NOTES / AANTEKENINGE

MISTAKEN IDENTITY OF THE VICTIM IN CRIMINAL LAW*

1 Introduction

Along with the drama and pathos that the trial of Oscar Pistorius brought to a multitude of South Africans, who devotedly followed the events (and dissections of events) with great dedication a few years ago, the case also highlighted and publicized a number of legal rules and doctrines. Who would have thought, for example, that the term of art *dolus eventualis* would emerge as the subject of such quizzical interest for so many?

Other issues which emerged are no less interesting from a legal perspective, but are admittedly of much more narrow and parochial interest, being limited to those who are required to apply substantive criminal law, whether in the courts or in the classroom. One of these is the *error in obiecto* notion (the spelling "*obiecto*", rather than "*objecto*" which more typically appears in the textbooks and the case law, is more correct, although, both spelling forms will be used below, as needs be). The word "notion" is carefully selected, since describing *error in obiecto* as a *rule*, has been firmly and correctly dismissed as incorrect by Snyman (Hoctor *Snyman's Criminal Law* 7ed (2020) 171): "[It] is not the description of a legal rule; it merely describes a certain type of factual situation." Burchell's point of departure is even more stark: "[T]he so-called *error in objecto* rule has uncertain, dubious origins and reference to it, even as a description of a factual predicament, should be excluded from the lawyers' lexicon" (*Principles of Criminal Law* 5ed (2016) 406n58). Phelps ("The Role of *Error in Objecto* in South African Criminal Law: An Opportunity for Re-evaluation Presented by *State v Pistorius*" 2016 *Journal of Criminal Law* 45 46) uses the phrase "little-known principle" to describe this "factual predicament". The author in Kemp, Walker, Palmer, Baqwa, Gevers, Leslie and Steynberg *Criminal Law in South Africa* 3ed (2018) 263 does not use any nomenclature when discussing the legal position arising out of this factual situation.

2 Definition and content of *error in obiecto*

A South African definition of *error in obiecto* (in the criminal law context) is "mistake as to the quality or identity of the object of the attack" (Hiemstra and Gonin *Trilingual Legal Dictionary* 2ed (1986) 192). This definition reflects the full heading encompassing this kind of error: *error in persona vel*

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obiecto, which extends to both an *error in persona*, a mistake regarding the identity of the person on whom the harm is inflicted, and an *error in obiecto*, a mistake as to the quality of an object. Therefore, when Hamlet stabs the person standing behind the curtain, thinking that it is Claudius, whereas it is in fact Polonius, this is an *error in persona*. In the case of *error in persona*, in the context of murder, X wants to kill Y, but at the moment that the harm is inflicted, X mistakes Z for Y, and kills Z. As indicated, the definition of *error in obiecto*, in itself, relates to the quality of an object, and so could be exemplified by the situation where X imports cocaine, thinking it is heroin, or when X sets fire to building A, thinking it is building B, or when X unlawfully appropriates item A, thinking it is item B (De Wet *De Wet en Swanepoel Strafreg* 4ed (1985) 144–145).

Blomsma notes that both types of error seem to create problems for the correspondence principle, in that X's intent does not relate to the specific objective element that was fulfilled, and that given that a mistake of fact negates intent, it could be argued that these types of error also do so (*Mens Rea and Defences in European Criminal Law* (2012) 240). However, he points out that not all deviations between the state of mind and reality are regarded as relevant, and these mistakes fall into the category of not excluding fault. While there do not appear to have been any reported South African cases falling into this category, a related example of the courts not paying heed to an error of mistaken identity may be seen in *R v Njembeyiya* (1941 EDL 156), where the accused stabbed to death the deceased, after mistaking the woman found in a compromising position with the deceased for the woman's sister, who was the wife of one of the accused. The court rejected the plea that the mistake as to the identity of the woman should reduce the accused's crime from murder to culpable homicide (158).

For the purposes of the present discussion, and for the sake of simplifying the discussion, the term *error in obiecto* will be used. This is despite this usage being formally inaccurate, given the fact that both the South African courts and writers typically only refer to "*error in objecto*", irrespective whether the mistake is in fact an *error in persona* or an *error in obiecto* proper. The discussion will also be limited to mistaken identity in the context of homicide (thus actually relating to an *error in persona*), though clearly the notion of *error in obiecto* has a wider application in the South African context. The point of departure is the well-established understanding that such an error does not exclude liability (Snyman "Is Daar Plek in die Suid-Afrikaanse Strafreg vir die Doctrine of Transferred Intent" 1998 *SACJ* 1 16), as all the requirements of definition of the crime of murder – the "unlawful and intentional killing of another living person" (Milton *South African Criminal Law and Procedure Vol II: Common-law Crimes* 3ed (1996) 310) – have been fulfilled.

3 Application

3 1 Case law

Although mentioned in a number of textbooks, the term *error in obiecto* has to a large extent (but not entirely, see for e.g., *R v Mabena* 1968 (2) SA 28

(RA); *S v Raisa* 1979 (4) SA 541 (O); *S v Du Toit (2)* 2005 (2) SACR 411 (T)) lain dormant in the language of our legal practice, the judgments of the courts (for examples of where the term was included in counsel's argument, see *S v Masilela* 1968 (2) SA 558 (A); *S v Marwane* 1982 (3) SA 717 (A)). However, it emerged in the extensively analysed and criticised judgment of the trial court in the Pistorius murder trial (*S v Pistorius* 2014 JDR 2127). In the judgment of the court the following statement of the law was set out (45):

> "There is thus in the case of error in *objecto* so to speak an undeflected *mens rea* which falls upon the person it was intended to affect. The error as to the identity of the individual therefore is not relevant to the question of *mens rea*."

This is a correct statement of the law, and indeed, the court's affirmation of this position is further clarified in relation to the facts (47), when it states:

> "We are clearly dealing with error in *objecto* or error in *persona*, in that the blow was meant for the person behind the toilet door, who the accused believed was an intruder. The blow struck and killed the person behind the door. The fact that the person behind the door turned out to be the deceased and not an intruder, is irrelevant."

Unfortunately, this is the high point of the court's reasoning, as it then proceeds to conclude (50) that the accused "did not subjectively foresee" as a possibility that the shots he fired would kill the deceased, thus excluding *dolus eventualis*, and the possibility of a murder conviction, and concomitantly rendering any discussion of *error in obiecto* unnecessary. If there is no intent to kill, there cannot be a murder conviction. This conclusion flies in the face of the court's further conclusion that the accused was acting in putative defence (69–70): either the accused failed to foresee the fatal harm resulting when he fired through the toilet door at the "intruder", and therefore lacked intention, *or* he acted intentionally, believing as he fired the shots that he was entitled to do so (putative defence). The accused cannot logically occupy both factual positions.

The accused in *Pistorius* having been found guilty on the basis of culpable homicide, the State launched an appeal to the Supreme Court of Appeal on a number of questions of law, including the curiously expressed question "[w]hether the principles of *dolus eventualis* were correctly applied to the accepted facts and the conduct of the accused, including *error in objecto*" (*Director of Public Prosecutions, Gauteng v Pistorius* 2016 (1) SACR 431 (SCA) par 20). The court (per Leach JA) identified a number of difficulties with the trial court's application of *dolus eventualis*, including the fact that it applied an objective, rather than subjective, test to the question of *dolus* (par 28) and that the test of what is required to establish *dolus directus* was conflated with the assessment of *dolus eventualis* (par 29).

For the purposes of the present discussion the next issue discussed by the court is of signal importance. It was held that the trial court was in error when it concluded that since the accused did not foresee that he could cause the victim's death (as opposed to whoever the person was behind the door), he could not be guilty of her murder (par 30). The SCA held that such an understanding of *error in objecto* was mistaken: "although a perpetrator's intention to kill must relate to the person killed, this does not mean that a perpetrator must know or appreciate the identity of the victim" (par 31). To

exclude the accused's intention to kill on this basis constituted an incorrect application of the law (par 32).

The Supreme Court of Appeal therefore (entirely correctly, it is submitted) gave short shrift to the contention that the identity of the victim matters, applying the *error in obiecto* approach that mistaking the victim is not a material error. Consequently, although it did not clarify the puzzling formulation of the question of law indicating that *error in obiecto* is a principle of *dolus eventualis* – it is not – the court was unanimous in holding that Pistorius was guilty of murder.

3 2 Distinct from aberratio ictus

The question has been posed: "Is there in actual fact a realistic distinction between *error in objecto* and *aberratio ictus*?" (Feltoe "Review of Burchell and Hunt *South African Criminal Law and Procedure Vol I: General Principles of Criminal Law* (1970)" 1972 *Rhodesian Law Journal* 278 285).

De Wet (*De Wet en Swanepoel Strafreg* 145) states that the situation where the actor is mistaken as to the identity of his victim, which he classifies as an *error in objecto*, occupies a particular place in the law relating to mistake. This is not because *error in objecto* presents a particular theoretical problem in the context of mistake, but because cases of *error in objecto* are easily confused by unthinking people ("onnadenkende mense") with cases of *aberratio ictus*, which has nothing at all to do with mistake. As Snyman explains (Hoctor *Snyman's Criminal Law* 175):

> "*Aberratio ictus* means the going astray or missing of the blow. It is not a form of mistake. X has pictured what he is aiming at correctly, but through lack of skill, clumsiness or other factors he misses his aim, and the blow or shot strikes somebody or something else."

Thus the difference between the *error in obiecto/error in persona* and *aberratio ictus* may be expressed as that "in the former, the offender killed the person he had individualized as a target [while] in [the] case of *aberratio ictus* the offender does not kill the person he had individualized" (Badar "*Mens rea* – Mistake of Law & Mistake of Fact in German Criminal Law: A Survey for International Criminal Tribunals" 2005 *International Criminal Law Review* 203 239). Milton distinguishes between "an undeflected *mens rea* which falls upon the person it was intended to affect" in the case of *error in obiecto* as opposed to a deflected aim associated with possible unforeseen and unintended factors in the case of *aberratio ictus* ("A Stab in the Dark: A Case of *Aberratio Ictus*" 1968 *SALJ* 115 118). That these concepts are "entirely different" is stressed by Ghanayim and Kremnitzer as follows ("Mistaken Identity and Error in Performance: A Transferred Malice?" 2014 *Criminal Law Quarterly* 329 335, see also Badar 2005 *International Criminal Law Review* 239):

> "In the case of a mistake of identity [*error in obiecto/error in persona*] the injury is inflicted upon the object that is right before the actor's eyes or mind, whereas in the case of an error in performance [*aberratio ictus*], the injury is inflicted upon some third party who is not the object of the actor's attention. In the case of mistake of identity, there is just one deviation from the actor's plan, while an error in performance involves two deviations. First, the action

> itself deviates from the intended path, and second, it injures… [a possibly] unintended object."

The contrary position – that there is no fundamental difference in legal effect between *error in obiecto* and *aberratio ictus*, whatever the factual differences between the concepts, has been based on various grounds. First, some Roman-Dutch writers seem to fudge the distinction between these concepts, not least due to the influence of the *versari in re illicita* doctrine, such that an "error in performance" or *aberratio ictus*, in terms of which X misses the actual target Y, and hits Z, does not exclude liability even where the result is not foreseen or foreseeable (Milton 1968 *SALJ* 116; Boothby "The Deflected Blow: *Aberratio Ictus*" 1968 *Rhodesian Law Journal* 19 23–5). Hence the mistake has no legal effect, as with mistake in identity or *error in obiecto*, but this in itself does not render the concepts equivalent. While there were earlier cases that also seemed to regard these concepts in the same light (such as *R v Xulu* 1943 AD 616; *R v Kuzwayo* 1949 (3) SA 761 (A); *R v Koza* 1949 (4) SA 555 (A)), these cases were decided at a time previous to a fully subjective notion of intention in South African criminal law, and there is little doubt that such objective constraints could only result in courts assessing *mens rea* through the lens of reasonableness (Burchell "*Aberratio Ictus*" in Kahn (ed) *Fiat Justitia – Essays in Memory of Oliver Deneys Schreiner* (1983) 165 170). The support for the equivalence of legal effect between *error in obiecto* and *aberratio ictus* in the then Rhodesian Appellate Division case of *R v Mabena* (*supra*), where (36) Beadle CJ regarded the distinction as "rather academic" and "somewhat unrealistic", and the later support for the approach taken in *Mabena* by Pain ("*Aberratio Ictus*: A Comedy of Errors – and Deflection" 1978 *SALJ* 480) seems rooted in this outdated understanding of the notion of intent according to Exton Burchell (*Fiat Justitia* 169–171), who points out that Roman-Dutch law writers either failed to make the distinction, or were affected by the *versari in re illicita* doctrine, or both (170). The *Mabena* decision was overruled by the Zimbabwe Supreme Court in *S v Ncube* 1984 (1) SA 204 (ZS) as "contrary to principle".

3 3 Addressing the arguments of Phelps and Burchell

Having examined the nature of the notion *error in obiecto*, its application in the case law, and having noted its doctrinal antipathy to *aberratio ictus*, it remains for us to turn to the arguments regarding *error in obiecto* raised by Phelps and Burchell. Phelps (2016 *Journal of Criminal Law*) has written in support of the judgment of the trial court in *Pistorius*. After a good general synopsis of the development in South African law which has given rise to the current position based on the subjective, psychological approach to criminal liability, which incorporates a discussion of *dolus eventualis*, *error in obiecto* and putative defence, Phelps makes three arguments which pertain directly to what Phelps believes is a mistaken approach to *error in obiecto*. She argues (i) that the identity of the deceased is still relevant to some extent in a charge of murder (59–60); (ii) that if identity were never relevant, *dolus indeterminatus* would be rendered superfluous (60); and (iii) that in considering the relevance of the victim's identity in a charge of murder it is

necessary "to distinguish between an abstract prohibition (the definition of the crime) and the concrete charge" (60–61).

Let us examine these matters in turn. Phelps argues that identity of the victim remains relevant insofar as a murder charge is concerned, citing (2016 *Journal of Criminal Law* 60) definitions of the test for intent in the case law and in academic writing referring to "the deceased" or "the victim" to indicate that the intent applies to a *particular* victim, on the basis of the definite article "the" (argument (i)). However, it is submitted, such definitions merely reflect the factual scenario in such a case. The accused in a murder trial is not charged with the death of a hypothetical victim, but a real one, and it is with regard to this real victim that the accused must intend harm.

But what of the contention that this would render *dolus indeterminatus* superfluous (argument (ii), Phelps 2016 *Journal of Criminal Law* 60)? Phelps states that *dolus indeterminatus*, which can occur in association with any of the standard forms of intention (direct, indirect or *dolus eventualis*), refers to where the perpetrator "does not have a particular victim in mind, but they intend to kill someone" (60). The SCA (in *DPP, Gauteng v Pistorius supra*) accepted that the situation in *Pistorius* – shooting at an intruder through a closed toilet door – would amount to *dolus indeterminatus* (par 31). In doing so, the court indicated that a perpetrator need not know the identity of the victim killed to be held liable for murder. However, although the "wild shootout" in the context of an armed robbery may be associated with *dolus indeterminatus* (the court cites Snyman's example in the fifth edition of *Criminal Law*, see Hoctor *Snyman's Criminal Law* 178), as may the planting of a terrorist bomb (De Wet *De Wet en Swanepoel Strafreg* 149), since the accused who acts in this way does not know and does not care who will get killed, this was not the case in *Pistorius*. The victim in *Pistorius*, though not known to the appellant, was certainly determinate – it was the person behind the door, a particular and specific victim, which may be contrasted with the examples of *dolus indeterminatus* mentioned earlier. The court seems to elide this distinction, switching seamlessly between a consideration of *dolus indeterminatus* proper and the factual situation in *Pistorius*. The court states incorrectly that *dolus indeterminatus* is "merely a label meaning that the perpetrator's intention is directed at a person or persons of unknown identity" (par 31). In fact, *dolus indeterminatus* is a label meaning that the perpetrator's intention is directed at *indeterminate* victims, or as Snyman puts it, "not at a particular person, but at anybody who may be affected by his act" (Hoctor *Snyman's Criminal Law* 178).

Understanding the true nature of *dolus indeterminatus* addresses Phelps's concern. As indicated, Phelps contends that "if identity were never relevant, *dolus indeterminatus* would be rendered superfluous" (2016 *Journal of Criminal Law* 60). Accepting that *error in obiecto* does not negate liability does not collapse the categories of intention or do away with *dolus indeterminatus* – it is murder where a specific human being is targeted and killed, even if the victim's identity is mistaken by the perpetrator, in terms of the ordinary rules of criminal liability pertaining to any form of *dolus*. This is the typical context for the *error in obiecto*, where the target is settled, established, definite and *determinate*, but mistaken. Where the target is *indeterminate* victims, then *dolus indeterminatus*, in association with one of the other forms of intention, would be of application.

Phelps's contention that a distinction must be drawn between the abstract prohibition and the concrete charge (argument (iii)) relates back to the point raised earlier (pertaining to argument (i)). Indeed, a criminal charge relates to a particular act, a particular harm, a particular victim. If the accused did not subjectively intend to unlawfully inflict the particular harm, then liability cannot follow for an intention-based crime. In this Phelps is entirely correct. However, the example that she proceeds to use, and the conclusion that she draws on this basis, are less secure. Phelps (2016 *Journal of Criminal Law* 61) uses the example of X, who intentionally blows up a shopping centre, killing a number of persons. X acts with *dolus indeterminatus* – that is, he does not know the identity of the victims he is targeting, but nevertheless intends their death. Unbeknown to X, his mother, who he believes to be safe in bed at home, is also at the shopping centre when the bomb detonates, and is one of the fatalities. Phelps argues that X does not have intention in respect of his mother's death, as he did not at any stage intend to kill *her*. However, in terms of *dolus indeterminatus* (as indicated above), X clearly intended the death of the unknown victims at the shopping centre when the bomb detonated. His mistake as to the identity of (one of) the victims can hardly avail him, in the light of his steadfast intent to kill all those who were in the vicinity of the bomb.

Before concluding, it may be useful to consider Burchell's analysis of the legal position. Burchell argues that *error in obiecto* amounts to a type of transferred intent "leading to an *automatic* exclusion from the intention inquiry of the relevance of the identity of the ultimate victim" (*Principles of Criminal Law* 404, author's emphasis). While one would agree that "transferring" fault is "anathema to the current approach" of individual, subjective liability, it is far from clear how Burchell can categorise the *error in obiecto* situation as such. The English doctrine of transferred intent is not a part of South African criminal law, as Burchell acknowledges, and it is incorrect to describe the *error in obiecto* situation in these terms. A mistake about the identity of the object is "irrelevant as long as the objects are of the same nature and kind" (Blomsma *Mens Rea and Defences in European Criminal Law* 241, see further De Wet *De Wet en Swanepoel Strafreg* 145). Thus, the intent, directed at the targeted but mistaken object, remains relevant for the purposes of criminal liability, and there is no transfer of intent to another person or entity.

Burchell continues to argue that such an approach is moreover "inflexible", and should, if applied, be limited to situations involving *dolus directus*, but should preferably be abandoned altogether "if it existed at all" (*Principles of Criminal Law* 405). He further contends (*Principles of Criminal Law* 405)

> "[a] rule that error as to the identity of the ultimate victim or victims is always irrelevant to criminal liability for homicide is very different from a particular general form of intent that requires the State, in every case where it is in issue, to prove the presence of this general form or forms of intent beyond reasonable doubt."

In response, it may first be noted that, as Burchell agrees (*Principles of Criminal Law* 406 fn58), *error in obiecto* is not a *rule* binding the court, but merely the description of a particular factual scenario. Secondly, given the

discussion of *error in obiecto* by Roman-Dutch law writers, contemporary academic authors, and in the case law, there can be little doubt in its existence. Thirdly, motive or desire plays no role in liability, thus it is irrelevant whether the accused *wanted* to kill the particular victim. The relevant question is whether the accused *intended* to kill the particular victim, whom he or she (at least) foresaw might be unlawfully killed as a result of the accused's act (or omission). Whether the result was *desired*, is a matter for sentencing (Blomsma *Mens Rea and Defences in European Criminal Law* 241). Fourthly, Burchell's argument does not sit well with Milton's statement (which Burchell cites with approval, *Principles of Criminal Law* 404), that *error in obiecto* liability flows from "an undeflected *mens rea* which falls upon the person it was intended to affect". Why abandon this terminology, when it usefully labels a particular situation where liability continues, as a result of such a mistake being non-material? Use of such a term helps to distinguish this situation from a material mistake, such as when the accused in fact killed a person while believing he was shooting an animal. Where the death of an animal was intended, the necessary element of murder that the killing of a human being must be intended would be excluded, and thus liability for murder could not follow. Finally, it is evident from the judgment of the Supreme Court of Appeal in *DPP, Gauteng v Pistorius* (*supra*) that even though it is not accurate to describe *error in obiecto* as part of the "principles of *dolus eventualis*" (par 31), the fact that the court did not seek to exclude the question of *error in obiecto* from the context of the operation of *dolus eventualis* clearly indicates that it is highly unlikely to be limited to *dolus directus*, or that it should be so limited, as Burchell and Phelps (2016 *Journal of Criminal Law* 51–52) contend. There is certainly a powerful policy argument to the contrary: where the actor has both choice and control over his actions, and the envisaged consequence is the death of another human being, how could it be argued that *dolus eventualis* should *not* be applicable (see Hoctor "The degree of foresight in *dolus eventualis*" 2013 *SACJ* 131 154–155)?

Both Phelps and Burchell baulk at the idea that mistaken identity is not legally relevant to liability. Both are motivated by the factual scenario in *Pistorius*, and their support for the finding in the trial court that culpable homicide was the appropriate basis for conviction (see Burchell "Masipa's decision to acquit Oscar of murder justified", available at *http://www.bdlive.co.za/opinion/2014/09/17/masipas-decision-to-acquit-oscar-of-murder-justified*, (accessed 30 October 2021); see Phelps 2016 *Journal of Criminal Law* 61–3). Central to their approach is that the fact that the actor would not have fired a shot if he knew that he was shooting the actual victim. As Blomsma points out, it "strains the common sense meaning of the word 'intend'" if killing the victim is the last thing that the accused desired (*Mens Rea and Defences in European Criminal Law* 241). In law, however, desires and motives do not serve to establish liability, and the crucial inquiry is whether intention to commit the crime was present. Why should a mistake in identity matter if the accused wished to kill a person? The only requisite constraint is that the objects should be of the same kind in so far as the definition of the crime is concerned (De Wet *De Wet en Swanepoel Strafreg* 145). What has happened in objective terms "should in its essential features be in line with what the actor *tempore delicti* thought

would happen" (Blomsma *Mens Rea and Defences in European Criminal Law* 241).

To conclude, there is no need to throw the baby out with the bathwater, on the basis of antipathy to the result in *Pistorius*. Though unelaborated in the case law and previously essentially limited to a theoretical concern in South African criminal law, and though non-existent in English law, *error in obiecto* (and *error in persona*, which as indicated above, is really what is contemplated when we are discussing mistaken identity in the context of murder) is well-known in Dutch and German law, and became a part of South African criminal legal theory at the same time as the reception of *dolus eventualis*.

While the *error in obiecto* notion has not always been accurately described in early sources, to describe it as having "uncertain, dubious origins", as does Burchell, is not appropriate. The focus of the confusion is the position of *aberratio ictus* in relation to *error in obiecto*, rather than the obscurity of *error in obiecto*. To point out, as does Phelps, that no reported South African case has turned on the point of *error in obiecto* is both entirely correct, and, it is submitted, entirely to be expected, given that such a mistake by definition (at least, in the present context of the crime of murder) does *not* provide an obstacle to liability being established.

If one departs from the context of the common-law crimes, it is possible that an *error in obiecto* situation can found a defence. As Blomsma notes (*Mens Rea and Defences in European Criminal Law* 241–2), a particular offence may indeed require that the object have a certain quality, such as where X is arrested while in the possession of drugs, but he argues that he thought he was transporting weapons or gold (or currency, as in the English case of *R v Taaffe* [1984] AC 539). Another example (also provided by Blomsma) would be where (as in section 102 of the German Criminal Code) it is an offence to assassinate a representative of a foreign state, and X believed the representative was a national. In these circumstances the mistake would be material, but the possibility of a defence in such circumstances may well be severely limited by the application of *dolus eventualis*.

Moreover, there is no cause for the notion of *error in obiecto* to be "excluded from the lawyers' lexicon", as Burchell suggests. Moreover, it is not accurate to argue, as does Phelps, that the notion of *error in obiecto* "has not gained such wide recognition as to become an entrenched principle of law" (2016 *Journal of Criminal Law* 54–55), if only because it is not so much a principle of law as a particular factual situation which does not give rise to a defence. As a descriptor of a particular factual situation which does *not* negate intention to commit a crime, *error in obiecto* still has a useful role to play in South African law, just as it does on the European continent (see, e.g., Badar 2005 *International Criminal Law Review* 238–239; Blomsma *Mens Rea and Defences in European Criminal Law* 240–242; Ghanayim and Kremnitzer 2014 *Criminal Law Quarterly* 331–333).

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