



# THE TRUTH WIRE

**D&K Management Consultants' monthly newsletter – an absolute MUST for anyone dedicated to protecting themselves and their business interests!**

**June 2014**

## The Captain's Log ...



Kyle Condon, MD of D&K Management Consultants cc

Firstly, let me apologise for the delay in sending out our June newsletter. It's no excuse but we've been running around assisting a number of clients with the on-going metal industry strike and the chaos that goes along with it. Having said that, let me get straight into it ...

I was recently sitting at a strike-affected company, watching the shenanigans going on with about a group of 150 strikers who were outside the company, demanding to come in. My strike reaction teams, I must give all credit to, were keeping the mob at bay and were frustrating the life out of the fairly excited crowd. While watching this go on, it dawned upon me that we live in the strangest country on the strangest continent and I mean that in all sincerity. Think about it ... where else in the world would you beat a colleague half to death with a sjambok and knobkerrie simply for the fact that he wanted to continue working in order to put bread on his table for his family and you chose not to? Now, that in itself is strange but, what makes it even stranger is that in two to three weeks' time, this strike will be over and these same people will go back to working at the same workstations, putting nuts and bolts onto the different components they work with, standing shoulder to shoulder with the man they just put into hospital for working while they were standing outside dancing and singing. Yet, the person they beat half to death, will in turn, not reciprocate the punishment dealt out to them or ostracise their attackers or lay criminal charges against them, he will simply smile and continue working and, at the end of the year, the company braai will take place and all these people will dance and sing as one big happy family. Perhaps, it's just me but this kind of behaviour can only be described as uniquely African. I just can't imagine that in first world countries, you'll stab a bloke with a screwdriver for going to work and then in three weeks' time work with him and share a lunch basket with him or discuss the latest football results with the guy.

I suppose I will never understand the psyche of our people and, at the same time, perhaps this is what makes Africa such a unique place to live in.

Further to this, I've got to admit I'm seriously and deeply concerned about how the strike violence escalates, and let's not just talk about the strikers, I'm also referring to again, our population in general, and how a situation can turn into a violent mass mob within the space of three or four minutes. It almost seems as though we've gone back into the dark ages where a caveman raids another caveman's cave and it puzzles me as to how we can become so violent so quickly and switch it on and switch it off.

I was in Wadeville two or three days ago where I watched a group of over 200 strikers smashing down the walls of a targeted company, gaining access and looting the place completely ... this came down to pure, blatant criminal activity and had nothing to do with the strike as far as I'm concerned, and was done under the cover of a labour protest. As far as I could see, there was no hesitation, no compulsion and certainly no guilt involved with what they were doing. Now, for any society to turn into such rampant barbarians in the space of a couple of minutes, and then go back to dancing, singing and chanting while walking down the street as if nothing had just happened, moving onto the next target area, is absolutely amazing. In fact, I would think that some universities around the world could come out here and study this behaviour of our people during strikes.

I've also come to the conclusion that the actual word 'strike' is no more than a recruitment campaign for the Unions to intimidate people into joining them, signing up authorising debit orders for the monthly Union fees, with the Unions then bleeding them dry over the next two to three years.

The phenomenon of strikes is nothing new to South Africa but, I will say, that it appears to me that the violence and the riots of the 70's and 80's are now being done under the cover of 'labour unrest'. The frustration and hatred from the strikers come to the surface within minutes, all under the guise of frustration over wages, working conditions, etc. which I don't entirely believe.

Nevertheless, the right to strike is there but so is the employers right to protect their premises and I must commend my strike protection teams for doing exactly that, whether we repel them with rubber bullets, catapults or sjamboks, we've done an excellent job of keeping these strikers at bay and I'm proud to say that to-date, not one company under our watch during this strike has been breached or compromised and not one staff member has been hurt. I can't say the same for companies next door as I've seen some pretty awful things taking place in other areas but it just goes to show ... sometimes standing up to bullies is the best possible thing to do.



In keeping with our 'strike theme', a number of people are still unsure of when they're allowed to fire their weapons, hence the following article:

### **When can I fire?**

Since the debate about the changing of law on use of force in effecting an arrest, South Africans have been confused about when they can and cannot use their guns to defend themselves. If they err on the side of caution, they could lose their lives. If they err on the side of violence, they could lose their freedom.

The following focuses on one aspect: the use of lethal force to defend property. While the case law remains unclear, the guiding principles suggest that killing another person in order to retain property is unlikely to be deemed lawful by the courts.

### ***The right to defend yourself***

In common law, the controlling principle on the right to use force to defend one's self or property is proportionality: the defensive act may not be more harmful than necessary to ward off the attack. Although there are no hard and fast rules, courts weigh up the interests protected by the defensive act against the interests infringed by the unlawful attack.

In determining whether a victim of crime acted reasonably, the courts judge each case on its own merits. Certainly, an owner who is confronted by a robber is not expected to abandon his property. He is entitled to protect it and the court will consider all the circumstances when deciding whether the means of defending the property were reasonable.

This right to self-protection can provide a defence to a charge of assault or even, in some cases, murder. Our law allows you to defend yourself, another person, your property or the property of another against a current or imminent unlawful attack.

Various requirements must be met before the defensive act will be considered lawful. The attack must be:

- commenced or imminent;
- against a legally recognised interest, and
- unlawful.

The action made in defence must be:

- necessary to avert the attack;
- reasonable in terms of the amount of force used; and
- directed against the attacker.

Therefore, the action taken must be in response to a currently pending aggressive action, and the law specifically rules out any action being taken, on the one hand, pre-emptively or, on the other, in 'revenge'.

### ***What does the case law say?***

The first authoritative decision that dealt with the use of lethal force to protect property was *Ex Parte Minister of Justice: In re S v Van Wyk*. In this case, a shopkeeper whose shop had been repeatedly broken into took desperate measures to protect his belongings and rigged a shotgun in such a way that the intruder would trigger the device upon breaking into the store.

One night an intruder broke in, set off the device and received a fatal wound. On a charge of murder, the shopkeeper invoked private defence and the court upheld his defence, acquitting him on all charges. The court reasoned that a person may, in exceptional circumstances, use lethal force to protect his property when there is no other way in which the goods can be retained. The only limit the court imposed was that the value of the goods should not be of a trivial nature. This decision was later followed in *S v Mogohlwane*.

In terms of these two decisions, killing in defence of property could be justified in situations where valuable property was being stolen. However, these judgements were handed down almost 40 years ago – long before South Africa's shift to a human rights democracy. If faced with similar facts today, the courts would undoubtedly arrive at a different decision.

### ***Changes under the new constitution***

The Bill of Rights protects various fundamental rights, including the right to life and the right to property. In cases of private defence, these rights will need to be weighed against each other. The court's balancing act would have to comply with the requirements as set out in section 36 of the Bill of Rights: was the infringement reasonable and justifiable in an open and democratic society based on principles on human dignity, equality and freedom? Applying this test, it is unlikely that any reasonable court would consider it justifiable to take another person's life in defence of property.

Consider the following scenario. You're woken in the middle of the night by the sound of breaking glass. You look out your bedroom window and see a thief stealthily driving your new sports car down the driveway. You shout at the thief to get away from your car, but he ignores you and continues to drive away. In desperation, you grab your gun and fire at the thief, killing him.

Your defence is that you were protecting your valuable property and that there was no other way of preventing the thief from stealing the vehicle. Also, the theft was still in progress, so your defence would comply with the requirements that the defensive act should be aimed at an attack that is not yet completed.

In terms of the Van Wyk decision, you would almost certainly succeed with this defence. However, in light of the constitutional changes, it's very possible that you would find yourself in danger of being convicted of murder. You would not be able to use lethal force to prevent the theft of your vehicle and would have to resort to other non-lethal methods of trying to prevent the crime. If during our lawful attempts to prevent the theft, the thief retaliates and poses a threat to your life or anyone else, only then would you legally be entitled to use necessary force to defend yourself or others.

Consider another set of circumstances. You wake up one night and discover that an intruder has broken into your living room. The thief is armed with a firearm and is sneaking through the house, gathering valuable items as he proceeds.

You know that if he is startled he might shoot you or your family. Can you lawfully shoot him? Do you have to take your family and flee from your home? Do you have to wait for him to attack you or your family?

Unlike the scenario with the car thief, this time the intruder is in your home. However, the same legal principles apply. You cannot use lethal force to prevent him from walking out with your TV. Instead, you or your family would have to be in immediate danger. It could be argued that the mere fact that the intruder is in your home is sufficient threat to justify your using lethal force against him. Again, each case could be judged separately, but the *legally* safe option would be to avoid using lethal force until you have no other option. Rather avoid confronting intruders. It could save your life and keep you out of jail.

### ***In short***

The principle is simple: *the life of the attacker can only be taken in order to protect your or someone else's life or to prevent serious bodily harm*. It is unlawful to use lethal force in any other circumstances. In other words, your property is not worth the life of the person that is stealing it from you!

*(Reference: Anton du Plessis, Institute for Security Studies)*

## News

Our second VIP Protection course for the year is under way with 12 students attending, a large contingent of these being from local municipalities. In 3 weeks' time, these students will leave us with the required skills to pursue their career in close personal protection. I'm sure there will be some bruised and battered bodies at the end of the 3 weeks but, the results and education achieved are well worth it!



Even the professionals screw up! My general manager, Mr Barry Spanner, got a little too close to the mob last week and this was the result. Thank you Mr Spanner – my insurance premiums go up again!



## Exposed!

Congratulations are in order to undercover agent, "V", for exposing a syndicate making a nice bit of profit out of stealing and selling catering equipment from their employer. His undercover reports were instrumental in assisting us with the bust of these guys.

## Cell Block Humour



Things to do in the shop while your spouse is taking their sweet time:

1. Randomly place boxes of condoms in people's shopping carts when they're not looking.
2. Set all the alarm clocks in 'appliances' to go off at 5-minute intervals.
3. Walk up to an employee and tell him/her in an official tone, "Code 3 in aisle 4" ... and see what happens.
4. Move a "WET FLOOR" sign to a carpeted area.
5. Set up a tent in the camping section and tell other shoppers you'll invite them in if they bring pillows from the bedding section.
6. When a clerk asks if they can help you, begin to cry and ask, "Why can't you people just leave me alone?"
7. While handling guns in the hunting section, ask the clerk if he knows where you can get anti-depressants from.
8. Hide in a clothing rack and when people browse through, say "PICK ME! PICK ME!"
9. When an announcement comes over the loud speaker, assume the fetal position and scream, "NO! NO! It's those voices again!"
10. Go into a fitting room, shut the door and wait a while and then yell loudly, "THERE'S NO TOILET PAPER IN HERE!"

## Quote of the Month

"The battlefield is a scene of constant chaos. The winner will be the one who controls that chaos, both his own and the enemies".

*Napolean Bonaparte*

**Thank you for reading our newsletter and, please feel free to submit any suggestions or feedback, including any topics you would like us to cover.**



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