

SOUTH AFRICA / JUDGMENT

Mahlangu v S (A232/2024) [2025] ZAGPPHC 660 (12 June 2025)

[2025] ZAGPPHC 660**COURT**

North Gauteng High Court, Pretoria

BEFORE

Munzhelele, Francis-Subbiah

CASE / FILE NUMBER

A232/2024

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IN THE HIGH COURT OF
SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

CASE

NO: A232/2024

(1) Reportable: No.

(2) Of interest to other

judges: No

(3) Revised.

12 June 2025

In the matter between:

MANEKIS

TINTI MAHLANGU

APPELLANT

and

STATE

RESPONDENT

The

matter was heard in an open court. The Judgment is handed down electronically by circulating to the parties' legal representatives

by email and uploading to Caselines. The date and time for hand-down is deemed to be the date that it is uploaded.

JUDGMENT

Munzhelele J (Francis – Subbiah J concurring)

- [1] The appellant was convicted of assault, attempted murder, unlawful possession of a firearm, and unlawful possession of ammunition. He was thereafter sentenced to one (1) year of imprisonment for the assault charge, five (5) years of imprisonment for attempted murder, five (5) years of imprisonment for unlawful possession of an unlicensed firearm, and two (2) years of imprisonment for unlawful possession of ammunition.
- [2] In terms of section 280 of the Criminal Procedure Act 51 of 1977, the sentence imposed for assault was ordered to run concurrently with the sentence for attempted murder, and the sentence imposed for unlawful possession of ammunition was ordered to run concurrently with the sentence for unlawful possession of an unlicensed firearm.
- [3] The appellant applied for leave to appeal against his conviction and sentence in the court a quo, which application was refused. The appellant thereafter petitioned the High Court in Pretoria for leave to appeal against conviction only and it was granted on 28 March 2024.
- [4] The facts of this case, as set out in the judgment of the court a quo, are as follows: On 17 November 2019, Mr Maditsi was driving his motor vehicle in the company of Mr. Fasi and Mr. Riba at San Diego in Zithobeni, when his vehicle was bumped by another. While Mr. Maditsi was engaged in a discussion with the driver who had collided with his vehicle, the appellant arrived at the scene and demanded that Mr. Maditsi move his car so that the appellant could pass. Mr. Maditsi informed the appellant that they were still resolving the matter with the other driver and would move the vehicle thereafter.
- [5] The appellant became agitated, leading to a heated verbal exchange. The appellant then slapped Mr. Maditsi with an open hand, whereupon Mr. Maditsi retaliated, and a physical altercation ensued. This assault was corroborated by two State witnesses who observed the appellant assaulting Mr. Maditsi. The individuals were eventually separated by Mr. Fasi. Thereafter, Mr. Maditsi, together with Mr. Fasi and Mr. Riba, entered the vehicle and drove away from the scene.
- [6] While travelling, they noticed the accused's vehicle following them. The accused's vehicle subsequently drew parallel to theirs and came to a stop in front of their vehicle. The appellant exited his vehicle after retrieving a firearm from the door panel. A passenger from the accused's vehicle attempted to restrain him, admonishing him not to proceed with his intended actions.
- [7] Simultaneously, Mr. Fasi exited Mr. Maditsi's vehicle and approached the accused. The appellant then discharged the firearm, firing shots at Mr. Fasi, as well as at the windscreen and door of Mr. Maditsi's vehicle. Mr. Fasi retreated to the car and reported that he had been shot. Mr. Maditsi immediately drove to a safer location, removed Mr. Fasi from the vehicle, and an ambulance was summoned. Mr. Fasi was transported to hospital, having sustained

four gunshot wounds to his body. His injuries were corroborated by a J88 medical report, which confirmed four bullet wounds.

- [8] Police officers later arrived at the scene where Mr. Maditsi's vehicle was located and took both Mr. Maditsi and the appellant to the police station in the same police vehicle. At the station, both individuals were subjected to gunshot residue testing. The results, marked as Exhibit "D", revealed the presence of gunshot residue on the hands of both the appellant and Mr. Maditsi.
- [9] Fired cartridge casings were recovered from the rear seat and the door panel of Mr. Maditsi's vehicle. Forensic analysis of the two 9mm caliber cartridge casings was inconclusive as to the origin of the firearm from which they were discharged.
- [10] The appellant and his witness testified in his defense. The appellant stated that he had been at the San Diego pub where he purchased a beverage. While there, he received a call from his security company informing him that someone had gained access to the roof and ceiling of his bottle store. He then decided to drive to the bottle store.
- [11] However, when he attempted to leave, he found that his path was obstructed by Mr. Maditsi's vehicle. Mr. Maditsi allegedly refused to move his vehicle, stating that he was still addressing the earlier accident. The appellant claimed that he could not recall what transpired thereafter, except that he remembered grabbing Tebogo (Mr. Maditsi) with his T-shirt, which subsequently tore.
- [12] With respect to the charge of attempted murder, the appellant testified that he drove with his friend Gift, and his sister from the San Diego pub to his bottle store when he observed a vehicle following them. That vehicle allegedly pulled up behind his own. The accused, together with Gift and his sister, exited their vehicle. Simultaneously, Mr. Fasi and another individual, exited the pursuing vehicle. The appellant claimed that he then heard a sound resembling a tyre bursting, which prompted him to flee to his car. He stated that he was unaware of what happened to his friend or his sister. He drove to the police station to report the incident.
- [13] While at the police station, the appellant was informed that his friend Gift had died at the scene. At the scene the appellant and the police found that Gift was run over by an unidentified motor vehicle on the street. The appellant returned with the police to the police station together with his motor vehicle. On their route, they encountered the damaged vehicle, which the appellant identified as the one that had been following them. This was Mr. Maditsi's vehicle. Mr. Maditsi was then taken by the police and placed in the same police vehicle as the appellant. At the police station, both parties were subjected to gunshot residue testing.
- [14] The appellant denied owning or possessing a firearm. He was subsequently arrested and detained.

- [15] The appellant's sister testified. But during her testimony, she initially stated that she did not witness the fight. However, under cross-examination, she altered her version, claiming that there was an argument only and not a physical altercation while at the San Diego pub. Regarding the shooting incident, she testified to hearing only one gunshot, whereas the appellant said he heard a sound resembling a tyre burst. She was unable to state where the shot had originated.
- [16] The court a quo was tasked with assessing the credibility, reliability, and overall probabilities of the evidence presented by the respective witnesses in relation to both charges. In doing so, the court was required to evaluate the testimony of each witness and each exhibit in accordance with established legal principles governing the assessment of evidence.
- [17] It is trite that the determination of guilt in a criminal trial rests upon the evaluation of the totality of the evidence, including the credibility of witnesses, the consistency and coherence of their accounts, and whether their version is possibly true when weighed against the inherent probabilities and other objective evidence. As articulated in *S v Chabalala* 2003 (1) SACR 134 (SCA) at para 15, the correct approach is not to consider the evidence of the State and the defense in isolation, but to weigh them together in determining where the balance of probabilities lies.
- [18] Furthermore, in assessing the credibility of witnesses, the court must consider factors such as the witnesses' demeanor, consistency, corroboration by independent evidence (like the evidence as handed in from the forensic lab where applicable), and whether their versions withstand logical scrutiny. Ultimately, the burden rests upon the State to prove the guilt of the appellant beyond reasonable doubt. If the accused's version is reasonably possibly true, he is entitled to an acquittal.
- [19] In *R v Dhlumayo & Another* 1948 (2) SA 677 (A) at 705-706 when it held that:
- "The trial court has advantages which the appellate court cannot have - in seeing and hearing the witnesses and in being steeped in the atmosphere of the trial. Not only has the trial court had the opportunity of observing their demeanor, but also their appearance and whole personality. This should never be overlooked. The mere fact that the trial court has not commented on the demeanor of the witnesses can hardly ever place the appeal court in as good a position as it was. Even in drawing inferences the trial court may be in a better position than the appellate court, in that it may be more able to estimate what is probable or improbable in relation to the particular people whom it has observed at the trial...The appellate court should not seek anxiously to discover reasons adverse to the conclusions of the trial court. Where the appellate court is constrained to decide the case purely on the record, the question of onus becomes all-important. To succeed, the appellant has to satisfy an appellate court that there has been 'some miscarriage of justice or violation of some principle of law or procedure'".*

[20] With regard to the assault charge, counsel for the appellant contended that the court a quo adopted a skewed approach in its analysis of the State witnesses' evidence by failing to properly consider contradictions, inconsistencies, and improbabilities therein. In particular, it was argued that the testimony of Mr. Fasi and Mr. Riba diverged — with one witness stating that the appellant used his fists to assault Mr. Maditsi, and the other alleging that the appellant slapped him.

[21] The State, on the other hand, submitted that any such discrepancy is immaterial to the central issue, namely whether an assault occurred. The alleged contradiction pertains merely to the manner in which the assault was perpetrated, not to the fact of the assault itself.

[22] The court a quo carefully and comprehensively evaluated the totality of the evidence, including that of both State witnesses and the defense. It

concluded that the State's version was more credible and reliable. The accused's own version — that he could not recall the events and only remembered pulling Mr. Maditsi by the T-shirt, which then tore — failed to meaningfully challenge the State's case. Moreover, the accused's witness stated that she did not witness the assault at all.

[23] The discrepancy raised by the appellant is, in my view, immaterial to the offence of assault common. Whether Mr. Maditsi was slapped or struck with a fist is irrelevant to the legal requirement that there must have been the unlawful and intentional application of force. The essential element that the appellant unlawfully assaulted Mr. Maditsi was clearly established and is not negated by the minor variation in the witnesses' descriptions of the assault.

[24] I accordingly find that there was no misdirection on the part of the court a quo in its assessment of the evidence or in its finding of guilt in respect of the assault charge.

[25] In relation to the charge of attempted murder, counsel for the appellant submitted that the court a quo failed to consider the totality of the evidence, including crucial forensic elements such as the ballistic results and the presence of gunshot residue on both Mr. Maditsi and the appellant. The central issue, as correctly identified by the State, was: "Who was the perpetrator who shot Mr. Fasi, four times with a firearm?" However, the State's written heads of argument, as well as its oral submissions during the appeal hearing, were conspicuously silent regarding the presence of gunshot residue in Mr. Maditsi's hands. The State focused solely on the residue found on the appellant, thereby presenting a one-sided analysis of the forensic gun residue evidence.

[26] The court a quo similarly failed to address this material issue—namely, the presence of gunshot residue on both Mr. Maditsi and the appellant. Due to the fact that the court a quo did not deal with this issue, the appeal court will deal with it right now.

- [27] On proper consideration of the totality of the evidence, only one person was seen in possession of the firearm, namely the appellant. Aside from the residue found on Mr. Maditsi, there is no evidence linking him to possession of the firearm on this night. The only remaining question is: how did he acquire the gunshot residue on his hands?
- [28] It is common cause, as reflected in the forensic report marked Exhibit “D,” that both the appellant and Mr. Maditsi tested positive for gunshot residue. The inference to be drawn from this evidence is that at least two individuals either discharged a firearm or were in close proximity to one when it was fired or shortly thereafter. Direct evidence from Mr. Fasi indicates that the appellant emerged from his vehicle with a firearm, which he retrieved from the vehicle’s door panel, pointed at Mr. Fasi, and fired while Mr. Fasi approached to speak with him and thereby continuing to fire even as Mr. Fasi retreated toward the vehicle. Although Mr. Fasi could not state with certainty how many shots were fired, the shooting was consistent with the testimonies of Mr. Maditsi and Mr. Riba.
- [29] Notably, there is evidence on record stating that Mr. Maditsi was placed in the same police vehicle as the appellant following the shooting. Upon arrival at the police station, both the appellant and Mr. Maditsi underwent gunshot residue testing.
- [30] It is well established fact that gunshot residue may be transferred to an individual who is in close proximity to a person who has discharged a firearm. Therefore, evidence that the appellant and Mr. Maditsi were placed in the same vehicle by police could explain the presence of residue on Mr. Maditsi’s hands.
- [31] Furthermore, there is overwhelming eyewitness testimony—from Mr. Maditsi, Mr. Fasi, and Mr. Riba—that the appellant was seen, illuminated by the vehicle headlights, in possession of a firearm and that he discharged multiple shots in the direction of Mr. Fasi and Mr. Maditsi’s vehicle. This evidence explains the presence of gunshot residue on the appellant’s hand. The firing of multiple shots would account for the deposition of residue on both the appellant and on Mr. Maditsi, due to their placement within the police vehicle. This also explains their close proximity to one another within the police van on route to the station.
- [32] There is direct evidence implicating the appellant in the shooting of Mr. Fasi, who sustained gunshot wounds. All three eyewitnesses—Mr. Fasi, Mr. Riba, and Mr. Maditsi—observed the appellant holding and discharging the firearm at Mr. Fasi and the vehicle. Regarding the version of the appellant, the court a quo had extensively analyzed his version and found it improbable in the circumstances. I also agree that the version of the appellant and his witness is not reasonably true, and the state has managed to prove that the appellant attempted to murder Mr. Fasi on the night in question.
- [33] In light of the totality of the evidence, the court a quo did not misdirect itself when it found the appellant guilty of attempted murder.

- [34] In relation to the charge of unlawful possession of a firearm and ammunition, the State has led compelling evidence linking the appellant to the firearm in question. A key eyewitness testified that he observed the appellant retrieving a firearm from the door panel of his motor vehicle. This is direct evidence of actual possession. Furthermore, forensic evidence established the presence of gunshot residue on the appellant's hands, consistent with recent discharge or handling of a firearm. Although ballistic analysis of the two spent cartridges recovered from the scene did not conclusively link them to a specific firearm, their proximity and the appellant's conduct support the inference that he discharged or was in control of a functioning firearm.
- [35] In criminal proceedings, it is sufficient if the appellant had physical control over the firearm, coupled with the necessary mental intention (*animus possidendi*). The appellant was unable to produce any lawful authority or license for the firearm, and no explanation was provided for his possession thereof. Once the State proves unlawful possession, the burden shifts to the appellant to rebut the presumption of unlawfulness. The appellant failed to do so.
- [36] The cumulative effect of the eyewitness testimony, the forensic evidence, and the appellant's failure to account for his possession of the firearm and ammunition, satisfies the requirement of unlawful possession of firearm and ammunition. The fact that Mr. Fasi was wounded by a gunshot means the gun was loaded with ammunition. The court is therefore entitled to draw the reasonable inference that the appellant was in unlawful possession of a firearm and ammunition, as contemplated in the relevant provisions of the Firearms Control Act 60 of 2000. Accordingly, the State has discharged its burden, and the appellant is correctly convicted by the court a quo on this count.
- [37] As a result, the following order is made:
1. On the charges of assault, attempted murder, possession of unlicensed firearm and ammunition, the appeal on conviction is dismissed.

M.MUNZHELELE

JUDGE OF THE HIGH COURT

PRETORIA

I agree, and so it is ordered

FRANCIS- SUBBIAH

Date of hearing:

21 May 2025

Judgment

delivered: 12 June 2025

Appearances:

For the appellant: Adv. Aphone

Legal Aid South Africa

For the Respondent: Adv. Masekoameng

National Director of Public Prosecutions

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