



# Media Q and A developed for Oscar Pistorius' trial

## Part 2: Understanding the gun-related charges against Oscar Pistorius

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**Note:** This is part 2 of a 2 part Q and A briefing document developed by Gun Free South Africa for Oscar Pistorius' trial (March 2014). To obtain *Part 1: What does Reeva and Oscar's story say about gun violence in SA*, please email [claire@gfsa.org.za](mailto:claire@gfsa.org.za)

### 1. Who is allowed to own a gun in SA?

The Firearms Control Act (2000) contains a range of provisions stipulating who may own a firearm for self-defence and prohibits anyone with a history of negligent gun use from gun ownership.

#### ***Gun for self-defence***

Section 13(2) of the Firearms Control Act (2000) states that a person applying for a gun licence for self-defence may be granted such a licence if he:

- (a) needs a firearm for self-defence; and
- (b) cannot reasonably satisfy that need by means other than the possession of a firearm.

Under the FCA, a person living in a gated suburb with 24-hour security, including surveillance, would need to show why they needed a gun for self-defence.

#### ***Unfit to own a gun***

Oscar faces three charges in relation to contravening the Firearms Control Act, all of which he has pleaded not guilty to; these charges are:

- being in possession of ammunition for which he did not have a licence;
- firing a shot with his 9mm pistol through the open sunroof of the car he and others were travelling in near Modderfontein, Kempton Park; and
- shooting a Glock 27 pistol while sitting with friends at a table in Tashas Restaurant, Melrose Arch<sup>1</sup>.

The Firearms Control Act contains specific provisions that exclude a gun owner from owning a gun if he has contravened the Act; relevant sections are highlighted:

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<sup>1</sup> The owner of the Glock that Oscar fired, Darren Fresco, could also be found unfit to own a firearm under the Firearms Control Act; Section 120(3)(c) states that, "It is an offence to have control of a loaded firearm, an antique firearm or an airgun in circumstances where it creates a risk to the safety or property of any person and not to take reasonable precautions to avoid the danger."



**Chapter 12, specifically Sections 102 and 103, detail the process to declare a person unfit to own a gun.**

Section 102 gives the Registrar (who is the National Police Commissioner) the power to declare a person unfit to possess firearm. To start this process, someone - a family member, friend or colleague - must make a statement under oath at their local police station. Section 102 identifies five reasons for reporting a gun owner to the police:

- (a) a final protection order has been issued against such person in terms of the Domestic Violence Act, 1998 (Act 116 of 1998);
- (b) that person has expressed the intention to kill or injure himself or herself or any other person by means of a firearm or any other dangerous weapon;
- (c) because of that person's mental condition, inclination to violence or dependence on any substance which has an intoxicating or narcotic effect, the possession of a firearm by that person is not in the interests of that person or of any other person;
- (d) that person has failed to take the prescribed steps for the safekeeping of any firearm;** or
- (e) that person has provided information required in terms of this Act which is false or misleading.

Once a statement has been made, the police will undertake an investigation, including interviewing witnesses. If the gun owner is found unfit, his gun will be taken away.

Section 103 gives the courts the power to declare a gun owner unfit to own a gun, stating that:

(1) Unless the court determines otherwise, a person becomes unfit to possess a firearm if convicted of-

- (a) the unlawful possession of a firearm or ammunition;**
- (b) any crime or offence involving the unlawful use or handling of a firearm, whether the firearm was used or handled by that person or by another participant in that offence;**
- (c) an offence regarding the failure to store firearms or ammunition in accordance with the requirements of this Act;
- (d) an offence involving the negligent handling or loss of a firearm while the firearm was in his or her possession or under his or her direct control;**
- (e) an offence involving the handling of a firearm while under the influence of any substance which has an intoxicating or narcotic effect;
- (f) any other crime or offence in the commission of which a firearm was used, whether the firearm was used or handled by that person or by another participant in the offence;
- (g) any offence involving violence, sexual abuse or dishonesty, for which the accused is sentenced to a period of imprisonment without the option of a fine;
- (h) any other offence under or in terms of this Act in respect of which the accused is sentenced to a period of imprisonment without the option of a fine;
- (i) any offence involving physical or sexual abuse occurring in a domestic relationship as defined in section 1 of the Domestic Violence Act, 1998 (Act 116 of 1998);
- (j) any offence involving the abuse of alcohol or drugs;
- (k) any offence involving dealing in drugs;
- (l) any offence in terms of the Domestic Violence Act, 1998 (Act 116 of 1998) in respect of which the accused is sentenced to a period of imprisonment without the option of a fine;
- (m) any offence in terms of the Explosives Act, 1956 (Act 26 of 1956), in respect of which the accused is sentenced to a period of imprisonment without the option of a fine;
- (n) any offence involving sabotage, terrorism, public violence, arson, intimidation, rape, kidnapping, or child stealing; or
- (o) any conspiracy, incitement or attempt to commit an offence referred to above.

(2) (a) A court which convicts a person of a crime or offence referred to in Schedule 2 and which is not a crime or offence contemplated in subsection (1), must enquire and determine whether that person is unfit to possess a firearm.



(b) If a court, acting in terms of paragraph (a), determines that a person is unfit to possess a firearm, it must make a declaration to that effect.

(3) A court which has convicted a person of a crime or an offence contemplated in subsection (1), has made a determination contemplated in that subsection or has made a declaration in terms of subsection (2) must notify the Registrar in writing of that conviction, determination or declaration.

(4) Unless a determination that a person is not unfit to possess a firearm has been made in terms of subsection (1), a notice contemplated in subsection (3) must be accompanied by a court order for the immediate search for and seizure of-

(a) all competency certificates, licences, authorisations and permits issued to the relevant person in terms of this Act;

(b) all firearms in his or her possession; and

(c) all ammunition in his or her possession.

(5) A firearm and any other item seized in terms of subsection (4) must be kept by the South African Police Service or, if appropriate, by the Military Police, until an appeal against the conviction or sentence has been finalised or the time for an appeal has elapsed.

**Section 120 deals with Offences and is read with Schedule 4, which lists the maximum period of imprisonment each offence carries:**

**Subsection 1(a) reads,** "A person is guilty of an offence if he or she contravenes or fails to comply with any provision of this Act."

**Section 120(3)(b)** states that "It is an offence to- discharge or otherwise handle a firearm, an antique firearm or an airgun in a manner likely to injure or endanger the safety or property of any person or with reckless disregard for the safety or property of any person." Maximum period of imprisonment: 5 years.

**Section 120 (7)** states, "It is an offence to discharge a firearm, an antique firearm or an airgun in a built-up area or any public place, without good reason to do so." Maximum period of imprisonment: 5 years.

Section 9(1)(m) excludes anyone from owning a gun who has, "been convicted of an offence involving the negligent handling of a firearm". In other words, if a gun owner is found guilty of contravening the Firearms Control Act, he will not be allowed to ever own a firearm.

In summary, even after being granted a gun licence, the Firearms Control Act makes provision for this gun to be removed if the person is not fit and proper. Know the Law. Use the Law. Save a Life.

## **2. List of charges Oscar faces relating to contravening Firearms Control Act**

The State Prosecutor's indictment against Oscar Pistorius (dated 15 September 2013) charges him with three contraventions of the Firearms Control Act (2000), referred to as Counts 2, 3 and 4 (Count 1 relates to the charge of murdering Reeva Steenkamp). The three counts and their alternatives are as follows:

### **Count 2: Contraventions of Section 120(7) of the Firearms Control Act no 60 of 2000**

- Alternative to Count 2: Contravention of Section 120(3)(b) of the Firearms Control Act No. 60 of 2000

### **Count 3: Contraventions of Section 12(7) of the Firearms Control Act no 60 of 2000**

- First alternative to count 3: Contravention of Section 120(3)(a) of the Firearms Control Act No. 60 of 2000
- Second alternative to count 3: Contravention of Sections 120(4)(a) of the Firearms Control Act No. 60 of 2000

### **Count 4: Contravention of Section 90 of the Firearms Control Act No. 60 of 2000**



### ***Detailed information relating to contraventions:***

Note: FCA refers to the Firearms Control Act No. 60 of 2000

#### **COUNT 2: CONTRAVENTION OF SECTIONS 120(7) OF THE FCA**

That the accused is guilty of the offence of contravening the provisions of Section 120(7) read with Sections 1, 103, 120(1)(a), Section 121 read with Schedule 4 and Section 151 of the FCA - DISCHARGE OF A FIREARM IN BUILT UP AREA OR ANY PUBLIC PLACE.

In that on or about 30 September 2010 and whilst travelling in a vehicle with other passengers, on a public road at or near Modderfontein, in the district of Kempton Park the accused did unlawfully discharge a firearm without good reason to do so, by firing a shot with his own 9mm pistol through the open sunroof of the car they were travelling in.

#### ***ALTERNATIVE TO COUNT 2: CONTRAVENTION OF SECTIONS 120(3)(B) OF THE FCA***

That the accused is guilty of the offence of contravening the provisions of Section 120(3)(b) read with Sections 1, 103, 120(1)(a), Section 121 read with Schedule 4 and Section 151 of the FCA - RECKLESS ENDANGERMENT.

In that on or about 30 September 2012 and at or near Modderfontein in the district of Kempton Park, the accused in the circumstances mentioned in Count 2 above, discharged a firearm to wit his 9mm pistol with reckless disregard for the other passengers in the car and/ or people in the vicinity.

#### **COUNT 3: CONTRAVENTION OF SECTION 120(7) OF THE FCA**

That the accused is guilty of the offence of contravening the provisions of Section 120(7) read with Sections 1, 103, 120(1)(a), Section 121 read with Schedule 4 and Section 151 of the FCA - DISCHARGE OF A FIREARM IN A BUILT UP AREA OR ANY PUBLIC PLACE.

In that during January 2013 and at Tashas Restaurant, Melrose Arch in the district of Johannesburg the accused unlawfully discharged a firearms to wit, a Glock 27 pistol, without any good reason to do so. Tashas Restaurant is a public place.

#### ***FIRST ALTERNATIVE COUNT TO COUNT 3: CONTRAVENTION OF SECTION 120(3)(A) OF THE FCA***

That the accused is guilty of the offence of contravening the provisions of Section 120(3)(a) read with Sections 1, 103, 120(1)(a), Section 121 read with Schedule 4 and Section 151 of the FCA - NEGLIGENT DAMAGE TO PROPERTY.

In that on or about January 2013 and at or near Tashas Restaurant, Melrose Arch in the district of Johannesburg the accused negligently used a firearm to wit a Glock 27 pistol and caused damage to the floor of the Restaurant.

#### ***SECOND ALTERNATIVE TO COUNT 3: CONTRAVENTION OF SECTION 120(3)(B) OF THE FCA***

That the accused is guilty of the offence of contravening the provisions of Section 120(3)(b) read with Sections 1, 103, 120(1)(a), Section 121 read with Schedule 4 and Section 151 of the FCA - RECKLESS ENDANGERMENT.

In that on or about January 2013 and at or near Tashas Restaurant, Melrose Arch in the district of Johannesburg the accused discharged a firearm to wit a Glock 27 pistol at a table in the restaurant amongst other patrons in a manner likely to endanger the safety of the people at his table and/or patrons and the property of the restaurant. The accused had in discharging the firearm (mentioned) shown a reckless disregard for the safety of the patrons or property of the Restaurant.



#### **COUNT 4: CONTRAVENTION OF SECTION 90 OF THE FCA**

That the accused is guilty of the offence of contravening the provisions of Section 90 read with Sections 1, 103, 117, 120(1)(a), Section 121 read with Schedule 4 and Section 151 of the FCA and further read with Section 250 of the Criminal Procedures Act, 51 of 1977 - POSSESSION OF AMMUNITION.

In that on or about 16 February 2013 and at or near 286 Bushwillow Street, Silverwoods Country Estate, Silver Lakes, in the District of Pretoria, the accused did unlawfully have in his possession ammunition, to wit 38 X 38 rounds without being the holder of

- (a) a licence in respect of a firearm capable of discharging that ammunition;
- (b) a permit to possess ammunition;
- (c) a dealer's licence, manufacturer's licence, gunsmith's licence, import, export or in-transit or transporter's permit issued in terms of this Act;
- (d) or is otherwise authorized to do so.

#### ***What the Firearms Control Act says in relation to contraventions:***

**Section 1** lists Definitions.

**Section 90** concerns "Prohibition of possession of ammunition", stating that, "No person may possess any ammunition unless he or she-

- (a) holds a licence in respect of a firearm capable of discharging that ammunition;
- (b) holds a permit to possess ammunition;
- (c) holds a dealer's licence, manufacturer's licence, gunsmith's licence, import, export or in-transit permit or transporter's permit issued in terms of this Act; or
- (d) is otherwise authorised to do so."

**Section 103** deals with "Declaration by court of person to be unfit to possess firearm"; it contains five subsections, which are copied below:

- (1) Unless the court determines otherwise, a person becomes unfit to possess a firearm if convicted of-
  - (a) the unlawful possession of a firearm or ammunition;
  - (b) any crime or offence involving the unlawful use or handling of a firearm, whether the firearm was used or handled by that person or by another participant in that offence;
  - (c) an offence regarding the failure to store firearms or ammunition in accordance with the requirements of this Act;
  - (d) an offence involving the negligent handling or loss of a firearm while the firearm was in his or her possession or under his or her direct control;
  - (e) an offence involving the handling of a firearm while under the influence of any substance which has an intoxicating or narcotic effect;
  - (f) any other crime or offence in the commission of which a firearm was used, whether the firearm was used or handled by that person or by another participant in the offence;
  - (g) any offence involving violence, sexual abuse or dishonesty, for which the accused is sentenced to a period of imprisonment without the option of a fine;
  - (h) any other offence under or in terms of this Act in respect of which the accused is sentenced to a period of imprisonment without the option of a fine;
  - (i) any offence involving physical or sexual abuse occurring in a domestic relationship as defined in section 1 of the Domestic Violence Act, 1998 (Act 116 of 1998);
  - (j) any offence involving the abuse of alcohol or drugs;
  - (k) any offence involving dealing in drugs;
  - (l) any offence in terms of the Domestic Violence Act, 1998 (Act 116 of 1998) in respect of which the accused is sentenced to a period of imprisonment without the option of a fine;



(m) any offence in terms of the Explosives Act, 1956 (Act 26 of 1956), in respect of which the accused is sentenced to a period of imprisonment without the option of a fine;

(n) any offence involving sabotage, terrorism, public violence, arson, intimidation, rape, kidnapping, or child stealing; or

(o) any conspiracy, incitement or attempt to commit an offence referred to above.

(2) (a) A court which convicts a person of a crime or offence referred to in Schedule 2 and which is not a crime or offence contemplated in subsection (1), must enquire and determine whether that person is unfit to possess a firearm.

(b) If a court, acting in terms of paragraph (a), determines that a person is unfit to possess a firearm, it must make a declaration to that effect.

(3) A court which has convicted a person of a crime or an offence contemplated in subsection (1), has made a determination contemplated in that subsection or has made a declaration in terms of subsection (2) must notify the Registrar in writing of that conviction, determination or declaration.

(4) Unless a determination that a person is not unfit to possess a firearm has been made in terms of subsection (1), a notice contemplated in subsection (3) must be accompanied by a court order for the immediate search for and seizure of-

(a) all competency certificates, licences, authorisations and permits issued to the relevant person in terms of this Act;

(b) all firearms in his or her possession; and

(c) all ammunition in his or her possession.

(5) A firearm and any other item seized in terms of subsection (4) must be kept by the South African Police Service or, if appropriate, by the Military Police, until an appeal against the conviction or sentence has been finalised or the time for an appeal has elapsed.

**Section 120(1)(a):** Section 120 deals with Offences, subsection 1(a) notes that “A person is guilty of an offence if he or she contravenes or fails to comply with any- provision of this Act”

**Section 120(3)(b)** states that “It is an offence to- discharge or otherwise handle a firearm, an antique firearm or an airgun in a manner likely to injure or endanger the safety or property of any person or with reckless disregard for the safety or property of any person.”

**Section 120 (7):** Section 120 deals with Offences, subsection 7 states, “It is an offence to discharge a firearm, an antique firearm or an airgun in a built-up area or any public place, without good reason to do so.”

**Section 121 read with Schedule 4:** Section 121 deals with Penalties: “Any person convicted of a contravention of or a failure to comply with any section mentioned in Column 1 of Schedule 4, may be sentenced to a fine or to imprisonment for a period not exceeding the period mentioned in Column 2 of that Schedule opposite the number of that section.” Schedule 4 deals with penalties, it consists of a table, the first column lists sections of the Act, and the second lists the maximum period of imprisonment.

**Section 151:** relates to the “Jurisdiction of magistrates’ courts” stating that “Despite any law to the contrary, any magistrates’ court has jurisdiction to impose any penalty provided for in terms of this Act.”

**Section 250 of the Criminal Procedures Act, 51 of 1977** deals with “Presumption of lack of authority”, noting that:

(1) If a person would commit an offence if he-

(a) carried on any occupation or business;

(b) performed any act;

(c) owned or had in his possession or custody or used any article; or

(d) was present at or entered any place,



without being the holder of a licence, permit, permission or other authority or qualification (in this section referred to as the '**necessary authority**'), an accused shall, at criminal proceedings upon a charge that he committed such an offence, be deemed not to have been the holder of the necessary authority, unless the contrary is proved.

(2) (a) Any peace officer and, where any fee payable for the necessary authority would accrue to the National Revenue Fund or the Railway and Harbour Fund or a provincial revenue fund, any person authorized thereto in writing by the head of the relevant department or sub-department or by the officer in charge of the relevant office, may demand the production from a person referred to in subsection (1) of the necessary authority which is appropriate.

(b) Any peace officer, other than a police official in uniform, and any person authorized under paragraph (a) shall, when demanding the necessary authority from any person, produce at the request of that person, his authority to make the demand.

(3) Any person who is the holder of the necessary authority and who fails without reasonable cause to produce forthwith such authority to the person making the demand under subsection (2) for the production thereof, or who fails without reasonable cause to submit such authority to a person and at a place and within such reasonable time as the person making the demand may specify, shall be guilty of an offence and liable on conviction to a fine not exceeding R300 or to imprisonment for a period not exceeding three months.

*Ends*