



SAGA SNIPPETS

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HuntEx 2018 is here!

This year's HuntEx will be from Friday 27 to Sunday 29 April at Gallagher Estate, Midrand.

New Insignia Launch

SAGA is pleased to announce that we will be launching some exciting new insignia at HuntEx. Make sure you come and take a look.

Folding Knife

The Roller is a simple liner-lock folding knife made by Enlan that fits easily in the hand and pocket (clip on the back). Blade material is 8CR13MOV aluminium, and the handle is G10. Overall length is 15.5cm, closed length is 8.5cm. This knife will be a useful EDC (every day carry) item. Show price is R160.

Solar Keyring Light

This Eco Glo product has a high intensity ultra bright light beam and is solar powered rechargeable so no battery replacement is needed. It has a 50 000 hour LED life and is operated with a momentary press switch. A very handy gadget. Show price is R60.

Pocket Multi-Tool

This 7 function Multi-Tool's handle is made of anodized aluminium and the tool is stainless steel. It features pliers, wire cutter, bottle opener, serrated blade, fine edge blade, Phillips screwdriver and a carabiner carry clip. This multi-tool is also an Enlan product and while compact is a capable little tool. Show price is R100.



New Beanies

SAGA has many women members who are going to love our new beanies. Available in two gorgeous shades of pink they are soft and warm and sure to be popular. One size fits all. Makes a great gift too! Show price is R60.

Of course our regular insignia items will also be available at special show prices at HuntEx. These are our green Beanies, Metal Lapel Badges, Cloth Patches, Golf Shirts, and Caps.

All the new insignia will be available from the office after HuntEx. Our website will list prices (including post and packaging), from the first week in May.

SAGA Stand

SAGA's main function at shows like HuntEx is to provide a forum for members to raise questions and discuss firearm issues. Similarly we are able to use the opportunity to advise people who do not know SAGA about our role in the firearms community in South Africa. This exposure is extremely valuable to SAGA and meeting with our members reinforces to our volunteer workers and staff that the work they do is important and necessary.

SAGA will be at stand 251 in Hall 2. Make sure you stop by to check on your membership - renewals and new memberships will be processed at the stand. Credit card and Snapscan facilities will be available.

Please note that the SAGA office will be closed from Wednesday 25 April and will re-open on Wednesday 2 May as the staff will be traveling and at HuntEx.



The Right to Self-Defence

The Right To Self-Defence and The Killing or Injuring of an Attacker and the Right To Use Force and even Kill a Suspect

By John Welch

Over the last few years court cases and media reporting may have troubled the waters for many who thought they understood the principles applicable to the right to self-defence and the correlative use of force, including deadly force, to thwart an unlawful and violent attack. The reference to “putative self-defence” in the Oscar Pistorius trial has also caused confusion, since a clear distinction between self-defence and putative self-defence is often not drawn. I have also been inundated with questions, especially at exhibitions and shows where SAGA has had a stand, regarding a person’s right and the circumstances under which, they may lawfully use force and even kill a person. I have further been appalled by stories told of what they, and in some cases the police (who allegedly advised them), believed would justify the killing or injuring of a suspect.

For the benefit of SAGA members, I wish to explain, once again, these principles and the application thereof by our courts and reiterate that deadly force must be considered the last resort. This will be done in two parts, the first dealing with self-defence and the second with the right to arrest and the correlative use of force when executing such arrest. These articles on legal aspects will then be followed by articles on the carrying of firearms for personal protection and other reasons, and the concomitant responsibilities. I shall conclude the series by looking at less-lethal weapons and their role in the armoury of the law-abiding citizen.

Principles of SA Criminal Law

To fully understand the principles of self-defence, it is necessary to have some understanding of the South African criminal law.

Murder is the unlawful and intentional killing of a human being. Dissecting this definition means there must always be an ACT, which must be UNLAWFUL, and which must be committed with the required form of *MENS REA* or FAULT, in this case *DOLUS* (INTENTION) and the specific element in the case of murder, that a HUMAN BEING is killed. Since murder is a consequential crime it means that there must be a causal link between the act and the consequence – the act must have caused the death of the deceased. For instance, had one shot and injured the attacker and on his way to hospital the ambulance is involved in a collision due to the negligence of the driver and the deceased dies as a result of injuries sustained in the collision, the shooter cannot be convicted of murder but possibly of attempted murder, provided there was no legal justification for shooting him.



The ACT may consist of a positive doing (*commissio*) or a negative not-doing, the omission or failure to do something in circumstances where one was legally expected to have acted positively. A commission in the case of murder is

for instance the shooting or stabbing or striking of a person. An omission is for instance where a medical doctor fails to attend to the injured patient who then dies because of such lack of medical attention. It could also be where a person may have caused injuries to a person (for instance during a vehicle collision) and his failure then to summon the police and emergency services. Unless the person is proven to have had the necessary skills to apply first aid, such failure to have performed a medical intervention will probably not count against him. In fact, most authorities currently advise that unless one has proper medical knowledge and experience to apply it, one should not even attempt to do so since one could cause more harm than good.

An act is unlawful, or more correctly, the causing of death is unlawful, when there was no legal justification for having caused such death. Therefore, the causing of death of a human being will always be considered unlawful unless there are clear indications that it was not. If there is doubt whether the shooter acted in self-defence he probably will be charged with murder so that his version (defence) could be tested under cross examination. This does not imply, though, that the accused must prove his defence, it merely means that he must raise a reasonable doubt, sufficiently to redound it in his favour.

All common law crimes, excepting culpable homicide, require the State to prove *dolus* or intent. Culpable homicide, therefore, is the only common law crime that requires *culpa* or negligence as requirement of fault. The legislature decides what form of fault is required for statutory crimes. Despite a common law presumption that fault should always be a requirement, the legislature may

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in fact state that no fault is required – this is referred to as strict liability.

Intention is a subjective concept and requires the prosecutor to prove that the accused had actual knowledge of his wrongdoing and that he directed his will towards committing the unlawful act or achieving the result. [This most simplistic explanation could be expanded on profusely.]

I have already stated that, to constitute murder, a human being must have been killed. Should it be proved that the body was already dead at the time of the shooting no conviction of murder could follow. Depending on the circumstances it may constitute attempted murder (only if at the time of the shooting the shooter believed the body was still alive) or violating a corpse (only if at the time of the shooting the shooter knew the body was dead).

These legal defences may be raised against charges other than murder too. If, for instance, a person is charged with having exceeded the general speed limit or for jumping a red traffic light, she could raise the defence of necessity if the situation in fact was such that the reasonable person under similar circumstances would probably have done the same. Although it is not expected of the alleged offender to prove the defence, she must raise in the court's mind a reasonable doubt, because only if the court is in doubt regarding the guilt of an accused shall that doubt redound in favour of the accused. Another typical example is pointing of a

firearm in contravention of section 120(6)(a) of the Firearms Control Act, No. 60 of 2000. Often the police would arrest a person for having allegedly pointed a firearm at someone. A conviction of this offence may follow only if the person did not have "good reason" to do so. If the person points the firearm and thereby prevents the victim from robbing or assaulting him or someone else, he obviously has good reason to do so. Also note, to successfully charge someone for pointing a firearm, the State does not have to prove that had the firearm been discharged the shot would probably have hit the complainant. It is sufficient to prove that the firearm was pointed in the general direction of the complainant.

Common Law Justification

Although there are other common-law defences, I deal only with private defence and necessity. Most authorities agree that a person can be said to be acting in private defence if: (i) s/he uses force to repel an unlawful attack that has already commenced or is imminently threatening; (ii) the defensive action is aimed at protecting a legally justifiable interest, not only that of the defender but of any other person regarded as a legally justifiable interest, which includes the right to life, bodily integrity and property rights in certain circumstances; and (iii) the defensive act is necessary to protect the interest threatened, is directed against or at the attacker and is not more harmful than what is necessary to ward off the attack. South African courts have repeatedly warned



against the arm-chair assessment of decisions, which have been taken quickly and in dangerous circumstances, both about private defence and the use of deadly force in terms of legislation.

Conduct may be wrongful *vis-à-vis* one person, but not about another. Consequently, although the deadly force provisions may be applicable in respect of the action taken against an attacker, it cannot be relied upon to justify the killing or injury of a non-attacker or an innocent bystander. Even in the event of a riot or protest action, one shall have to prove that the rioters acted in concert and with a common purpose. Indiscriminate shooting into the masses is therefore not justified. For this reason, force, even deadly force, might be justified against an instigator of violence even though he did not perform any violent act. It must, however, be proved that it was reasonable and necessary to use force against him to protect lives or other interests worth protecting.

In the case of private defence, the valid test is what was reasonably practicable in the circumstances and whether the threat or danger could have been halted through less drastic means.

It is accordingly clear that private defence negates the unlawfulness criterion that is required for the

Watch this space ...for more interesting firearm snippets

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crime. Where, however, the accused believed that his life was in danger at the time of the fatal shooting, whereas in truth and fact it was not, he cannot rely on private defence, since there was no unlawful and violent attack. This is called putative private defence. If all the facts prove that the accused had a genuine *bona fide*, albeit mistaken, belief about the attack, such belief will affect his knowledge of wrongfulness and therefore the element of fault or intention. Since intention therefore has not been proven, he would be acquitted on a charge of murder, attempted murder or assault. The trial judge in the Pistorius case seemed to have confused the principles of criminal liability.

Whereas private defence is always directed at a human attacker acting unlawfully, the defence in necessity is directed at the interests of another innocent party or a mere legal provision. Accordingly, when shooting a dog that has viciously attacked a person, the protector will rely on necessity for having killed the dog. However, had the dog been instigated by its owner and the protector killed the dog, the defence is one of private defence against the owner, being the unlawful attacker. When "forced" to exceed the speed limit or skip a red traffic light to get away from the attacker, the defence, on a charge of disobeying a traffic signal, will also be necessity. Accordingly, only in the most exceptional and extreme circum-

stances will the killing of an innocent bystander be justified, for instance where it is proven that the life of the defender (or another person) was at serious risk by the actions of the attacker, hence since one life is not necessarily more valuable than another, the defender was entitled to take an innocent life to save his own.

Since every case is fact specific, the above must be seen as guidelines and not legal advice. Proper legal advice, based on the relevant facts, is required when one faces a criminal prosecution or civil claim for damages.

World Forum Launch Facebook Page

The World Forum on Shooting Activities is pleased to announce the launch of its official Facebook page at:

<https://www.facebook.com/WorldForumOnShootingActivities/>

SAGA is a founding member of the World Forum and is pleased to be associated with it.

