

SOUTH AFRICA / JUDGMENT

Heyns v S (A307/08) [2011] ZAWCHC 256 (8 June 2011)

[2011] ZAWCHC 256

COURT

Western Cape High Court, Cape Town

BEFORE

Weinkove, Louw

CASE / FILE NUMBER

A307/08

Source: saflii.org · Research copy typeset by Esheria. Not court-issued or certified.

IN THE HIGH COURT OF SOUTH AFRICA

WESTERN CAPE HIGH COURT, CAPE TOWN

APPEAL COURT CASE NO: A307/08

In the matter between:

MARTIN HEYNSAppellant

and

THE STATERespondent

JUDGMENT: 8 JUNE 2011

WEINKOVE A.J.

1. Pursuant to events which took place in Pacaltsdorp. George, during the night of 27 September 2003, the Appellant was charged in the George Regional Court with:
 - 1.1. the murder of Henry Marnewil by shooting him with a firearm; (count 1)
 - 1.2. the attempted murder of Ricardo Prins by stabbing him a number of times with a small knife; {count 2)
 - 1.3. the assault with intent to do grievous bodily harm to the said Prins with a whip of some nature; (count 3)
 - 1.4 the assault with intent to do grievous bodily harm to Calvin Erasmus by striking him in the face with an object; (count 4)
 - 1.5. the assault with intent to do grievous bodily harm to Christiaan Alaart; (count 5)

1.6. pointing a fire arm at Christiaan Alaart (count 6) and at Ricardo Prins; (count 7)

1.7. the illegal possession of a fire arm (count 8).

2. Appellant, who was represented by an attorney throughout the trial, first appeared before the Magistrate on 3 June 2004. He was convicted of unlawful possession of a firearm. He was acquitted on the charge of assault with attempt to do grievous bodily harm upon Christiaan Alaart and of pointing a firearm at him and Prins. He was convicted on the charges of murder, attempted murder, common assault and, in respect of Erasmus, of assault with intent to do grievous bodily harm.
3. Mr. Schmidt, counsel for Appellant, who appeals with the leave of the court a quo against his conviction and sentences, did not persist in oral argument with the submission raised in his heads that the evidence of the two doctors who performed the post mortem was of an unsatisfactory nature and that they contradicted each other in material respects. Counsel did submit, however, that there was a lack of reliable evidence in regard to the shooting of Manevil and that it was sinister that no bullets, or bullet points, or bullet casings were found inside the house. He also made the point that there was no exit wound and that the doctors were unable to locate the bullet.
4. As far as the bullet is concerned, it probably was removed when the deceased was taken to the hospital before he died and was treated there. It is certainly established that the deceased was shot and that he died from a gunshot wound.
5. The deceased's mother woke up at night when her house was broken into by Appellant and his cohorts and she personally witnessed the Appellant shoot and kill her son outside her bedroom door. In any event, Prins, who was allegedly stabbed by Appellant, said he saw the firearm in Appellant's hands and he saw him hand the firearm to another one of the Accused immediately before Appellant started stabbing him with a knife.
6. Appellant testified under oath and admitted that he went to the deceased's house to look for him and Prins. His evidence was unconvincing and contradictory. Counsel tried but faintly to make a feature of Appellant's retraction, after an adjournment during the proceedings, of his denial that he had stabbed Prins at all.
7. In some way or another, Counsel suggests that the fact that Appellant lied under oath and then withdrew these lies and admitted that he stabbed Prins should count in his favour and demonstrate his truthfulness. In my view the evidence that the appellant shot and killed the deceased, is overwhelming and there is no truth in his denial of that fact.

8. The evidence showed that earlier that evening Appellant had attacked Prins, who was in the process, according to him, of assaulting Appellant's brother who was intoxicated. According to Appellant, Prins was beaten and chased away. A while later Prins, the deceased and some of their friends again attacked Appellant's brother and in the process of beating them off for a second time, Appellant says that he was stabbed by Prins in the chest with a broken bottle top.
9. What thereafter ensued was a type of gang war. Appellant and his friends got together and tracked down Prins and his friends who tried to run away. They took refuge in the house of the deceased, but Appellant and his friends forced open the door and attacked the occupants. Appellant first encountered the deceased and shot him dead. He then ran into the deceased's mother's bedroom where Prins was attempting to escape. He then stabbed Prins a number of times (the Magistrate counted 27 stab wounds). Appellant then assaulted Calvin Erasmus.
10. This case dragged on through the Courts from 2004 until 3 March 2008 when Appellant was sentenced to imprisonment of 15 years in respect of the murder, 5 years of which 2 were to run concurrently with the 15 years aforesaid in respect of the attempted murder and 6 months which was wholly suspended in respect of each of the counts of assault with the intent to cause grievous bodily harm and common assault. Finally, he was sentenced to 1 year imprisonment on the charge of the unlawful possession of a firearm. Effectively he was sentenced to 19 years imprisonment.
11. Save that in respect of count 4 where the appellant hit Erasmus with a single blow to the face with his fist and in respect of which Ms. Marshall who appeared on behalf of the State conceded that the correct verdict is that of common assault and not assault with the intent to do grievous bodily harm, the Magistrate did not misdirect himself in any respect in regard to the convictions. I agree with Respondent that in respect of the two medical expert witnesses their qualifications were properly proved and their testimony beyond reproach.
12. Counsel for the Appellant who argued the appeal with enthusiasm and commitment, also raised the issue that the Magistrate had not warned the Appellant at the commencement of the trial, of his right in terms of section 97 ter of Act 32 of 1944 to have assessors assist the Magistrate. Counsel pointed out that the record shows that this issue was raised by the prosecutor more than 3 months after the commencement of the trial and after the two principal witnesses for the State, Prins and Mrs. Manevil had already completed their testimony. While conceding that the representatives of the then accused (including Mr. Williams, who acted for the appellant) all confirmed that the accused did not want the court to sit with assessors. Mr Schmidt submitted that principally because of the fact that the crucial evidence had already been completed, the omission nevertheless resulted in a failure of justice.
13. I do not agree that there was in fact a material omission. On a literal reading of the record, the prosecutor in effect recorded that the decision not to require the magistrate to sit with assessors had been taken before the commencement of the trial but that the decision was

not placed on record at the time. However, even if there was a substantive omission at the commencement of the trial, the appellant through his representative made it clear, when the issue was raised, that he did not wish the magistrate to sit with assessors. In the circumstances, the trial commenced and proceeded before a court, to the constitution of which the appellant (and his co-accused), who were represented throughout, had no objection. In my view, there has been no failure of justice

14. I also agree with Respondent that there is no merit in the complaint that the State did not call certain witnesses, because Appellant had every right to call these witnesses himself. In my opinion there is no merit in the suggestion on the appellant's behalf that the trial Court misdirected itself in any respect in regard to the conviction.
15. As far as the sentences are concerned, Appellant who was 25 years old at the time of the incident but already 29 years old when he was sentenced on 3 March 2008. told the Court that the reason he assaulted Prins was because he was taking revenge for his having been stabbed with a broken bottle. Also, Prins had earlier assaulted his brother What Appellant did

was to hunt the Complainants down and attacked them, whether in revenge or otherwise. The assault took place in the private home of the deceased's family and his execution by Appellant was cold-blooded and deserving of the strongest censure by the Court. What the deceased had done wrong was to assist Prins and he paid for this with his life. Appellant chose to take the law into his own hands and break into a private home to track down his prey. He stabbed Prins at least 17 times, although the Court counted 21 stab wounds during the inspection.

16. Save that in my view, as was also conceded by Ms. Marshall on behalf of the State, the magistrate should have ordered that the sentence of 1 year on count 8 (illegal possession of the firearm) should also run concurrently with the sentence of 15 years on count 1, I do not consider that the Magistrate misdirected himself in any respect as far as the imposition of the sentence is concerned. Having regard to the circumstances of the offence, I consider that, given the nature and seriousness of the offences which in my view overshadow the personal circumstances of the appellant as well as the effect of the unfortunate delay in bringing the matter to a conclusion, the sentences (save for the issue of concurrency referred to above) to be appropriate and fully justified.
17. I would make the following order: 16.1 The appeal against the conviction and sentences on counts 1 (murder), 2 (attempted murder), and 3 (assault with the intention to do grievous bodily harm) is dismissed and the conviction and sentences on these counts are confirmed. 16.2. The appeal against the conviction on count 8 (illegal possession of a firearm) is dismissed but the appeal against sentence on count 8 succeeds to the extent only in regard to concurrency, as is set out in par 16.5 hereunder. 16.3. The appeal against the conviction on count 4 succeeds in part and the conviction on count 4 is changed to a conviction of common assault. 16.4. The sentence on count 4 of six months imprisonment which is suspended in full, is confirmed. 16.5. It is ordered that the sentence of 1 year imprisonment

on count 8 shall run concurrently with the sentence of 15 years on count 1, 16.6. In the result, the effective sentence is reduced from 19 years to 18 years imprisonment.

WEINKOVE, AJ Acting Judge of the High Court I agree. It is so ordered. LOUW. J Judge of the High Court

was to hunt the Complainants down and attacked them, whether in revenge or otherwise. The assault took place in the private home of the deceased's family and his execution by Appellant was cold-blooded and deserving of the strongest censure by the Court. What the deceased had done wrong was to assist Prins and he paid for this with his life. Appellant chose to take the law into his own hands and break into a private home to track down his prey. He stabbed Prins at least 17 times, although the Court counted 21 stab wounds during the inspection.

16. Save that in my view, as was also conceded by Ms. Marshall on behalf of the State, the magistrate should have ordered that the sentence of 1 year on count 8 (illegal possession of the firearm) should also run concurrently with the sentence of 15 years on count 1, I do not consider that the Magistrate misdirected himself in any respect as far as the imposition of the sentence is concerned. Having regard to the circumstances of the offence, I consider that, given the nature and seriousness of the offences which in my view overshadow the personal circumstances of the appellant as well as the effect of the unfortunate delay in bringing the matter to a conclusion, the sentences (save for the issue of concurrency referred to above) to be appropriate and fully justified.

17. I would make the following order:

16.1 The appeal against the conviction and sentences on counts 1 (murder), 2 (attempted murder), and 3 (assault with the intention to do grievous bodily harm) is dismissed and the conviction and sentences on these counts are confirmed.

16.2. The appeal against the conviction on count 8 (illegal possession of a firearm) is dismissed but the appeal against sentence on count 8 succeeds to the extent only in regard to concurrency, as is set out in par 16.5 hereunder.

16.3. The appeal against the conviction on count 4 succeeds in part and the conviction on count 4 is changed to a conviction of common assault.

16.4. The sentence on count 4 of six months imprisonment which is suspended in full, is confirmed.

16.5. It is ordered that the sentence of 1 year imprisonment on count 8 shall run concurrently with the sentence of 15 years on count 1,

16.6. In the result, the effective sentence is reduced from 19 years to 18 years imprisonment.

WEINKOVE, AJ

Acting Judge of the High Court

I agree. It is so ordered.

LOUW. J

Judge of the High Court

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.saflii.org/za/cases/ZAWCHC/2011/256.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/heyns-v-s-unknown-topic-awchc-2011--6a3ea5203b1caa9129816485>

Prepared on 10 October 2026 · Esheria