**IN THE HIGH COURT OF SOUTH AFRICA**
**KWAZULU-NATAL DIVISION, PIETERMARITZBURG**

**CASE NO: AR369/2016**

In the matter between:

**BLAYNE SHEPARD** Appellant

and

**THE STATE** Respondent

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**ORDER**

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The following order is made:

(1) The appeal is upheld to the extent that the conviction of culpable homicide is set aside and replaced with one of assault with intent to do grievous bodily harm.

(2) The appellant is sentenced to two years correctional supervision in terms of section 276(1)(h) of the Criminal Procedure Act on the conditions set out in the annexure to this order.

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**JUDGMENT**

**Delivered on: FRIDAY, 07 DECEMBER 2018**

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**K Pillay J (Olsen J concurring)**

[1] On 23 March 2013, Bret Williams (the deceased) was killed after an altercation with various persons at the Kings Park Rugby Stadium. This was a sad and unnecessary death that had its origins in the deceased meddling in the affairs of others. The deceased was aptly referred to by the learned Regional Magistrate as a "nosey parker", as "an aggressor" and "provocative". Indisputably this vituperative conduct set in motion a chain of events that had fatal consequences for the deceased. How and by whom he was killed was what the learned Regional Magistrate had to grapple with when faced with conflicting medical evidence on the mechanism of death, and of contradictory eyewitness testimony. At the end of a lengthy trial only the appellant who was one of four accused in the court a quo, was convicted of culpable homicide and sentenced to three years' imprisonment. His three co-accused were discharged at the close of the State case. Prior to the commencement of the trial, charges were withdrawn against Grant Cramer (Cramer), who subsequently became a State witness. The appellant was initially charged with murder and various other charges but was, at the end of the State case, acquitted of all but the murder charge.

[2] Pursuant to leave being granted by the court a quo, the appellant now appeals against the conviction and sentence. The facts giving rise to this appeal are summarised as follows. There were two incidents involving the deceased on that evening. The first incident involved an altercation with Cramer and one Kirsten Cooper (Cooper). The second incident involved the appellant and others. I will, for ease of reference, refer to them as the first and second incidents respectively.

**The First Incident**

[3] On the aforesaid date, after the Sharks victory against the Rebels, Cramer who is a close friend of the appellant celebrated with various persons at bars within or near the precincts of the Kings Park Rugby Stadium. Amongst the people he was with or met along the way were his girlfriend, Cooper, Timothy Creighton and his girlfriend, Jessica Brown (Brown), the appellant and his erstwhile co-accused Travin Lee Martin, Ross Hamilton and others. At some stage Ross Hamilton and accused 2 were embroiled in an argument. Cooper wanted to intervene resulting in Cooper and the appellant exchanging insults. The deceased, who had just emerged from the toilets, enquired aggressively as to what was going on. Cramer told the deceased to "piss off, it doesn't concern you". Cooper did not respond to the deceased prompting the latter to confront her aggressively with insulting words. Aggrieved by the insult directed at his girlfriend, Cramer joined in the brawl. The deceased punched Cramer and as he attempted to do so a second time he fell on the tarmac. Cramer grabbed the deceased and held him in a chokehold until he was asked by Cooper to release him as the deceased appeared to lose consciousness. Cramer did not dispute that the deceased might have sustained an abrasion to his left knee. After this altercation he discovered that a gold neck chain which was of great sentimental value to him was missing. Cooper, Travin Martin, accused 2 and 4 then joined him in the search of this chain. Travin Martin and Timothy Creighton, who were also present, corroborated Cramer on the events surrounding the first incident.

**The Second Incident**

[4] Cramer later noticed that paramedics were attending to the deceased. He heard the deceased refer to accused 2 in derogatory terms using sexual slang. The deceased then punched accused 2, causing the appellant to intervene. A fight then broke out involving all the accused. He saw the appellant, accused 2 and 3 throw punches at the deceased but was not sure if they landed. He was engrossed in looking for his chain. He interrupted his search to notice accused 2 outside the fight, and attempted to hold him but the latter shrugged him off and returned to the affray. He particularly took notice of the deceased. The deceased was upright, in the vicinity of the trailer. He later noticed the deceased lying on the ground, with his feet

towards the shed. The appellant and the other accused had left. He continued the search for five to ten minutes. He and his companions were then confronted by the security officer and a Neil Burger (Burger) who was on a golf cart. A report was made that the deceased had suffered brain damage. He conceded that he had sight of statements and photographs of the deceased before writing his own statement. He had no discussions with Dr Hammond or Dr Hattingh. He could not dispute that the appellant was wearing slip slops.

[5] With regard to the second incident, Timothy Creighton stated that when he saw the deceased, he was lying in a supine position, with the appellant and accused 2, stomping and kicking on the deceased who was surrounded by a group of men. He also saw accused 4 pick up a piece of concrete. He was however concentrating on the search for Cramer's chain. He did make a statement, at Cooper's suggestion, exculpating Cramer. He did not see the deceased strike accused 2 or hear the appellant say "Do you want to hit my brother". He also did not observe the guards and the paramedics pushing the deceased or the deceased fall and hit his head on the edge of the trailer. He had imbibed five double brandies.

[6] Travin Martins saw the paramedics treat the deceased and saw the appellant and other accused in the vicinity of the trailer's gooseneck. This witness clearly did not see much of what occurred during the second incident. Prior to recording his statement, he was interviewed by Attorney Jooste and Advocate Jorgensen. Written notes were taken. About a week later he was presented with a typed statement which he had to check and correct before it was commissioned. He stated that he was not instructed on the contents of the statement. This witness was not interviewed by the South African Police Service. The trial court accepted that this witness's statement was obtained for the purposes of a bail application in respect of Cramer.

[7] Cameron Hamilton is a former police reservist. This witness's recollection of events appeared patchy and not too reliable given that he was on medication and had consumed alcohol.

[8] Baolo Ifomba (Ifomba) is a security guard in the employ of Fidelity Security Reaction Unit. He was called to gate 4 to attend to an altercation. This witness also had an imperfect recollection of the persons and events of the night in question. He did however confirm a search for a chain, a verbal argument between the deceased and some men, necessitating Mike Norman (Norman), Erick Tshinyama (Tshinyama) and himself forming a protective barrier around the accused. He heard the deceased say something which seemed to annoy one member of the crowd prompting a person dressed in black, later identified from a photograph as accused 3, asking the deceased "what did you say", repeatedly. The witness was pushed. He fell over the trailer. He looked backwards, saw the deceased had also fallen and was being attacked by the crowd who were kicking and stamping the deceased on his ribs and stomach area. He saw one person hold a brick which he was stopped from throwing. The crowd then moved away. Paramedics attended to the deceased who subsequently died. He attended an identification parade but it is common cause that he identified a person who was not a suspect. He did not view any CCTV footage.

[9] Tshinyama was also employed as a security guard by Fidelity. He was with Ifomba and Norman on roving duties when he was summoned to the tractor shed to attend to a fight. He arrived shortly after Ifomba and Norman. On arrival he found the deceased seated and being attended to by paramedics. He could not recall the precise spot where he saw the deceased. He found Norman and Ifomba facing four men who wanted to attack the deceased. There were other civilians standing around. He did not hear the deceased insult anyone as he concentrated on the four who were trying to force themselves past the guards to get to the deceased. He heard a discussion about a missing chain. The group still wanted to attack the deceased who was now standing on the pavement near the tractor shed wall. In the process, he and the other security guards were pushing against the appellant's group causing Tshinyama to fall against the trailer thereby injuring his shoulder. Ifomba too fell onto the trailer. As he lay where he had fallen he turned his head to see the deceased standing against the wall but when he got up the deceased was lying on the ground. He noticed that the deceased was being kicked at a speed, too fast to see where the kicks had landed. He did not see, the deceased (as was suggested to him) being pushed and falling against the trailer. As for identifying the

persons he saw kicking the deceased, he could only recall that one of them was a well-built male dressed in a pink shirt. This was also one of the males who pushed at them earlier. He could not however identify any suspect in an identification parade. He was not shown any photograph or CCTV footage prior to his testifying.

[10] Burger is the general manager of Fidelity Security Services. On the night of the match he was patrolling on fields KP6 and 7, on his golf cart when he received a radio message of a fight near the supporter's club, to where he proceeded. Upon arrival he observed a crowd in front of the tractor shed. By then the first fight was over. Ifomba, Norman and Tshinyama were trying to prevent an attack on the deceased who stood near the trailer. He saw Cramer looking for his chain and he proceeded to help him. He suddenly heard a commotion and noticed that all hell had "broken loose" as a group of people rushed towards the tractor shed door where a trailer was parked. He alighted to intervene but was struck by someone on the right side of his face, causing him to fall onto his derriere. His view was obscured. He lay there for ten to fifteen seconds and when he again looked in the direction of the noise he noticed the deceased lying on his back with his head towards the east as depicted in photograph E2. He noticed the appellant kicking and stomping on the deceased's torso. He conceded however that he only saw the deceased's body between the pelvis and neck. He did not see where the kicks actually landed. He saw Geraldine Roberts (Roberts), a paramedic kneeling next to the deceased when he was being kicked. The witness was confronted about the different versions regarding the incident which he gave in various statements as well as important omissions. The responses furnished were far from satisfactory.

[11] Keith Stanley Seach was moonlighting for Fidelity as supervisor/manager of security guards. He saw the deceased after the first incident, stand-up before proceeding, unsteadily towards the pump house, accompanied by Derrick Banks (Banks) and Roberts, where he stood against a wall. At that stage, four men accompanied by Cramer arrived and one of them asked for a chain. Cramer was also looking for a chain. The person who asked for the chain accused the security guards of stealing the chain. One of the four men dressed in a pink shirt similar to that in exhibit "H6", came around and started speaking to the deceased. He looked away to see if the police arrived, when he looked back to the scene, he saw the

deceased standing behind guards. He initially said he saw Burger walk past him and proceed to the scene of the incident, but later recalled seeing Burger being punched and falling down. He then concentrated his sight on the man with the pink shirt. He saw the deceased walk towards the tractor shed where another fight broke out. He saw the appellant throw a punch at the temple of the deceased and the deceased fall in front of the gooseneck of the trailer. The deceased was kicked. He called for help but kept his eye on the unfolding scene. He saw the deceased lying on the ground being kicked and stamped on the head and chest by persons. Security guards who attempted to intervene were pushed and one was thrown against the trailer. He did not see anyone else falling. He saw Burger, Norman and Banks being punched. Banks and Roberts tried to protect the deceased. He proceeded to the North East corner of the trailer. The kicking had stopped, but pushing and shoving continued. The deceased was now lying with his head close to the trailer. One member of the group also picked up a brick but was stopped from throwing it by Roberts. He noticed the appellant and others walk away and give themselves "high five" gestures.

[12] He could only recall making a verbal report about the incident. He was not interviewed by stadium management, Fidelity or any medical specialist. No CCTV footage was shown to him. He recalled making a written statement to Warrant Officer Pillay. He did not identify anyone at an identification parade. When confronted by his statement, he conceded that he did not mention that one member of the group wore a pink shirt. Seach's memory in this regard was only refreshed when shown a photograph exhibit "H". He stated that he did not mention this because he had "blanked out quite a bit" which he went on to explain meant that he sought merely to remember the main points. He disputed that the reason for the omission in his statement was due to his being selective or concocting a story. He could not dispute that the appellant did nothing to the deceased or that all four males were involved in the kicking and stamping. The State recalled Seach after a statement exhibit "Q" came to light.

[13] According to the learned Magistrate this witness was reluctant to return to the witness stand because he wanted to put the incident behind him. He stated he could not recall providing a written statement. He confirmed that exhibit "QQ" bore his signature and surmised that he must have made it in the early hours of the morning

following the incident. The statement was not in his handwriting. In response to counsel's questions whether the statement in question reflected the truth, his response was that it could be five percent of the truth. He conceded also that the information contained in the statement could have emanated from someone else. He highlighted the parts which he believed to be the truth.

[14] Kevin Breckle was at the time of the incident, employed by Fidelity Security to manage the electronics division at all their sites including Kings Park. His role was to uplift camera footage of the tractor shed area and of the supporter's club. He presented their footage in the form of exhibit "Z", which was exhibited to the trial court. It showed, inter alia, the appellant and his erstwhile co-accused leave the stadium. It showed two of the appellant's former co-accused mimic a stamping/stomping action with one leg.

[15] Kim De Villiers, was employed by a taxi service for inebriated drivers and was at the Kings Park Stadium on the night in question. He witnessed parts of the first incident involving Cramer. After Cramer had released his hold on the deceased, the deceased fell to the ground. He approached the deceased to enquire if the latter was all right but found that the deceased had passed out. Five to ten minutes later he noticed a scuffle erupt between a few white males and four to ten security officers who seemed not to have control over the situation. He did see someone pick up a brick but dropped it when admonished. He noticed the deceased lying to the right of a white trailer bay depicted in photographs exhibit "E13" and "E2" and being surrounded by security officers and paramedics. He did however see a very thick – set bald man in a pink shirt, rant and rave whilst flexing his muscles, uttering threatening words in vulgar language. He left his card with a security officer if he needed to be called as a witness. He did not attend an identification parade enquiry or view CCTV footage relating to the incident.

[16] Banks was employed as an ambulance attendant. He was qualified in intermediate life support. He attended to the deceased after the first incident. He was with Roberts on the night in question. He did a proper examination of the deceased, from head to foot. He noticed an abrasion to one of the deceased's elbows. He did not notice any abrasions on the neck, head or knees. If there were

he would have noticed them. Whilst repacking his medical equipment, he heard an argument about a missing chain. A fight broke out between members of the public and security officers. The deceased walked towards the steel door of the tractor shed. When he looked again he observed the deceased lying on the ground between the trailer and the kerb (photograph S4). He advanced towards the deceased who was being assaulted by white males, one of whom was the appellant whom he identified as having a large built, bald head and wearing a pink shirt. The appellant was stomping on the deceased's head with his feet. He was the only one seen doing so, although his statement refers to seeing white males kicking him several times. He also noticed accused 4 holding a concrete object above his head. However the latter put it down without using it.

[17] The fight was over within seconds. The deceased lay motionless on his left side. It appeared to the witness that the deceased tried to get under the trailer as his head was already underneath it. It would be incorrect for anyone to suggest that the deceased was pushed under the trailer. He rolled the witness onto his back. He noticed an abrasion to the deceased's face and that it bore parallel lines. He did not determine what caused it. The deceased was blue around the mouth. He had no pulse. He noticed no injuries on the deceased when the latter's shirt was lifted. Despite intervention by a life support paramedic, the deceased was declared dead. According to the witness the deceased was clinically dead before the arrival of the paramedic. When it was suggested during cross examination that he was lying and did not know what happened, his response was "I could be uncertain as to what happened". He did attend an identification parade but did not correctly identify any of the implicated persons.

[18] The appellant's version is that he is a qualified personal trainer. Accused 2 is his elder brother. He attended school with accused 3 and 4 and Cramer was his gym partner. He also knows Cooper, Cameron Hamilton and Travin Martin but not Timothy Creighton. He also knew Burger through an ex-girlfriend. He worked as a Fidelity security guard in the past and was given a white short sleeves shirt with the Fidelity logo on the pocket. He did not meet Keith Seach or any of the other security guards. He wore a pink t-shirt on the night in question and black shoes with back laces as featured in exhibit "SS". He confirmed being with accused 2, 3, 4 and

Cameron Hamilton at the stadium where, they had a beer each. At some stage they proceeded to the Coyote Bar where they imbibed more liquor. The witness consumed three single brandies and a beer at Coyote Bar and a further three to four double brandies and coke later at Rovers Club. The consumption of alcohol did not affect his powers of recollection. He confirmed, in a material way, most of the sequence of events testified to by Cramer relating to the first incident. On his arrival he noticed the deceased lying in a supine or a starfish position, with a whitish form/fluid/substance on his right cheek. He did not have an opportunity of asking Cramer or Cooper what had happened as they were engrossed in looking for a chain. He saw two paramedics standing nearby with a number of security guards. They were not attending to the deceased. He did not approach the deceased but accused 4, picked up a pair of slops and placed it near the deceased's feat.

[19] During the search for the chain the witness advanced forwards the guards. He did not know where the others in his party were. He noticed Burger standing to his right next to his golf cart. He did not see Seach or Norman. He heard someone suggest that the guards should be searched. This caused the latter to take offence and become upset. They advanced until three or four were, as he described, "in his face". The guards began pushing/shoving him and others with force. This resulted in chaos with people shouting and swearing. He could not dispute Ifomba's evidence that the crowd and deceased exchanged words or that Ifomba, Tshinyama and Norman formed a line keeping the deceased and crowd apart, or that Ifomba was pushed and fell against the trailer. He pushed back but saw no guard fall. He noticed the paramedics pushing but not at whom. The deceased got up from the first place he had lain which was three metres diagonally to his left and walk off towards the left of the trailer. The deceased then turned and advanced aggressively towards them. He did not hear the deceased say refer to his brother using vulgar language, nor see the deceased throw a punch at his brother. The deceased did however join in the chaos, pushing and shoving and being pushed and shoved in return. He denied intervening on behalf of his brother.

[20] According to the witness, everyone, including the paramedics, guards and members of the public were pushing and shoving. He was pushed by a guard against the trailer and he pushed back. It was pointed out that this version was not

put to any of the witnesses by his counsel. He stated that everything happened very fast and he next saw the deceased lying next to the trailer from where he never moved again. Although the fight ended the guards continued shouting and swearing. He recalled shouting threatening words back , whilst flexing his right arm.

[21] He disputed, as was suggested to him by the State's counsel, that he had been the aggressor, or that he assaulted the deceased in any manner whatsoever. He and his co-accused thereafter left. He heard the following morning, that the deceased had died and contacted Cramer to enquire what had happened to the deceased. He did not conceal evidence or persuade anyone to lie about the matter. Amongst his group, he was the only one with a bald head and a distinctive pink shirt. He agreed with the prosecutor that a blow to the head could be dangerous and that repeated blows could cause death.

**Medical evidence**

[22] Dr Ashley Sherwin Hammond holds an MBChB and a diploma in Forensic Medicine. He has been a full-time medical practitioner from 1997. He is not a qualified specialist forensic pathologist. On 28 March 2013 he examined the body of the deceased. He recorded his findings on form G7/15 (exhibit "HH"). He confirmed the correctness of the said findings and that the photographs in exhibit "F" correctly reflected the injuries to the deceased as observed by him. His chief findings as tabled in exhibit "HH" were:

'Deep scalp bruising left frontal scalp. Subdural haemorrhage and subarachnoid haemorrhage to the interior temporal lobe. Blood clot in the ventricles. Abrasion to the knees and left frontal scalp.'

[23] He conceded that, bruising under the right eye and to the cheek, as reflected in the photographs, was not recorded in his report and attributed this to confusion caused by lividity. No skull fractures were noted, although deep scalp bruising was present. An examination of the intra cranial contents of the brain revealed a subarachnoid haemorrhage and subdural haemorrhage on the front temporal lobes, both left and right. There was bleeding inside the dura and in the subarachnoid space towards the front of the brain. A blood clot was present in the ventricles,

caused by a sudden or violent shaking, which caused the brain to hit against the inside of the skull causing a shearing or rupture of the small blood vessels in the brain. He opined that this could have been caused by a severe blow or a kick to the head or through a motor vehicle collision. The witness did not believe, having regard to the injuries and the shape of the trailer that it was likely that the deceased fell against it. He felt that if that happened he would have expected an imprint abrasion or fracture at the point of contact as the trailer is a sharp force. The injuries were more in keeping with blunt force to the head. He was of the view that had the deceased hit the trailer that would not have caused such severe injury to the subarachnoid, subdural and the intra ventricular aspects of the brain. He stated that the whole scalp was dissected.

[24] Apart from the injuries noted there were no others, in particular, to the back of the head. The blue discolouration of the lips indicated that the deceased's neck had been compressed, causing venous blood to build up in the head and neck. The neck structures were intact however and there was no tracheal haemorrhage. The compression to the neck made no contribution to the death. He said that stomping and kicking to the chest area, could but did not necessarily cause bruising, contusions and fractures to the ribs. He attributed its absence to the deceased anticipating the injuries and tensing his muscles. There were no obvious fractures of any bones in the head nor any skull distortion. According to the witness the bleeding into the ventricles of the brain was the more serious of the three injuries and death would have followed within twenty five or thirty minutes.

[25] The witness was concerned that the blood sample taken from the deceased had not made its way to the Forensic Laboratory prompting him to request an investigation. He did not record the dimensions of any of the injuries as he regarded them as superficial and minor. No x-rays were ordered as there was no indication that it was necessary. He agreed that the abrasion to the left frontal temporal scalp under which he found deep scalp bruising, appeared to come from four directions. He did not correlate it to a diamond pattern. He did not discount the suggestion that this injury was compatible with a hard impact on grid-like surface, such as found on the trailer.

[26] Dr Hammond was not asked to compare the injury on the deceased with the sole imprint of any shoe. When shown a shoe identified as the one worn by the appellant, he stated that he did not consider the markings associated with the injury to have been caused by the appellant's shoe. The witness was not aware of the practice of taking photographs of a deceased's body prior to rinsing.

[27] Dr Christa Hattingh is a specialist forensic pathologist employed by the Department of Health in the Forensic Pathology Services. She has completed approximately three thousand post mortems. She was approached for an opinion on two issues namely:

(i) The cause and mechanism of death of the deceased and to comment on the injuries.
(ii) To comment on whether the sole cause of the deceased's death could be attributed to the assault at the stadium.

[28] She was present during some of Dr Hammond's testimony. She was furnished with Dr Hammond's post mortem report, a copy of a photo album compiled by the investigating officer and the statements of witnesses, Cramer, Norman, Banks and Roberts. She was not furnished with Cooper's statement. Her conclusion in the report, (exhibit "J"), which she confirmed in court was that the deceased's injury was caused by head injury, which was due to the application of force. This was evidenced by the scalp abrasion, deep scalp bruising and intracranial haemorrhages. In this case there were no shoe patterns which evidenced injuries caused by kicking and stomping. She stated that the head is very vulnerable to injury, particularly to acceleration/deceleration and rotational forces because it is heavy in relation to its size, is freely mobile in three dimensions and occupies a relatively unstable position.

[29] She agreed with Dr Hammond that the absence of any wounds, abrasions or contusions to the body and the limited injuries to the deceased's head did not support a history of prolonged kicking and stomping. She testified that examination of the deceased's clothing was essential to determine if any injuries correlated with any marks on the fabrics. It is not in dispute that in this case there were no marks on the deceased's shirt. She conceded that it was possible that the deceased fell

against the bar of the trailer as depicted in the photographs shown to her. She also agreed that Dr Hammond's post-mortem report lacked detail. The skull thickness was not measured as it should have been done neither did Dr Hammond measure the abrasions. With regard to the abrasions to the deceased's knees, she stated that they simply indicated that at some stage pre-mortem, the deceased had been on both knees.

[30] Dr Steven Naidoo is specialist forensic pathologist with approximately 20 years' experience as a specialist. He was Professor of Forensic Medicine from 2003 to 2011 but is now in private practise. He is an independent consultant and trainer. He has concluded between 10 000 to 12 000 autopsy examinations. His speciality is the pathology of trauma and of sudden death. His other interest is in head injury. He has also contributed to a medical text book, "Introduction to Medico-Legal Practise" by Professors Dada ad McQuiod-Mason. In anticipation of testifying in this matter the witness read the reports of Dr Hammond and Hattingh, Professor Botha's opinion, attorneys notes to him, notes on the evidence of Drs Hammond and Hattingh, and Cooper's statement. He also had sight of a selection of photographs and the appellant's shoe before compiling his own report (exhibit "TT"). In addition he had sight of the trailer depicted on exhibit "S2" and the instructing attorney's trial notes on the evidence of witnesses. Prior to testifying he also consulted a book on forensic pathology by Bernard Knight, Mayo and clinical books by Hutchenson and Byton as well as physiology books by Hall.

[31] He then compiled a report exhibit "TT". He knew both Dr Hattingh and Hammond. Dr Hattingh was his post-graduate student. Dr Hammond occasionally sought his guidance during a post-mortem. Dr Naidoo did not examine the body of the deceased nor was he present during the post-mortem examination. He did not dispute that the cause of death was a blunt type head injury. According to him the injury sustained by the deceased in this case was a high velocity deceleration injury typically seen in a motor vehicle accident where someone crashes against a brick wall and the head hits the windscreen or the dashboard.

[32] The witness states in his report:

'The intra-ventricular haemorrhage is, in fact, most crucial evidence of the nature of this brain injury. It donates a deep type of shear strain injury which must be considered most typically of a moving head (not just a mobile one) undergoing either sudden acceleration or sudden deceleration strain. Acceleration strain (mobile head set into very rapid motion) is less likely in the context of the scenario of this case. If deceleration (rapidly moving head coming to sudden rest) is the likely scenario, the court must seriously consider an unsupported and ***unbroken fall*** to the ground or against an object. The haemorrhage is due to bleeding from within the ventricles and the source is not always clear but may be from the septum pellucidum (midline membrane between left and right ventricles) or from the corpus callosum.'

The witness testified that Dr Hammond's testimony with regard to "a violent shaking type of injury must be qualified as the fatal injury in this case was not due to a "shaken acute syndrome" type of injury but from severe acceleration-deceleration type of injury imparted to a mobile head as in a fall or in a motor-vehicle collision.

[33] He also found it difficult to reconcile the absence of grime marks on the shirt and the minimal surface injuries to the head and torso with possible impacts by fists and shod feet. He however added the disclaimer that not every contact blow will cause bodily injury. Variables such as site of the body surface, thickness of skin, amount of and nature of underlying tissue, age, sex and nature of impact and nature of surface against which the body surface rests or is propelled can have an effect on the appearance or not of bodily injuries.

[34] According to the witness, Dr Hattingh did not clarify the mechanism of death as opposed to the cause of death which she found was due to blunt force injury. He did however agree with Dr Hammond's findings that bi-frontal and bi-temporal frontal contusions are "characteristically a manifestation of the brain in motion injury, seen in the mobile head that is moving and coming to rest characteristically, or starting from rest and being kicked into acceleration".[1] With regards to the bruising noted on the left cheekbone, right lower eyelid, thigh, elbow and on the side and back of the neck and forehead, documented by Dr Hammond, his opinion was that this was normal post-mortem lividity. This was accentuated because of the likelihood that the deceased was positioned with his head slightly lower than his body due to the

[1] Page 2683 of the record.

sloping surface on which he lay, although he could not dispute that the bruising was in keeping with a head injury or being punched in the face. Dr Hammond's report did not, regrettably, record the presence or absence of post-mortem lividity. He also conceded that it was unlikely that a simple drunken fall would result in the abrasions found on the deceased's knees because they were what he termed, moving abrasions.

[35] The witness pointed out that even though the survival period between the last alleged stomping on the deceased and being declared dead was short, one would still expect to see bruises to the face and torso and possibly rib fractures even if they were in the early stage of development. He would also have expected to see resistance impact injuries to the deceased's back given that he was lying against coarse gravel. He stated that the injury on the deceased's eyelid was more likely to be lividity as if it was bruising there would in all likelihood be fractures to the fragile sinuses. This would have been observed when the skull is opened during the post-mortem examination and the dura removed. It was therefore his conclusion that this injury was lividity and not bruising. During his evidence in chief the witness was referred to the statement of Cooper, who stated that the deceased appeared to have lost his balance and fell to the ground with a thud. It looked to Cooper that he hit his head and that she never saw him move after that.

[36] Confronted with this version of events, the witness seemed to suggest that the fact that the deceased fell, striking the ground from a standing position is a major acceleration of the head. The inability of the deceased to move after that fall typifies brain stem concussion. His conclusion was that the direct cause of death was a deceleration head injury and its occurrence upon impact from a fall from an upright position, contributed to by the likely state of the deceased's drunkenness, was the only mechanism of injury. He was of the opinion that the direct impact of blows or kicks to the head and body themselves did not cause the fatal head injury. Although a blow may have partly contributed to propelling such a fall, he believed that no single blow or accommodation of blows or totality of blows directly caused the deceased's death in this case.

[37] Despite his strongly held beliefs on the mechanism of death the witness made concessions during cross-examination as illustrated by counsel for the State:

(i) According to the learned author Bernard Knight, a mobile head kicked on the floor, may exhibit the same injuries as one could sustain in a drunken fall.
(ii) That impact abrasions could be consistent with being kicked.
(iii) That the discolouration below both of the deceased's eyes as seen in exhibit "F" could be bruising.
(iv) That some of the abrasions could have been caused by the deceased being kicked with the front of the shoe worn by the appellant at the time.
(v) Significantly he stated that where there is rapid death there would not be a manifestation of bruising.
(vi) Bruising to the back of the deceased's arm was typical of a person using elbows to break ones fall.
(vii) That the fall against the trailer scenario is incompatible with the series of abrasions on the deceased's left temporal area as seen in exhibit "F".

[38] Whilst Naidoo is clearly an experienced pathologist, his evidence, like that of Dr Hattingh, has to be viewed against the fact that he did not conduct the post-mortem examination. He based his conclusion primarily or largely from witnesses evidence, what he was told by the appellant's legal representative, photographs and medical reports

[39] It is well-established that a trial court not having the benefit of seeing and hearing witnesses, will largely defer to the trial court's impressions of them. It is only in exceptional cases that a court of appeal will interfere with a trial court's assessment of oral testimony. This was emphasised in *Parkes v Parkes*[2] which quoted with approval the following passage from a decision of the Privy Council:[3]

[2] *Parkes v Parkes* 1921 AD 69 at 77.
[3] *Khoo Sit Hoh v Lim Thean Tong* [1912] AC 323 at 325.

'Of course, it may be that in deciding between witnesses he has clearly failed on some point to take account of particular circumstances or probabilities material to an estimate of the evidence, or has given credence to testimony, perhaps plausibly put forward, which turns out on more careful analysis to be substantially inconsistent with itself, or with indisputable fact, but except in rare cases of that character, cases which are susceptible of being dealt with wholly by argument, a Court of Appeal will hesitate long before it disturbs the findings of a trial judge based on verbal testimony.'

[40] The appellant in his s 115 statement attacked the investigative process on the basis that there was a "lack of objective, unbiased and constitutional investigative process which impacted on his rights to a fair trial", specifically with regard to the following:

(i) The failure to collect, preserve and test tissue and blood samples at the post-mortem.
(ii) The failure to photograph or record the post-mortem process.
(iii) The conducting of the post-mortem itself.
(iv) The holding of an identification parade after the identities of the accused had been made public in the press and in open court.
(v) Investigating any previous alleged assault of the deceased and the possible effects thereof on cause and mechanism of death.

Though these issues were pursued in this appeal as well, the main basis on which the judgment of the trial court is impugned is that the State failed to present sufficient evidence to overcome the onus incumbent upon it to "prove the guilt of the accused to the standard of beyond a reasonable doubt".[4]

[41] It is apparent from the judgment that the learned Magistrate applied his mind to the issues raised but found that the appellant's rights to a fair trial were not infringed. There is no doubt that the state pathologist's functions are curtailed in some respects by a lack of resources. Whilst personal initiative could have ensured more was done, for instance bringing in a kitchen scale to weigh organs, the alleged

[4] Heads of argument para 19.1 page 38.

failures in my view, did not impact materially on the appellant's right to a fair trial, given his defence that he did not commit the offence in question.

[42] On the evidence of the appellant's own expert witness, the prior assault (first incident) had no effect on the cause and mechanism of death. Clearly the investigative process was not perfect in this case, however the failures complained of, in my view, are not so fundamental as to have tainted the verdict in any way. The learned Magistrate comprehensively analysed the law and facts on this issue. I find no need to do likewise as it would be a task of supererogation to undertake such an exercise.

[43] On the appellant's version his face was blurred in the photograph included in the newspaper articles concerning the incident. In the circumstances, it is highly unlikely that the identification of the appellant at any subsequent identification parade would have been compromised. The issue of the trailer being regarded as a vital piece of evidence only came to light after Cooper made a statement. By then the trailer was no longer available to be subjected to inspection. As correctly pointed out by the learned Magistrate, there was no suggestion or allegation by the defence of any irregularity or impropriety on the part of the investigating officer or for that matter of the prosecution.

[44] The State prosecutor chose not to call Cooper but made her available to the defence. The defence did not call her as witness despite using the contents of her statement extensively to cross-examine State witnesses and contending that her statement was of fundamental and far reaching forensic significance. The state is not obliged to call all witnesses, even those adverse to its case. This was emphasised in *S v Van der Westhuizen*[5] as follows:

'Where an accused is represented, it is not the function of a prosecutor to call evidence which is destructive of the State's case, or which advances the case of the accused. The duty of a prosecutor, to see that all available legal proof of the facts is presented, is discharged by making the evidence available to the accused's legal representatives; the prosecutor's obligation is not to put the information before the court. There is therefore no

[5] *S v Van der Westhuizen* 2011 (2) SACR 26 (SCA) at 27A-B.

substance in the argument that the appellant did not receive a fair trial because the State called some witnesses, and not others.'

[45] Cooper is alleged to have stated in her statement "the guard and the medics were pushing everyone when the deceased appeared to lose his balance and fell to the ground with a thud, it looked like he hit the edge of the trailer, and I never saw him move after that".

[46] Section 186 of the Criminal Procedure Act (CPA) permits a judicial officer to call a witness if he/she believes that such a witness is essential to its decision. It reads as follows:

'The court may at any stage of criminal proceedings subpoena or cause to be subpoenaed any person as a witness at such proceedings, and the court shall so subpoena a witness or so cause a witness to be subpoenaed if the evidence of such witness appears to the court essential to the just decision of the case.'

[47] It is, as pointed out by the learned Magistrate, that in order to exercise that discretion judiciously he had to "hold the belief that the witness can contribute value to the matter and that his or her evidence is essential to a just decision."[6]

[48] As emphasised in a number of decisions[7] this section introduces an inquisitorial element to an essentially adversarial criminal justice system. It perhaps bears repeating the sage words of Curlewis JA in *R v Hepworth*[8] in relation to the function of a judge:

'A criminal trial is not a game where one side is entitled to claim the benefit of any omission or mistake made by the other side, and a judge's position in a criminal trial is not merely that of an umpire to see that the rules of the game are observed by both sides. A judge is an administrator of justice, he is not merely a figure head, he has not only to direct and control the proceedings according to recognised rules of procedure but to see that justice is done.'

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[6] Page 3004 of the record, page 70 of the judgment.
[7] *S v Von Molendorff & another* 1987 (1) SA 135 (T); *Ngobeni v S* (741/13) [2014] ZASCA 59 (2 May 2014).
[8] *R v Hepworth* 1928 AD 265 at 277.

[49] Section 186 clearly affords a trial court a wide discretion to invoke its provisions which discretion must be exercised judicially and reasonably. However as was affirmed in *S v Gerbers:*[9]

'…a Court of Appeal should remind itself that there were well-known limits to its powers to gainsay the bona fide exercise by a trial Court of a judicial discretion vested in it.'

The need for impartiality when deciding to invoke s 186 to call a witness has been emphasised in a number of decisions.[10]

[50] As to what is essential to the just decision of the case, Heher AJA in *S v Gabaatlholwe & another*[11] stated, inter alia:

'…If the statement of the proposed witness is not unequivocal or is non-specific in relation to relevant issues it is difficult to justify the witness as essential rather than of potential value.'

[51] In *R v Jonathan,*[12] the following paragraph is of relevance:

'But I repeat that I know of no case, where counsel for the accused deliberately refrains from calling a witness, in which it has been held that it then becomes obligatory on the Court itself to call such witness.'

[52] In *Sithole v S*[13] a potentially crucial witness was not called by the state and defence.

'[30] In this case, neither party wished to rely upon the evidence of Mr Xaba. Neither wanted to call him as their witness. If he had been called by the prosecution and he had testified to the version which the prosecution had expected from his statement, then the defence would have attempted to destroy his reliability. If he had been called by the prosecution and he had not adhered to the version which had been expected from his statement, then the prosecution would have challenged him as a perjurer or, at the least, as a contradictory and unreliable witness. If he had been called by the defence and had not adhered to the statement he had made, then the prosecution would have challenged him on the same basis.

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[9] *S v Gerbers* 1997 (2) SACR 601 (SCA) at 602F-G.
[10] *S v Masooa* 2016 (2) SACR 224 (GJ); *S v Le Grange & others* 2009 (1) SACR 125 (SCA); *Ngobeni v S* note 7.
[11] *S v Gabaatlholwe & another* 2003 (1) SACR 313 (SCA) para 6.
[12] *R v Jonathan* 1932 TPD 44 at 47.
[13] *Sithole v S* (A149/2010) [2012] ZAGPJHC 158 (12 September 2012).

[31] In summary, Mr Xaba was a witness whom neither the prosecution nor the defence wanted to give evidence and both parties would, quite rightly, have done their best to destroy his credibility and the reliability of his evidence. The court would have been left with nothing – no evidence upon which it could rely.'

In this case the trial court felt it was not entitled to invoke the provisions of section 186 "with a view to providing the defence with a possible explanation for the deceased's fatal injury or even defence" because to do so would be "contrary to well-established procedural principles that a court should not descend into the dust of the arena".[14]

[53] Having considered the above decisions and the Magistrate's reasons for not calling Cooper as a witness in terms of s 186 of the CPA, I conclude that no misdirection has been established.

[54] The State in this case bears the onerous burden of proving its case beyond a reasonable doubt. This was aptly stated by Plasket J in *S v T*[15] as follows:

'The State is required, when it tries a person for allegedly committing an offence, to prove the guilt of the accused beyond a reasonable doubt. This high standard of proof - universally required in civilised systems of criminal justice - is a core component of the fundamental right that every person enjoys under the Constitution, and under the common law prior to 1994, to a fair trial. It is not part of a charter for criminals and neither is it a mere technicality. When a court finds that the guilt of an accused has not been proved beyond reasonable doubt, that accused is entitled to an acquittal, even if there may be suspicions that he or she was, indeed, the perpetrator of the crime in question. That is an inevitable consequence of living in a society in which the freedom and the dignity of the individual are properly protected and are respected. The inverse - convictions based on suspicion or speculation - is the hallmark of a tyrannical system of law. South Africans have bitter experience of such a system and where it leads to.' (Footnotes omitted.)

[55] There is no concomitant duty on an accused to prove his innocence. In order to escape conviction, an accused merely has to give an explanation that is reasonably possibly true. In criminal cases the State is not required to overcome

[14] Page 3004 of the record.
[15] *S v T* 2005 (2) SACR 318 (E) para 37.

every instant of doubt but merely to prove its case beyond a reasonable doubt. It simply requires a judicial officer to be firmly convinced of the accused's guilt. The defence have criticised the trial court's findings of "moral certainty" as to the guilt of the appellant but this approach is endorsed by the Supreme Court of Appeal in *S v Mavinini*:[16]

'It is sometimes said that proof beyond reasonable doubt requires the decision-maker to have 'moral certainty' of the guilt of the accused. Though the notion of 'moral certainty' has been criticised as importing potential confusion in jury trials, it may be helpful in providing a contrast with mathematical or logical or 'complete' certainty. It comes down to this: even if there is some measure of doubt, the decision-maker must be prepared not only to take moral responsibility on the evidence and inferences for convicting the accused, but to vouch that the integrity of the system that has produced the conviction - in our case, the rules of evidence interpreted within the precepts of the Bill of Rights - remains intact. Differently put, subjective moral satisfaction of guilt is not enough: it must be subjective satisfaction attained through proper application of the rules of the system.' (Footnote omitted.)

[56] In evaluating the evidence of the witness the learned Magistrate correctly reasoned thus:

'In assessing the evidence, all of it must be considered, that is the state witnesses and the defence witnesses. Any witness taken in isolation may not meet the required standard of proof but when his or her evidence is considered collectively as part of the mosaic a different picture can and often emerge. That is what has transpired here. Assessed and judged individually it is unlikely that it can safely be stated that any state witnesses has established the guilt of the accused beyond reasonable doubt but collectively, together with that part of the accused's testimony which is not in conflict with the state case, a picture has emerged which fits like a hand into a glove enabling the court to find with the requisite degree of certainty whether the accused was involved in the final conduct.'

[57] In this case the witnesses indeed gave varying accounts of what precisely happened during the second incident. These variations must be viewed against the mobility of the events that unfolded, the limited visibility and the number of persons involved in the affray. Witnesses were viewing the incident from different vantage points. Some were also worn down by repetitive questioning. The appellant himself did not fare well under cross-examination. He in my view feebly, attempted to

[16] *S v Mavinini* 2009 (1) SACR 523 (SCA) para 26.

distance himself from any involvement in the assault. Despite all the criticisms against the evidence of the State witnesses, what was a golden thread amongst some of the witnesses' evidence is that a big built bald man in a pink shirt was seen kicking at the deceased's upper torso. It was common cause that the appellant fitted that description. Burger and Cramer know the appellant. Whatever flaws there might have been in their evidence, both identified the appellant as being part of the group who were assaulting the deceased. The magistrate's finding that the appellant participated in the assault cannot be faulted.

[58] Seach's evidence was, in my view correctly assessed with caution. This witness was certainly subjected to intensive cross-examination to the extent where he seemed to simply agree with everything put to him. However, given the various shortcomings in his evidence which cannot simply be glossed over, my view is that only parts of his evidence that are supported by other witnesses can be believed.

[59] Medical evidence in a criminal trial has immense corroborative value, and is often used to demonstrate consistency or inconsistency with ocular testimony, as the case may be. The value of such evidence was stated in the case of *Solanki Chimanbhai Ukabhai v State Of Gujarat*[17] as follows:

'Ordinarily, the value of medical evidence is only corroborative. It proves that the injuries could have been caused in the manner alleged and nothing more. The use which the defence can make of the medical evidence is to prove that the injuries could not possibly have been caused in the manner alleged and thereby discredit the eye witnesses. Unless, however the medical evidence in its turn goes so far that it completely rules out all possibilities whatsoever of injuries: taking place in the manner alleged by eye witnesses, the testimony of the eye witnesses cannot be thrown out on the ground of alleged inconsistency between it and the medical evidence.'

[60] Whilst there is assonance on the cause of death, the medical evidence viewed in totality does not in my view establish beyond a reasonable doubt that the mechanism of death was as postulated by the State, namely the kicking and stomping on the deceased's head and upper torso. The reason I say so is that, Dr Hattingh herself conceded that there was no certainly on the mechanism of death.

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[17] *Solanki Chimanbhai Ukabhai v State Of Gujarat* (1983) 2 SCC 174 para 13.

According to her whilst the deceased could have sustained the injury as a result of falling from his own height and hitting his head on the trailer this was unlikely because there was insufficient external bruising to the site of the injury. Nor was there a skull fracture.

[61] It is so that Dr Hammond found no corroborating injuries to the deceased in respect of the version of the state witnesses regarding the kicking and stomping on the deceased after he had fallen down.

[62] Doctors Hattingh and Naidoo expected there to have been, injuries to the upper torso of the deceased consistent with an aggressive kicking and stomping as testified to by some of the witnesses. There were none. The white t-shirt of the deceased bore no evidence of shoe or other marks consistent with shod feet kicking at that apparel. The deceased had no defence-type injuries to his arms and shoulders. Neither were there any rib fractures, skull fractures or extensive bruising to the head/skull of the deceased according to Naidoo. The only significant injury to the head was the injury to the left parietal area of the skull of the deceased. Significantly there were no soft tissues injuries to the delicate areas of the face of the deceased either.

[63] It is not in dispute that the deceased fell close to a trailer. Apart from Seach, whose evidence in my view was sufficiently discredited, none of the witnesses saw how the deceased actually fell during the struggle. The mechanism of death proffered by Dr Naidoo, namely the deceased falling and hitting his head on the trailer or the ground, causing a brain stem injury resulting in death is as consistent with the evidence as is the version of Dr Hattingh, that the kicking and stomping would have caused the same result. This dissonance creates doubt about the actual mechanism of death.

[64] The events surrounding the second incident were, beset with various problems namely lack of adequate lighting, the mobility of the scene, the attack of the deceased by a crowd of persons, the intervention by security guards and the pushing and pulling. There was unfortunately no clear or credible evidence on

exactly when and how the deceased fell. There were certainly flaws or deficiencies in the eyewitnesses' testimony which the learned Magistrate was alive to.

[65] It follows that even if this court disbelieves the appellant, the State still bore the onus of proving each element of the offence beyond a reasonable doubt. This was emphasised as follows in *Juggan v S:*[18]

'Although the appellant was untruthful in regard to the visit to the lonely spot as has been repeatedly stated, the untruthfulness of an accused person must not be taken to the point of relieving the State of the burden of discharging the onus resting upon it.'

[66] In this case, the State relied on the so called doctrine of common purpose to prove that the appellant was a part of a group that kicked and stomped at the deceased, which conduct resulted in the deceased's death. Reverting to the issue of onus, here too it was incumbent on the State to demonstrate how the conduct of each of the participants contributed to the death of the deceased, given the evidence that it was not only the appellant who was kicking at the deceased.

[67] In *S v Maxaba en andere*[19] the court held:

'There is no magic spell contained in the so-called doctrine of "common purpose". Where there is participation in a crime then each one of the participants must satisfy all the requirements of the relevant definition of the crime before he can be convicted as an accomplice. Murder is a consequence crime (gevolgsmisdaad). If the State wishes to prove common purpose, then it must prove, not only that each participant had the necessary intention to kill the victim, but also that his part therein contributed, actually or psychically, to the cause of death.'

[68] In my view the evidence was such that it did not unequivocally establish that the appellant wrongfully or negligently caused the death of the deceased. However what has been established is that he was kicking at the upper torso of the deceased. The extent and force, given the dearth of credible evidence in this regard has not been established. However kicking someone with booted foot is likely to cause serious injuries.

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[18] *Juggan v S* [2000] JOL 7459 (A) para 12.
[19] *S v Maxaba en andere* 1981 (1) SA 1148 (A) at 1149A-B.

[69] In the circumstances I am satisfied that an assault with intent to do grievous bodily harm was proved beyond a reasonable doubt. The conviction of culpable homicide has to accordingly be set aside and replaced with one of assault with intent to do grievous bodily harm.

[70] Turning to the sentence imposed, in view of this court setting aside the conviction of culpable homicide and replacing it with assault with intent to do grievous bodily harm it is now free to assess sentence on this offence anew. It is accepted by the state that the deceased's behaviour set in motion a chain of events that had devastating consequences for him, regrettably so.

[71] In respect of the appellant, the following was submitted:

(i) He had no previous convictions nor demonstrated any tendency towards repeated criminal conduct or violence.
(ii) Society does not require protection from the appellant.
(iii) He is gainfully employed and therefore a productive member of society.
(iv) He can be rehabilitated and catered for outside the prison environment.
(v) The appellant should not be punished to assuage the anger of ill-informed members engaged in social media, nor for any acts committed by third parties.

[72] It is always sad when any person unnecessarily loses his/her life. The effects on loved ones, is devastating. The anger it engenders against supposed perpetrators is understandable. However courts have a duty to achieve a balance when meting out sentence by considering the crime, the interests of society including the victims and the personal interests of the offender equally. In this case I accept that there is no evidence that the appellant has a propensity for committing crimes of violence. On this fatal evening, there was much going on. The deceased unfortunately placed himself at the centre of issues he had no business being in. That of course did not justify his death. Neither did it justify the appellant and others acting aggressively. We live in a society where respect for law and order should be paramount. Knee jerk reactions to a person clearly under the influence and behaving badly should as far as possible be avoided, especially if there are security

guards, as there were in this case, whose intervention should have been sought. There is no doubt that the death of the deceased had a severe impact on the life of the deceased's partner, Louise Jane Scott and her minor child, as set out in her victim impact statement.[20]

[73] In my view no purpose will be served by the incarceration of the appellant. The conviction of culpable homicide is to be replaced with assault with intent to do grievous bodily harm. However the appellant's actions require a measure of censure which will ensure that he is sufficiently deterred from committing similar acts in future. Given especially his age, it strikes me that the positive intervention which correctional supervision offers is preferable to the non- proactive approach to reform reflected in a suspended sentence, with or without the reinforcement of a fine. In the court *a quo* the defence proposed correctional supervision on the conditions proposed by the correctional service official whose report was Exhibit "UU" before the court. Subject to minor alterations, those conditions appear to me to be appropriate.

**The following order is made:**

**(1) The appeal is upheld to the extent that the conviction of culpable homicide is set aside and replaced with one of assault with intent to do grievous bodily harm.**

**(2) The appellant is sentenced to two years correctional supervision in terms of section 276(1)(h) of the Criminal Procedure Act on the conditions set out in the annexure to this order.**

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**K Pillay J**

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**Olsen J**

[20] Exhibit "WW" at page 3269 of the record.

Appearances:

| | |
|---|---|
| Counsel for Appellant | : Advocate L Barnard |
| Instructed by | : Jaques Botha and Associates |
| Counsel for State | : Advocate Shah |
| Instructed by | : Director of Public Prosecution |

**IN THE HIGH COURT OF SOUTH AFRICA**
**KWAZULU-NATAL DIVISION, PIETERMARITZBURG**

**CASE NO: AR369/2016**

In the matter between:

**BLAYNE SHEPARD** Appellant

and

**THE STATE** Respondent

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**ANNEXURE TO APPEAL COURT ORDER**

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## CONDITIONS OF CORRECTIONAL SUPERVISION

**[1]** **With due consideration to his work / general co-operation, and other relevant circumstances the accused is placed under house arrest for the duration of his sentence.**

**[2]** **The accused may not change or leave his place of residence without prior approval except for purposes of essential work or other reasons as the Commissioner may deem fit.**

**[3]** **The accused shall perform sixteen (16) hours of free community service for each month of the sentence.**

**[4]** **The accused shall attend the Orientation Programme of the Department of Correctional Services, and submit to assessment and attend other programmes aimed at improving his identified problem areas, which may be deemed necessary whilst serving his sentence.**

**[5]** **The accused shall refrain from using alcohol and/or drugs.**

**[6]** **The Commissioner shall ensure that these conditions are complied with.**

**DATE :** **07 DECEMBER 2018**