



# BELLVILLE COMMUNITY POLICE FORUM

EMPOWERING PARTNERSHIP AGAINST CRIME



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## Do NOT Share Photos of Suspects on Social Networking Sites

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More and more legal experts are warning against the loading/sharing of pictures of so-called suspects involved in criminal activity, or suspected of being involved in criminal activity, on social networking sites as a method to combat crime.

### Words and Advice from Legal Attorneys and the SAPS

Attorney Sakkie Krouwkam warns that if the people whose pictures are being posted on the social networking sites are innocent and had never before been charged with any crimes, you are opening yourselves up for legal action.

According to Ms Mitzi Ebersöhn, who is part of the SAPS social media team states that even the SAPS when uploading photos of suspects that their faces is not visible, in line with their constitutional right, and that their identity cannot be revealed until they appeared in court.

Then we get to the important part of this article. The law that is set out in South Africa that pertains to the publishing or distribution of photographs and other images of persons in custody. This law can be argued an applied to persons that is suspected of being involved in criminal activity, or that have committed a crime but not yet in custody as well, along with what is still contained within the constitution as well.

A summary of the South Africa Police Service Act 68 of 1995 from [www.ossafrica.com](http://www.ossafrica.com) states the following:

#### **Publication of photographs or sketches of those in custody**

No person may, without the written permission of the National or Provincial Commissioner, publish a photograph or sketch of a person who is:

suspected of having committed an offence and who is in custody awaiting criminal proceedings, or awaiting a decision to implement criminal proceedings, against them; and/or expected to be a witness in criminal proceedings and who is in custody awaiting the opportunity to provide testimony.



### **The South African Police Service Act 68 of 1995, Section 69.**

**69 PROHIBITION ON PUBLICATION OF PHOTOGRAPHS OR SKETCHES OF CERTAIN PERSONS IN CUSTODY**

(1) For the purposes of this section • “photograph” includes any picture, visually perceptible image, depiction or any other similar representation of the person concerned; and “publish”, in relation to a photograph or sketch, includes to exhibit, show, televise, represent or reproduce.

(2) No person may, without the written permission of the National or Provincial Commissioner, publish a photograph or sketch of a person—

(a) Who is suspected of having committed an offence and who is in custody pending a decision to institute criminal proceedings against him or her;

(b) Who is in custody pending the commencement of criminal proceedings in which he or she is an accused; or

(c) Who is or may reasonably be expected to be a witness in criminal proceedings and who is in custody pending the commencement of his or her testimony in such proceedings.

(3) Any person who publishes a photograph or sketch in contravention of subsection (2), shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding 12 months.

You can download the act here: <http://www.saps.gov.za/legislation/acts/act68of1995.pdf>

We will at a later stage make this kind of documentation available on our website for registered users.

### What if you are not the original poster/publisher of the image contravening the act, but shared the post across or on social networking sites?

Under South African law the **“dealer is basically just as guilty as the stealer”**. This means, if you share the images further on social networking sites yourself, you are opening yourself to be charged and convicted under SAPS Act 68 of 1995 Section 69, as well as opening yourself up to civil charges under the constitution that can be made against you by the person whose photograph or image you shared.



### Effect of Sharing Images on Social Networking Sites

Furthermore, and on the other side of the coin, sharing photos and images on social networking sites that pertain to crime scenes and images of suspects can have a huge negative impact on criminal investigations in progress by the SAPS, and severely hamper their efforts, just the same is it could assist them in their investigations. Hence the clause that you cannot share the images without the proper permission from the relevant persons at the SAPS, whether it be the station media liaison appointed for this, or the National or Provincial Police Commissioner.

### Delaying Police Investigations

Put yourself in the following position of an SAPS member. There is a syndicate that committed an act of vehicle theft; however no information apart from that of a witness with relation to the vehicle they arrived or let in is available. The criminals are not aware that someone has witnessed the crime. It is the 4<sup>th</sup> or 5<sup>th</sup> incident like this, with same vehicle and registration number. The vehicle is currently hot and flagged as sought by the SAPS. Now, the last witness goes and shares the information, including vehicle registration number on social networking sites.

These criminals see that the post is being shared all over social media and that their vehicle registration

number that they use have been leaked. Now they change vehicle and registration number. Immediately it sets the SAPS back in their investigation finding these criminals and bringing them to justice. How do they find these criminals now and try and to prevent further crimes committed by this group of criminals?

### *Criminals Being Released Due to Technicalities*

Another scenario, it is late evening, the light outside is poor and you see a suspect assaulting another person. A criminal charge of assault is opened at the police station and the SAPS is investigating the case. Now someone who witnessed the assault and took a picture of the assailant shares the information on social media.

A few days or few weeks later the SAPS tracks the culprit down and he is arrested. The case goes to court and the legal aid representative, or lawyer that represents the suspect, get a hold of this image, which is not clear as it was dark. If the arrest were based on the identification of the individual from the photograph, and the witness initially identified the suspect from the photograph, the defence lawyer can get the case thrown out of court, arguing that the only reason his client was arrested and identified is due to the fact that the image has been shared on social media and his client identified as result of that. It does not matter whether he actually is guilty or not. The state prosecutors' case now becomes extremely difficult.

### *Ruining an Innocent Person's Life*

Lastly, if the person is not guilty and messages with photos are distributed on social media, for example portraying the person as a paedophile, fraudster etc...

Some of these allegations and charges can result in a huge media uproar and someone becoming "famous" for all the wrong reasons. It can ruin their lives to such an extent that they lose their spouse, children, jobs, everything. It can be so bad that these people, although cleared by the courts, cannot find work afterwards. It can lead to someone's life getting so bad that they consider, or in some cases do, commit suicide.

**So let us be responsible and careful, and think twice before we share images on social networking sites and social media platforms.**