



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF
APPEAL

From: The Registrar, Supreme Court of Appeal

Date: 17 September 2026

Status: Immediate

The following summary is for the benefit of the media in the reporting of this case and does not form part of the judgments of the Supreme Court of Appeal

Arlow v The State (1124/2023) ZASCA 119 (17 September 2026)

Today, the Supreme Court of Appeal (SCA) handed down a judgment upholding an application for reconsideration of a decision refusing special leave to appeal against a conviction and sentence on a charge of attempted murder.

The application arose from criminal proceedings in the Magistrates' Court for the Regional Division of Mpumalanga, held in Mhala, where Capt. Q Arlow (the applicant) was convicted of attempted murder and sentenced to five years' imprisonment. His appeal to the Mpumalanga Division of the High Court was unsuccessful. His subsequent petition to the SCA for special leave to appeal was dismissed. The President of the SCA referred the application for reconsideration and, if necessary, variation of the SCA's order dismissing the applicant's petition to Court for oral argument. The reconsideration application was accompanied by an application to adduce further or new evidence relating to the prospective appeal.

The applicant was deployed to the Kruger National Park as part of operations to combat rhino poaching. He pursued a vehicle driven by Mr L Nkosi (the complainant) after it had exited the park, in circumstances that gave rise to his reasonable suspicion that a serious crime was unfolding and that there may have been firearms in the complainant's vehicle. The applicant maintained that, during the ensuing confrontation, he lost his footing while avoiding being run over by the complainant's vehicle. As he attempted to avoid a collision, his firearm accidentally

discharged a shot that passed through the door panel of the complainant's vehicle and unintentionally struck and injured the complainant.

Having surveyed the evidence presented at the criminal trial, the SCA found that neither counsel for the State nor counsel for the applicant, nor the trial court, questioned how a 9 mm pistol could have caused the entrance and exit wounds measuring 5 mm and 3 mm, respectively. The SCA further held that the conspicuous discrepancy required the contradictions in the evidence presented, particularly regarding how the shot was fired, to be subjected to heightened scrutiny.

The SCA considered the applicant's application to lead further evidence on appeal and held that the expert evidence sought to be introduced was materially relevant, prima facie credible, and supported by a reasonably acceptable explanation for its late production. A failure to consider and accept the evidence would result in a miscarriage of justice, which s 17(2)(f) of the Superior Courts Act 10 of 2013 was manifestly designed to obviate.

The further evidence demonstrated, inter alia, that it was improbable for a projectile with a diameter of 9 mm to cause a 5 mm entrance wound and a 3 mm exit wound. The SCA concluded that the evidence raised a reasonable possibility that the applicant's account of an accidental discharge was true. The absence of intention on the applicant's part called into question the soundness of his conviction.

The SCA found that the State failed to prove the applicant's guilt beyond a reasonable doubt and that no competent alternative verdict could properly be sustained. The SCA therefore set aside the conviction and sentence.

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