

SOUTH AFRICA / JUDGMENT

S v Hobkirk (SS99/00) [2000] ZAGPHC 26 (22 September 2000)

[2000] ZAGPHC 26**COURT**

High Courts - Gauteng

BEFORE

Willis

CASE / FILE NUMBER

SS99/00

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IN THE HIGH COURT OF SOUTH AFRICA

(WITWATERSRAND LOCAL DIVISION)

JOHANNESBURG

CASE NO; SS99/00

DATE:2000.09.22

In the matter between

THE STATE

and

NORMAN PETER HOBKIRK.....Accused

JUDGMENT

WILLIS. J: The accused was indicted on three separate charges of murder:

With regard to the first charge it is alleged that he wrongfully, unlawfully and intentionally killed an adult male, whose identity is unknown to the state (to whom I shall hereinafter refer to as "the first deceased"), near the Maurice Freeman Recreation Centre, Bertrams in the district of Johannesburg, on or about 28 November 1992.

The second charge alleges that the accused wrongfully, unlawfully and intentionally killed Donald William Crighton (whom I shall

hereinafter refer to as "the second deceased") in Bertrams, in the district of Johannesburg, on or about 30 August 1997.

The third charge alleges that the accused wrongfully and unlawfully and intentionally killed Clarence Albert Pretorius (to whom I shall hereinafter refer as "the third deceased") in Bertrams, in the district of Johannesburg, on or about 3 September 1997.

The accused pleaded not guilty to all three charges. Mr Thinane, the counsel who appeared on his behalf, tendered the following plea explanations in terms of section 115 of the Criminal Procedure Act, 51 of 1977.

With regard to the first charge it was said that the accused's recollection of events was vague, but that he suspected that on the

date in question he was in detention at a prison for a case that had been completed in January 1993 against him, and in respect of which he was at that time awaiting trial.

With regard to the second charge the plea explanation was that at the time the accused had been with his girlfriend, one Kobie Sinclair, sitting on an iron horse in the park where the incident had taken place. From there he could see what happened, and saw a man being killed and he tried to dissuade them to continue from killing the deceased.

With regard to the third charge the plea explanation was a bare denial, it was alleged that it was untrue that the accused had killed or not the accused had been in custody at the time when the first charge was committed, namely on 28 November 1992. If it was indeed true that the accused was in custody at that time then quite obviously there would be no purpose in continuing with the evidence against the accused in respect of that particular charge. On the other hand, if it could be established that the accused was not in custody, as he believed he had been, at that time then it may affect the accused's plea explanation.

The court then adjourned on the first day in order to enable the accused together with the investigating officer to ascertain whether or not the accused had been in custody at this time.

When the court next reconvened it was confirmed by both Mr Thinane counsel for the accused, and Mr Mohlala counsel for the state, that the accused had not in fact been in custody at the time that the offence alleged in the first charge was committed. The accused then explained that his recollection of events on that particular date is vague, but that he denied having been involved in the killing of deceased 1.

Thirteen formal admissions relating to the identity of the deceased, so far as it could be established, their cause of death, the photographs taken at the scenes, and so on, were made on behalf of the accused in terms of section 220 of the Criminal Procedure Act, 51 of 1977.

I start from the premise that the correct approach in any criminal trial is to look at the whole of the evidence. In this particular

regard I refer to the case of *S v van der Meyden* 1999 (2) SA 79 (W), in which the following is said at 81 A:

"in whichever form a test is expressed it, in other words the court, must be satisfied upon a consideration of all the evidence."

There are certain similarities in each of these three charges:

1. All three victims had had their trousers and underpants removed and were left lying half-naked from the waist down.
2. All three victims had multiple injuries, way in excess of that which would be necessary to kill a person.
3. There had been actual physical contact between each victim and the aggressor.
4. All three victims were killed with a sharp instrument.
5. The victims had not apparently been robbed.
6. There were none of the usually apparent motives, such as anger, jealousy, greed and so on.
7. The victims were not in a position to put up much resistance. In the case of the first two the blood alcohol test, conducted as a result of the post-mortem examination, showed that they were under the influence of alcohol to a considerable extent at the time that they were killed. The third deceased was a frail elderly man.
8. The attacks took place in a highly localised area in Bertrams, Johannesburg, within a radius of 200 metres of each other.
9. The victims were all male.
10. In the last two cases the bodies of the victims had been burned after they had been killed. The killings bore the hallmarks of what is colloquially known as "a serial killer". With regard to charge 1 the evidence of the state may be summarised as follows:
 11. There was the testimony of the eyewitness Matilda Stigling, She was about 11 or 12 years old at the time that deceased 1 was killed. She had known the accused since she was 4 years old. They had lived in the same street in Bertrams. They were related to each other by marriage. On the late afternoon or early evening of 28 November 1992 she had been walking towards the Maurice Freeman Recreation Centre on her way to the shops. On her way she saw the accused attacking the first deceased with a brick and then grab him and attack him further. She then ran away. She had recognised the first deceased having seen him quite often in the area for some ten days prior to the incident. She told her mother about the incident upon arriving home. What she had seen had not been reported to the police because her mother did not want to get involved.

12. The fingerprint found on a broken bottle found next to the deceased matched that of the accused. Not only was this the evidence of the fingerprint expert, Captain Grace, but it was common cause. This bottleneck had blood on it, the first deceased suffered numerous lacerations, which in all probability would have been inflicted by this bottle neck.
13. A tacky footprint having a size 5 was found right near the body of the first deceased. The footprint was marked in blood. It is common cause that the deceased was wearing tackies on that particular day, and that he normally wears a size 5 tacky. 4. In his statement (exhibit M) which he made before a magistrate. Miss Du Pisanie, on 7 April 1999, the accused admitted that he had stabbed the first deceased although he had attempted to explain that he had done so because he had been attacked by the first deceased.

Mr Thinane who appeared for the accused did not contest the admissibility of this statement although he sought to argue that not

much weight should be attached thereto. In the light of the accused's own evidence, with which I shall deal later, Mr Thinane was entirely correct in not contesting the admissibility of this statement.

With regard to charge 2 the evidence upon which the state relies may be summarised as follows:

1. There was the testimony of the eyewitness Chris Weideman. He 20 years of age, and both now and at the time of the incident lived at 5 Pemberton Street, Bertrams. He had been with his father on the verandah of his home at about 22:00 at night on the night of 30 August 1997 when he had observed the accused, together with another person, in the park which was across the road from his home. These two persons had then attacked the second deceased. They put a rope around his neck, throttled him, brought him to the ground and further attacked him. Both had kicked him while he was on the ground. The accused had then obtained a mattress, put it on top of the second deceased and then lit it. The accused then ran away. This witness had been a friend of the accused before the incident and knew him well.
2. There was the testimony of the girlfriend of the accused at the time, Kobie Sinclair. She said that shortly after 23:00 on the night in question she had asked the accused to go and buy her some cigarettes. He had left the house where they were staying, which was near the park in which the second deceased was killed, to buy cigarettes. About 10 minutes later she herself left to buy some

chips. On her way she had walked past the park and had noticed the fire burning. She continued on her way to purchase the chips. Having purchased the chips she walked back past the park and noticed a group of people standing around the fire. When she got back to the house the accused was there with the cigarettes. He asked her why she smelt of fire smoke. She then said to him: "Why don't you go and look for yourself?" The accused went out, and when he returned the accused had ash or charcoal on his trousers. He had taken a bath upon returning, which seemed to her strange as he had bathed earlier that night. Indeed his behaviour had been very strange

from the time she returned from having purchased the chips. She expressly ruled out the version given by the accused in his plea explanation, that they had been together in the park, sitting on an iron horse when they had seen other persons attack the deceased.

3. It was common cause that at some stage on the night of the murder of the second deceased the accused had been at the scene of the crime.
4. In exhibit M {the statement made to the magistrate referred to earlier) the accused admitted that he had killed the second deceased

but said that he had "horn doodgeslaan met my hande" because the second deceased had attacked him. The post-mortem examination of the second deceased shows that he had died from a penetrating incised wound of the chest and a slit throat.

With regard to count 3 the evidence upon which the state relies may be summarised as follows:

1. There was the testimony of a former girlfriend of the accused, one Heidi Weideman, who said that in December 1 998 she had heard rumours that the accused had killed a person in the old age home, being Park Cottages, where deceased 3 had been killed. The accused had admitted to her that he had indeed killed this person.
2. There was the testimony of his best friend at the time, Barend Smit, who said that the accused had told him that he had "killed a cop". It was common cause that deceased 3 had been a police reservist and very proud of the fact.
3. In exhibit M (the statement made to the magistrate referred to earlier) the accused admitted that he had killed the third deceased.

It should perhaps be pointed out at this stage that in his statement to the magistrate the accused said that both the second and the third deceased had attempted to have homosexual relations with him. The post-mortem examination as well as the circumstantial evidence tendered by the daughter-in-law of the third deceased and a work colleague of the second deceased indicate that it was most improbable that either of these persons were practising homosexuals. I accept that in matters of sexual orientation and preference one can seldom, if ever, be absolutely certain.

The accused himself testified. He was an appalling witness. Although he admitted before the magistrate his responsibility for killing each of the deceased, originally blaming the incidents on the aggression of those killed, he denied in the witness-box that he had anything to do with any of these deaths. He contradicted himself as to whether he had been put under any pressure by Captain van Aardt to make a statement. He also contradicted himself as to whether he had been told what to say. He furthermore contradicted himself as to whether he had been told by Captain van Aardt to admit his involvement in the crimes. At one stage he said he had decided to take the blame because he got frustrated and had a low tolerance level. He contradicted himself as to the day on which he had left a bottle at the Maurice Freeman Centre. He could give no satisfactory explanation as to how he could remember what he had been doing on the day that the first deceased had been killed, which is some 8 years ago. He contradicted his version as to what he

had been doing when the first deceased was killed. He could give no satisfactory explanation for how his clear fingerprint would have remained on the bottleneck if someone else had used it after him. He said that the investigating officer had promised him a light sentence and psychological treatment if he admitted to the magistrate that he had committed these crimes. The magistrate, however, asked him if he expected any benefit if he made the statement, or if any promises had been given to him if he made the statement. He said "no".

When confronted with the radically different versions in his plea explanation and that given under oath with regard to charge, or count 2, he blamed this on the fact that he was receiving psychiatric treatment.

The accused's version is a tissue of lies and cannot possibly be accepted as being reasonably possible true. It is trite that the fact that an accused person tells lies does not make him guilty, it is merely a factor to be taken into account.

I accept that criticisms may be levelled at the evidence of each of the eyewitnesses and the witnesses who were friends of the accused to whom the accused allegedly made admissions. The eyewitness, Matilda Stigling, was a young girl of 11 or 12 at the time and her evidence must be treated with caution. None of the eyewitnesses is particularly intelligent, and it is clear to me that they were

afraid. Similar observations may be made of the witnesses to whom the accused allegedly admitted his involvement in the killings of the second and the third deceased.

Mr Thinane submitted that I should treat their evidence with caution. I do so. I also accept that the evidence of the fingerprint on the bottleneck and the evidence of the footprint, standing on their own, would never be sufficient to convict the accused.

I also wish to record that it was clear to me that the witness Kobie Sinclair was endeavouring to protect the accused. She sought to narrow the time in which the accused had been absent from the house to minimise the possibility that he could have been responsible for the killing of the second deceased. Her evidence, however, was deadly in so far as defeating the plea explanation of the accused was concerned. As I have already indicated she expressly ruled out the possibility that she and the accused had, immediately before the second deceased had been killed, been in the park sitting on an iron horse.

I return to the point I made very much earlier in this judgment. One must look at the totality of the evidence. I wish to quote further from the cases of *S v van der Meyden*, to which I referred at the beginning of this judgment:

"A court does not look at the evidence implicating the accused in isolation in order to determine whether there is proof beyond

reasonable doubt, and so too it does not look at the exculpatory evidence in isolation in order to determine whether it is reasonably

possible that it might be true." With regard to each of the three counts the totality of the evidence on each individual count

permits no other reasonable inference than that the accused is guilty as charged. There is no doubt from the post-mortem reports that whoever killed the deceased in each particular charge must have had a direct intention to kill.

There are two further sources of corroboration for the guilt of the accused:

1. The similar fact evidence to which I referred at the beginning of the judgment.
2. The evidence of the expert Dr Pistorius. Her evidence also to some degree touches upon the issue of similar fact evidence. There is a well established cautionary rule against the

admissibility of similar fact evidence. Nevertheless it is relevant for

example where:

1. it shows the accused's disposition. (Cf *S v Katz* 1946 AD 71, at 78-9);
2. there is a sufficient nexus in time, method or circumstances to permit an inference. (Cf *S v Green* 1962 (3) SA 886 (A), at 894F; *S v Letsoko* 1964 (4) SA 768A, at 775B; *S v Gokool* 1965 (3) SA 461 (N), 57 (NC); *Jones v S* 1972PH h 129 (A); *Sv R* 1972(4) SA 57 (NC); *S v Lebogang* 1980 (4) SA 2360; *S v Phillips* 1985 (2) SA 727 (Gen));
3. if it is relevant as to motive *H v Rorke* 1915 AD 145. Similar fact evidence as corroboration is similarly admissible. (Cf *R v Viljoen* 1947 (2) SA 56 (A), at 63 and 64; and *S v Gokool*, (supra).

The similarities in the crimes corroborate each other. In particular the weaknesses in count 3 are corroborated by the similarities which counts 1 and 2 have thereto.

Dr Pistorius, an expert psychologist who interviewed the accused, gave evidence which completes the picture. She gave evidence as an expert. She is a very experienced expert in serial killings and serial rapes. Her doctorate was earned on the topic of serial killing, and she had published a book on the subject. She has studied and taught on this issue internationally. Her credentials and her competence were not challenged. She impressed me with her grasp of her subject.

The accused spent much of his childhood in orphanages and reformatories. She had no doubt, from what the accused himself told her and the circumstantial evidence applied to her expert knowledge, that the accused as a child had been sodomised by his father and his cousins. He had also been sodomised regularly at the orphanages and reformatories which he attended. This induces a sense of anger, humiliation and powerlessness.

The sodomising of young boys stimulates the prostate to induce an involuntary erection. This causes confusion. There is pain and

pleasure at the same time. There is guilt at experiencing a refracted sense of pleasure during an act which is painful and which the boy senses is wrong. This has dangerous consequences in the fantasies which the accused would develop over the course of time. One of the ways in which a child learns the intellectual and emotional skills to survive in the world is through fantasy. The capacity to fantasise, although diminished, remains with us even in our adulthood. Everyone has fantasies. They serve an important psychological function in enabling persons to relieve their frustrations, to feel good about themselves, to be happy, to be in control, to be free, perhaps even to be a hero.

In a person such as the accused the fantasies will be especially dangerous. To concur the feelings of anger, humiliation, guilt and powerlessness which arise from sexual abuse as a child, the accused would fantasise about humiliating, conquering and controlling another man in a sexual way. A person such as the accused would not derive sexual pleasure from his acts of killing and humiliating the deceased and removing their trousers, but rather for a brief moment in time regain a sense of power.

The accused is a pyromaniac, i.e. a person who derives sexual pleasure from lighting fires. This is a very rare sexual deviation and not properly understood at this stage in the history of psychology. There may be something primeval in the enjoyment just about everyone derives from watching fires. When the wiring in our brain becomes wrongly circuited this natural enjoyment of watching fires could become a sexual perversion.

The obvious question arises: if everyone has fantasies, and sometimes even fantasies which are morally wrong, why do most people not act them out? The answer, according to Dr Pistorius, lies in this: the accused did not have the benefit of a positive influence of his father or another adult male role model. For reasons which are not yet fully understood fathers, particularly in relation to boys, have a critical role to play in developing a superego, a conscience, a sense of right and wrong, or morality. This is particularly important in the development of young boys between the ages of 6 and 12. Deprive a child of this and there will be serious problems for that child in adulthood. Good fathers, it seems, have a critical role to play in making a good society.

The combination of the accused's childhood experiences, together with the lack of development of a higher sense of purpose, largely made him into the person that he is today. The profile of the accused, according to Dr Pistorius, fits exactly that of the serial killer in counts 1, 2 and 3. He also admitted to her that he had killed the two persons in counts 2 and 3. At the time of his interview with her these were the only crimes under investigation.

The significance of Dr Pistorius' evidence goes further. It provides a motive for otherwise inexplicable crimes. At the risk of seeming repetitive, I wish to emphasise that the evidence as a whole permits no other reasonable inference than that the accused is guilty of each of these three murders.

The investigating officer, Captain van Aardt, and his team are to be commended for their excellent detective work and thorough preparation

of the case.

Count 1: the charge of murder, you are found guilty as charged.

Count 2; the charge of murder, you are found guilty as charged.

Count 3: the charge of murder, you are found guilty as charged.

ON BEHALF OF THE STATE: ADV MOHLALA

ON BEHALF OF THE ACCUSED: ADV D THINAIME

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