, Dr Mugabi agreed that it was a good idea for him to see a clinical psychologist and arrangements were made for him to see Dr Elder who would consult with him at the hospital at 9am on the following day, which would be before he was discharged. When the court asked for clarification Porritt said that Mugabi had authorised it but that the hospital arranged the consultation. He also could not recall who made the appointment or how Dr Elder's name came up for the referral since he never knew the name previously.²⁷

78. In any event he did not see Dr Elder. According to Porritt just before the appointment on Wednesday he received a message that Dr Elder was ill and could not attend to her patients. Porritt also said that she had squeezed him in because she had been contacted after hours, but he did not remember by whom. It is for this reason that she could only see him at 3pm on the Friday public holiday (June 16th) since she had to push out her other patients for the Wednesday and Friday. Porritt believed that this message was conveyed by Bennett²⁸

79. Adv van den Heever then asked Porritt for how long he was actually marked as a *"high care patient"*. At this stage the medical records had not been brought through. He answered that it was until Wednesday 14 June when he was discharged.²⁹ He was discharged by Dr Mugabi at about lunch time.

80. Since the appointment with Dr Elder had been arranged under the hospital plan he was anxious about it being extended until after he was discharged as it *"would form part of the hospital's investigation into ... my collapses. My syncope"*³⁰. He however was given a sticker by the sister at the cardiac unit to give to Dr Elder when he met her on Friday. Porritt volunteered to produce it from his pocket. Adv van den Heever said that it need not be shown.³¹ There is

²⁷ 28/06 vol 2 p102-103. Dr Mugabi's notes do not mention Dr Elder.

²⁸ 28/06 vol 2 p103-104

²⁹ 28/06 vol 2 p 97

³⁰ 28/06 vol 2p111

³¹ 28/06 vol 2 p111

however no mention of this in any of the hospital records that were brought through on the following day by Dr Mugabi.

81. Porritt testified that from the Tuesday (i.e. 13 June) he started having the most unbelievable headaches he had ever experienced in his life. He claimed that he was not a headache sufferer and if there is an occasional onset of a headache it only requires one or two Sindols and the headache is alleviated within 15 minutes. He became very distressed because he had asked for medication on three occasions before receiving it. The staff explained that they needed authorisation from Dr Mugabi to prescribe the medication. The medication proved completely ineffective and Porritt complained further because the headaches were unbearable. He was then given some big green tablets which, although not very effective helped to a certain extent. He took them again on the morning of the 14th and when he was discharged was given a large container of them.
82. Porritt explained that he was extremely distressed about being discharged before the cause of his problem was determined and hoped that Dr Elder would be able to shed some light on the problem. Porritt explained that physically he was weak and was enduring these blinding headaches. While in his ward preparing to leave he bent forward to tie up his shoelaces and felt that his head was *“full of a heavy liquid that rushed to the front of my head as I bent forward. And I thought my head was going to explode.”*³² He also explained that if he stood up it would instantly set off the headache, so too if he sat up from a lying position. He said that he had no headaches until the Tuesday afternoon and believes it arose after the angiogram.
83. He also claimed that the green tablets proved to be useless and that he was a wreck from the headaches. He therefore procured some migraine packs from a chemist which contained 5 tablets in each pack. He said that they were very strong and are supposed to instantly knock out a migraine. He claimed that he was taking three packs of 5 tablets each a day. He started taking the migraine packs on Wednesday and continued with them on Thursday, Friday and

³² 28/06 vol 2 pg 113-114.

subsequently. Porritt said that he suffered a terrible migraine when giving his evidence on the 26th and that he had to lie on the floor because if he stood up it was terrible.

He also claimed that he suffered a terrible migraine in the cells on the night of 27 June and took another migraine pack in the early hours of 28 June which has enabled him to be in court to testify on the day in question. He described all these headaches as unbelievable and even as he was testifying it felt as if he had been punched in his right eye.³³

84. On Thursday morning 15 June Dr Elder's receptionist informed him that she had become more ill and had to cancel all her Friday appointments. Porritt explained that he was relying on Dr Elder to send a report to the court which he had hoped to have on the Wednesday and failing that on the Thursday. Since it was the long weekend he was also in a panic as to how he was going to deal with his health issues because he could not access anyone else on short notice. Since the court order required a report by Thursday at 2pm he desperately tried to arrange to see another specialist before then but was unable to do so. He claimed that many of the specialists purported to be booked out for 2 months. Porritt wished to see a psychiatrist or clinical psychologist. However in his own mind he would not be physically capable of attending court on Monday 19 June explaining that:

*"I was by then in fear for my life, because the headaches were killing me. I did not know what had caused my blackouts. I could not drive a car. And if I had been ordered to get onto an aeroplane I would have rather had an AK47 put in my ear and the trigger pulled."*³⁴

85. In answer to Adv. Van der Heever's question as to what drove him to fear for his life he said;

"I had no warning and no control over they syncope... I have always been a robust person and it was just as though somebody just switched out the lights

³³ 28/06 vol 2 pg 116-117.

³⁴ 28/06 vol 2 pg 119.

with no warning whatsoever. And then it would come on and now I had started with these unbelievable headaches which I had never experience in my life before. And I knew something was seriously wrong but I had been discharged from the medical facility without a prognosis.”³⁵

86. After being informed that Dr Elder would not be able to consult with him he tried to get a psychiatrist or another clinical psychologist to asses him as urgently as possible. He even tried to contact Dr Dobрева’s rooms. He said that she may be reluctant to treat him because she was treating Bennett but nonetheless he though she may be able to direct him to a psychiatrist or clinical psychologist. He however spoke to her bookkeeper because she had already gone away for the long weekend. The bookkeeper advised that if he was admitted to a private psychiatric facility like Oatlands there would be a psychiatrist on call and they would be able to access one over the long weekend. It was important for him to do so because *“I was desperate to have my problem assessed and to receive some treatment for it so that I could get to court on the Monday or failing that to receive a proper specialist report on what the situation was.”³⁶*

87. Dr Dobрева’s bookkeeper also informed him that one could not get into Oatlands directly but needed a referring Doctor. Since his own doctor had retired since he had last seen him over 10 years ago and was working elsewhere Porritt contacted his ex-wife who informed him where Dr Anderson was practicing and gave him directions. Porritt informed the court that he was taken to Dr Anderson by Vanessa Pretorius. When he arrived there he was informed that the doctor had also knocked off for the long weekend. This would have been between noon and 1pm.

88. Porritt was referred to one of Dr Anderson’s partners, Dr Cynthia Brown. He then consulted with Dr Brown who he had not previously met. He presented his history to her and mentioned that after his appointment with the clinical psychologist had been cancelled, he was unable to access a psychiatrist or another clinical psychologist. He told her that it was desperately urgent for him to see one. He

³⁵28/06 vol 2. Pg 119.

³⁶ 28/06 vol 2 pg 120

also informed Dr Brown that if he was referred to Oatlands psychiatric care facility there would be a psychiatrist or psychologist on call who he would be able to see over the weekend. He said that his intention was to have his medical condition assessed and treated because he was being killed by the headaches and because he had the Monday court date looming which he had mentioned to Dr Brown.³⁷

89. Dr Brown was somewhat disparaging about the EEG test that had been done for epilepsy and said that it was not very accurate. She indicated that there was an outstanding neurologist who practiced in Howick. Dr Brown thought it appropriate for him to obtain a second opinion from a neurologist while he was admitted at Oatlands.

90. In response to a direct question from his counsel Porritt said that it was absolutely not his intention to be admitted into Oatlands or see a psychologist or psychiatrist in order to escape coming to court on Monday 19 June. He said that his first prize would have been to be well and attend court.³⁸ Dr Brown did not say that it was necessary for him to see a psychiatrist or psychologist. She in fact contacted Oatlands and made the necessary arrangements for Porritt's admissions. She was able to arrange an admission for Saturday 17 June. Dr Brown's referral note had been forwarded among the documents already handed into court. It is dated 15 June and reads

"To whom it may concern

This is to certify that (indecipherable) saw Mr G Porritt today.

He has just recently been discharged from Mediclinic for investigation of syncopal attacks by various specialists.

I have now referred him to Oatlands psychiatric facility in Howick for his mental state and possible further evaluation for epilepsy. "

91. Porritt explained that later on the Thursday afternoon he was contacted by Terry, who is the hospital manager at Oatlands and Porritt told her that he had been

³⁷ 28/06 vol 2 pg 123.

³⁸ 28/06 vol 2 pg 124.

advised that a highly rated psychologist, Dr Olla, was on standby over that weekend. Terry advised him that Dr Olla was going on leave straight after the weekend and that she accordingly was discharging her patients on the Thursday and was not prepared to take Porritt on as a patient or to consult with him over the weekend. She also said that there would be no therapy sessions over the weekend and that there would be no point in him being admitted on the Saturday but should only come on the Sunday.

92. Porritt said that he was very distressed by this because he wanted to receive treatment as soon as possible. He informed Terry Wilson that he was not at all happy that he would only be able to see a psychiatrist at 7:30 on the Monday morning. Porritt expressed unhappiness at the change of arrangements and said he would refer to her. He repeated that he wanted to have his syncope and headaches resolved at worst by Monday. Mr Porritt stated that he was in no condition to board a plane and fly to Johannesburg nor could he drive a car. He said that he is not a position to drive a car because no one has explained the cause of his syncope. He has no control over it since he suddenly blacks out with no warning and would be endangering other road uses.

93. Because Porritt was unhappy about not being able to see Dr Olla he phoned Terry. She was unavailable and he left a message for her to contact him urgently. She only returned his call at 19h00. On the Sunday morning he then phoned Oatlands to speak to Terry. He was informed that she was off for the weekend but she had changed his booking to Sunday afternoon and he would see Dr Pillay first thing Monday morning.³⁹

94. Mr Porritt was admitted at about 15:30 on Sunday 18 June. He did not see a medical practitioner and therefore demanded to see Dr Olla. He did so *“Because I had been told she was the stand-by doctor.”*

This is difficult to follow since Porritt had already put down the phone to Oatlands on the Saturday when he was told that Dr Olla would not be available and

³⁹ 28/06 vol 2 pg 133.

appeared to have resigned himself to being treated by any psychiatrist or psychologist who was on duty as suggested by Dr Brown.⁴⁰

95. The person who admitted him, a Ms Ferguson, contacted Terry and then said that Porritt would have to wait until the next morning to see Dr Pillay. Porritt claimed that it was important for him to see Dr Olla on the Sunday as he was very unwell and wanted medical attention as soon as he could get it.
96. A little after 7:30 on the Monday morning he consulted with Dr Pillay. Dr Pillay asked him to provide a history and Porritt was referred to Dr Pillay's notes at bundle A 134 which had not been previously produced by the defence. It reflects that Porritt was admitted on 18 June and contains Dr Pillay's handwritten notes. It reflects that Dr Pillay referred Porritt to Dr Mansfield who was the neurologist that Dr Brown had mentioned and also referred him to Dr Maxwell to review the neurological symptoms and possibly undergo an MRI brain scan. According to Porritt Pillay felt that this would provide a better indication than the tests that had been done.
97. Porritt said that he informed Dr Pillay that he had to be in court on that very day (i.e. 19 June). He added that *"I had the court order with me and discussed it with her in detail."* After consulting with Porritt Dr Pillay did not suggest that he should rather go to court nor did she suggest that he was in a fit state or that he was in a position to actually attend court.⁴¹

98. Porritt explained that he was not able to attend court on the 19th because:

*"Dr Pillay said I was not fit to attend court. That was on the certificate."*⁴²

The document (A74A) is handwritten and signed by Dr Pillay. It reads;

⁴⁰ As will appear later from the evidence of Dr Pillay and her documentation, she had already been advised by Oatlands on 15 June that she would be the treating psychiatrist.

⁴¹ 28/06 vol 2 pg 141.

⁴² 28/06 vol 2 pg 142-143

“To whom it may concern,

This is to inform you that the above mentioned Patient was admitted to Oatlands care centre on 18/06/17.

Presented with syncopal attacks? Psychiatric manifestation. To be further assessed.

Not fit to attend court currently.”

99. Porritt explained that he read through this note during the consultation. He did not see Dr Pillay after this consultation which was on the morning of 19 June and although he tried to speak to her again he was unable to.

100. He was then discharged from the Oatlands facility on the afternoon of Tuesday 20 June. Porritt said that no Doctor or specialist saw him or attended to him before he was informed that he was being discharged. Only Terry informed him about it. She called him out of a therapy session with one of the psychologists at Oatlands.

Porritt was then referred to the last line on Dr Pillay’s patients’ notes and doctors’ orders (A71) which reads “review 21/6/17”. Porritt was also referred to a motivation letter for funding for hospitalisation event (A70) which referred to Dr Pillay proposing Cipralex and Stilnox medication as well as treatment in the form of individual group psychotherapy. According to Porritt Dr Pillay mentioned that she thought he could be treated as an outpatient after a period.

101. He was shocked when he was told that he would be discharged. He explained it as follows;

“I had told the hospital about the court order as soon as I heard about it the previous day and that I was anticipating that at some stage someone would come to arrest me and when Terry called me out of the therapy session she said the police have now arrived and Dr Pillay has resigned as my psychiatrist, because she does not want to get involved in a court case. None of the other psychiatrist want to get involved either in a court case. So I now have no treating psychiatrist therefore legally they are not

allowed to keep me in the facility. And they had no option but to discharge me.... I felt that I was still very unwell and I had been tossed to the wolves.” Porritt however did say that Terry had recommend a transfer to Akisa which is an acute facility which she felt would be more appropriate for his condition as Oatlands was a sub-acute facility.⁴³

102. Porritt was then referred to the Oatlands’ discharge sheet which reflected that he was discharged at 15:40 on 20 June. The note reads *“patient is discharged as per Dr orders all his medication was given to him.”* Porritt was also referred to A72 which are the patient notes and Doctor’s orders of 20 June which read:

“Dr Pillay – per WhatsApp message.

Dr Pillay informed Sr Jo that she was discharging patient from her care at 12h42“

103. Porritt believed that the Police had arrived at that time. He was in a therapy session when they attempted to arrest him. It will be recalled that this was thwarted by the application for leave to appeal.

104. Porritt’s son Greg fetched him in the evening at about 19h00 from Oatlands. Porritt said that he had two dizzy spells while waiting for his son to arrive and that his mental state was not good and that the way he had been handled as Oatlands exacerbated his position. Porritt explained that when he went into Oatlands:

“I was very hopeful when I went there that they would give me the answers to what was causing my collapses. I was extremely distressed about it. I had these terrible headaches that had been persisting since Tuesday.”⁴⁴

⁴³ 28/06 vol 2 pg 151.

⁴⁴ 28/06 vol 3 p 154

105. Porritt was taken by his son back to Mediclinic Pietermaritzburg which he added had been recommended by Terry as an alternative to Akisa. Terry said they would have a psychologist on standby who would see him. It is evident that there was no referring doctor and he went into casualty again. They examined him and admitted him to the medical ward under the care of a physician. He went to Medicare because he was in a very bad state and urgently needed medical attention which Oatlands could not give him. According to Porritt Terry had in fact recommended Mediclinic as the best place to treat him for his headache as well as for his psychological condition.”

106. While travelling between Oatlands and Mediclinic Porritt stated that he had another syncope attack while in his son’s car. He did not realise that he had passed out. It was not a long one but his son told him afterwards that it had occurred.

107. Porritt arrived at Mediclinic in the evening of 20 June where he remained until the following morning when the police arrived in the person of Captain Van Wyk and her colleague. They informed him (while he was in his ward) that the appeal case had been lodged and withdrawn and therefore he was now under arrest.

This means that on Porritt’s version he had not been informed by his legal representatives that they had withdrawn the application for leave to appeal that day. This despite Adv. Van Der Heever informing the court that these were her instructions. This does put into question the veracity of Porritt’s statements regarding instructions given by him and the consultations that took place whether face to face or over the phone between himself and those on his behalf on the one hand and his legal team on the other.

108. Shortly prior to the police entering his ward he had been informed by Dr Sadiq, the physician, that the police were outside and he got the impression that *“the Hospital just could not wait to get rid of me.”*

109. After his arrest Porritt confirmed that he was examined by Dr Soni, a district surgeon in Pietermaritzburg. The examination lasted approximately 15 minutes. He claimed that he was better that morning than the night before because he had been lying down and had a little rest the night before. Nonetheless he was still weak and still had a headache. It was not the extreme pain that he had the night before which he rated on a scale of one to ten out of ten. They had put him on an intravenous drip which appeared to have worked during the course of the night.
110. Porritt explained that the police were kind to him and put him in the front passenger seat which they reclined as far as it would go so he could be as horizontal as possible. This was to avoid his headache exacerbating if he sat up. He claimed that the headache was manageable for the first part of the trip but shortly after Harrismith his *“headache went berserk.”* His headaches got worse and he then had cold shivers as he was freezing cold. This was approximately 30 km from Johannesburg. He then took up a foetal position on the back seat with his head lying down behind the driver’s seat. This appeared to make a huge difference and his condition improved. He was not as freezing cold and his condition became more bearable.
111. During the course of the trip the police had communicated with his attorney on more than one occasion.
112. The police took him straight to the emergency ward at Charlotte Maxeke hospital. There were a large number of people seated in a queuing system and the police officers bypassed the queue and went into a room where a basic blood pressure test was conducted. The police explained to the doctor that they had a court order requiring them to admit him. According to Porritt the reaction of the doctors to the court order was;
- “who does that judge think he is? Who made these arrangements? There are people that have been queuing for two days.”*
113. At this point Porritt said that he could not even walk or stand and that mentally he felt terrible because he had a near death experience. He claimed that his

physical condition deteriorated immensely from the time of discharge in Pietermaritzburg until he arrived at Charlotte Maxeke.

114. Since he could not be admitted into the Charlotte Maxeke he was taken to Milpark Hospital where the specialist emergency physician on duty admitted him. After that he underwent another brain scan and some testing. He was then referred to a neurologist. It was now approaching 03:00 in the morning and the physician said that it was not reasonable to call out a specialist neurologist at that time but he would be seen in the morning. Colonel van Wyk informed the physician that Porritt had to be in court at 09:00 in the morning. The specialist physician said that if Porritt was admitted he cannot be taken out. Colonel Van Wyk said that she had a court order and if the physician was not going to admit him in the hospital then she would put him in a holding cell to which the physician responded that it *"would not be fair to Mr Porritt in his condition."*
115. The physician then went to see the hospital management. At that stage no one was aware that private hospitals do not admit persons who are in police custody. Milpark clinic then advised that they would not admit Porritt and would discharge him. Colonel Van Wyk then asked Bennett who was staying at a hotel in Rosebank whether she would have Porritt stay with her until the morning as well as Colonel Van Wyk. Bennett agreed and this was then arranged.
116. After Porritt attended court that morning he spent the night at the Johannesburg central police station. On the following morning being Friday the 23rd at approximately 05:45 Porritt was informed that Adv. Van Der Heever was coming to see him at 6:30. Porritt then jumped up and immediately collapsed. There was a step about 18 inch wide and a foot wide which his head just missed fractionally. He lay there for about 20 minutes to compose himself. He was asked whether he wanted tea and he got up very carefully on his hands and knees and gradually supported himself on the wall until he could steady himself.
117. On Monday 27 June Porritt said he was probably at his best because he had lain flat on the floor from Friday afternoon for about 20 hours a day until he consulted with the neurologist on Monday afternoon. However on the 27th he was

not well he had a terrible headache and actually lay on the floor in court to try and get the blood to ease the pain. He said that when he was in the witness box during the afternoon of the previous day his vision was actually blurred and he experienced terrible aches on his temples and behind his eyes.

118. Porritt's evidence in chief ended off with him explaining that it was not possible for him to attend court on 12 June because:

*"I was extremely unwell and I was very fearful for my state of health. I did not believe I could get onto an aeroplane. ... I was in Mediclinic undergoing assessments for what was the cause of my headaches."*⁴⁵

It was also not possible for him to attend court on 19 June because he again was very unwell and very fearful of his state of health. He could not possibly get onto an aeroplane because of his headache which, if he stood up from a sitting position, felt as if his head was about blow. He further more testified that Dr Mugabi advised him on the 12th of June that he could not attend court and that he was again advised on the 19th that he was not fit to attend court.

119. Before dealing with Porritt's cross-examination by the State it is appropriate to set out the objective facts as Porritt related them without entering into the explanations offered by him, which were tested during his cross-examination and which must be considered by reference to the hospital and medical records properly weighed as to relevance and the purpose of their admissibility (e.g.; as to truth of content or as to simply being what they purport to be but not as to truth of content without more)

- a. Porritt claims to have had three syncope episodes within half an hour on the night of 9 June which he described as life threatening yet he does not go to the emergency ward at Mediclinic in Pietermaritzburg which it turns out was very close to the pub where he would at least have had basic tests that would readily have evaluated all his vital signs and given him

⁴⁵ 28/06 vol 3 p168

either some comfort or have resulted in some elevated readings, such as blood pressure from the stress of the unexpected episodes.

At this stage Porritt was aware that he was due in court on Monday and that going immediately to emergency would have been the surest way of readily satisfying a court should he not be fit to attend on Monday. It was also the quickest way of obtaining a medical certificate and pre-cognise the State that he would not be attending court so that they could conduct thorough investigations promptly, including, as the court heard from the bar, obtaining CCTV footage from the pub;

- b. Porritt only admits himself, effectively after the ordinary working hours of medical practitioners, on the Saturday at about lunch time. This resulted in any necessary tests, which the medical practitioners (faced with the history described by Porritt) were obliged to conduct, not being completed before Monday when Porritt was due in court;
- c. Porritt did not explain to the doctors immediately on admission that he was due in court on Monday. He only did so on Sunday night evening;
- d. Porritt could have been discharged at 14h00 on Tuesday 13 June but asked to be discharged on the Wednesday at 14h00;
- e. Porritt did not attempt to contact any of the treating doctors at the time of discharge to advise that he had just endured a further massive and unbearable headache;
- f. After his discharge from Mediclinic Porritt did not as a fact attend on a neurologist at any stage until after his arrest despite this being recommended by Dr Mugabi and despite Porritt himself expressing concern about the inadequacy of the neurological examination. Nor did he attend on a psychologist or psychiatrist until Monday morning 19 June 2017 despite Dr Dobрева being available and being the person who,

notwithstanding her busy schedule, he stated he was able to contact directly in order to make an urgent appointment for Bennett, as was revealed during the course of the enquiry into Bennett's non-attendance on 30 January.

As I have mentioned, at this stage I am only concerned with the hard objective facts since the explanations given must be weighed on a circumspection of the totality of the evidence;

- g. Despite the court order of 19 June expressly giving him that option, Porritt did not request a nurse or any medical practitioner to accompany him to Johannesburg despite claiming to have suffered another syncope attack some 24 hours earlier, making it the fourth in less than a week and despite the onset of his headaches while at Oatlands⁴⁶;
- h. At no stage was Porritt actually treated for any psychological or psychiatric condition or disorder, other than possibly being given pain-killers for his headaches, which had not manifest themselves until the results of angiogram test came through. At best he attended group therapy sessions at Oatlands.
- i. He was discharged from every medical facility to which he was admitted of his own accord. And similarly the State appointed medical practitioners could find no physiological condition to account for his alleged life threatening episodes of syncope and excruciating headaches.

120. As stated earlier, since Porritt's testimony was not completed by 29 June and because it was arranged that Doctor Mugabi and Doctor Pillay would come on specific days, so as not to unduly disrupt the interest of their patients and the hospital concern, Porritt's evidence was interrupted after evidence-in-chief, to enable Doctor Mugabi to testify on 29 July and for Doctor Pillay to testify

⁴⁶ It bears repeating that Porritt claimed, at the stage he was discharged from Oatlands, that he was still very unwell and fearful for his state of health, having had a near death experience which had yet to be diagnosed.

subsequently. In any event, Adv van den Heever on behalf of Porritt, confirmed that there was no prejudice to her client.

DR MUGABI'S EVIDENCE

121. Dr Mugabi produced not only the documents relating to his treatment of Porritt but also had been given custody of all the hospital records and produced the originals in court. These formed bundle C which comprised the emergency room records when Porritt admitted himself at Mediclinic on 10 June; Bundle D comprised the hospital records relating to Porritt's admission into the wards from 10 June until his discharge on 14 June; Bundle E are the emergency room records and doctor's notes when Porritt again admitted himself into Mediclinic on 20 June; Bundle F are the further hospital records relating to Porritt's admission of 20 June and Bundle G was Dr Mugabi's own notes which generally were a duplication of some of the other records and included handwritten annotations made by Dr Mugabi to his typed report that was already produced in Bundle A.

122. Although Dr Mugabi had been subpoenaed by the court under s 67 (4) both Adv van den Heever and Adv Coetzee were asked whether they wished to lead him. Both declined and the court proceeded to ask Dr Mugabi a number of questions.

123. Dr Mugabi testified that Porritt was admitted because he had reported to have suffered three episodes of transient loss of consciousness on the previous day. The emergency room had immediately conducted a 12 lead ECG. The emergency doctor noted some abnormalities and felt that a cardiologist should be consulted. On the evening of 10 June Dr Mugabi, who was on duty as the resident cardiologist that night, saw Porritt in the cardiac ward to which Porritt had been taken.

124. They had a conversation and Dr Mugabi took Porritt's history and examined him. Porritt had related to him briefly the three episodes of transient loss of consciousness. Porritt had related them in the same order as he had testified in

court. Dr Mugabi's examination revealed a minor abnormality but this did not explain Porritt collapsing. They did however prompt Dr Mugabi to complete an assessment of Porritt's heart as one could not just dismiss the heart as a cause of his collapses.

125. Dr Mugabi therefore directed an exercise stress test and echo-cardiogram for the following morning (i.e. on the Sunday). The results of the echo-cardiogram tests satisfied Dr Mugabi that the structure of Porritt's heart was essentially within normal limits. The echo-cardiogram therefore ruled out the heart as a cause of any syncope. Porritt performed well on the exercise stress test and had no cardiac symptoms, his heart-rate was normal as was his blood pressure for a person exercising. There were no significant heart rhythm abnormalities and he did not experience any chest pains. Not only did this confirm that there was no significant structural heart disease but Dr Mugabi was able to conclude that the likelihood of carotid artery disease was remote.

126. Dr Mugabi then decided to do a cardio-angiogram on Monday 12 June. This comprises an X-Ray of the vascular supply to the heart. Dr Mugabi put it that he wished to be absolutely certain that Porritt did not suffer from any coronary artery disease or significant blockages or narrowing in the arteries that supplied blood to the heart. Dr Mugabi could safely conclude at that stage that whatever caused the collapses described by Porritt his prognosis was good.

Dr Mugabi put it this way;

“even if we had not at this stage identified an exact cause why had collapsed, but what we could safely say was he had a favourable prognoses, he was not about to die from whatever caused his collapse

127. The results of an angiogram are produced immediately. The results were therefore known on 12 June. Dr Mugabi therefore considered it prudent to obtain the opinion of a neurologist. This is because he had to consider whether the loss

of consciousness described by Porritt was the result of a seizure or stroke and, since he had fallen off a bar stool, whether he had suffered any head injury. Dr Yacoob was then brought in. He did an ECG of the brain and an ultrasound of the arteries that take blood to the brain including a CT scan of the brain. During his examination Dr Yacoob also took down an independent history from Porritt.

128. Dr Yacoob informed Dr Mugabi that he was not convinced that Porritt had suffered a seizure, but he could not say that with certainty. Dr Yacoob was also satisfied that Porritt had not suffered a stroke. He therefore felt that Porritt could be discharged and observed but did not consider that Porritt required seizure treatment at that stage. Dr Yacoob considered that Porritt did not require any further neurological assessment either. Dr Mugabi was of the view that if there was any subsequent seizure or subsequent collapse they would then carry out further cardiovascular testing.

129. Dr Mugabi confirmed that they did not secure a diagnosis before Porritt was discharged but they were able to secure a prognosis which they knew was good. What Dr Mugabi did say was that:

“When we were left with a cause, without a diagnoses after an initial evaluation we allow for time. We allow, because the events may recur. Maybe they may, maybe they may not, and I think only when events recur are we then justified to do more testing, to do further evaluations to ascertain a diagnoses. (emphasis added)

130. Dr Mugabi also confirmed that Porritt had told the nursing staff that he was experiencing excruciating headaches. Since this was not Dr Mugabi’s field he had asked a neurologist to have a look at Porritt. From a cardiovascular situation there is no correlation between headaches and a seizure and from a cardiological perspective there is no relationship between the heart and a transient loss of consciousness. There may well be from a neurological point of view. But since the neurologist was comfortable that his tests were sufficient to have Porritt discharged he was confident that Porritt could go home. There was also no cardiovascular reason to stop Porritt from driving a car. The reference in Dr

Mugabi's note of a referral to a neurologist in fact occurred prior to Porritt being discharged.

131. Dr Mugabi explained the typed note he made of referring Porritt to a psychologist at the patients request (G2). He said that Porritt had made a specific request to see a psychologist. At that stage Dr Mugabi said that he was *"fairly confident that he (Porritt) was going to leave hospital before the 19th."*⁴⁷ Porritt then told him that there was a court case and that the police were trying to frame him and the police had asked him to submit a report and Dr Mugabi felt that this may have created coping problems for Porritt and therefore considered that Porritt's request to see a psychologist was not unreasonable. I need to pause at this stage.

It is evident that the reason Dr Mugabi considered Porritt's request not to be unreasonable was because he felt that Porritt might not be coping with the stress attendant on the court case or possibly that the seizure described by Porritt or the transient collapse had added to the psychological stress.

132. Dr Mugabi said that he could see no reason why Porritt could not have travelled to court and that;

*"after the cardiac assessment and assurances by the neurologist there was absolutely no reason why Mr Porritt could not travel"*⁴⁸.

He also confirmed that he had been unaware that Porritt had again been admitted to Mediclinic on 20 June or of any of the events relating to his admission. The first time Dr Mugabi became aware of this was when he was given the hospital records to produce in court.

133. The court considered that having regard to the interests of Porritt, Adv van den Heever should commence with the questioning of Dr Mugabi with the right to further question him once Adv Coetzee had completed his questioning.

⁴⁷ 29/06 vol 4 p 206

⁴⁸ 29/06 Vol 4 p 208

134. Dr Mugabi conceded that it would have been remiss or negligent of the casualty physician on duty not to admit Porritt taking into account the history he had given to them. The thrust of the questions was directed at Dr Mugabi not having discharged Porritt, if they had not done the tests they had, prior to in fact discharging Porritt and that it would have been irresponsible not to have completed the tests which were in fact completed on 12 June, thereby precluding Porritt from being discharged before then.⁴⁹

135. Dr Mugabi explained in response to a question by Adv van den Heever that he saw Porritt on the evening of 13 June planning to discharge him then but Porritt wanted to go home on the morning of 14 June after seeing a psychologist and accordingly he was to be discharged only at noon on 14 June. Moreover the request was not unreasonable as Porritt was already liable for the cost of the hospital accommodation whether he left on the evening of 13 June or by noon on the following day. This then put the request that Porritt had made into context. When pressed by van den Heever to agree that he was professionally satisfied that it was correct for Porritt to see a psychologist Dr Mugabi was not prepared to go further than to state that:

“Let us put it like this, I thought the request was not unreasonable, let us put it that way.”

136. It was then put to Dr Mugabi that Dr Yacoob’s note (G3) concluded that while the EEG was within normal limits it does not exclude a seizure disorder.

Dr Mugabi was also referred to the nurses’ bed notes at D56 to D63 which referred to Porritt stating that he had a headache on the evening of 12 June. This was both at 20h00 and again at 22h20 and on 13 June at 11h05. He was also referred to the notes at D102 which referred to medication being prescribed for headaches.

⁴⁹ E.g. 29/06 vol 4 p211 to 212

137. Adv van den Heever then consulted with Porritt and on resuming put to Dr Mugabi that her instructions were that Porritt had requested the medical certificate of 11 June (A4) because:

“he was supposed to be in court on the 12th, and this note was needed for the court to see that he was in fact in the hospital and he was going to be there until such time as an expert or a specialist decided that he can now be discharged after whatever?”⁵⁰.

138. Dr Mugabi replied that he did not recall the specific circumstances but that:

“patients always asked for these notes as evidence that they are, at the time, in hospital and they will be in hospital for some time, for some time, for some unforeseen time in the future, yes, so I wrote this one.”

139. It was put to Dr Mugabi that syncope could relate to other medical disorders such as sugar levels, the functioning of the brain, or a stress source.

In response Dr Mugabi said that syncope is a subset of the broad category described as a transient loss of consciousness. He said that:

“Syncope means that you have lost consciousness because for a period of time the whole brain has not received blood. This is due to the supply of blood stopping and it then is re-established”⁵¹.

However, as Dr Mugabi explained, loss of consciousness can arise from causes other than syncope. It can be consequent upon a seizure or a loss of sugar levels or a stroke.⁵²

140. Adv van den Heever pertinently put it to Dr Mugabi that a doctor could say that he is not going to treat a patient if he did not believe the history or symptoms

⁵⁰ 29/06 vol 4 p219

⁵¹ 29/06 vol 4 p220

⁵² 29/06 vol 4 p221

that were related by the patient. Dr Mugabi's answer is most informative. He said that:

"Of course you can say that, it is within your rights if you think someone is malingering to say so. But malingering is a complete diagnoses of exclusion. You must be absolutely certain, and in a scenario of syncope, it is a very hard thing to decide that people are malingering or not. Of course, if you look in the books, malingering is a well-known [inaudible] diagnoses. It is well-known, people make it up and, I mean, you just have to say you collapsed and no-one was there".⁵³

141. In concluding her questioning Adv van den Heever finally put it that, although she could not put her hands on it, there was some bruising noted on Porritt's body to which Dr Mugabi agreed.
142. The first question put by Adv Coetzee was that the clinical notes did not refer to any bruising, but to redness on the buttock area. The significance of this will appear later.
143. Dr Mugabe then again clarified that syncope requires the existence of a physiological condition.⁵⁴ He also explained that the second and third episodes described by Porritt did not conform to a syncope episode.⁵⁵
144. Moreover the provision of a drip for Porritt was not for purposes of treating a condition. It was rather to maintain venous access when a patient undergoes an angiogram.⁵⁶ It was also confirmed that Porritt was not a high risk patient and that Dr Mugabi would not have discharged a patient if he was suffering from a life threatening condition or was seriously ill.⁵⁷ Furthermore Dr Mugabi said that most patients who have had a syncope are completely well when they are seen and in most cases it is not life threatening. In Porritt's case he presented as a well

⁵³ 29/06 vol 4 p222

⁵⁴ 29/06 vol 4 p224

⁵⁵ 29/06 vol 4 p225

⁵⁶ 29/06 vol 4 p227

⁵⁷ 29/06 vol 4 p231

patient. Even his initial clinical assessment was that of a well patient. They however felt compelled to admit him and investigate him fully because his initial ECG was not normal in that he had an irregular heartbeat together with the history that he presented. There would have been no need to investigate Porritt if the only issue was his irregular heartbeat.⁵⁸

145. Dr Mugabi also confirmed that Dr Yacoob's results were already known on 12 June. It is also evident that psychiatrists have rooms at Mediclinic

146. He was also referred to F45 which reflected that Dr Mbatha a psychiatrist at Mediclinic had made the following clinical note of her interview with Porritt (which was on 21 June). It reads;

“ Currently has an ongoing court case.

Current stresses- ongoing court case

Asking for help- to be given time off so that he can get a break to work on his case, he is exhausted.

147. Dr Mugabi then explained that, the conversation in which the court case was first mentioned and that Porritt said he was being framed by the police only arose on the evening of 13 June. It arose when Porritt requested a note for the referral to a psychologist and took place after Dr Mugabe had planned to discharge Porritt.⁵⁹

148. Adv Coetzee also put questions directly to Dr Mugabi about a malingering patient both by reference to claiming unconsciousness and faking headaches.⁶⁰ Dr Mugabi would however not be drawn into conceding that on the tests they had done it could be determined whether or not Porritt had been malingering. It was however evident that Dr Mugabi considers that a doctor is obliged to believe the history as presented by the patient and it would be necessary to observe a person for a very long time before the dishonesty will be revealed. There is

⁵⁸ 29/06 vol 4 p237-239

⁵⁹ 29/06 vol 4 pp243-245

⁶⁰ 29/06 vol 4 p250-251

however no test to determine if a person has lost consciousness since it is a symptom. He nonetheless strongly challenged that Porritt left the hospital seriously ill.⁶¹

149. Adv van den Heever then proceeded to ask questions arising from the State's questioning of Dr Mugabi.

She confirmed with Dr Mugabi that the discussion he had with Porritt on 13 June took place at about 19; 20 (D62). It was however evident from the same hospital records (at D61) that earlier at 14;00 Dr Yacoob had seen Porritt and was prepared to have him discharged but that Porritt said that he wished to see Dr Mugabi before he is discharged.

150. Moreover Dr Mugabi was not unduly concerned about the fall from the bar stool as it was a story and there was no reason to believe, from his interaction with Porritt, that Porritt had suffered any serious injury from the fall.

151. The court then asked a number of questions. Dr Mugabi claimed that he would have been satisfied to discharge Porritt once the angiogram results had come through. This was on the afternoon of 12 June. It also appears that Dr Yacoob had communicated telephonically with Dr Mugabi that he had assessed Porritt and was happy to discharge him. Dr Mugabi said that he thought it odd that Porritt did not come to hospital on the day the episodes occurred. He explained that a collapse is a dramatic symptom and it is not usual for a person who has collapsed to spend the night at home and not come to hospital the same day and in this case the pub in question was "*a short distance away from the hospital*"⁶²

⁶¹ 29/06 vol 4 p251

⁶² 29/06 vol 4 p258

152. He also clarified that Porritt was identified as a high risk fall patient, because of the history he provided of loss of consciousness, not a high risk patient. He also confirmed that while Porritt was under their care he was “well” ⁶³.
153. Dr Mugabi was asked by the court to elaborate on why he claimed that on the second and third episodes Porritt did not demonstrate classic symptoms of syncope. He replied that a classic case of syncope results in a sudden loss of consciousness in which case there will be a loss of muscle tone and when you awake it is instantaneous. In Porritt’s case he claimed to have jerking movements while unconscious which is not typical of people whose blood supply has suddenly stopped for a transient period. The third episode described by Porritt resulted in him not regaining his mental state immediately. This would suggest that it was a seizure or a stroke or something else. ⁶⁴
154. The doctor confirmed that he had not conducted an investigation regarding any injuries that were not visible. However there were no visible injuries. It is evident that Porritt did not complain of any. He also stated that if Porritt had wanted to see a neurologist sooner than Tuesday then one would have been available on Monday 12 June. It is evident from Dr Mugabe’s testimony that from the time he saw Porritt there was no suggestion of urgency to have any investigations completed. ⁶⁵
155. Dr Mugabe was excused and there was a short period when Porritt was cross-examined by the State before the adjournment.

DR PILLAY’S EVIDENCE.

156. Dr Pillay started her evidence on the morning of 30 June. She produced all the documents that were in her possession regarding her involvement with Porritt. These documents together with the file cover formed bundle H.

⁶³ 29/06 vol 4 p264

⁶⁴ 29/06 vol 4 p265

⁶⁵ 29/06 vol 4 p267

157. It will be recalled that the hospital records from Oatlands had already being introduced in the bundle prepared by Porritt, being bundle A. At this stage, I cannot recall if there might have been one or two others that would have ended up in another bundle.

158. Dr Pillay related that Porritt was a patient of Oatlands, having been admitted there on Saturday 17 June by Dr Cynthia Brown who is a general practitioner in Howick. Dr Pillay had been contacted by Oatlands Care Centre on 15 June about this by Sister Jill who is the nursing manager at Oatlands.⁶⁶

Dr Pillay was told that Porritt suffered from severe anxiety and depression and was asked if she was able to take him on as the treating psychiatrist. Sister Jill said that she was admitting the patient on Saturday. Dr Pillay then agreed to see Porritt on Monday morning. It must be pointed out that this was not challenged despite being at odds with Porritt's claim that he was still waiting to have an appointment with Dr Olla.

159. Dr Pillay also testified that there would have been a psychiatrist on call at Oatlands over the weekend. That being so, it also is difficult to appreciate why Porritt waited until Monday when he could have a psychiatrist examine him at any time from the Thursday and certainly over the weekend.⁶⁷ Already on Thursday, Doctor Pillay had informed Sister Jill that she would only be available on Monday as she would be away over the weekend.

160. Dr Pillay then saw Porritt at about 7.45 on Monday 19 June. It was a 30 minute consultation. She assessed Porritt by taking down the history, as there is no physical examination in psychiatry- only a mental state examination. This is done while interviewing the patient. The contemporaneous note is H2. Porritt indicated that during the previous week he had experienced three blackouts and

⁶⁶ 30/06 vol 5 pp296-298

⁶⁷ It is also evident from Mediclinic records of 20 to 21 June and Dr Mugabi's testimony together with Dr Mbatha's notes that Mediclinic would also have had a psychiatrist available from the date of his discharge and over the long weekend of 16 June. Porritt did not claim to have contacted Mediclinic to arrange for readmission with its resident psychiatrist on duty during this period.

described how they occurred. His family became concerned when they heard about the episodes and advised him to go in for a check-up which he did at Mediclinic. The investigation done there had come up clear and he was discharged. Although he mentioned a cardiologist and neurologist he did not name them. He also did not disclose that he had tried to arrange an appointment with Dr Olla.

161. Dr Pillay then asked him questions about his mental state. He was asked about depressive symptoms to which he replied that he had been very down and had experienced sadness on most days, that he was chronically tired, had difficulty concentrating, was very tearful at times and that his sleep was disturbed and his appetite was decreasing.

Porritt mentioned that he started suffering from severe headaches since the angiogram was done. He was then asked about his stressors. Porritt mentioned that he was having an ongoing battle with the courts over the past 14 years and that it was taking its toll on him. He had been in court on a daily basis which had not allowed him to recuperate or be able to sufficiently put his arguments together. Porritt described his anxiety symptoms as comprising muscle tension and that he was very worried about the outcome of the court proceedings. He was also worried about the financial repercussions and the effect his lengthy court battles were having on his family.

162. Dr Pillay then proceeded to ask about Porritt's cognitive symptoms. He claimed that he experienced difficulty concentrating over the past few years and had difficulty following the court proceedings. It was then that he mentioned that he needed to be in court that very day and that he urgently needed to send a letter to the court saying that he has been admitted to hospital.⁶⁸ As a result Dr Pillay wrote her certificate which was referred to earlier (A74A).

163. Dr Pillay explained that "*not fit to attend court currently*" was intended to only mean the day in question. She had just assessed him for 30 minutes and was

⁶⁸ 30/06 vol 5 p304

concerned about his blackouts and that he had been admitted the night before. She had not assessed that at a cognitive level he was unable to attend trial. Her concern was at an investigative level. When asked by the court whether she was able to say whether that included Porritt's ability to travel Dr Pillay said the following :

*"I must tell you that at the outset I was not aware, I was not made aware that Mr Gary Porritt was supposed to be attending court on the day. "*⁶⁹

164. As she continued, her testimony became clear: At the time Porritt asked her for the medical certificate it was already 08h05 and he said that he was supposed to appear in court in Johannesburg at 08h30. Porritt had not previously mentioned that he had to be in court for his trial that day. Had she known she would not have commenced his assessment.⁷⁰ The note itself was limited only to the day in question.

Moreover, Dr Pillay claimed that the term '*unfit*' was used incorrectly. It was not intended to convey his physical state pursuant to an investigation or examination. She meant to indicate that he was unable to attend court because it was necessary for him to be fully investigated, which at the time she believed should be conducted by a neuro-psychologist.⁷¹ She would however not immediately have let him out as there would have to be an assessment also by a neuro-psychologist, a neurologist and a psychologist. It was evident that Dr Pillay only had the 30 minute consultation with Porritt and that she did not do a prognosis let alone a diagnosis.

165. Dr Pillay then informed the nurses that she was referring Porritt to Dr Mansfield who is a neuro-psychologist and to Dr Maxwell who is a neurologist. Porritt was referred to the neuro-psychologist because the investigations done at Mediclinic ruled out physical causes and a

⁶⁹ 30/06 vol 5 p 306

⁷⁰ 30/06 vol 5 p306

⁷¹ 30/06 vol 5 p307

neuropsychologist undertakes detailed testing, and is able to advise if blackouts are due to psychiatric causes. The referral to the neurologist was because it appeared that his blackouts were not taken seriously and she thought it best to obtain a second opinion.

The reference to an MRI was just a suggestion by Dr Maxwell as it had not been done at Mediclinic.⁷² She accepted that an MRI is very expensive and while some patients are prepared to pay for it, it would need to be approved by a hospital plan before the cost would be borne by medical aid.

166. Dr Pillay then related what occurred during the course of 19 June when Bennett contacted her. She informed Dr Pillay that a court order had been sent for Porritt to be taken to a district surgeon in Johannesburg for evaluation and to be referred to a state psychiatrist if needed. Bennett then sent a copy of the court order per email. Dr Pillay did not respond to it because they had already had a discussion.

167. On the next morning (20 June) Bennett sent another email stating that she had drawn up an appeal and the application was attached (A136). Dr Pillay read through it and as she put it (together with the elucidating questions from the court) :

“I immediately realised that my medical certificate had been misconstrued and that it meant that he was not fit to attend court at all.

When you say misconstrued, what actually do you mean? --- Misunderstood. Misunderstood.

Why was it misunderstood? Or how did you understand it (indistinct)? --- From the application of that appeal it mentioned quite a few points that Dr Pillay say that he was unable to stand trial. And, and this was not, this is not what I had meant when I sent through this medical certificate.

⁷² 30/06 vol 5 p311

*What did you mean? --- He was not fit to (intervenes)
(Indistinct). --- Attend on the 19th. Because he had already
been admitted. And responsibly needed further investigations.*

.....

*So what do you mean by that? --- If a patient presents with a
history of black outs then a doctor becomes concerned of the cause
behind those black outs. To ensure that it could be treated
appropriately. And so that there is no recurrence of black outs.”⁷³*

168. As a consequence Dr Pillay then sent an email to all the persons whom Bennett had sent her email to. She did so by way of blind copying. This is A135. It reads”

“Dear Sue

*Please take note that the letter stating Gary is unfit to attend court was
for yesterday 19/06/17, as he was admitted on the evening of 18/06/17
and required initial assessment”*

*His physical and mental state does not prevent him being examined
and further investigated by a state psychiatrist at another facility.*

I do not oppose the court order and due process should be followed

Kind regards”

169. Dr Pillay said that Sister Jill informed her that the police had come to fetch Porritt and take him to a district surgeon. On the afternoon of 20 June Sister Jill again contacted Dr Pillay to advise that Porritt was very stressed and that he would like to see her at this stage. Dr Pillay advised sister Jill that no one had informed her that it was a medical legal case and that she does not attend to such cases. She said that Porritt is welcome to see another psychiatrist. Dr Pillay did say that Porritt should be discharged out of Oatlands. The purpose was for him to be transferred to a district surgeon at a State facility if needed. She

⁷³ 30/06 vol 5 pp 314 -315

believed that a referral to a district surgeon was the most responsible thing she could do at the time. She was satisfied that Porritt was physically able to travel to Johannesburg on 19 June when she had assessed him.

170. Adv van den Heever took Dr Pillay through the prescription chart at Oatlands. She was also taken through the motivation letter for funding of hospitalisation event which Dr Pillay had completed and signed. It reflected that Porritt's proposed length of stay was 7 days.

171. Dr Pillay was challenged with regard to whether she did not simply discharge Porritt without concern as to what would happen to him and why Sister Jo did not in her note (A72) refer to Porritt being transferred to a district surgeon and another psychiatrist. Dr Pillay was then asked why she did not go to Oatlands and see Porritt at the time of discharge. Her reply was :

*"Because when it comes to his psychiatrist/patient relationship there has to be trust involved. There has to be a sense of (indistinct) between the patient and the psychiatrist. If the psychiatrist or the patient feels that they have been misled in some way then it is their, it is their prerogative to say that the patient, that they would be unwilling to take care of that patient. And has advised the patient that they may see another psychiatrist."*⁷⁴

And when pressed to explain herself Dr Pillay said:

"That is an assumption on my part, firstly. I cannot state on paper that I was misled to believe anything specific.

But when I came to realise the whole bigger picture and the whole sequence of events I find that I may have been blindsided into seeing this patient in the first instance. And I did not feel, as a psychiatrist,

⁷⁴ 30/06 vol 5 p327

that I could give my full care to the patient, having already have this understanding of him in my head.

I felt that the patient had not been completely open with all the events that was happening in his life.”⁷⁵

172. Adv. Van der Heever then sought to test Dr Pillay on this and on her discussion with Bennett regarding the court order, and that she only changed her mind about Porritt when she read the court order. In short Dr Pillay responded that the court order was not the reason for her changing her mind about Porritt and persisted that the doctor patient relationship was broken due to a lack of trust. She explained that this was as a result of a sequence of events that had occurred since Monday morning including the attempts by Bennett to repeatedly contact her.

173. The cross-examination then side-tracked as to whether or not Bennett could speak for Porritt in her interactions with Dr Pillay. In the end the questioning by Adv. Van der Heever missed the issue of the enquiry. It is not a test of what the threshold point is when a psychiatrist decides that the relationship required between doctor and patient results in a parting of the ways because of a lack of trust. It is rather whether Porritt had failed to disclose to Dr Pillay at the outset that he was required to attend court that day and effectively wanted, at least amongst other things, a letter excusing him from court attendance when, had she been informed at the outset, she would not have attended to him. From her observations she considered that there was no reason why he could not attend court on the 19th and be investigated for any of the conditions subsequently.

174. What however came out was the string of WhatsApp communications which were introduced as B52. These were between Dr Pillay and Sister Jo of Oatlands.⁷⁶ They are entirely consistent with Dr Pillay at a very early stage confirming that she was unaware that she had not been informed of what she

⁷⁵ 30/06 vol 5 p328

⁷⁶ The WhatsApp messages refer to “Jo Oatlands”. It is assumed that Sister Jo is the Sister Jill referred to earlier and which was transcribed as such at the time. Nothing turns on it.

termed the “*medical legal aspect*”, that she does not deal with such cases and that her note for Porritt only related to an absence from court on 19 June and not beyond. It is also evident, and the court takes note that it is common practice, that if a person wishes to be excused for any period for medical reasons then the medical practitioner will identify a specific period of time.

175. Since Dr Pillay did not complete her testimony, arrangements were made for her to resume being examined by Adv. Van Der Heever on the following Wednesday. On 4 July the court resumed with the cross-examination of Porritt by Adv. Coetzee.

176. On 5 July Adv. Van Der Heever continued with the cross-examination of Dr Pillay. It turned out that Dr Pillay was well aware of referrals for observation under the provisions of the Criminal Procedure Act. Dr Pillay also clarified the notes she had made on the hospital plan form where she described Porritt as a-suicidal; Porritt told her that he had thoughts of dying but he was a-suicidal because he had not clear plan of how to carry it out, there were no previous attempts of killing himself, and he sought help for his condition.

CROSS-EXAMINATION OF PORRITT

177. At the hearing of 4 July Adv. Coetzee continued to deal with Dr Mbatha’s notes of her consultation with Porritt at Mediclinic that were made on 21 June (at F41-46). Porritt identified what he claimed was incorrectly recorded by her.

It is noted that in the consultation note reference was only made to two syncopal episodes⁷⁷

⁷⁷ At F41-42. The notes of Dr Mbatha also do not record the episode which Porritt claimed in his testimony occurred in his son’s car between Oatlands and Mediclinic (which would have been the day before). Nor is there any mention of extensive headaches. One would expect that if the most recent syncope episode had been mentioned that it would be noted with an immediate referral back to Dr Mugabi or other cardiologist and to a neurologist.

178. Porritt was then questioned about the Dr Mbatha's note which appears on F45 (which was mentioned in part earlier)

"Currently has on-going court case

Current stressors- On-going court case

Asking for help- to be given time off so that he can get a break to work on his case, he is exhausted."

He was asked several times to explain what he meant and sought to provide a context. In my view Porritt did not provide a satisfactory reply.

179. Porritt was also referred to the court order of 12 June which required him to procure a written report by a medical practitioner by no later than 15 June.⁷⁸ This is already set out at the beginning of my judgment.

Once again, if one has regard to what Porritt actually requested of the doctors, it fell far short of what was required: This despite Porritt having been served with that order on 13 June. Porritt conceded that he did not ask either Dr Mugabi or Dr Yacoob for a report, as contemplated in the court order, from the time he was aware of it until the time he was discharged. His only explanation was that their report would not serve the required purpose.

180. There are at least three pages of questioning on this point. This is because, as appears from the record, Mr Porritt did not answer the question directly.⁷⁹ It was then put that their reports would not suit him. Adv Coetzee also dealt with the affidavits that Porritt handed up: The one from Mr Heenan which was deposed to on 22 June 2017; the other affidavit was that of Ms Govender which is dated 20 June 2017. Porritt explained that the affidavits were obtained by his son after approaching the staff of the pub in question:

⁷⁸ 7/07 vol 9 p703

⁷⁹ 7/07 vol 9 p703-vol 10 p714

“To see if they could assist with finding any patron or staff who may have witnessed these syncope attacks”⁸⁰

This statement is relevant because of what occurs later.

181. Porritt was also asked about the outcome of an examination by a neurologist at Milpark on 26 June⁸¹. Porritt said that there was a verbal report. A week later, when testifying, neither Porritt nor his legal team was able to produce a written report. The Court is entitled to assume, having regard to the lengths that Porritt claims he has gone to gather evidence, that if the neurologist’s examination would have assisted him, a report would have been procured sometime between 26 June and when Porritt testified on 7 July. It will also be recalled that the proceedings continued through to Saturday, 8 July.

182. The State then sought to introduce a clip that appeared on Moneyweb of Porritt lying on the floor in court. It was taken by a journalist. As I understand Adv Van Der Heever’s position, it is accepted that the clip is of Mr Porritt and was taken in court. What is in dispute is whether it is a collage of snippets as opposed to a continuous filming. The clip was played in court and identified as J1.

183. It is evident that Adv Van Der Heever also sought to rely on aspects of the clip. What it purported to demonstrate is Porritt going down on all fours and, whatever the sequence, it is evident that he does so gingerly, then positions himself by effectively moving backwards on all fours, then he receives a bottle of water from which he drinks and hands it back before putting his left elbow on the floor and turning over to lie on his back. It is evident that the actions that are discernible from the clip, and which can reliably be accepted, were done gingerly

⁸⁰ 7/07 vol 10 p 725

⁸¹ This would have been a neurologist of Porritt’s choice

and that Porritt was positioning himself, which does not suggest a person who is suffering from an extreme headache as was contended for at the time.⁸²

During the course of that day, I believe it was, Porritt seated himself but effectively gripped onto the counsel's table with his fingers as if supporting his body which was lying bent or limp below the height of the table.

184. Another recording was produced by the State. This time of CCTV footage taken at Milpark Hospital from 15h37 on 22 June 2017 for I believe approximately half an hour, possibly longer. It was played in court and identified as J3. Affidavits purporting to allow for the introduction into evidence of both clips was marked J2.

185. To put the relevance of the CCTV footage into context, the typed transcription of the record reveals that the court adjourned on 22 June at 12:17. Accordingly the clip was taken within three and a half hours of the adjournment. It shows Porritt lounging in a very relaxed manner on a chair. It also shows that those with him, and in particular Bennett, were not concerned about his wellbeing – Bennett moved off and left Porritt to his own devices as did the attorney. Porritt stood up without difficulty, chatted and answered his cellphone. He also picked up the bag with which he arrived without difficulty. No one offered to take it for him and he was seen leaving the hospital still carrying it.

186. It then came out that the person who Porritt mentioned earlier, Vanessa Pretorius, had in fact been with him at the pub on 9 June. Despite the distinct impression that Porritt gave of arriving at the pub and only meeting his friend there, it turns out that they had in fact driven there together. Moreover, under cross examination he stated that she in fact witnessed him falling from the bar stool⁸³. It will be recalled that he had said that he related to the friend he was with the first episode when he returned from the gents. He now also stated that

⁸² I am satisfied that for the limited purpose set out in this judgment the J1 clip can be admitted into evidence.

⁸³ 8/07 vol 11 p 808

Vanessa Pretorius had accompanied him out when he left after paying the bill and that she was the person who drove him.⁸⁴

187. Under cross-examination by Adv Coetzee, it also appeared that she would have known the house where Porritt stayed. The claim that he overshot the house because he could not give directions does not seem to hold water.

188. There was an attempt to then seek leave to postpone the matter so that Vanessa Pretorius could give evidence.

I refused the application and I will give brief reasons now.

The first is that all the evidence pursuant to examination and cross-examination was already before the Court and readily available to everybody who wished to see it. Secondly, I have sighted certain extracts of Porritt's evidence, which make it clear that on his version there was a search high and low for persons who could assist and his explanation of some form of embarrassment in calling Vanessa Pretorius holds no water.

Accordingly the opportunity to have called Vanessa Pretorius had come and gone. An election I believe had been made. Whether or not Adv Van Der Heever, who said that she had never been informed of the name, had not been told the name in consultation⁸⁵ or received any information regarding who the person was, I would have thought that competent counsel would ask this as a first question unless there was some suggestion that such a question should not be asked. That counts against Mr Porritt.

⁸⁴ Under cross-examination Porritt first claimed that he met Ms Pretorius at the pub (8/07 vol 11 p794). Later he referred to them getting to the pub and that he had drunk a lot of wine before the meal came (8/07 vol 11 p804) and that they were there for approximately three hours although the first blackouts only occurred in the last half hour and after they had eaten (8/07 vol 11 pp804-805). She also drove him home (8/07 vol 11 p807).

⁸⁵ Porritt claimed that he had only a 40 minute consultation with Adv van der Heever in the cells. The paucity of consultations was mentioned on two further occasions by Porritt. On at least two of the occasions Adv van der Heever shook her head. One of those occasions was noted. See 8/07 vol 11 pp 810-813. It is evident from Adv van der Heever's reaction at the time that Porritt did not disclose the actual extent of the consultations that were held.

Mr Porritt's subsequent explanation regarding not wishing to disclose the identity of Vanessa Pretorius or that she was with him at any stage, does not accord with the two instances in the record, which I have cited already, where Porritt had no difficulty in stating that Vanessa Pretorius was with him in Pietermaritzburg at a hospital. I also overlooked at the time I read out the judgment my note that the explanation does not accord with Porritt's earlier explanation given under cross examination that he would have had no difficulty providing Ms Pretorius' name if he had been asked to identify the friend who was with him at the pub. I will amplify:

The first relevant exchange between Porritt and Adv Coetzee is as follows:

"Mr Porritt, when you started testifying and M'Lord, I am referring to page 59 and 60 of the record. You only referred to a friend initially, not to Vanessa Pretorius. --- That is right. Nobody asked me.

No, you were specifically asked, we did mention this to you.

Then on page 59 your answer was:

"I was with a friend at the bar."

You never mentioned Vanessa Pretorius? --- A friend ...[intervene]

Ja. Did you not mention her name, because you wanted as little witnesses to be identified as possible, to test your version? --- No.

You never even ...[intervene]. --- I identified I was with a friend. You could have asked me who was the friend. Nobody asked me who was the friend. Now you have asked me who was the friend and I have told you."

And a little later in regard to who the identity of the person who drove him home from the pub there is a further inconsistency:

"Drove home, drove home... From the Keg to your home you have not identified ...[intervene]. --- I think I did identify.

*You did not. --- Definitely Ms Pretorius."*⁸⁶

⁸⁶ 8/07 vol 11 p806 and p807 respectively

The same explanation was persisted with again as appears from the following exchange:

“What I said to you is, you did not identify the person or persons that drove you to your home in your evidence in chief. --- Correct.

Why did you not do that? --- I did not give a specific identity of the person [indistinct] when I did not give that specific identity of Karin Ballard, the court said I must give it and I immediately gave it. Had I been asked, I would have given it as I had now.”⁸⁷

(emphasis added)

189. I have indicated that Porritt also wished to introduce evidence by way of the affidavits of Govender and Heenan. I believe no store can be placed on what they say; it has little or no probative value because, unlike the other evidence before the court, it is untested. I have already indicated at the commencement of the judgment, when I considered the legal issues, that the nature of the matter will determine what evidence will pass muster and what will not. The issue concerns Porritt’s state of mind.⁸⁸

190. Even if these affidavits were put into the mix, which I believe they should not, they do not assist Porritt. He had the most obvious witness to call to testify on his behalf. On his subsequent explanation, he decided not to reveal her identity. Moreover, during the argument for postponement and at an earlier stage, Adv Van Der Heever wished to ask Porritt a question regarding the existence or otherwise of CCTV footage at the pub. During an exchange with the Court, the question was withdrawn.

Adv van der Heever then sought a postponement to establish if there was CCTV footage.

⁸⁷ 8/07 vol 11 p809

⁸⁸ By contrast in *Terry v Botes* the Cape full bench was concerned with a case where the accused had been surgically operated on the previous day and there was no dispute about his physical incapacity to attend court.

191. While I have given Adv Van Der Heever the benefit of making certain submissions from the bar, I believe it is also appropriate to refer to certain submissions made by Adv Coetzee from the bar in reply; namely that the State had attempted to obtain the CCTV footage from the pub, but because it is on a “*continuous belt*”, it gets recorded over after a short period. He argued in the alternative that if evidence was sought to be brought in by Adv Van Der Heever, the State would also seek to introduce evidence that Porritt’s son had in fact been to the pub and had been shown the CCTV footage of the night of 9 June before it was recorded over, but did not seek to make a copy of it.

As I indicated, these are matters which come from the bar and I did not wish to place any store by them. I mention them in order to impress on both parties, that to the extent that Adv Van Der Heever sought to introduce evidence that is not real evidence and not tested evidence, so too did Adv Coetzee seek to do the same. Moreover if this matter was not dealt with in an expeditious manner, then this hearing would proceed interminably- the cut-off point in most cases being the probative value of the evidence sought to be led.

192. The expedition which this matter required was explained on numerous occasions to both parties during the course of the proceedings. Again, it was for Porritt to make the election to call the obvious witness or to disclose her name to his counsel and for counsel to at least make an enquiry of him as to who that person might be. As appears from the record, she did not. It is too late to try and introduce that evidence when effectively the horse has bolted and all of Porritt’s evidence in cross-examination has been transcribed and is readily available for somebody to prepare on. The probative value of her evidence would already be compromised, particularly if one has regard to Porritt’s first explanation as to why he did not mention Ms Pretorius’ name until he was cross-examined (as appears from the extracts I have added which appear earlier).

FINDINGS

193. As an overview, I raised at the beginning certain objective factors. They required to be filled in- there needed to be explanations and Porritt was the only person who could provide them. What has in fact occurred is that such explanations are completely unsatisfactory. They failed to address key aspects of what Porritt claims motivated him throughout. These have been set out in the body of this judgment.

194. Among them, is that Porritt was appreciative of the need to provide a report to the Court, but on each occasion where there is a note by a medical practitioner, given on his requesting, the note certainly does not qualify as a report which Porritt, by his own admission, knew was required in terms of the court order.

In fact, Porritt indicated that already on 12 June he believed that he needed to provide reasons for his nonappearance. At that time he was attended to by Dr Mugabi and Dr Yacoob, yet did not ask them for such a report.

195. There is also the conduct of Porritt and those close to him. Often in cases the facts are determined as much by what a person does, as by what he or she does not do. Again I set out the critical milestones.

196. Porritt has failed to give a satisfactory explanation that is reasonably possible as to why he did not go immediately to the emergency ward at Mediclinic on 9 June. Having now disclosed that the person in the vehicle is somebody close to him, it is difficult to appreciate why she did not simply take him there to at least have tests conducted. At worst it might have been a ten to fifteen minute delay.

197. Porritt's description of how he felt at various times does not accord with his failure to take immediate and prompt steps to try and remedy what he claimed was his plight and what he continually referred to as a near death experience.⁸⁹

⁸⁹ Porritt demonstrated from 10 to 14 June a great concern about the need to be properly and comprehensively examined and to have a medical diagnosis. He professed displeasure at the failure to provide

As I indicated at the outset, they include a failure to go promptly to a psychiatrist or psychologist, to have a reassessment by a neurologist and if one has an overview of the well over 300 pages of medical reports, nowhere will one find a diagnosis from a doctor or any other medical practitioner of any condition that would have prevented Porritt from coming to court on 12 June or any of the other dates mentioned earlier.

198. I indicated at the beginning of this judgment that I would deal with two scenarios. The one, if Adv Van Der Heever is correct, is that a warning is essential. This would confine the enquiry to whether or not the requirements of s 67 has been met in the sense set out by the Constitutional Court in *Singo* which I believe is prescriptive in this matter.

199. In doing so, the court is entitled to have regard to the entire course of conduct of Porritt, what he did or did not do, what one would have expected him to do and his explanations for not doing it. There is a litany of excuses and of people who were not available. However on analysis the explanations relied upon by Porritt do not appear to coincide with the timing relied upon. In this regard he claimed to still want to see Dr Olla, the psychiatrist, on Friday 16 June and again on the Sunday when according to Dr Pillay there had already been a confirmed appointment for the Monday with her as the treating psychiatrist at Oatlands. The evidence was that from at least 16 June everyone, which would have included Porritt, was comfortable with Dr Pillay, and with Porritt only being admitted on the Saturday with the first consultation to be held on the Monday. The Monday happened to be the date on which the Court had adjourned the matter in terms of its order of 12 June.

a diagnosis before being discharged from Mediclinic on 14 June. He also professed an urgent need the moment he was discharged from Mediclinic to be examined by a neurologist and someone in the field of psychiatry or psychology. The *volte face* cannot be explained on the basis of the input of others who convinced him to receive attention. His evidence is that he personally was insisting on a thorough physiological and psychometric diagnosis because of the “*near death*” experience he had experienced.

Although the notes of Dr Mbatha were not confirmed by her, and while there is the possibility of omissions in the narrative, I consider it beyond doubt that Dr Mbatha would have made a note of the most recent syncope episode which Porritt alleged had occurred the previous day on the way from Oatlands to Mediclinic if he in fact had related it to her. The risk of not recording it and of not also recommending a referral to at least further observation by a cardiologist and neurologist was too great for it not to have been noted.

200. The evidence as set out in this judgment reveals that not only the conduct of Porritt but also of those close to him, are inconsistent with a person who claims to have had the life threatening experiences at the time and on the occasions that he claims.⁹⁰

201. It is also evident from the evidence of Dr Mugabi and Dr Pillay, as well as the various hospital records and the notes of other medical practitioners, that at no stage was there a sufficient concern for Porritt's wellbeing that would have precluded him from attending court on the dates in question; far from it, as the testimony which I have mentioned reveals. At best he was throughout under examination or observation, not treatment (save for strong analgesics with which he was discharged as an out-patient)..

202. The hospital and medical staff were committed because Porritt had provided a history to them. They were committed to undertake investigations, as was said in one of the extracts, in light of the history provided by Porritt. They would have wanted to make certain that they eliminated the various relevant considerations from the reckoning. Despite such caution on their part, Porritt was discharged from three medical facilities, granted that according to Dr Pillay, on the one occasion it was into the hands of a district surgeon.⁹¹

203. I thought it best to set out the evidence in great detail, bearing in mind that the transcript itself runs into over 800 pages, possibly more⁹². During the course of the judgment I referred to the test which I believe is applicable to weighing the evidence. Applying the evidential burden identified earlier and giving Porritt the benefit of the lower level of evidence required he has not satisfied, the evidential burden as required by s 67(2)(a) of establishing a reasonable possibility that his failure to appear on 12 June was not due to fault on his part.

⁹⁰ Not only is the CCTV footage at Milpark revealing with regard to how Porritt was left to his own devices, but despite his son being witness to another alleged syncope episode the day before, Porritt was driven by the police from Pietermaritzburg, with neither Porritt nor any family member requesting that a nurse or other medical practitioner accompany him to Johannesburg (despite this being provided for in the court order).

⁹¹ It is evident from the extracts cited earlier that Dr Mugabi was satisfied that all relevant tests that could be done had been done. Porritt's claim that Dr Pillay was critical that an MRI had not been done is belied by her evidence, as it is by that of Dr Mugabi, as to him and Dr Yacoob being satisfied that Porritt could be discharged.

⁹² When the transcript of the last day of hearing (8 July) came through the total number of pages of evidence was 955. The bundles comprising A through to H numbered just over 400 pages.

204. This applies to Porritt's failure to appear on 12 June. There is also his failure to appear on 13 and 14 June as well as on 19 June.

It ought to be apparent from the body of the judgment and the facts as indicated that the test adopted by s 67(2) (a) has not been satisfied in relation to Porritt's failure to appear or remain in attendance on each of these days as well. The cut-off must be 19 June because the warrant of arrest to which the Section 67 enquiry relates, was issued on that day. Accordingly these proceedings cannot relate to events, or any failure to appear, after the date of the issue of the warrant.

205. I am satisfied that Porritt did intend not to appear in court on each of the dates and that this was for the purpose of delaying the proceedings. This conclusion arises from Porritt's own evidence regarding what he did and did not do and his failure to satisfy the court that his explanations create a reasonable possibility that his failure to appear was not due to his fault. I had also omitted to mention that I do not accept that a person who falls backwards off a bar stool, let alone any ordinary lower chair which has a back support (unlike the bar stool described by Porritt) would not have bruising (not just redness), would not request at least an anti-inflammatory and complain of pain in the lower back or coccyx region and have difficulty sitting comfortably. The claim of falling on his face when collapsing in the gents and hearing a loud crack and the collapse outside on a rough surface without any visible bruising or scratches, let alone a degree of pain or discomfort, is in my view, and having regard to the totality of evidence regarding Porritt's actual conduct completely at odds with what he claimed occurred (which he claims he was unaware of and required others to relate to him). In short there is no reasonable possibility that he sustained the sequelae he claimed and therefore he could not have fallen as claimed by others, none of whom testified, not even his son who was said to have witnessed the last episode.

ORDER

206. Porritt has failed to satisfy the court that there is a reasonable possibility that his failure to appear in court on 12 June 2017 was not due to fault on his part as contemplated by s 67(2) (a) of the CPA and as read into by *Singo*.

207. Independently of that Porritt has also failed to satisfy the court that there is a reasonable possibility that his failure to appear in court on 13 June, 14 June and 19 June was not due to fault on his part.

208. Moreover bail was provisionally cancelled and the bail money was provisionally forfeited

209. Accordingly it is ordered that

1. *In terms of s 67(2) (a) of the CPA that the provisional cancellation of the bail that was ordered on 19 June 2017 is confirmed and Mr Porritt is to be held in custody as an awaiting trial prisoner unless a court decides to grant him bail or provides any special dispensation as to the place of his detention under a fresh application.*
2. *The provisional forfeiture of the bail money which was reduced at some stage from the sum of R800 000 to the sum of R100 000 is confirmed subject to the rights, if any, of the Office of the Chief Justice to claim the disbursements incurred in any of the transcriptions of the record and the flight, accommodation and any other costs it has incurred as a consequence of the subpoenas that were issued and served which required the attendance of Dr Mugabi and Dr Pillay at the instance of the court under s 67(3) of the CPA*

3. *The proceedings are adjourned to 1 August 2017 and will continue on the dates referred to in this court's order of 5 June 2017 and;*

a. Mr Porritt is remanded in custody:

b. In view of the issues raised Ms Bennett who is present in court is warned in terms of s72 (1) (a) of the CPA to appear before this court at 10:00 on each of the dates specified hereunder in connection with the offences to which the proceedings under this case number relate and is furthermore warned to remain in attendance during each of such dates and that in terms of s72(4) if she fails to appear or, as the case may be, to remain in attendance at the proceedings in accordance with this warning a warrant for her arrest may be issued, in which case she may be sentenced to a fine not exceeding R300 or to imprisonment for a period not exceeding three months unless she satisfies the court that there is a reasonable possibility that her failure was not due to fault on her part. The specified dates are:

i. 01 – 04 August 2017;

ii. 7th, 8th, 10th, and 11th August;

iii. 21 – 25 August 2017;

iv. 04 to 08 September 2017;

v. 11 to 15 September 2017;

vi. 18 to 20 September 2017;

vii. 26 to 28 September 2017; and

viii. 02 to 06 October 2017

all dates inclusive.

SPILG J

DATES OF HEARING: 21, 22, 27, 28, 29 and 30 June, 4, 5, 7 and 8 July 2017

DATE OF JUDGMENT: 21 July 2107

FOR ACCUSED NO 1: Adv A van der Heever

BDK Attorneys

FOR THE STATE: Adv EM Coetzee SC

Adv JM Ferreira

Adv PJ Louw