



**IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN**

Not reportable

Case no: A16/2024

In the matter between:

THULANI SYLVERIUS MAPHANGA

APPELLANT

and

THE STATE

RESPONDENT

Neutral citation: *Maphanga v S* (A16/2024) [2025] ZAFSHC 298 (17 September 2025)

Coram: Opperman J *et De La Rey* AJ

Heard: 11 August 2025

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email and released to SAFLII. The date and time for hand-down is deemed to be 16h00 on 17 September 2025.

Summary: Appeal against convictions – administering of oath on 17-year-old to turn 18 years of age within two weeks of date of testimony – evaluation of evidence of complainant in sexual offences matter – bare denial by accused.

ORDER

The appeal against the convictions on all three charges is dismissed.

JUDGMENT

Opperman J (De La Rey AJ concurring)

Introduction

[1] The case came on appeal after petition was granted on 29 January 2024 by this Court in that the late filing of the application for leave to appeal was granted and leave was granted to the applicant to appeal against his convictions. The petition to appeal against the sentences was dismissed.¹ Leave to appeal was dismissed in the court *a quo* on the convictions and sentences in October 2023. The convictions and sentencing *a quo* happened on 30 March 2022. The appellant was represented by counsel throughout the trial.

[2] The matter turns on sexual offences in terms of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 (SORMA). The appellant was 53 years old at the time of his arrest on 30 November 2020. The complainant was 16 years old at the time when the alleged events occurred that caused the charges against the appellant. The dates of the perpetration of the alleged offences are reflected on the charge sheet to be 18 March 2020 and August 2020.

[3] The complainant, born on 27 February 2004, was approximately two weeks shy of her eighteenth birthday at the time she testified in court on 10 February 2022. The

¹ This was dealt with under case no P11/2024.

prosecutor applied for her to testify under section 158² of the Criminal Procedure Act 51 of 1977 (CPA), as her intellectual and emotional development was deemed sufficient and she did not require an intermediary.³

[4] She attended church devotedly where the appellant is a pastor at the church that she and her family frequented. The incidents occurred when she assisted the appellant with chores related to the church. Reading of her evidence shows a mature young lady with an emotional and moral aptitude that is impressive. I will return to this later.

[5] The appellant was convicted of the following offences:

- a. Count 1: Rape in terms of s 3⁴ of SORMA;
- b. Count 2: Sexual assault in terms of the contravention of s 5⁵ of SORMA; and
- c. Count 3: 'Exposure or display of or causing exposure or display of genital organs, anus or female breasts to children ('flashing') in contravention of s 22⁶ of SORMA.

[6] On 18 March 2020, the appellant allegedly raped the complainant by penetrating her vaginally with his finger. In August 2020, he allegedly committed sexual assault of the complainant by touching her 'breasts and buttocks'. Also, on a separate occasion, in August 2020, he allegedly 'exposed/displayed his genital organs/penis', to her.

² 'Section 158:

(1) Except as otherwise expressly provided by this Act or any other law, all criminal proceedings in any court shall take place in the presence of the accused.

(2)(a) A court may, subject to section 153, on its own initiative or on application by the public prosecutor, order that a witness, irrespective of whether the witness is in or outside the Republic, or an accused, if the witness or accused consents thereto, may give evidence by means of closed-circuit television or similar electronic media.'

³ Record pp 17 and 18. Furthermore, the presiding officer was mistaken in the judgment when he noted on p 176 at lines 15 to 19 that the complainant testified *via* intermediary.

⁴ 'Rape.—Any person ("A") who unlawfully and intentionally commits an act of sexual penetration with a complainant ("B"), without the consent of B, is guilty of the offence of rape.'

⁵ 5. Sexual assault.—(1) A person ("A") who unlawfully and intentionally sexually violates a complainant ("B"), without the consent of B, is guilty of the offence of sexual assault.

(2) ...'

⁶ Page iv of the record: Section 22: '—A person ("A") who unlawfully and intentionally, whether for the sexual gratification of A or of a third person ("C") or not, exposes or displays or causes the exposure or display of the genital organs, anus or female breasts of A or C to a child complainant ("B"), with or without the consent of B, is guilty of the offence of exposing or displaying or causing the exposure or display of genital organs, anus or female breasts to a child.'

[7] The appellant was sentenced as follows:

- a. Count 1: 10 years imprisonment;
- b. Count 2: 3 years imprisonment; and
- c. Count 3: 12 months imprisonment.

The sentences on counts 2 and 3 were ordered to run concurrently with the sentence imposed in count 1. The effective sentence is thus 10 years imprisonment.

[8] The appellant pleaded not guilty to all the charges and did not present any plea explanation. The State adduced the evidence of the complainant and her mother and handed in exhibits A to D.⁷ The appellant testified in his defence and his evidence concluded his case.

The appeal

[9] The appellant questions whether the Court conducted an enquiry to determine if the complainant understood the nature and import of the oath and secondly, whether the trial court correctly convicted the appellant on the evidence adduced.

[10] On the evidence itself the appellant takes issue with:

- a. The fact that the complainant is a single witness;
- b. the medical evidence;
- c. the complainant's delay in reporting the incident;
- d. contradictions; and
- e. the appellant's version.

The competence of the complainant as witness

[11] The record indicates that the complainant possesses the intellectual and emotional capacity to understand the oath and to grasp its consequences. She stated⁸ that prior to the incident she performed well in school, which supports her demonstrated intellectual

⁷ Exhibit A: Birth Certificate, Exhibit B: J88 Medical Report, Exhibit C: Matshediso Mokapela's statement to the police and Exhibit D: The Victim Impact Statement.

⁸ In Exhibit D.

ability during her testimony. She understood the questions and provided direct answers. At the time, she was two weeks from turning 18; she testified without an intermediary and communicated deliberately and clearly. It is also trite that she and her family are actively involved in their church and adhere to their religious beliefs, for which truthfulness and swearing to speak the truth before God are important aspects.

[12] The law does not require a person to be an adult in law before the oath may be administered. As was succinctly put by Kruger:⁹

'The court must be satisfied that a child at least understands the difference between truth and things which do not exist (*S v Mashava* 1994 (1) SACR 224 (T) at 228g–h; *S v N* 1996 (2) SACR 225 (C) at 229e–g). If the child does not understand the oath, he or she must be admonished to speak the truth (*S v Seymour* [1997] 4 All SA 644 (N), 1998 (1) SACR 66 (N) at 71b–c).'

[13] The facts and circumstances of the administering of the oath in this case differ from the cases cited by the appellant. Additionally, the approach taken by the court *a quo* in addressing the witness was materially distinct.

a. In *Ndaba v S*¹⁰ the witness was a mere 11 years old. This is what happened:

[6] The above extract from the record reflects that the court was aware of the complainant's tender age of 11 years before requesting her to relate what happened to her. Despite this, the magistrate failed to conduct the competency test, which is the precursor to admonishing a child witness.

[7] The competency test is often used in relation to child witnesses to determine if they understand the difference between truth and falsehood. This is a prerequisite for the oath, affirmation and an admonition in terms of s 164 of the Criminal Procedure Act 51 of 1977 (the CPA). PJ Schwikkard and S E van der Merwe *Principles of Evidence* 4 ed (2016) at 451 state as follows: 'Even very young children may testify provided that they (a) appreciate the duty of speaking the truth; (b) have sufficient intelligence; and (c) and can communicate effectively.' (Footnote omitted.) Nowhere in the record does it reflect that the learned Magistrate tried to establish if she could distinguish between falsehood and the truth.

⁹ A Kruger *Hiemstra's Criminal Procedure* (SI 18, 2025) at 162.

¹⁰ *Ndaba v S* (AR528/2017) [2018] ZAKZPHC 17 (18 May 2018).

[8] Section 192 of the CPA, goes further to state that if a child does not have the ability to distinguish between the truth and untruth, such child is not a competent witness. It is the duty of the presiding officer to satisfy himself or herself that the child can distinguish between the truth and untruth. *The maturity and understanding of the child must be established by the judicial officer, who must ascertain the level of intelligence for the child to give evidence in the trial proceedings.*' (Accentuation added)

b. In *Matshiva v S*¹¹ the witnesses were 8 and 13 years old and here, it was not clear from the questioning of the witnesses by the court what its purpose was. 'Was it intended to establish the capacity of the child witnesses to understand the nature and import of the oath or was it aimed at establishing their ability to distinguish between truth and falsity?' The witnesses were simply sworn in before their capacity to understand the nature and import of the oath was established.

c. The case of the *Director of Public Prosecutions, Transvaal v Minister for Justice and Constitutional Development and Others*¹² is valuable in the handling of matters of this nature but the facts and issues of law are significantly different than in *casu*. Here the child complainant was about 13 years old when she testified. No application was made to lead her evidence through an intermediary, nor did the trial court enquire into the desirability of the appointing of an intermediary. However, it is not clear how the oath provision (s 164(1)) arose on the facts. The child was questioned by the court to establish whether she understood the import of an oath and, secondly, whether she understood the difference between truth and falsehood. The court was not satisfied that the child understood the import of the oath but was satisfied that the child knew what it meant to speak the truth. The child was therefore admonished to speak the truth. On these facts, the question whether the provisions of s 164(1) exclude, from testifying, a child who does not understand the difference between truth and falsehood, simply did not arise.¹³

d. In *S v B*¹⁴ the witness was 9 years old and the following happened:

'[5] In her reasons for judgment the magistrate said: "3.1 I do concede that the court never

¹¹ *Matshiva v S* (656/12) [2013] ZASCA 124; 2014 (1) SACR 29 (SCA); [2014] 2 All SA 141 (SCA) (23 September 2013) para 12.

¹² *Director of Public Prosecutions, Transvaal v Minister for Justice and Constitutional Development and Others* (CCT 36/08) [2009] ZACC 8; 2009 (4) SA 222 (CC); 2009 (2) SACR 130 (CC); 2009 (7) BCLR 637 (CC) (1 April 2009).

¹³ See paras 49 and 50.

¹⁴ *S v B* 2003 (1) SACR 52 (SCA).

enquired from M. the complainant whether she understood the nature and import of the oath or whether she considered the oath to be binding on her conscience before admonishing her to tell the truth. 3.2 The court believed that due to her tender age she would not have understood the nature and import of the oath and therefore merely admonished her to tell the truth after she was found to be a competent witness who knew the difference between truth and falsehood.”

[6] The court *a quo* relied on *S v N* 1996 (2) SACR 225 (C) at 229e and *S v Malinga* 2002 (1) SACR 615 (N), a judgment of the full bench of the Natal Provincial Division which was binding on it. It consequently held that a finding in terms of the section had to be preceded by some form of inquiry; that it was clear that the magistrate did not inquire from the complainant whether she understood the nature and import of the oath; and that the evidence of the complainant was therefore inadmissible. However, in its judgment granting leave to appeal the court *a quo* said: “It seems to me that there are reasonable prospects of the Supreme Court of Appeal concluding that in the circumstances of this case the presiding magistrate, *by clear implication, made a finding which was based on her observation that the witness, because of her self-evident youth and immaturity, could not understand the actual nature and import of the oath and accordingly it was only necessary to admonish and warn her and then hear her testimony.*”

[7] *Since the judgments by the court a quo was delivered this court has held in S v B* 2003 (1) SA 552 (SCA) *that an inquiry is not always necessary in order to make the finding required by s 164 and that the mere youthfulness of a witness may indeed justify such a finding.*’ (Accentuation added.)

[14] It is imperative to have regard to the reality that the court *a quo* observed and experienced the witness and was convinced of her maturity and insight. He reiterated this in his judgment.¹⁵ This is what the presiding officer did that stands beyond reproach in the circumstances of this case:¹⁶

‘2022-02-10

MS B: My name is N B. I was born in 2004, February 27.

COURT: So, you will be 18 years on the 27th of this month?

MS B: That is so Your Worship.

COURT: So, 17 years. Do you have any objection in taking oath? *Do you first understand what oath is?*

¹⁵ Page 243 of the record.

¹⁶ To protect the identity of the complainant, I will employ the initials.

MS B: Yes, I understand what the oath is Your Worship.

COURT: What is oath and I can see you are old enough; I just want to be sure.

MS B: *An oath is swearing that you would tell the truth.*

COURT: Thank you. Do you consider an oath binding on your conscience if you decide to take an oath?

MS B: Yes, I do Your Worship.

COURT: So, you have no objection in taking oath?

MS B: No objection Your Worship.

COURT: *Do you then swear that the evidence you shall give shall be the truth, the whole truth and nothing else but the truth. If so, please say "So help me God".* (Accentuation added.)

[15] In conclusion, the legislative prescription supports the manner in which the court *a quo* dealt with the situation. She understood the oath and the truth, and it was not necessary to apply s 164.

Section 162 of the CPA provides:

'(1) Subject to the provisions of sections 163 and 164, no person shall be examined as a witness in criminal proceedings unless he is under oath, which shall be administered by the presiding judicial officer or, in the case of a superior court, by the presiding judge or the registrar of the court, and which shall be in the following form:

"I swear that the evidence that I shall give, shall be the truth, the whole truth and nothing but the truth, so help me God."

And s 164 provides:

'(1) Any person, *who is found not to understand the nature and import of the oath or the affirmation, may be admitted to give evidence in criminal proceedings without taking the oath or making the affirmation: Provided that such person shall, in lieu of the oath or affirmation, be admonished by the presiding judge or judicial officer to speak the truth.*' (Accentuation added.)

[16] The foregoing suggests that considerations regarding the understanding of the truth and related inquiries become relevant at the s 164-stage. Competent witnesses that are placed under oath are never investigated on their ability to understand the truth.

[17] The first ground of appeal must, in light of the above, be dismissed; the fairness of the trial was not affected in any manner whatsoever and the witness was competent to

testify in terms of s 162 of the CPA.

The single witness

[18] Sexual offences are rarely, if ever, committed in the presence of witnesses – sexual offences against children even more so. The scenario *in casu* happened within the realm of a church and between a pastor and a child. The likelihood that a pastor will perpetrate offences of this nature in the presence of witnesses is next to nought. If convictions may not follow on this scenario for the mere fact that the witness is a so-called single witness and was 16 years old at the time, justice will fail miserably. I said the following in *Raleting v S*:¹⁷

'[10] The case for the State is largely reliant on the evidence of a single child witness.

'1. In *S v Stevens* (417/03) [2004] ZASCA 70; [2005] 1 All SA 1 (SCA) (2 September 2004) the Supreme Court of Appeal declared the law on single witnesses:

"[1] Courts in civil or criminal cases faced with the legitimate complaints of persons who are victims of sexually inappropriate behaviour are obliged in terms of the Constitution to respond in a manner that affords the appropriate redress and protection. Vulnerable sections of the community, who often fall prey to such behaviour, are entitled to expect no less from the judiciary. However, in considering whether or not claims are justified, care should be taken to ensure that evidentiary rules and procedural safeguards are properly applied and adhered to.

[17] As indicated above, each of the complainants was a single witness in respect of the alleged indecent assault upon her. In terms of s 208 of the Criminal Procedure Act, an accused can be convicted of any offence on the single evidence of any competent witness. It is, however, a well-established judicial practice that the evidence of a single witness should be approached with caution, his or her merits as a witness being weighed against factors which militate against his or her credibility (see, for example, *S v Webber* 1971 (3) SA 754 (A) at 758G-H). The correct approach to the application of this so-called 'cautionary rule' was set out by Diemont JA in *S v Sauls and Others* 1981 (3) SA 172 (A) at 180E-G as follows:

'There is no rule of thumb test or formula to apply when it comes to a consideration of the credibility of the single witness (see the remarks of Rumpff JA in *S v Webber*. . .). The trial judge will weigh his evidence, will consider its merits and demerits and, having done so, will decide whether it is trustworthy and whether, despite the fact that there are shortcomings or defects or contradictions

¹⁷ *Raleting v S* (A69/2021) [2021] ZAFSHC 198 (14 September 2021).

in the testimony, he is satisfied that the truth has been told. The cautionary rule referred to by De Villiers JP in 1932 [in *R v Mokoena* 1932 OPD 79 at 80] may be a guide to a right decision but it does not mean "that the appeal must succeed if any criticism, however slender, of the witnesses' evidence were well-founded" (per Schreiner JA in *R v Nhlapo* (AD 10 November 1952) quoted in *R v Bellingham* 1955 (2) SA 566 (A) at 569.) It has been said more than once that the exercise of caution must not be allowed to displace the exercise of common sense.'

2. The adjudication of a child witness demands the proverbial Wisdom of Solomon and the judgement must be given with circumspection and anxious care. A court must articulate the warning of care and the need for caution and with reference to the circumstances of the case. A court must examine the evidence in order to satisfy itself that the evidence given by the witness is clear and substantially satisfactory in all material aspects. Although corroboration is not a prerequisite for a conviction, a court will in appropriate circumstances, seek corroboration which implicates the accused before it will convict beyond reasonable doubt. In the absence of corroboration, a court will look for some feature in the evidence which gives *the single child witness* enough veracity to reduce the risk of mistaken reliance.

3. The cautionary rule in sexual assault cases is irrational, outdated and archaic. Minor children testified in the case of *Woji v Santam Insurance Company (Pty) Ltd* 1981 (1) 1020 (A). The circumstances of the *Woji*-case were similar to the matter in hand. Two minor children testified years after the fact.

'DIEMONT JA: This is an unusual and interesting case. It is unusual in that the only two eye-witnesses are two small boys testifying to an incident which had happened five years before the trial; it is interesting in that it raises the question of the weight to be given to the testimony of children in a civil action.

Despite his youth - or perhaps because of his youth - Sibonde's evidence was clear, simple and straightforward.'

The judgment continued and stated that the question which the trial court must ask itself is whether the young witness' evidence is trustworthy.

1. Trustworthiness depends on factors such as the child's power of observation, his power of recollection, and his power of narration on the specific matter.
2. In each instance the capacity of the particular child is to be investigated.
3. His capacity of observation will depend on whether he appears intelligent enough to observe.

4. Whether he has the capacity of recollection will depend again on whether he has sufficient years of discretion to remember what occurs while the capacity of narration or communication raises the question whether the child has the capacity to understand the questions put and to frame and express intelligent answers.
5. There are other factors as well which the court will take into account in assessing the child's trustworthiness in the witness-box. Does he appear to be honest – is there a consciousness of the duty to speak the truth?
6. Then also the nature of the evidence given by the child may be of a simple kind and may relate to a subject-matter clearly within the field of its understanding and interest and the circumstances may be such as practically to exclude the risks arising from suggestibility.
7. At the same time the danger of believing a child where evidence stands alone must not be underrated. It is well known, however, that children often have a vivid memory of an unusual or exciting incident. A motor accident, for instance, is an occurrence that might well arrest the attention of a child, more particularly if he were directly or indirectly involved and that it would leave a clear picture on his memory would not be surprising.'

[19] The complainant satisfies all criteria outlined above: She demonstrated intelligence, consistently understood her obligation to provide truthful testimony, and presented evidence that appears highly detailed and unlikely to be fabricated. Her account of events was simple, clear and coherent. Any suggestion of a motive to falsely implicate the appellant has been effectively refuted. As a child, she had no reason to advance her father's standing in the church, and in fact, there was reluctance to report the incident. The absence of the testimony of the father is inconsequential. The mother's testimony corroborated the complainant's narrative, with only minor inconsistencies deemed immaterial by the court *a quo*, that exercised appropriate caution in its assessment. The slight discrepancies in their corroborative accounts further support the conclusion that there was no malicious conspiracy or motive.

The medical evidence

[20] It is the case for the appellant that the medical report does not indicate any injuries and thus the complainant was not supported by objective evidence. The medical examination occurred on 1 December 2020 more than eight months after the penetration

with the finger. The presence of any injuries would be a physical impossibility at the time of the forensic examination and the report stated clearly in conclusion that the absence of genital injuries does not exclude penetration.

The complainant's delay in reporting the incident

[21] Under this heading the statement in the heads of argument of the appellant¹⁸ on the fact that the appellant went back to the complainant's house again in August after the March incident, 'defies logic why would the appellant go to the complainant's house again if he had raped the complainant on a previous occasion' and is uncharacteristic of a person that has raped the complainant; is noted. The issue to be had with the statement is that conduct of perpetrators of these offences cannot be speculated on by counsel. What is trite is that the complainant was hesitant to report the incident and the appellant had to have realised this.

[22] Section 59 of SORMA defies the argument of the appellant on the reporting of the complainant. She was faced with a pastor in her church. She was afraid of him, and she gave her reasons. In *S v L.M*¹⁹ the stance of the Constitutional Court was reiterated in support of s 59:

'[34] I am also mindful that the complainant failed to report on the first occasion she alleges she was raped to anyone. This, on its own, does not necessarily warrant an adverse inference. Section 59 of the Sexual Offences Act provides that in criminal proceedings involving the alleged commission of a sexual offence, the court may not draw any inference only from the length of any delay between the alleged commission of such offence and the reporting thereof. The reason for this statutory provision is to ensure that presiding officers do not unjustifiably draw an adverse inference only due to a reporting delay, and without proper consideration of psychological and other factors that might have contributed to this. Section 59 should not be unduly interpreted as still requiring that the complaint be made at the first reasonable opportunity. The complainant in this instance testified about her fear of reporting the incident and I accept her evidence in that regard, also when considering the family dynamic at play and the evidence of Ngcofe's conduct towards her.

¹⁸ Paras 26 and 27.

¹⁹ *S v L.M* (50/2021) [2022] ZACGHC 16 (28 February 2022).

[35] Confirming this approach, in *S v Vilakazi Dambuza JA*, on behalf of the majority of the court, held as follows:

"Firstly, as Milton states, reluctance on the part of rape survivors, or some of them, to report the rape at the first opportunity is a firmly recognised fact. It is also generally accepted that with young children the reluctance is compounded. In this case the complainant testified that she was afraid of the appellant. I am persuaded that the prospect of accusing her mother's friend who used to assist her in her studies must have compounded the fear." (Accentuation added)

The contradictions and the appellant's version

[23] As to the contradictions and the version of the appellant; the court *a quo* pondered the issues meticulously and with due regard to the law, specifically from pp 185 to 190 of the judgment. It cannot be faulted. He was cautious in the acceptance of the evidence of the witnesses for the State and realised that the onus on the State is beyond reasonable doubt, notwithstanding the very questionable case for the appellant.

[24] The fundamental principle on the evaluation of evidence on appeal is that an appeal court is not inclined to disturb findings by the trial court on the evaluation of the evidence. The advantage of seeing and hearing the witnesses is difficult to surpass. The Supreme Court of Appeal reiterated in its judgment on 31 July 2020 in *AM and Another v MEC Health, Western Cape*:²⁰

'Such findings are only overturned if there is a clear misdirection or the trial court's findings are clearly erroneous. That has consistently been the approach of this court and the Constitutional Court as reflected recently in the following passage from *ST v CT*:

"In *Makate v Vodacom (Pty) Ltd* the Constitutional Court, in reaffirming the trite principles outlined in *Dhlumayo*, quoted the following dictum of Lord Wright in *Powell & Wife v Streatham Nursing Home*:

"Not to have seen the witnesses puts appellate judges in a permanent position of disadvantage as against the trial judges, and unless it can be shown that he has failed to use or has palpably misused his advantage, the higher court ought not to take the responsibility of reversing

²⁰ *AM and another v MEC Health, Western Cape* (1258/2018) [2020] ZASCA 89.

conclusions so arrived at, merely on the result of their own comparisons and criticisms of the witnesses and of their own view of the probabilities of the case."²¹ (Accentuation added.)

[25] The same was law seventy-seven years ago; and it is still true in the constitutional epoch. If there was no misdirection of facts by the trial court, the point of departure is that its conclusion was correct. The general principles according to which a court of appeal should consider the case are set out in *R v Dhlumayo*.²² The court of appeal must bear in mind that the trial court saw the witnesses in person and could assess their demeanour.

[26] The court of appeal will only reject the trial court's assessment of the evidence if it is convinced that the assessment is wrong. If the court is in doubt, the trial court's judgment must remain in place.²³ Courts of appeal have greater liberty to disturb findings of a court *a quo* when dealing with inferences and probabilities;²⁴ in *casu*, the evidence is of a direct nature. Furthermore, the court of appeal does not zealously look for points upon which to contradict the trial court's conclusions and the fact that something has not been mentioned does not necessarily mean that it has been overlooked.

Conclusion

[27] On the conspectus of evidence, the convictions on all three the charges are correct beyond reasonable doubt. The court *a quo* gave a well-reasoned judgment in accordance with the applicable law.

Order

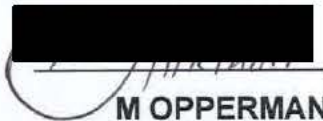
[28] The appeal against the convictions on all three charges is dismissed.

²¹ Ibid para 8.

²² *R v Dhlumayo* 1948 (2) SA 677 (A).

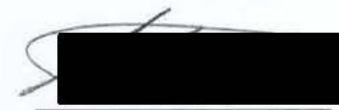
²³ *S v Robinson* 1968 (1) SA 666 (A) at 675H.

²⁴ *Minister of Safety and Security and Others v Craig and Others* [2009] ZASCA 97; 2011 (1) SACR 469 (SCA) at 58.



M OPPERMAN
JUDGE OF THE HIGH COURT

I concur.



H DE LA REY
ACTING JUDGE OF THE HIGH COURT

Appearances

For the Appellant:

Instructed by:

TD Diba

Molete Attorneys,
Bloemfontein

For the Respondent:

Instructed by:

AM Ferreira

Director of Public Prosecutions,
Bloemfontein.