

MANDLA XABENDLINI v THE STATE
(608/10) [2011] ZASCA 86 (27 MAY 2011)

Media Statement

Today the Supreme Court of Appeal (SCA) dismissed an appeal by the appellant, Mandla Xabendlini, against his conviction of the pointing of a firearm in contravention of the then applicable s 39(1)(i) of the Arms and Ammunition Act 75 of 1969. The question on appeal was what constitutes the pointing of a firearm for the purposes of Section 39(1)(i). This section made it an offence for any person to wilfully point any arm, air rifle or air revolver at any other person.

The facts giving rise to this appeal are briefly the following. John Thompson and Jean Badenhorst had been employed as security officers by Fidelity, a company involved in the transportation, delivery and collection of money. They were on duty on the morning of 4 June 1998, and had delivered money to Woolworths in Adderley Street, Cape Town. As they were leaving Woolworths they were attacked and robbed of an empty metal money container and the firearm which Badenhorst had in his possession. The persons involved in the robbery left the scene in a white Ford Bantam bakkie. The bakkie was pursued by Sergeants Nicholas du Toit and Richard Beesley who had been in the vicinity. While in pursuit of the bakkie, the police officers fired shots directed at the wheels of the bakkie. They noticed a passenger in the bakkie, (later established to be the appellant) pointing a firearm at them. The police then fired shots directly at the appellant, whereafter he disappeared from their view. The bakkie crashed into another vehicle and a short while later was forced to stop. The two occupants, the appellant and his former co-accused, were arrested.

There has, to date, been conflicting interpretations by the courts of s 39(1)(i) and its predecessor, s 114 of the General Law Amendment Act 46 of 1935.

The SCA held that a wider interpretation of the section is to be preferred as it accords with the intention of the legislature which is to protect the public from the dangers associated with the handling and use of firearms and the resultant fear induced in the mind of the person at whom the firearm is pointing that he would or could be struck.