THE HIGH COURT OF SOUTH AFRICA

(WESTERN CAPE DIVISION, CAPE TOWN)

High Court Case No: A273/16
Lower Court Case No: CTRC
31/140/09

GRANT MATTHEW SMITH **APPELLANT**

and

THE STATE **RESPONDENT**

Coram: ROGERS J & PARKER AJ

Heard: **18 NOVEMBER 2016**

Delivered: **26 JANUARY 2017**

JUDGMENT

ROGERS J (PARKER AJ concurring):

Introduction

[1] The appellant was convicted in the court a quo of conspiring with Jo-Ann Neethling to murder Alan Kusevitsky and sentenced to nine years' imprisonment of which two years were suspended. He appeals against conviction and sentence.

[2] It is doubtful whether conspiracy to commit murder (or other crimes) was by our common law an offence (De Wet & Swanepoel *Strafreg* 3rd Uitg 193; Burchell *Principles of Criminal Law* 4th Ed 529). If the murder was committed or sufficient acts performed to constitute attempted murder, the conspirators could be convicted of murder or attempted murder as the case might be. But conspiracy simpliciter was not, it seems, a crime. A statutory offence of conspiracy was introduced by s 15(2)(a) of Act 27 of 1914 and is now to be found in s 18(2)(a) of the Riotous Assemblies Act 17 of 1956 which provides in relevant part that any person who conspires with any other person to aid or procure the commission of or to commit any offence, whether at common law or against a statute, shall be guilty of an offence and liable on conviction to the punishment to which a person convicted of actually committing that offence would be liable. This is the statutory offence which the appellant was alleged to have committed.

[3] If the State proved its case, the appellant could perhaps have been charged with and convicted of attempted murder, since the alleged conspiracy had been implemented to the point of handing over cash to the two persons who were believed to be the hitmen (though they were in fact undercover policemen). See Snyman *Criminal Law* 6th Ed at 278 and Burchell supra 535-536; but cf *R v Nlhovo* 1921 AD 485. Nothing turns on this.

[4] The alleged conspiracy was said to have come into existence in late 2008. Neethling was arrested on 4 December 2008 and the appellant on 9 December 2008. Neethling entered into a plea bargain and was the State's main witness against the appellant. The trial only got underway in September 2011. Evidence was completed in March 2015. The magistrate's judgment, delivered in September 2015,

is somewhat disjointed, perhaps reflecting the disjointed way in which the trial was conducted. The magistrate, who had the opportunity of observing the witnesses, disbelieved the appellant's denial of involvement and accepted the essential elements of Neethling's evidence. The magistrate did so while recognising the considerable imperfections in her testimony and the need for caution arising from the fact that she was an accomplice and a single witness. We can only interfere with the magistrate's factual findings if they are vitiated by material misdirection or shown by the record to be wrong (*R v Dhlumayo & Another* 1948 (2) SA 677 (A) at 705-706; *S v Naidoo* 2003 (1) SA 347 (SCA) para 26). This approach applies equally to credibility findings and the application of cautionary rules (*S v Prinsloo* 2016 (2) SACR 25 (SCA) para 187). Less deference is required where the question is one of drawing inferences from proved facts (*Director Of Public Prosecutions, Gauteng v Pistorius* 2016 (1) SACR 431 (SCA) para 46).

[5] Pre-sentencing reports were obtained. Evidence in mitigation and aggravation was adduced. On 11 March 2016 the magistrate imposed the sentence previously mentioned. On the same day she granted the appellant leave to appeal against conviction and sentence. His bail was extended pending the outcome of the appeal.

Background facts

[6] In 1998 the appellant established a security business called City Bowl Armed Response ('CBAR'). The business was conducted through a close corporation. In 2001 Kusevitsky, who had worked with the appellant in the mid-1990s, joined CBAR and took charge of sales and marketing while the appellant focused on the operational side. The arrangement was that Kusevitsky would obtain a 15% interest in the corporation, increasing to 30% if and when certain targets were met. The business grew and Kusevitsky became a 30% member though not without some delay.

[7] Over the period 2006-2008 Kusevitsky expressed increasing frustration at what he perceived to be the appellant's failure to give him full financial disclosure.

He wrote several letters to the appellant in that regard, the most recent of which was in May 2008.

[8] Neethling, a paramedic, started employment with CBAR in September 2006. A second paramedic, Lianne Bedwell, joined in May 2008. Together they constituted what was referred to in the evidence, somewhat grandly, as the medical division. They would accompany armed response officers on their rounds.

[9] It is common cause that the appellant and Neethling were at some stage involved in an intimate relationship. Neethling said the relationship was still in existence when she and the appellant were arrested in December 2008. The appellant testified that the relationship began in August or September 2007 and that he broke it off in December 2007.

[10] Kusevitsky testified, and it was not disputed, that on 18 October 2008 he met with the appellant and asked certain questions about the bank statements which the appellant had made available to him. Most of these questions the appellant deflected by saying he would need to look into the matter or speak to the bank.

[11] A few days later Kusevitsky established that the corporation was substantially in arrears to SARS. He also got original bank statements which reflected many unexplained payments and which differed from the copies the appellant had given to him. He told the appellant that he insisted on a forensic audit. The appellant procrastinated. In the meanwhile Kusevitsky spoke to the Commercial Fraud Unit about a possible fraud charge.

[12] On 27 October 2008 Kusevitsky and the appellant met in CBAR's boardroom. At the start of the meeting two other gentlemen were present, one of them a potential buyer of CBAR's business. After they left Kusevitsky confronted the appellant about the bank statements. There is a factual dispute as to what happened next. Kusevitsky testified that the appellant became very angry. It appeared to Kusevitsky that the appellant was reaching for his firearm. Kusevitsky took a split-second decision. He shoved the appellant backwards. The latter fell on the floor. Kusevitsky fled the boardroom.

[13] According to the appellant, however, Kusevitsky became angry, walked around the table and punched him in the face. The appellant then ran from the boardroom. Although Kusevitsky denied this account, he conceded that the appellant may have run from the boardroom before he did. Each went to the police to lay a charge against the other though Kusevitsky testified that in the event he elected not to open a case because it might negatively affect CBAR's reputation.

[14] A few days later the appellant acceded to Kusevitsky's demand for a forensic audit which got underway in November 2008. The audit firm called for a lot of information, mainly from the appellant. The audit firm provided Kusevitsky and the appellant with weekly reports. These indicated that CBAR's finances were in bad shape.

[15] On 7 November 2008 Kusevitsky and the appellant met with the managing director of ADT, Mr Good, to explore the possibility of a sale of CBAR's business. Good was interested but said it would take several months to get approval from the parent company abroad. In the light of the information emerging from the forensic audit, Kusevitsky told the appellant that he did not want his 30% share of the potential sale proceeds to be used to settle the corporation's creditors, given what Kusevitsky regarded as the appellant's misappropriation of funds. In mid-November 2008 Kusevitsky presented the appellant with a letter, drafted by his attorney, in which the appellant was to acknowledge liability for misappropriated money. The appellant said he wanted his own attorney to vet the letter.

[16] On Friday 21 November 2008 Kusevitsky went to the appellant's office and said he had had long enough to consider the draft letter. If the appellant did not sign it, Kusevitsky would refuse to agree to a sale if his share of the proceeds had to be used to settle creditors. The appellant buckled and signed the letter. (The letter was not adduced as an exhibit.)

[17] In the meanwhile, and unbeknown to Kusevitsky, Neethling was involved in discussions directed at doing Kusevitsky harm. It is not in dispute that Neethling spoke on these matters with her medical partner, Bedwell, and with an armed response officer, Etienne Lochner, both of whom testified for the State. After a while

Lochner and Bedwell formed the view that Neethling was earnest in her expressed intention to have Kusevitsky killed. On Sunday 23 November 2008 Lochner sent a cryptic SMS to Kusevitsky alerting him to the threat. Kusevitsky spoke with Lochner who told him that Neethling had been soliciting him to arrange a hitman. According to Kusevitsky, Lochner told him that Neethling had said something about an acknowledgment of liability letter though it seems Lochner did not say that the appellant was part of the plan. Lochner agreed to accompany Kusevitsky to the police the following morning. On Monday 24 November 2008 Kusevitsky and Lochner met with Col Barkhuizen who, after interviewing them, told Kusevitsky that he would be seeking authority from the Director of Public Prosecutions to run an undercover sting operation.

[18] Kusevitsky testified that he became increasingly anxious during the week of 24-28 November 2008 since he believed that there was a plot afoot to kill him but had to behave as if nothing was wrong. On Friday 28 November 2008 Kusevitsky phoned Barkhuizen and insisted on seeing him, which he did on Saturday 29 November 2008. He complained about the delay in the sting operation. Barkhuizen obtained the necessary authority there and then. Two undercover policeman, Capt Teladia and D/I Swan, were to pose as the hitmen. On Tuesday 2 December 2008 Barkhuizen met with Lochner to instruct him on what he was to say to Neethling about the hitman who would make contact with her. (Lochner had already indicated to Neethling that he could help her find a hitman.) Lochner passed on the information to Neethling. It seems that she may have been getting cold feet: she testified that she told Lochner that she would prefer not to take the hitman's call but he said that it was too late to pull out and threatened that she might come to harm.

[19] At 11h08 on Wednesday 3 December 2008 Swan phoned Neethling. They arranged to meet at the Engen garage in Orange Street, quite close to CBAR's offices in Buitenkant Street. (This and the other conversations between the undercover policemen and Neethling were recorded. Transcripts were handed in during the trial.) The meeting took place at about 12h55, inside the policemen's car. Swan says he understands she needs something done and asks her what exactly she has in mind. She replies, ' All the way… no joking … gone'. Swan says they will need a photograph of the target and details about his car and address. He asks

Neethling how soon she wants the job done. She replies as soon as possible, within the next five days. Swan says the price is R15 000 upfront, R15 000 on completion. Neethling agrees. Swan asks by when she can arrange the money. She replies by the end of the following day. Swan says he will phone her to set up the next meeting.

[20] Neethling's evidence is that when she got back to CBAR's offices, she and the appellant went for a walk. She told him about the hitmen's requirements. Later that day she went to his office. The appellant handed her a black-and-white photograph of Kusevitsky on an A4 sheet of paper and an A4 envelope containing cash. He also gave her Kusevitsky's home address and car details which she noted on her mobile phone.

[21] At 15h10 on Thursday 4 December 2008 Swan phoned Neethling. They arranged to meet in Bree Street. On arrival, which was between16h00-16h30, Neethling got into the policemen's car. She handed over the photograph and envelope containing the cash. Swan noted down, on the sheet containing the photograph, various particulars about Kusevitsky as Neethling read them off her phone. At one point Swan says, 'Just for clarity's sake… You don't want this guy picked up?… Beaten?… Kidnapped?… Whatever?'. She replies, ' Listen you can get excited… Whatever you want to do… I just don't want it… I want it to go away… I want him not to be found. I want him to…'. Swan says, 'Disappear?' To which she responds, 'You can get excited, I don't mind.' At a later stage Swan and Teladia suggest it will look like an accident or a hijacking or robbery. They ask her how quickly she can come up with the other R15 000. She responds by asking how fast they can do the job. Swan said two days. The meeting ends with Swan confirming that he will let her know (ie once the job has been done).

[22] Immediately after getting out of the car Neethling was arrested. The police seized the photograph and the envelope with the cash. When Neethling was cross-examined she said she was aware her fingerprints had been found on the money, the photograph and the envelope (she would not have had personal knowledge of this). Barkhuizen testified that the envelope contained R15 000 in crisp new banknotes. According to him, Neethling's fingerprints were found on three of the

banknotes. His recollection was that the only prints found on the envelope and the photograph were those of the two undercover policemen. This discrepancy was not taken up in cross-examination. Be that as it may, it is common cause that the appellant's fingerprints were not found on the photograph, banknotes or envelope.

[23] The police notified Kusevitsky of Neethling's arrest.

[24] At around 17h00 – 18h00 one Davids, a CBAR shift adviser, was informed that Neethling had been arrested. He phoned the appellant, who was not at office, to advise him of the arrest. According to Davids, the appellant received the news calmly. Later in the evening the appellant phoned Davids asking for more information which Davids was seemingly unable to provide, since according to the appellant he did not know at that stage why Neethling had been arrested or where she was being detained.

[25] Kusevitsky testified that he was at office on Friday 5 December 2008 and that the appellant was not present though he was told by staff that the appellant had come in earlier and left. The appellant's evidence was that he was at office on the Friday as usual.

[26] Barkhuizen interviewed Neethling on the Friday morning (a statement was formally taken by a female officer in the afternoon). Based on that interview, he wished to put her accusations to the appellant though did not think there was as yet a sufficient basis to arrest him. He went to the appellant's home but the appellant was not there. On the Friday and over the weekend Barkhuizen left a number of messages on the appellant's voicemail. He also gave Neethling permission to phone the appellant because she wanted the appellant to help her appoint an attorney to defend her. Her call, too, went to voicemail.

[27] On the morning of Sunday 7 December 2008 the appellant booked himself into Kenilworth Clinic. He testified that the stress of recent of weeks had become too much for him – his wife had been in hospital, his child had been sick and there had been the forensic audit and the deteriorating relationship with Kusevitsky. He claims to have been unaware at that stage that the police were looking for him.

[28] In the early hours of Monday 8 December 2008 Barkhuizen took a further statement from Neethling. In this interview Neethling referred to her discussions with Bedwell. On Tuesday 9 December 2008 Barkhuizen interviewed Bedwell. Based on her statement he concluded that there were grounds to arrest the appellant.

[29] On the Tuesday afternoon the appellant finally phoned Barkhuizen who told him that he was in the process of applying for a warrant for his arrest on a murder conspiracy charge. He advised the appellant to hand himself over. The appellant replied, 'You must be joking', and put down the phone. A short while later the appellant's attorney, Mr De Sousa, having received a call from the appellant, phoned Barkhuizen pursuant to which the appellant was arrested at Kenilworth Clinic. He was later released on bail.

[30] The police obtained a warrant to search CBAR's offices, in particular the appellant's office. It is not entirely clear when this search was conducted though it seems to have been on the morning of Monday 8 December 2008. Computers were seized. A police computer specialist examined the computers in an attempt to find the photograph of Kusevitsky handed to the undercover policemen. No matching image could be found.

[31] Kusevitsky, assisted by CBAR's IT consultant, Cornelius van Rensburg, accessed CBAR's call logging system. This was probably also on 8 December 2008. The call logging system tracks and records all conversations on CBAR's landlines, cellphones and two-way radio system. There were eight landline channels, three cellphone channels and one radio channel. The hardware (three units with four channels each) was in the server room. The hardware was linked to a computer in the appellant's office. This was a dedicated computer for the filing of voice recordings. There were the usual recordings on these channels on the days preceding 3 December 2008 and the days following 4 December 2008. There were no recordings for 3 December 2008. In respect of 4 December 2008, there were the usual recordings on the radio channel for a full 24-hour period but no recordings on the other 11 channels before 17h00. The earliest voice recording still on the system for 4 December 2008 was Davids' call to the appellant to tell him of Neethling's arrest. Van Rensburg testified that because there were no recordings at all for 3

December 2008 there could perhaps have been a system failure. However this could not explain the absence of telephone recordings for 4 December 2008 since the system would either work for all channels or for none. His conclusion was that the telephone recordings of 4 December 2008 must have been deleted.

[32] Pursuant to subsequent civil litigation between Kusevitsky and the appellant, the former acquired sole control of CBAR. The appellant was also sequestrated. In February 2011, and on the basis of the forensic report into CBAR's affairs, the appellant was convicted of theft and sentenced to three years' correctional supervision.

Neethling

[33] The magistrate approached Neethling's evidence with caution for good reason. Most of the direct evidence (as distinct from inferential reasoning) concerning the appellant's involvement came from her though it would not be wholly accurate to describe her as a single witness, given that Lochner and Bedwell overheard certain conversations of an incriminating kind (see later in this judgment). She was a co-perpetrator. She had no defence but might have hoped for lenient treatment if she implicated the appellant. This in fact occurred by way of the plea bargain agreement, a term of which was that she should testify truthfully at Appellant's trial.

[34] On her own version she was a person willing to participate in murder. There was also evidence that she had a prescription-drug habit and was sometimes under the influence of drugs and alcohol while on duty. During February 2008 she spent time at a drug rehabilitation clinic. She testified that she had a history of depression. In general she seems to have been a volatile character. Bedwell regarded her as forceful.

[35] There were some inconsistencies between her evidence and that of Lochner and Bedwell. In fairness to her, one must bear in mind that she was testifying about events which had occurred more than three years previously (she gave her evidence in March 2012). She was centrally involved in all relevant events while

Lochner and Bedwell were testifying about a few specific occasions. Things which made an impression on them and which they were able to recall may have been more hazy in Neethling's mind.

[36] Neethling's evidence of the genesis of the conspiracy was that the appellant told her that Kusevitsky wanted to close the medical division. The only way the problem would disappear was if Kusevitsky were to 'go away' because he (the appellant) did not have the financial means to buy him out. He asked her on several occasions to arrange for someone to kill Kusevitsky. These discussions sometimes took place in his office, sometimes in the car and sometimes telephonically. Neethling eventually sounded Lochner out about finding a hitman. This led to the further events I have summarised. When she told the appellant of her assignation with the putative hitmen, he was pleased and said that soon all their problems would be gone. She claimed, however, that he also insinuated that her son might come to harm if things did not go according to plan. She understood him to be threatening her. She was frightened for her son and scared of losing her job.

[37] The magistrate thought that Neethling downplayed her own role. That may be a natural human tendency. Although the magistrate's assessment may be right, this does not materially detract from her evidence regarding the appellant's involvement. She may have been a more willing and proactive participant than she wanted the court to believe but her evidence is nevertheless clear that the appellant shared at least an equal role.

[38] It will often be the case on a charge of conspiracy that the State is driven to rely on the evidence of a co-conspirator. The fact that the co-conspirator's evidence is poor is not on its own a reason to acquit. The court must carefully consider whether other evidence establishes beyond reasonable doubt that the essential elements of the co-conspirator's evidence are true, even if other parts of such evidence are unreliable.

[39] I thus turn to a consideration of the other evidence tending to support the essential burden of Neethling's claim that the appellant was part of the conspiracy. I

shall consider them under separate headings. What is important, though, is not the force which each consideration has independently but their cumulative weight.

Motive to murder

[40] The facts I have already summarised show that the appellant had reason to harbour strong resentment against Kusevitsky. Their relationship had been tense for some time. This boiled over into a physical confrontation on 27 October 2008. Kusevitsky subsequently insisted on a forensic audit which revealed CBAR's financial condition to be precarious, something which Kusevitsky openly attributed to the appellant's alleged misappropriation of money. Matters culminated in the acknowledgment letter. This letter would have resulted in the appellant getting relatively little from a sale of the business to ADT.

[41] The appellant not only had reason to be bitter towards Kusevitsky over recent events. There would also be a financial advantage to him if Kusevitsky were killed. He and Kusevitsky had key-man insurance on each other's lives. If Kusevitsky died, the policy would pay R3 million to Kusevitsky's estate and Kusevitsky's 30% interest in CBAR would pass to the appellant. The acknowledgment letter which the appellant had signed would cease to be a millstone round his neck. Kusevitsky believed that a further motive may have been that the appellant feared facing jail time for theft and fraud.

[42] As to Neethling's motive, she testified that the appellant told her that Kusevitsky had plans to close the medical division with the result that she and Bedwell would lose their jobs. Kusevitsky denied that he was involved in any such plan. A decision to close the medical division would have been an operational matter within the appellant's domain and would in any event have required the appellant's approval as the majority member. The State's thesis was that the appellant made up the story about the closure of the medical division in order to co-opt Neethling's support for Kusevitsky's murder.

[43] The appellant denied that he and Kusevitsky discussed the closure of the medical division. He also denied having told Neethling that Kusevitsky wanted to close the medical division.

[44] Lochner testified that everyone in the office knew of the rumour about the closure of the medical division. Neethling was the source of the rumour.

[45] Since both the appellant and Kusevitsky denied having ever discussed the closure of the medical division, I think it can be taken as certain that there was in fact no such proposal. If the appellant falsely planted the closure story in Neethling's head, the State must be right that this was part of a plan to pit Neethling against Kusevitsky.

[46] If Neethling made up the story herself, her reason may have been to make Lochner and Bedwell more sympathetic to her requests for assistance to do Kusevitsky harm. But since she herself, on this hypothesis, knew that there was in fact no plan to close the medical division, the 'plan' and the saving of her job could not have been a motive for her to kill Kusevitsky.

[47] If Neethling genuinely feared the loss of her job (as a result of a false story from the appellant), it is still difficult to believe that this would on its own have been a sufficient motive for her to kill Kusevitsky. The appellant's enmity and financial motive far exceeded hers. It is far more probable that, as she claimed, she and the appellant were still involved in an intimate relationship. At any rate, and even on the appellant's version, Neethling wanted the relationship to continue. If she had some inkling from the appellant of the precarious state of the business and the corner into which the appellant had been forced by Kusevitsky (she displayed some knowledge of the acknowledgment letter), her personal relationship with the appellant together with her indirect interest in the business as an employee and as a recipient of the appellant's financial aid (inter alia he had lent her a car) would be the probable explanation for her conduct. At any rate, no plausible motive existed for her, on her own, to have Kusevitsky killed.

The money

[48] Neethling handed R15 000 in cash to the undercover policemen. She genuinely believed they were hitmen and thus must have been confident that she would be able to pay them a further R15 000 after the job was done. They were not people to be trifled with. She testified that she did not have the means to pay anyone R15 000, let alone R30 000.

[49] Neethling's evidence in this respect is very likely to be true. She testified that her net salary was R5500. This figure was not challenged in cross-examination. Barkhuizen testified that he had investigated Neethling's financial position. He visited her residence in Table View. Neethling's elderly mother told him that Neethling was paying rent of R2600 p/m and showed him a rental receipt. She was supporting her mother and a child. He checked her bank accounts and could find no evidence that she had access to this type of money.

[50] As at March 2006 the appellant was drawing a net salary was R39 000. (In a letter of 6 March 2006 Kusevitsky complained about the discrepancy between the appellant's salary and what Kusevitsky was receiving.) He was presumably receiving a larger salary by November 2008. He also received other (illicit) financial benefits from CBAR, something which he effectively admitted when signing the acknowledgment letter.

[51] Kusevitsky testified that cash from customers who preferred to make cash payments was handled by the appellant because he did the banking. Kusevitsky's evidence was that after the appellant's arrest the forensic auditors in his presence went through the cash receipt book. There was an amount just shy of R40 000 reflected as cash receipts for the period August-November 2008 which had not been banked. The appellant confirmed the modus operandi. He said cash went to the administrative manager first (presumably that is how the money came to be reflected in the cash receipt book) and then came to him.

[52] The appellant did not claim in his evidence that Neethling would in the ordinary course have had access to R30 000 (something he might have been

expected to know, given their intimate relationship). When asked where he thought she had got the money from, he said he did not know. He suggested that she might have borrowed it from a bank. He also said that her grandfather had passed away several months previously and suggested that she might have inherited money from him. Given Neethling's very modest circumstances, it is most unlikely that she would have been able to borrow the money from a bank. Barkhuizen found no evidence of this in his investigation. And such motive as Neethling may have had to do Kusevitsky harm would not have been so great as to move her to borrow R30 000 from a bank. As to the inheritance thesis, it was not raised with Neethling in cross-examination. If Neethling had told the appellant about the death of her grandfather, it is unlikely that she would not then also have told him that she would be inheriting money from him yet the appellant did not claim that she told him anything of the sort.

[53] Although the appellant denied being the source of the money, he did not deny that he would have had access to R30 000.

Kusevitsky's photograph and personal information

[54] Much time was devoted in the court a quo to the source of the photograph and personal information provided to the purported hitmen. The receptionist, Michelle de Villiers, testified that staff photographs (for ID tags) were downloaded from a digital camera onto her computer. The photograph which Neethling handed to the putative hitmen was Kusevitsky's staff photograph.

[55] De Villiers testified that only she and the appellant had the password to her computer. The appellant was able to access her computer from his office. She initially testified that Neethling did not have access to her computer or know her password but in cross-examination was willing to concede that Neethling and others might have had access to her computer when she was absent from work.

[56] Kusevitsky testified that his photograph was taken by the appellant personally on the appellant's own digital camera which was smaller than the CBAR camera usually used for staff photographs. (The appellant denied this.)

[57] As previously mentioned, no image of Kusevitsky was found on CBAR's computer records. The forensic analyst only examined image files. If Kusevitsky's photograph had been stored as an image file, someone must have deleted it. The analyst could not exclude the possibility, however, that the image was stored in some other way (eg as part of a document).

[58] Since De Villiers did not supply Neethling with Kusevitsky's photograph, the most probable source was the appellant though the evidence is probably not strong enough to exclude as a reasonable possibility that Neethling could have obtained it without his assistance. As to the description and registration number of Kusevitsky's vehicle and the fact that he wore a firearm on his left leg, this information, while definitely known to the appellant, could have been ascertained by Neethling independently from her own observations. And she admitted knowing that Kusevitsky was married and had two children.

[59] There is a stronger case that the appellant was the source of Kusevitsky's residential address (24 Ascot Road Milnerton) and of the information that Kusevitsky possibly had a dog. Kusevitsky testified, and it was not disputed, that for security reasons his residential address as at December 2008 was not on record as part of CBAR's personnel records. The appellant conceded that he had visited Kusevitsky's home. At that stage Kusevitsky had a Ridgeback puppy. The appellant thought Kusevitsky's address may have been available in CBAR's administrative records because CBAR had attended to the installation of the security system at the house. The appellant also knew that Kusevitsky liked dogs and would have seen the dog at his house.

[60] As mentioned previously, Bedwell overheard a telephonic conversation in which the appellant gave Neethling Kusevitsky's Milnerton address. It is possible, though, that the plan at that stage was an assault, not a murder.

The missing telephone records

[61] It appears highly probable, from Van Rensburg's evidence, that telephone call records for 4 December 2008 must have been deliberately deleted. If records for

that day were deleted, it greatly increases the likelihood that the missing records for 3 December 2008 were part of a deliberate deletion rather than a malfunction.

[62] There is no direct evidence that there were incriminating telephone calls on 3 or 4 December 2008 between the appellant and Neethling or between the appellant and others. Some of the communication between the appellant and Neethling on those days took place face-to-face. Unfortunately some of Neethling's answers in the transcript are noted as 'inaudible'. At one stage she was asked how the appellant called her back to the office. Her answer is 'inaudible' but in response to the next question she says she went up to his office – this was the occasion on which he handed her the money. It is likely that there would have been some telephonic contact between them.

[63] There appears to be no other reason than the existence of incriminating telephone calls for anyone to have deliberately deleted logs for 3 and 4 December 2008.

[64] The appellant was technologically astute. He could, via the computer in his office, access the call logging system. He did not dispute that it would have been possible for him from his office to have deleted call records though he denied having done so.

[65] It was not suggested to Neethling in cross-examination that she had the technological know-how to access the call logging system and delete calls. The appellant conceded, furthermore, that his office was kept locked except when he was there. He said only he and the IT consultant, Van Rensburg, had access to his computer.

[66] A further factor militating against Neethling's involvement in the deletion of logs is that when she left the office shortly before 16h00 on 4 December 2008 she did not know that she was walking into a trap. She was arrested immediately after her interaction with the undercover policemen and so had no further opportunity to return to the office to delete logs.

[67] The appellant, on the other hand, found out from Davids shortly after 17h00 that Neethling had been arrested. If he was part of the conspiracy and knew of Neethling's assignation with the putative hitmen, he must have known why she had been arrested. He would have had the opportunity to return to his office that evening or early the next morning in order to delete calls from the logging system.

Appellant's reaction and disappearance

[68] As just mentioned, the appellant knew shortly after 17h00 on Thursday 4 December 2008 that Neethling had been arrested. When asked whether he had tried to contact Neethling, he claimed not to be able to remember. He confirmed Neethling's evidence that her mother had phoned him during the evening to find out where her daughter was. He had said he did not know. He testified that he phoned a police contact to find out where Neethling was being held but his friend was not available.

[69] It is common cause that the appellant did not phone Kusevitsky to tell him of Neethling's arrest. Indeed he had no communication at all with Kusevitsky prior to his arrest.

[70] There is a factual dispute as to whether the appellant was at the office on Friday 5 December 2008. Kusevitsky said that he himself was there as usual and that the appellant was not present. Kusevitsky was informed by a staff member that the appellant had come to the office early and left again.

[71] The appellant claimed to have been at the office as usual and that Kusevitsky was absent. This claim is not only at odds with Kusevitsky's testimony but with Barkhuizen's evidence. Barkhuizen testified that after interviewing Neethling during the course of the Friday morning he wanted to interview the appellant. Barkhuizen was in frequent contact with Kusevitsky, who was at the office and knew that Barkhuizen was looking for the appellant. Barkhuizen left messages on the appellant's phone and even went to his residence, something he would not have done if the appellant were at the office. The appellant was not at home. Although Barkhuizen spoke with the appellant's wife, he described the latter as being

delusional and under the influence of alcohol or drugs. When it was put to him that the appellant would testify that he had been at the office on the Friday, Barkhuizen expressed surprise.

[72] If the appellant had been at the office and Kusevitsky had been absent, one would have expected the appellant – if he were innocent – to make contact with Kusevitsky. (The converse is not true because Kusevitsky was firmly of the view that the appellant had conspired with Neethling to have him killed.) When this was put to him in cross-examination, he gave the feeble explanation that he had been busy attending to the payment of salaries. He also alluded to his strained relationship with Kusevitsky.

[73] Barkhuizen was not the only person who left messages for the appellant. Neethling also tried to phone him on the Friday but his phone was on voicemail. Barkhuizen continued to phone the appellant over the weekend without success. Although the appellant claimed not to have received these messages, that version is simply not plausible. Since Davids and Neethling's mother had successfully reached him on his phone, there is no reason why Neethling and Barkhuizen's calls would not have reached his phone.

[74] Kusevitsky testified that in the ordinary course the appellant would contact him frequently about relatively minor business issues. Kusevitsky regarded the complete absence of communication from the appellant following Neethling's arrest as very unusual.

[75] On the Sunday morning, having not returned messages from Barkhuizen and having not yet spoken with his business partner Kusevitsky, the appellant booked himself into Kenilworth Clinic. He remained there incommunicado until, eventually on the afternoon of Tuesday 9 December 2008, he made contact with Barkhuizen. His explanation for admitting himself into Kenilworth Clinic is too coincidental to be credible. He was the 70% member of CBAR and its operational manager. He usually worked on weekends. His disappearance from the scene, and his failure to apprise Kusevitsky of his whereabouts and of the fact that he would not be at work for a few

days (something which could have been done by SMS or email), is simply not compatible with the behaviour of an innocent man.

[76] The appellant would have known that he could not evade Barkhuizen indefinitely. But if he had conspired with Neethling to murder Kusevitsky, Neethling's arrest would have been a great shock to him. His reaction to the news and his disappearance point to the conclusion that he was buying himself time to work out how best to respond to the crisis.

The evidence of Lochner and Bedwell

[77] The matters discussed thus far are largely inferences based on objective facts. There was, however, some direct evidence from Lochner and Bedwell implicating the appellant in a conspiracy.

[78] Bedwell and Lochner were not precise about the dates on which certain events occurred. This is not altogether surprising. They were testifying more than three and a half years after the event.

[79] Bedwell testified about an occasion where Lochner and she were present with Neethling. The latter asked Lochner (with whom Neethling was at times flirtatious) whether he could find someone to assault Kusevitsky. This seems to have been because of Kusevitsky's supposed plan to close the medical division. Neethling also wanted to make contact with one of Bedwell's tow-trucking acquaintances for the same purpose. Neethling did not at this stage refer to the appellant as part of the plan. On another occasion when Bedwell and Neethling were on the road together, Neethling told her that the appellant wanted Kusevitsky beaten up.

[80] Not long afterwards – Bedwell thought in early November 2008 – she and Neethling were in the staff eating area when Neethling got a call. Neethling testified that there were days when the appellant would phone her constantly. On this occasion she put her phone on speaker and said to Bedwell 'just listen to this'. After

the call, so Neethling testified, Bedwell commented that the appellant had ‘gone psycho’.

[81] Bedwell’s evidence about this incident was that when Neethling put her phone on speaker, she (Bedwell) could hear that the other party was the appellant. She recognised him from a slight speech impediment. She heard the appellant saying that he would ‘put the money up’ but that ‘the conversation never took place and that they never spoke to each other about it’. Neethling asked the appellant for an address which he gave. This was in Ascot Road Milnerton. The name Ascot stuck in her memory because when the appellant said it the name Royal Ascot came into her head. I have already mentioned that Kusevitsky’s residential address was not part of CBAR’s personnel records and would not have been known to Neethling.

[82] At this stage, as I understand their evidence, Bedwell and Lochner thought that the plan was to have Kusevitsky assaulted, not killed.

[83] Lochner testified about an occasion when he and Neethling were on duty together in a vehicle. She asked him to stop the car and asked if he knew anyone who could beat someone up. Her enquiry then escalated to a possible killing. He told her that he knew of several such people and mentioned a going price of between R12 000 and R25 000. She replied that money was not a problem. Lochner said it would take about 24 hours to fix a price and get confirmation. Lochner testified that because Neethling was in a relationship with the appellant he initially assumed that Neethling’s plan was aimed at the appellant’s wife. She had said on several occasions that she would ‘kill the bitch’. When asked why he was seemingly willing to help Neethling in a criminal enterprise, he said Neethling was a ‘nutcase’ who often spoke nonsense if she arrived at work under the influence of alcohol or drugs. He had in mind to go to the police but wanted to elicit more information from her so that he could be sure she was serious. He had several discussions with her, warning her of what might happen if things went awry. He said his last conversation with her, before he went to the police, was to ask if she was sure she wanted to go ahead with the job and whether she understood the consequences.

[84] Lochner's evidence was inconsistent as to whether Neethling mentioned the appellant as being part of the plan. He was not an impressive witness. He had a previous conviction for theft and perjury for which he was sentenced to four years' imprisonment. It is clear, however, that by 23 November 2008 he and Bedwell had concluded that Neethling was in earnest in wanting to arrange for someone to kill Kusevitsky. This is the day on which Lochner sent his warning SMS to Kusevitsky.

[85] Lochner gave evidence of a further occasion when he was in the car with Neethling and she spoke with someone on her cell phone. Lochner was confident that the other party to the call was the appellant because Neethling addressed him as 'Grant' on several occasions and used the sort of affectionate language which was typical of her frequent telephonic conversations with the appellant. During the call she told the appellant that she had 'got this guy, I need the money, it's planned'. She mentioned a price of R25 000 to the appellant. Lochner testified that immediately after the call Neethling told him that she had just been talking to the appellant. If Lochner was telling the truth and his recollection is accurate, this probably took place over the period 25-28 November 2008. By this stage he and Kusevitsky had met with Barkhuizen but the sting operation had not yet been authorised. The figure of R25 000 was the upper range which Lochner had previously mentioned to Neethling. Since Neethling seems not yet to have met with any supposed hitman, she may have been overstating the position to the appellant in order to move their plan along.

[86] Bedwell testified that on a date which was probably Friday 28 November 2008 she, Lochner and Neethling were working together. After finishing at an accident scene, Neethling got a call to come back to the office. Bedwell dropped Neethling there. The appellant was outside to meet her. He put his arm around her to kiss her but she pulled away. The appellant and Neethling then walked off together in the direction of the Gardens Centre.

[87] If Neethling, Lochner and Bedwell are representative of the private security business, it is none too salubrious. They do not seem to have been people with high moral scruples. Lochner, like Neethling, was not a good witness and Bedwell's evidence is not without criticism. Generally, though, the magistrate did not find

anything inherently improbable about their versions. Confusing though their evidence may have been, each of them testified to at least one incident in which the appellant was involved in a plan with Neethling to do Kusevitsky harm. The conversation on the speaker phone which Bedwell overheard was not necessarily, at that stage, a plan to commit murder but did involve the appellant as the provider of funds. The conversation which Lochner overheard was probably at a time when matters had progressed to a killing. The evidence of Lochner and Bedwell also supports Neethling's version that her intimate relationship with the appellant was still in existence.

[88] If Lochner and Bedwell were intent on falsely implicating the appellant, they could have fabricated far stronger evidence of his involvement in conversations with Neethling.

[89] The conversations which they respectively overheard did not constitute hearsay evidence by Neethling concerning the appellant's involvement. If X overhears Y and Z conspiring to commit a crime, X's evidence about the discussion is plainly direct evidence of the conspiracy. There is no reason to doubt that Bedwell was able to recognise the appellant's voice. In Lochner's case, he did not hear the other speaker but gave credible reasons for his deduction that it was the appellant. On the other hand, Neethling's statement to Lochner, after the call, that she had just been talking to the appellant is hearsay. It appears to have been a narrative statement rather than an executive statement in furtherance of the conspiracy and is thus probably inadmissible despite the hearsay exception recognised in cases such as *R v Mayet* 1957 (1) SA 492 (A) at 494A-H. I would not attach any independent weight to Neethling's narrative statement nor is it necessary to do so because she testified and gave direct evidence of the appellant's involvement (even if not concerning this specific telephonic discussion, which she may not have recalled).

Kusevitsky's evidence

[90] Kusevitsky testified that Neethling spent a lot of time in the appellant's office on 3 December 2008 and on the morning of 4 December 2008. Because Kusevitsky was aware by this stage of Neethling's involvement in a plot to kill him, he kept a

close eye on them. Since she was a paramedic, she should have spent most of her time on the road. She was still in the appellant's office on the Wednesday when Kusevitsky left the office at sometime after 16h00.

[91] He went to the appellant's office around lunchtime on the Thursday. Neethling was sitting there. He said to the appellant that Neethling had been at the office the whole day and queried why she was not out working. Neethling gave Kusevitsky an angry look and stormed out of the office. Kusevitsky testified that he spoke with the appellant like this because, although he was anxious, he was trying to act as normally as possible. He left the office at around lunchtime. (The appellant confirmed that Neethling had been in his office at around lunchtime. He said Kusevitsky had been very aggressive when complaining about Neethling's presence, something which Kusevitsky denied when it was put to him.)

Factors in appellant's favour

[92] Apart from the evidence he gave in his own defence, there are two factors which should be mentioned as potentially counting in the appellant's favour.

[93] The first is that his fingerprints were not found on the envelope, the photograph or the money whereas Neethling's prints were found on three of the banknotes. Whether her prints were found on the envelope and photograph is unclear. It is not surprising that Neethling's prints should have been found on one or more of these items since it is the State's case that she handed them to the putative hitmen. If the money was in an envelope, she would not necessarily have had reason to touch it but it would not cause surprise if she did.

[94] If the appellant was the source of the money, one does not know how it came into his possession. He may not have touched the banknotes directly. If he did, he may not have held them with enough force to leave fingerprints. The same is true of the envelope and photograph. Barkhuizen, for what it is worth, was not particularly surprised at the absence of prints.

[95] The other factor I should mention is that Neethling did not mention the appellant or the involvement of anyone to the putative hitmen. The conversations would be consistent with her being the sole client. However Neethling did not have any particular reason to tell the hitmen that the appellant was involved. It was not something they needed to know. If the appellant was the mastermind, he would probably have impressed upon Neethling that she should not mention his name. (This would be consistent with the discussion Bedwell overheard.)

Conclusion on conviction

[96] In my view, the circumstantial evidence, coupled with the direct testimony of Neethling, Lochner and Bedwell despite all their imperfections as witnesses, was a formidable case for the appellant to answer. He did not impress the magistrate as a witness. In some respects his evidence was palpably unsatisfactory. He feigned an absence of recollection about the acknowledgment letter and its implications for him financially. He was evasive about the financial benefit he would derive from the key-man insurance if Kusevitsky died. He provided no credible explanation for his failure to communicate with Kusevitsky about Neethling's arrest and his own absence from work or for his failure to return Barkhuizen's messages.

[97] Although he had no onus to provide an alternative theory of the case, the fact remains that he could not explain why Neethling on her own would have wanted to have Kusevitsky killed or how she could have raised the money. In the end there was only one version that was reasonably possibly true, namely that the appellant conspired with Neethling to have Kusevitsky killed and provided her with the money, the photograph and the personal information. I am satisfied that the court a quo reached the correct conclusion. At any rate, it has not been demonstrated that the magistrate's conclusion was vitiated by material misdirection or that on the record it was wrong.

[98] The appeal against conviction must thus be dismissed.

Sentence

[99] On conviction for conspiracy to murder, the accused may be sentenced to the same imprisonment as for murder, save that the minimum sentencing regime does not apply. As to the gravity of the offence, it was undoubtedly serious. The appellant conspired to have Kusevitsky killed in order to benefit himself financially and probably to shield himself from prosecution for theft and fraud. He gave Neethling the money, photograph and information, knowing that she was leaving his office to meet the putative hitmen. He had by then completed his role. Once Neethling left his office, the matter was out of his hands. If the men with whom Neethling met had been real killers, Kusevitsky would almost certainly have died. If exposed, the appellant would have been a party to premeditated murder carrying a prescribed life sentence.

[100] However, in judging the seriousness of the crime, one must not only take into account the accused's moral blameworthiness but the objective gravity of the offence. The moral blameworthiness of a person who tries to murder another but fails is no different from the person who succeeds, but attempted murder is nevertheless not punished as severely as murder. In the present case, the plan to kill Kusevitsky only took distinct shape after Lochner reported the matter to the police and the sting operation was set in motion. Although the appellant and Neethling did not know it, their plan was doomed to fail. Kusevitsky was not at actual risk of being murdered.

[101] In my view, the magistrate failed properly to bear the aforesaid distinction in mind. She said that conspiracy to murder could not be described as anything 'but very, very serious'. Later she said that the prescribed sentence for murder was 'most certainly a starting point' in assessing an appropriate sentence. The latter observation is incorrect. The fact that the permissible sentencing range for conspiracy to commit a crime is determined by the permissible sentencing range for the crime itself does not mean that the starting point, in a case of conspiracy, is the sentence which would have been imposed if the crime had been successfully committed.

[102] In regard to the appellant's personal circumstances, his only previous convictions were in October 1985 when he was convicted on one count of theft and four counts of fraud. These were taken together for purposes of sentence. He was sentenced to a fine of R300 or one month's imprisonment and four months' further imprisonment suspended for four years. He was only 19 at the time. Apart from the fact that these convictions did not involve violence, they were more than ten years old and should have been expunged in terms of s 276B(1) of the Criminal Procedure Act. Unfortunately the prosecutor made reference to them during the cross-examination of Ms Cawood, a social worker called for the defence, when challenging her view that the appellant has not displayed anti-social behaviour. Although I do not think the magistrate attached much weight to the previous convictions, she did refer to them as undermining Ms Cawood's opinion. This was a misdirection.

[103] Subsequent to his release on bail the appellant relocated to Durban where he has found employment as a technician installing television and audio systems. He is in a committed relationship with the lady who has a 12-year-old son (the appellant's wife and his children have returned to England). He has complied scrupulously with his bail conditions. The magistrate found that if correctional supervision were otherwise an appropriate sentence, the appellant was a suitable candidate. The magistrate considered, however, that the case was too serious for correctional supervision.

[104] Mr Scholzel submitted that the magistrate failed adequately to take into account that the trial dragged on for four and a half years. This was a matter to which the magistrate devoted some attention since Ms Cawood mentioned it as a mitigating circumstance. Some of the delay was attributable to the medical indisposition of the prosecutor (on two occasions) and the magistrate (on the third day of a session). The delay from April 2011 (when the trial was scheduled to start) to September 2011 was because the appellant was unwell. A delay of a further year was attributable to the unavailability of his attorney (in July 2013 he was overseas, in October 2013 he was unavailable due to a knee operation and in April 2014 he was double-booked in a high court trial). Throughout the four and half years the appellant was out on bail (and his bail was extended pending this appeal).

[105] Nevertheless, the trial spanned an unacceptably long period. The magistrate said that it was the longest case she had ever tried. The appellant had to travel from Durban for each appearance. The trial would have occasioned personal and financial stress. Unfortunately my impression is that the magistrate was irritated at Ms Cawood's suggestion during oral evidence that systemic problems in the justice system contributed to this delay. The magistrate appears to have been intent on minimising the delay as a factor in the appellant's favour. And she overstated the position, I think, when she said that 'up to a certain extent, and a big extent' the delay was attributable to the defence.

[106] Mr Scholzel submitted that the magistrate attached insufficient weight to the fact that the appellant had already suffered by losing his business and reputation in the security industry. Whether the appellant lost his business due to the criminal trial and conviction may be doubted. His financial misdoings had already been exposed and he had signed the acknowledgment letter. I accept that the damage to his reputation might make him unemployable again in the security industry but like the magistrate I do not regard this as a significant mitigating factor.

[107] As the magistrate observed, the appellant did not express remorse. But she added that remorse was the 'flipside of the coin of mercy' and that she could not really give consideration to the element of mercy in the absence of remorse. Here the magistrate fell into error. Mercy is not a reward for remorse. In *S v Rabie* 1975 (4) SA 855 (A) Holmes JA said that mercy or compassion or plain humanity had nothing in common with 'maudlin sympathy for the accused'. It is a 'balanced and humane quality of thought' which tempers one's approach when considering the *Zinn* triad. One does not first determine an appropriate sentence and then reduce it for the sake of mercy (861D-E). Mercy, or a balanced and humane way of thinking, infuses the assessment of the three *Zinn* considerations; it is not an independent fourth element (*S v Roux* 1975 (3) SA 190 (A) at 197E-198C).

[108] It will be recalled that Neethling was given a wholly suspended sentence of two years' imprisonment. The magistrate, in sentencing the appellant, said that she had to consider the sentence imposed on Neethling. How she did so, regrettably, does not appear from her judgment. Earlier in her reasons, in dealing with the

gravity of the offence, she said that Neethling may have been a ‘foot soldier’ but that the appellant was ‘pulling the strings’. The magistrate considered, when it came to blameworthiness, that he had played a bigger role than Neethling. As against this, there is the fact that in the judgment on conviction the magistrate found that Neethling downplayed her involvement. It is true that the appellant’s blameworthiness is greater than hers, given that he was in a position of authority over her and that she was vulnerable to his influence emotionally and financially. On the other hand, she too may have stoked the fires of resentment in him. There was not a large gulf between their respective levels of culpability.

[109] Generally one should strive to punish co-perpetrators equally unless there are circumstances justifying differential treatment. Justice must not only be done but be seen to be done. The imposition of unequal sentences on equally guilty perpetrators violates one’s sense of justice. This principle applies even where co-perpetrators have been tried separately. Where there is a disturbing disparity in sentences, and the degrees of participation are more or less equal, and there are not personal circumstances warranting the disparity, appellate interference may be warranted on the ground that the harsher sentence is disturbingly inappropriate. This is subject to the important qualification that the milder sentence should not have been unreasonably lenient. If the milder sentence was clearly inappropriate, an appeal against the harsher sentence would have to be assessed on its own merits and subject to the usual restraints on appellate interference (see *S v Marx* 1989 (1) SA 222 (A) at 225B-226B).

[110] There is an enormous difference between the sentence imposed on Neethling and the sentence imposed by the court a quo on the appellant. If Neethling’s sentence was within a reasonable range of permissible sentences, one would have to conclude that the appellant’s sentence was disturbingly inappropriate. Unfortunately Neethling’s plea and sentence agreement was not placed before the court a quo and we thus do not know the factual basis on which she was sentenced. We also do not know the personal circumstances which were placed before the sentencing court (which may have involved her role as a caregiver for her son). If the appellant wished to rely on Neethling’s sentence as a factor relevant to his own, he should have placed the relevant facts before the court a quo.

[111] I must say, though, that however favourable a gloss Neethling may have put on the case when she was sentenced, a wholly suspended sentence of two years' imprisonment seems to me to be inappropriately lenient. I would thus not regard it as a basis for branding the appellant's sentence as disturbingly inappropriate.

[112] Nevertheless, and assessing the appellant's sentence along conventional lines, I do regard the sentence of nine years' imprisonment (two of which were suspended) as disturbingly inappropriate. I have already indicated that the magistrate misdirected herself in assessing the seriousness of the offence, the element of delay and the appropriate role for mercy. The magistrate directed strong criticism at Ms Cawood. I have mentioned this in regard to the issue of delay. The magistrate also took umbrage at Ms Cawood's statement in her report that there was 'no concrete evidence' of the appellant's guilt and that she 'found the logic of the judgment hard to follow'. The magistrate criticised the appellant's attorney for allowing these statements to appear in the report. Although the magistrate was entitled to regard the inclusion of this matter as inappropriate, I cannot resist the conclusion that the appellant suffered because the magistrate's assessment was clouded by her annoyance with Ms Cawood and her irritability with the appellant's attorney.

[113] I thus think we are entitled to interfere with the sentence. I agree with the magistrate that a sentence of correctional supervision would be too lenient. Having regard to the appellant's clean record, his personal circumstances and the lengthy delay in the completion of the trial, I think an appropriate sentence would be seven year's imprisonment of which three years should be suspended on appropriate conditions.

Order

[114] The following order is made: (i) The appeal against conviction is dismissed. (ii) The appeal against sentence succeeds. The sentence imposed by the court a quo is set aside and replaced with the following: "The accused is sentenced to a period of seven year's imprisonment of which three years is suspended for five years on condition that the accused is not found guilty of murder or attempted

murder or conspiracy to commit murder or assault with intent to cause grievous bodily harm committed during the period of suspension."

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ROGERS J

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PARKER AJ

APPEARANCES

For Appellant	Mr H Scholzel
For Respondent	Mr ADR Stephen SC Office of the Director of Public Prosecutions Western Cape