

The matter between the State and Professor Peter Beale

This editorial provides a brief synopsis of the judgement in the case between the State and Professor P G Beale which emanated from the High Court of South Africa, Gauteng Division, Johannesburg, dated 04 March, 2025. The accused, Professor Beale, a retired professor and paediatric surgeon, stood trial for charges related to surgical procedures carried out on three separate occasions. The indictment consisted of five charges, three counts of murder (counts 2, 3, 5) and two counts of fraud (1, 4).

The allegations regarding fraud

According to count 1, it was alleged that in March 2012, the accused unlawfully and with intention to defraud, misrepresented to the biological mother of one of the deceased children that the pathology results of a rectal biopsy obtained by the accused confirmed that the deceased had Hirschsprung's disease, thereby necessitating surgical intervention in the form of a rectal pull-through procedure. As a result, the mother consented to the procedure. It was further alleged that at the time of misrepresentation, the accused was aware there had been no confirmation of Hirschsprung's disease in the rectal biopsy obtained from the pathologist. Accordingly, the rectal pull-through procedure was not indicated.

The second case of fraud (count 4) concerned a second child that demised. It was alleged that between September and October 2019, the accused unlawfully and with intent to defraud, misrepresented to the deceased child's parents and paediatrician that the pathology results of a distal oesophageal biopsy obtained from the child by the accused, showed intestinal metaplasia. As a result of this misrepresentation, the parents and paediatrician accepted and believed that the presence of intestinal metaplasia necessitated a Laparoscopic Nissen Fundoplication procedure. Consequently, the parents consented to the procedure being performed. It is further alleged that at the time of the misrepresentation, the accused knew that there were no features of intestinal metaplasia, nor any signs of dysplasia or malignancy in the distal oesophageal biopsy, and thus the Laparoscopic Nissen Fundoplication was not surgically indicated.

The allegations regarding murder

According to count 2, the accused was alleged to have unlawfully and intentionally caused the death of a three-year-old male child between 30 and 31 March 2012. According to the accused, he performed the rectal pull-through procedure on 30 March 2012 and excised a 12cm section of the rectum. The child passed away on 3 April 2012.

With regard to count 3, it was alleged that, on or about 29 July 2016, the accused unlawfully and intentionally caused the death of a 21-month-old female child, born with a serious congenital defect. She had been undergoing medical treatment and surgical interventions throughout her life. She was diagnosed with gastro-oesophageal reflux disease (GORD), which required a surgical procedure known as a Nissen Fundoplication. This was performed on the 29th July. She was later found to have undiagnosed myocarditis which had compromised her cardiac function.

The allegations regarding count 5 were that, on or about 11 October 2019, the accused unlawfully and intentionally caused the death of a ten-year-old male child. A Nissen Fundoplication procedure had been performed following a diagnosis of GORD. Apparently there was an anaesthetic complication of tension pneumothorax. The child was also found to have undiagnosed viral myocarditis.

The judgement

In passing judgement, it was made clear that in terms of the applicable legal principles the accused bears no onus to prove the truth of any explanation he provides. Citing the case of *Rex v Difford*², the Judge illustrated: "If he gives an explanation, even if that explanation be improbable, the Court is not entitled to convict unless it is satisfied, not only that the explanation is improbable, but that beyond any reasonable doubt it is false. If there is any reasonable possibility of his explanation being true, then he is entitled to his acquittal."

The Judge also cited *S v Van der Meyden*³ as follows: "The onus of proof in a criminal case is discharged by the State if the evidence establishes the guilt of the accused beyond reasonable doubt. The corollary is that he or she is entitled to be acquitted if it is reasonably possible that he might be innocent (see, for example, *R v Difford* 1937 AD 370 especially at 373, 383). These are not separate and independent tests, but the expression of the same test when viewed from opposite perspectives. In order to convict, the evidence must establish the guilt of the accused beyond reasonable doubt, which will be so only if there is at the same time no reasonable possibility that an innocent explanation which has been put forward might be true. The two are inseparable, each being the logical corollary of the other."

Additionally, the Court was referred to *Principles of Criminal Law*⁴ which states:

"In terms of principle, where *mens rea* in the form of intention is required, liability is dependent upon the existence of intention in respect of every circumstance or consequence of the crime in question. Since unlawfulness is an essential element of every offence, logic dictates that knowledge on the part of the accused that his conduct was unlawful is a prerequisite of liability."

In this case, the accused subjectively believed that the operations were medically indicated and hence the State failed to establish the element of intention, premised on its allegation of *dolus eventualis*.

The court emphasised that in relation to the murder charges, the State had to prove not only that the accused's actions were the factual cause of the deaths, but also that they were the legal cause. With regard to the fraud charges, the Judge maintained that the totality of evidence showed that the accused genuinely believed the operations were indicated.

Based on the above reasoning, the Judge found that the accused was not guilty on all charges. However, regarding the deceased ten year old, the accused admitted that he regretted leaving after being informed of the child's deteriorating condition, yet he chose to do so. The accused may be considering pursuing his practice. Therefore, because of his conduct and admission, the Judge has determined that this judgment is to be referred to the HPCSA for consideration.

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1. *S v Beale* (SS10/2021) [2025] ZAGPJHC 209. <https://www.saflii.org/za/cases/ZAGPJHC/2025/209.html> (accessed 4 March 2025).
2. *R v Difford* 1937 AD 370 at 373.
3. *S v Van der Meyden* 1999 (2) SA 79 (W) at 80H–J.
4. Burchell J. *Principles of Criminal Law*. 5th ed. Cape Town: Juta & Company Ltd; 2016. p. 386.