

SOUTH AFRICA / JUDGMENT

S v Lawrence (CC16/2019) [2024] ZAWCHC 238 (12 June 2024)

[2024] ZAWCHC 238

COURT

Western Cape High Court, Cape Town

BEFORE

De Wet

CASE / FILE NUMBER

CC16/2019

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IN

THE HIGH COURT OF SOUTH AFRICA

(WESTERN

CAPE DIVISION, CAPE TOWN)

Reportable

CASE

NUMBER: CC16/2019

In

the matter between:

THE
STATE
and
WAYNE
HENRY
LAWRENCE
The accused

JUDGMENT

DE WET AJ:

“All crime has harsh effects on society. What distinguishes domestic violence is its hidden, repetitive character and its immeasurable ripple effects on society and, in particular, on family life. It cuts across class, race, culture and geography, and is all the more pernicious because it is so often hidden and so frequently goes unpunished.”[1]

[1] The prevalence of domestic violence in South African society spurred the enactment of the Domestic Violence Amendment Act (“the DVAA”)[2], which came into effect on 14 April 2023, and the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007, to effectively deal with gender-based violence of which femicide is the extreme form. It is non the less rife and continues unabatedly as a result of various factors such as fear of retaliation and shame.[3]

[2] [AM][4] was 38 years old when she tragically died from a gunshot wound fired at close range through her chin, whilst trying to get out of her vehicle in the driveway of her parents’ residence in Montevideo, Bishop Lavis, whilst her 16 year old daughter, [MM], was in the passenger seat next to her. The accused, who was the life-partner of [AM] and the father of [MM], admitted that he “sneaked” into the yard where [AM] and his daughter were residing at the time, with one of his firearms, a .40 S&W pistol (“the Glock”), and that he was holding the firearm when the fatal shot was fired. He however denies that he was responsible

for the death of [AM] and the shot which caused a bullet to lodge in the foot of his daughter during the incident. He further denies that he had planned or had intended to murder [AM]. He also denied that he had abused and assaulted [AM], in any way, during their almost 22-year relationship.

[3] The accused stand accused of the following counts:

Count 1: Assault read with the provisions of s 94 of the Criminal Procedure Act 51 of 1977 (“the CPA”);

Count 2: A contravention of s 120(9)(f) read with ss 1, 103, 120(1)(a), 121 [Schedule 4], and 151 of the Firearms Control Act, No. 60 of 2000 – Supplying false information in an application for licence, competency, certificate, permit or authorisation;

Count 3: A contravention of s 120(6)(a) read with ss 1, 103, 120(1)(a), 121 [Schedule 4] and 151 of the Firearms Control Act, No. 60 of 2000 – Pointing a firearm;

Count 4: Kidnapping;

Count 5: A contravention of s 17(a) read with ss 1, 5, 7 and 17 of the Domestic Violence Act 116 of 1998;

Count 6: A contravention of s 120(3)(b) read with ss 1, 103, 120(1)(a), 121 [Schedule 4] and 151 of the Firearms Control Act, No. 60 of 2000 – Reckless endangerment to person or property;

Count 7: A contravention of s 17(a) read with ss 1, 5, 7 and 17 of the Domestic Violence Act 116 of 1998;

Count 8: A contravention of s 120(6)(a) read with ss 1, 103, 120(1)(a), 121 [Schedule 4] and 151 of the Firearms Control Act, No. 60 of 2000 – Pointing a firearm;

Count 9: A contravention of s 17(a) read with ss 1, 5, 7 and 17 of the Domestic Violence Act 116 of 1998;

Count 10: Attempted murder;

Count 11: Murder [and that the provisions of s 51(1) of the Criminal Law Amendment Act 105 of 1997 (“the CLAA”) is applicable to the aforesaid charge in that the charge is listed in Part 1 of Schedule 2 and, more particularly, is listed in paragraph (a) under murder];

Count 12: Defeating or obstructing the course of justice.

[4] The accused tendered a written plea explanation wherein he confirmed that he is aware that the State alleges that the provision of s 51

(1) of the CLAA are applicable in respect of count 11 (the murder charge). Mr Booth, who appeared for the accused throughout the trial, confirmed that the accused was informed about the applicable minimum sentence as well as the competent verdicts on the various counts. The

accused pleaded not guilty to all twelve counts.

[5] In his plea explanation the accused admitted that he and [AM] had been in a relationship since approximately 2009 and that he is the lawful licensed holder of two firearms, a .45ACP Taurus pistol (“the Taurus”) and the Glock. He admitted that [AM] died on 11 December 2017 at Bishop Lavis and on the basis set out in the post-mortem report which was admitted into evidence. He further stated that:

5.1. during his relationship with [AM], she regularly abused him and had physical relationships with other men;

5.2. at the time of her death, she was involved with Abduraghman Malan (known as Plante and I refer to him as “Malan” herein), a person with whom she worked;

5.3. he had not planned to murder [AM] and denied that his actions were premeditated;

5.4. he had no intention to murder [AM]; and

5.5. at the time of [AM]’s death his judgment was impaired as he had been diagnosed with major depression and generalised anxiety which illnesses impaired or diminished his judgment at the time of the incident.

[6] He specifically pleaded that:

“3.9 At the time of the Deceased’s death, the Accused was in a severely depressed state of mind having been diagnosed with major depression and generalised anxiety disorder. The accused was hospitalised for these illnesses during October 2017. He was also on prescribed medication at the time” and that “... although the Accused understood the difference between right and wrong, his state of mind was diminished and his judgement impaired at the time of the said incident as a result of the aforementioned illnesses.”

[7] The accused made various formal admissions in terms of s 220 of the CPA and during the course of the trial various forensic reports, letters, cell phone records and statements were admitted and handed in as exhibits and forms part of the record.[5] The contents are not repeated herein.

[8] A brief common cause timeline of events is useful to detangle the circumstances which led to the tragic death of [AM] and assists to place the evidence heard during the trial in context:

8.1. The accused and [AM] met during 1998 when she was 16 years old and still at school. The accused was 22 years old at the time and had completed a 6-month diploma course in electrical work.

8.2. [AM] fell pregnant from their relationship in Grade 11 but had an abortion during the beginning of Grade 12 at the insistence of her parents.

8.3. [AM] fell pregnant again in Grade 12 from their relationship and the parties’ daughter, [MM], was born on 13 June 2001.

8.4. Until about 2007 [AM] and [MM] stayed at [AM]’s family home situated in N[...] Street, Montevideo (“the maternal family home”).

8.5. During 2007 he parties jointly purchased a property at [...] D[...] Street, Montana and they lived there with [MM] until [AM] ended the relationship between her and the accused during October 2017. [AM] and [MM] stayed with [AM]’s sister for a short period after the break-up and then moved back into the maternal family home. [MM] was approximately 6 years old when she moved into D[...] Street with her parents and 16 years old when they moved back to the maternal family home.

8.6. [AM] was admitted to Stikland Hospital on 19 January 2011 and remained there until 11 February 2011. She was transferred to Crescent Clinic and received further treatment there for some time.

8.7. During the beginning of October 2017, and whilst [MM] was on holiday with her grandparents, [AM] ended the relationship with the accused and moved out from [...] D[...] Street.

8.8. The accused did not accept the break-up and persisted, on his version, to which I shall return, to pursue [AM] and begged her to come back to him.

8.9. On 11 October 2017, and during the evening, the accused took [MM] to the home of Malan in Mitchells Plain, to show [MM] that [AM] was seeing, or was in a relationship, with someone else. He had his firearm with him.[6]

8.10. On the morning of 12 October 2017, the accused went to [AM]’s place of employment in Parow to try and convince her to come back to him. She drove with him in his vehicle for a while whereafter he dropped her back at her place of work.

8.11. On the same day, [MM] received WhatsApp messages from the accused wherein he stated: “[MM] I just want to say I’m sorry for what you are feeling and going through now. When mommy told me she slept with Malan “the guy from last night” I didn’t want to believe it and I was hurting sooo much that I force her to have ugly sex with Daddy. I told her that I was going to have anal sex and put stuff in her and record it and send it to Malan and she must stop me and tell me if she didn’t do it. She didn’t stop me so I went through with doing it to her. Only after she told me that she just said so to get away from me because of all the years of pain and abuse I put her through. I am really sorry for what I did to your mommy and that’s the reasons she’s acting the way she is. I feel very bad about it and asked her to forgive me and to give me a chance to prove how sorry I was but she chose not to. I love your mommy very much but I never treated her right. I feel so bad about all this and her not wanting to try that I am going to kill myself now to prove to everyone including your mommy how much she meant to me. I sorry for putting your through this but I really can’t anymore. Love you

and your mommy always Daddy.”[7]

8.12. On 19 October 2017 [AM] obtained an interim protection order in terms of the Domestic Violence Act 116 of 1998 in the Bishop Lavis Magistrate’s Court under case number 306/12/2017 against the accused to not intimidate, harass, threaten, manhandle, assault, swear and or otherwise verbally or physically abuse her and [MM] and to not enter the maternal family home where [AM] and [MM] was living at the time, and [AM]’s place of work. He was further interdicted from following, stalking, ambushing and or in any manner restricting the freedom of movement of [AM] or [MM].[8]

8.13. The interim interdict was served on the accused on 21 November 2017 and he intended to oppose the interdict on the return date.

8.14. On 26 October 2017 the accused was admitted to Melomed Claremont, a private clinic, by Dr Dhansay who diagnosed him upon discharged with an adjustment disorder with depressed mood. [9]

8.15. On 3 November 2017 the accused discharged himself from the clinic.

8.16. It is alleged that during November 2017, there was a shooting incident whilst [MM] was with the accused at [...] D[...] Street, Montana. The accused denies the occurrence of any incident.

8.17. [MM] had a panic attack at school in November 2017 (her evidence was that it was the day after the incident at [...] D[...] Street), started receiving psychological assistance and was unable to finish her school year.

8.18. During the week of 20 November 2017, there was a family meeting at the maternal family home where the accused, his parents, [AM] and her parents were present regarding the relationship between [AM] and the accused. There is a dispute pertaining to what was said at this meeting.

8.19. On 28 November 2017 the interim protection order was extended at the Bishop Lavis Magistrate's Court and the return date set for 1 February 2018.

8.20. On 10 December 2017 the accused, his sisters, [AM], [MM] and various family members, attended a DJ show of a cousin in Long Street, Cape Town. The outing abruptly ended and there is a dispute as to what had happened.

8.21. On 11 December 2017 at about 20h30, [AM] arrived at the maternal family home with [MM]. The accused was outside the vehicle and had the Glock in his hand. [AM] was shot twice at close range whilst still sitting in the car. Once through her abdomen (this was the first shot but was not fatal) and once through her chin at close range (this was the fatal shot) with the Glock of the accused. [MM] who was also in the vehicle during the incident, was shot in the foot.

8.22. The accused left the scene without rendering assistance and was arrested on 13 December 2017. The Glock has not been found but the accused admitted that this was the firearm that shot [AM]. The accused's other firearm, the Taurus, was found at his parent's home in Valhalla Park, Bishop Lavis.

[9] The State called 16 witnesses. The accused testified in his own defence and called two witnesses, his sister Renee Florence and Mr Pillay, a clinical psychologist, to which the accused was referred by his legal representative.

[10] As [AM]'s voice could not be heard, the State relied on certain hearsay evidence which I was asked to admit in terms of s 53 (1)(c) of the Law of Evidence Act 45 of 1988. The application was opposed. After due consideration of the particular circumstances of the matter and the factors listed in s 53(1)(c)(i) to (vi) of the aforesaid Act, I allowed the following evidence in the exercise of my discretion:

10.1. the disclosure of [AM] during her first nervous breakdown at a consultation with the doctor, during which Ms [OM], the mother of [AM] was present;

10.2. the communications between [AM] and [MM];

10.3. the screenshots of the WhatsApp messages that was sent to Malan as contained in exhibit "FF", as well as the communications between Malan and [AM];

10.4. the report that [AM] made to Donna Dirks that the accused abused her.

- [11] During argument, the State, rightly so, conceded that it, given the evidence at trial, could not prove counts 4 and 5 (the alleged kidnapping and contravention of the domestic violence order on 12 October 2017) beyond reasonable doubt. I, in the circumstance and save insofar as it is relevant to the other charges, do not deal with the evidence pertaining to these charges in any detail.
- [12] Whilst I have considered all the evidence presented, I summarise herein only certain relevant parts of the evidence to contextualise my findings. Considering the plea explanation tendered by the accused, the most crucial evidence in my view was that of [MM], Malan, Dr Roffey, Mr Pillay and the accused. The relevant circumstantial evidence is also highlighted.

Sergeant Tjeketsi:

- [13] Sergeant Tjeketsi is a member of the South African Police Services (“the SAPS”), stationed at Bishop Lavis during December 2017. He reacted to a shooting incident at 2[...] N[...] Street, Montevideo. On arrival he was taken to the back of the yard where a blue Audi A3 was parked with registration number C[...]. He saw a colored female lying on her back behind the steering wheel across the driver’s seat and she was bleeding on the righthand side of her head. He observed a gunshot wound under the chin. He further saw a cartridge case lying behind the driver’s seat and there was a set of house keys with the vehicle’s key. The person in the vehicle was later identified as [AM]. He confirmed the photographs of the crime scene and the position in which [AM] and other items were found in the vehicle.
- [14] Inside the house he met [MM] whose foot was injured during the shooting incident. Ms [OM], the grandmother of [MM], reported to him what [MM] had told her. The perpetrator was identified to him as Wayne Lawrence, the father of [MM]. According to him [MM] was in a state of shock. [AM] was declared dead on the scene.
- [15] After the relevant role players took over the scene, he and his partner made their way to render assistance at [...] D[...] Street, Montana, the home of the accused. As no one answered and in order to gain access to the premises, members of the task force had to break open the front gate.
- [16] During cross-examination Sergeant Tjeketsi confirmed that he did not speak to [MM], who was very upset and in shock, but that Ms [OM] told him that [MM] told her that her father had shot her after he had shot her mother, whereafter he fled the scene. He was confronted with the light conditions at the crime scene but could not contribute much in this regard.

Ms [OM]:

- [17] Ms [OM] is the mother of [AM]. She was 62 years old when she testified. She has lived with her family at the maternal family home for 38 years.
- [18] She testified that [AM] and [MM] started living at the maternal home again after [AM] left the accused during the beginning of October 2017.

- [19] She confirmed that the accused and [AM] started a relationship whilst [AM] was 16 years old and in school. Initially, they did not approve of the relationship but the accused and [AM] remained together. [AM] fell pregnant during matric and her granddaughter [MM] was born from their relationship. [AM] and [MM] remained living at the maternal family home until they moved in with the accused at [...] D[...] Street, Montana when [MM] was about 6 years old.
- [20] During her testimony, she explained that the accused would not often come to their house but did attend birthdays. Initially, she described the relationship between the accused and [AM] as good. She however observed that [AM] was always hurried and anxious to go home when in the company of the accused.
- [21] She stated that in 2011, [AM] had a nervous breakdown and was admitted to Stikland Hospital. When she accompanied [AM] to the doctor, [AM] disclosed to the doctor in her presence, for the first time, that the accused had hit her since she was 16 years old. [AM] further disclosed that the accused threatened to kill her, and himself, should she disclose the abuse.
- [22] When [AM] was discharged from Stikland, she recuperated at their house. She was unsure whether [MM] stayed with them or the accused. She could recall that [MM] later stayed with them together with [AM]. [AM] saw a psychologist. She explained that [AM] later moved back to [...] D[...] Street and continued her relationship with the accused.
- [23] When [MM] was about 13 or 14 years old, she received a call from [MM] who told her that her “Daddy” was spraying her mom with a hose pipe. [MM] was very upset. She immediately went to the house and found [AM] drenched. The accused was standing over [AM] and he said “Ek het haar nat gespyt, ek het haar nie gemoer nie”. She saw that [AM] was very upset and crying. The parents of the accused also arrived and she took [AM] to the maternal family home. The accused did not want [MM] to go with them but after a few hours the accused’s sister brought [MM] to their house.
- [24] She testified that [AM] left the accused in early October 2017. She left him whilst they (her parents and [MM] were on holiday). She explained that [AM] initially stayed with her sister, but later moved back to the maternal family home. [AM] did not want to be with the accused anymore. To protect herself and [MM] from the accused, she obtained an Interim Protection Order against him.
- [25] Ms [OM] stated that she can recall one incident when the accused came to [AM]’s bedroom window and spoke to [AM] through the window. [AM] remained resolute not to go back to the accused. One afternoon in November 2017, she was sitting with [AM] in the lounge at the maternal family home. [MM] at that time was with the accused. [AM] received a phone call and it was the accused. [AM] told the accused that she was not coming home. Then [AM] heard that gunshots were fired, and the phone call ended. After the phone went off, they were unable to get hold of the accused or [MM]. They contacted her sister and phoned the police. When the SAPS went to [...] D[...] Street, Montana, there was no one home. [AM] was

in shock, and they thought that the accused had shot [MM]. Later the accused's sister, Lynne, brought [MM] home. The following day [MM] had a panic attack at school and [AM] took her to the doctor. Since then, [MM] has been seeing a psychologist.[10] [MM] was unable to complete her school year because of the incident.

- [26] Towards the end of November 2017, the accused wanted to meet with her, her husband, [AM], and his parents. The meeting was held at the maternal family home. The accused wanted [AM] to take him back. [AM] did not want to listen to him, and the accused told them that he knew that he hurt her, [AM], but that she must please take him back. The accused was crying during the meeting. [AM] mentioned to them that there was one incident in which he hit her "trunk style" with a bar of soap in a sock. During the meeting, [AM] also referred to the many infidelities the accused had in their relationship. Ms [OM] stated that it was not nice to hear the truth of the relationship between the accused and [AM]. The accused got angry and left the maternal family home on his own.

- [27] She testified that on 10 December 2017, she left the house before [AM] and [MM] to attend Sevens Rugby. [AM] was dressed in a black long-sleeve top.

- [28] She did not see [AM] when she returned from the outing. On 11 December 2017, [AM] left for work. During the day while doing the laundry she found the top [AM] had worn the night before and it was torn on the back and front. The top was not in that condition when she saw [AM] the previous day. She intended to ask [AM] about the damage later that day, but she forgot.

- [29] Around 18h00 [AM] came home from work, whereafter she left for Donna's Dirk's place. Donna was one of [AM]'s best friends and lived in Ruyterwacht. It was about 21h30 when she had already retired to bed, when she heard loud shouting at the back of the house. She heard two loud sounds which she described as a bomb or loud fireworks. She heard the words "My Daddy shot my Mommy". She immediately got up and pulled the curtains aside to look through the window. She saw a person, who was short in stature, running past her bedroom window wearing dark clothing. She did not see what happened to the person who disappeared in the direction of the front of the house and near the fence of their neighbour. Thereafter she went to the window in [AM]'s

room. She saw the vehicle and [MM] at the back. [MM] was repeatedly shouting that her daddy shot her mommy.

- [30] She explained that she could see reasonably well through the window as there are lights from the neighbour's houses and the big depot light that lit the backyard. She went to the back of the house and found [MM]. [MM] was in a hysterical state. She saw both front doors of the vehicle were open. She saw [AM] lying over the two front seats with her feet outside of the door. Some of

their neighbours jumped over the fence to help. [MM] was carried into the house because of her injury. [MM] reported to her that her daddy had shot her in the foot.

- [31] They contacted the police. [MM] repeatedly exclaimed that her daddy shot her and her mommy. [MM] later had an operation to remove the bullet from her foot at N1 City Hospital and had to stay in the hospital for a few days. [MM] never saw the accused again after that fateful Monday.
- [32] A while after [AM] was killed, she sorted out [AM]’s personal belongings and found a letter addressed to [AM] in a handbag of [AM]. I will return to this letter later.
- [33] She testified that the family is still devastated by the death of [AM] and that [MM] was still receiving counselling at the commencement of the trial proceedings.
- [34] During cross-examination, Ms [OM] was confronted with her observations about the person running past the window, and the lighting at the back of the house. To what end is not clear as the accused admitted he was there and later had left the scene without rendering assistance after the shooting incident.
- [35] She readily conceded the history of the relationship between the accused and [AM] and reported her family’s initial reservations about their relationship. She was confronted with the emotional state of [AM] and extensively questioned about the circumstances surrounding [AM]’s admission to the psychiatric hospital in 2011. The seriousness of her psychological state at the time was not disputed nor that the accused assisted with [AM]’s admission to hospital. She was confronted about why she did not report the accused to the police when she became aware of his abuse of [AM]. She responded that [AM] assured her that everything was “sorted”. She was also confronted with the alleged infidelities of [AM] which she was unable to comment on.
- [36] It was put to her that the accused denied that he sprayed [AM] with a hose pipe and told the witness: “Ek het haar net nat gespyt en nie gemoer nie”.
- [37] She confirmed that after [AM] left the accused, there was one occasion where they found [AM] asleep at [...] D[...] Street, Montana and the accused was also there.
- [38] It was put to her that the accused disputed that he admitted during the family meeting that he had physically assaulted [AM] during their relationship or in the way described by her. She was adamant about what he had said.
- [39] Ms [OM] did not dispute that the accused was hospitalized for depression and taking medication. She could not comment on the averments made by the accused that he and [AM] were getting back together and even sleeping together the Saturday before 10 December 2017. She explicitly denied that the family meeting was called on the insistence of [AM].

[MM]:

- [40] She was 21 years old when she testified.[11] The State brought an application to lead her evidence by way of close-circuit television based on a medical report submitted by Mr Pieterse[12] and the fact that she had not seen the accused since the day of the shooting. The application was granted. She testified that she and her “Mommy” were best of friends, and she also had a good relationship with her “Daddy”, although he had a temper. The accused’s hobbies according to her included dog fights (it was common cause that he at one point had 9 pit bull terriers) and shooting at the shooting range. According to her he had two firearms namely a “silver and black” one (this was obviously the Taurus) and the Glock, which he used for shooting competitions. The accused was very possessive and controlling of [AM]. He disliked that she went out with other people. They argued often over insignificant events such as [AM] arriving late from work. According to her observations the arguments over time escalated to assaults on [AM]. She recalled one incident whilst they still lived in the maternal family home before moving to D[...] Street, when she heard [AM] crying in her room. When she entered the accused was also there and [AM] was bathing a bleeding lip in a ceramic bowl with water.
- [41] The abuse became worse and she saw the accused assaulting [AM] by hitting her with open hands or fists, choking her, throwing objects at her or throwing her to the ground and kicking her in the stomach or ribs. When she became older, she intervened by standing in front of [AM] to try and make him stop assaulting her mother.
- [42] She recalled an occasion when they had an argument, and the accused threw [AM] on the floor in their house and then proceeded to drag her outside where he sprayed her with a hose pipe whilst she was lying on the concrete. She called her paternal grandfather and Ms [OM]. Ms [OM] arrived and collected [AM] and her paternal grandfather also arrived at the house. She recalled and confirmed that [AM] once had a nervous breakdown and that she once attempted to commit suicide.
- [43] She testified that during 2017 things became really bad between [AM] and the accused. [AM] decided to end the relationship and to move out. The accused threatened her that he would hurt her family. She was aware that the accused had an affair with a girl named Melissa. [AM] moved out at the end of September
2017. Although the relationship was over the accused always asked about [AM] and she would tell him to let go but to no avail.
- [44] One day in October 2017 the accused picked her up from school and early that evening the accused told her that he knew where [AM] was. They climbed into the bakkie and drove to Mitchell’s Plain to an unknown house. Her mother’s vehicle was parked in front of the house. The accused had his black and silver firearm (the Taurus) with him, and he entered the house whilst she remained in the vehicle. She started worrying about what was happening inside and decided to go and have a look. She heard voices upstairs in the house and went up where she found the accused, [AM] and Malan in the bedroom. The accused was waving the firearm in the general direction of Malan and [AM]. An argument erupted

and eventually everyone went downstairs where Malan tried to defuse the situation by telling the accused that he would leave [AM] alone. She and [AM] left in [AM]'s car and the accused left in his vehicle. The next day she received the message from the accused referred to in paragraph [9.11] of this judgment, which was apparently send to her to apologise and explain his behaviour the previous evening.[13]

[45] One day in November 2017 the accused picked her up and took her home, incessantly talking about reconciliation with [AM] and he was frustrated that [AM] was not taking any calls from him. He took her cell phone and phoned [AM] who answered the call. He tried to persuade [AM] to come and talk about their relationship, but she refused. Whilst talking to [AM] he took out his "black and silver" firearm and then threatened her over the phone that he was going to hurt himself and [MM] if she did not comply with his request. He proceeded to fire two shots in the air, ended the call and took her away from the house so [AM] would not find them. She believed that it was to make [AM] think that he had hurt her and to manipulate her to come back to him. The accused

prohibited her from contacting [AM] and only later that evening she was dropped off at the maternal family home by one of the accused's

sisters. Everyone was in a state of shock and she no longer felt safe in the company of the accused. Thereafter she refrained from

communicating with him.

[46] The next day she had a panic attack at school and [AM] took her to a psychologist. She was unable to return to school and did not complete her school year.

[47] On 10 December 2017 the extended family went to a DJ show hosted by her cousin Damian at a club in Long Street. The accused requested a lift from [AM] to the event to which she agreed. He sat at the back and she and [AM] were in front. The accused was mostly talking on his cell phone and was, according to her, trying to be nice. When they arrived, the accused stowed his firearm under the driver's seat and they all entered the club where everyone had a good time, except the accused. At some stage he asked [AM] for the car keys to go and sit in the car. After a while [AM] became worried that the accused would take the car, and she went down to the car. Shortly thereafter the accused's sisters also went out and she then followed. She found the accused on the back seat,

[AM] in the driver's seat in front of him and one of her aunts in the front passenger seat. The accused had his arm around [AM]'s neck and the gun pointed against her head. His sisters calmed the accused down, and everyone left shortly thereafter, only to resume the argument at Aunt Lynne's house in Woodstock, where [MM], and presumably also the accused, slept over.

[48] On the fatal day the accused again begged her to speak to her mother and he looked "defeated". His sisters were discussing taking him back to hospital, but that did not occur. The accused wanted her to open her Christmas gift, because he was "not going to be there for Christmas". She was taken to her other aunt's house in Ruyterwacht for the afternoon

and then obtained a lift to Donna's place with one of her cousins, where [AM] had already arrived earlier. When it was getting dark Donna received a message from the accused on her cell phone, which frightened everyone, and she and [AM] decided to go home.

- [49] When they arrived at the maternal family home [AM] opened the automatic gate and drove in. They were still in the vehicle when she saw a figure approaching the car from the right side of the vehicle. The driver's door was already open, as her mother was trying to get out of the vehicle and the interior or courtesy light was on. It was the accused. He pushed [AM] down into the vehicle and he had his Glock, which he used for competitions, in his hand. [AM] tried to push the accused away from her with her left hand. The accused was aggressive and forceful, with gritted teeth. [AM] was shouting when the first shot went off, hitting [AM] in her

stomach. The accused then lifted the firearm to within a short distance of [AM]'s chin and fired a second shot. As she was

still seated in the passenger seat, she thought he was going to shoot her as well. Her mother's upper body was lying on her lap. The accused ran away past Ms [OM]'s bedroom window, still in possession of the firearm. He wore a black Diesel cap.

- [50] She got out of the vehicle and realised that she had been wounded in her foot as she was bleeding. She was taken to N1 Hospital and it turned out that one of the two bullets fired during the incident must have ricochet from the vehicle's body and was embedded in her foot. It was removed at a later date and she spent three days in hospital. She suffers from consequential nerve damage to her foot. She often has nightmares from that evening and is still receiving treatment.

- [51] On 2 April 2021 she received a message from the accused via mobile phone, from an unknown number. It was clearly from him as the message read that it is a "Special Surprise from Wayne" and there was a picture of the accused and her when she was still very young. The message said:

"I can't anymore...I miss and love you so much and I hate myself for what happened and for having you going through all this...I

miss laying bakkies with you and I miss mommy and she didn't deserve what happened to her but it wasn't suppose to happen the way it did...I had to die that night..i pray to God that you will forgive me one day but never forget that I will always love you even if you hate me. I know I shouldn't speak to you but my life is over and I don't care what happens to me anymore".[14]

- [52] When shown the letter found by Ms [OM] after the death of [AM], she confirmed that it was written by the accused. She stated that he had practiced with her to write when she was small and in detail described, with reference to certain letters in his handwriting, that he wrote it. She confirmed that she knew his handwriting well.

- [53] During cross-examination nothing of real importance was elicited except, perhaps, that she elaborated that [AM] had often left the accused for short periods, but that she would return time and time again after the accused had convinced her “that he had changed”. She also testified that the pulling and tearing of [AM]’s clothing was a regular event as was the threat of violence towards [AM] and her family.
- [54] Her evidence regarding what happened at Malan’s house differs from that of Malan and I shall deal with it later herein.
- [55] About the fatal incident in the car, she confirmed that the accused had his full weight on [AM] and [AM] was in a weaker position. She stated that she saw his finger on the trigger and that he was less than a forearm away from her in the vehicle.
- [56] It was put to her that the accused was treated for depression after [AM] had finally left him in October 2017 from 26 October 2017 to 3 November 2017. She was aware thereof. It was put to her that the accused had “overdosed on tablets a few days after being discharged from Melomed and was then admitted to N1 City”. She was not surprised and stated that he often threatened to shoot himself to get under [AM]’s skin.

Ms Candice Brown:

- [57] She confirmed that she saw [AM] in the beginning of October 2017 and that she was excited to start her new life. Before that time [AM] had attempted to leave the accused on many occasions. She testified that on the morning of 12 October 2017 at around 06h00 the accused arrived at her house looking for [AM]. She told him she was in a hurry as she did not want to talk to him. When she arrived at work a bit later, the accused’s vehicle was parked there, the passenger door was open, and [AM] was sitting in the vehicle. The next moment she heard the door slam and screeching tyres. She pursued the accused’s vehicle for a while but lost it. She returned to work and contacted the SAPS as she was concerned about [AM]’s well-being and because she looked scared. The accused dropped [AM] off at work about 30 minutes later. [AM] was visibly upset. On 19 October 2017, [AM] obtained an interim protection order against the accused. During cross-examination she admitted that she did not observe signs of physical abuse, but [AM] told her about it.

Mr Abduraghman Malan [“Malan”]:

- [58] Malan testified that he is 44 years old and worked as a Forklift technician at Toyota Forklift. He is single but has four children. He met [AM] at work during 2015 or 2016. In late 2016 they started a secret romantic relationship. He testified that [AM] was very unhappy in her relationship with the accused and the continuous abuse inflicted on her. The accused’s affair with one Kashiefa also made her unhappy. Their secret affair became public when [AM] left the accused and moved out. He and [AM] communicated daily via the WhatsApp chat.
- [59] He and [AM] were together at his house on 11 October 2017 when he heard a car hooter outside. They looked through the window and saw it was the accused. [AM] panicked and her obvious fear made him scared as well. They went downstairs towards the back door as

the accused opened it and entered. The accused asked him if he was Malan and when he replied positively the accused took out a “shining and chrome” firearm, which he lifted and pointed at him. He feared for his life, but [AM] jumped in between them. There was a short struggle between the accused and [AM] whereafter the accused put the firearm away in his jacket. They all went upstairs for a short while to talk like grown-ups.

- [60] The accused went downstairs and out of the front door and came back with [MM]. He said to [MM] “Kyk what is your mother doing”, whereafter he and [MM] went upstairs. They followed because they feared the accused. There was no firearm at this stage. They all went downstairs again, and the accused was pleading with [AM] to come back to him and pleaded with him to talk to [AM], to which he agreed to pacify the accused. He became “fed up” with the situation and told them all to leave his house. [MM] and [AM] drove away, and the accused followed shortly thereafter.
- [61] He confirmed that the accused came to [AM]’s place of work the next morning. When [AM] saw the accused, she went to him and took him outside. He presumed it was to avoid a scene. He saw her again a bit later that morning and she was upset.
- [62] He did not report the incident at his house to the SAPS as [AM] had told him that the accused had promised to leave him alone if he did not report it. He did what she wanted.
- [63] He confirmed that he received various messages and phone calls from the accused. He also confirmed the extensive communications between him and [AM] wherein she confided in him about the abusive relationship between herself and the accused and that she feared him. The messages and their content were not disputed by the accused and was admitted into evidence.[15]

Ms Donna Dirks:

- [64] Donna Dirks testified that she and [AM] were “best friends”. It turns out that she was one of the last people to see [AM] alive, as [AM] delivered some perfume to her house on the night of her death, which [AM] sold for additional income. [AM] complained to her that the accused contacted her incessantly, and she was fearful of him. [AM] told her that the accused was never going to leave her alone. [MM] arrived at her home. She was dropped off by her cousin, Damian. Whilst they were chatting the witness received a message from the accused, using the “praying hands” emoji. She told [AM] to rather go home, to be safe, and [AM] and [MM] left. Not long

thereafter she received a telephone call from Robyn, who informed her that [AM] had passed away. She rushed to the scene and found the police there, with the body of [AM] still in the car.

Captain Renge:

- [65] The evidence of Captain Renge was of a formal nature and the relevance thereof is that the bullet found in the abdomen of the deceased and in the foot of [MM[Ad1]] was not fired from a .45 calibre taurus firearm. The markings on a bullet fired from a Glock firearm are

distinctive from those made by other firearms. Most firearms have circular markings on the discharged bullet, whereas the markings on a bullet discharged from a Glock, a self-loading, semi-automatic firearm is rectangular. Her evidence was not seriously disputed by the defence and the accused admitted that he went to the maternal family home with his Glock and that this was the weapon which shot [AM].

Dr Grace Uren:

[66] Dr Grace Uren replaced the pathologist who had done the initial pathology report, as Dr Inglis, the pathologist at the time, had emigrated to Australia. The fatal shot to [AM] was from the bottom of her chin, straight through her head, exiting at the top back of her head. It was a close-proximity wound, as there was blackening, which meant that the firearm was held near the skin. The first shot, the abdomen shot, would have been non-fatal, if medical intervention took place within time.

Veronica Yarvis, Juanita Piet and Captain Ganief:

[67] These witnesses testified regarding count 2.

[68] In essence, they testified that they processed the application by the accused for a second firearm, the Glock, during 2016 for which he received a licence in 2017.

[69] The accused disputed who processed the application and who took his fingerprints. I do not think anything turns on this. What was common cause is the fact that he did not disclose on the application form that he had a previous conviction.

[70] The accused admitted that he had a previous conviction which he did not include in the application. He stated that he was told by someone that it did not count if the conviction was older than 10 years.

Ms Desiree Arendse:

[71] She is the aunt of the accused. She confirmed that the accused often parked his vehicle in front of their house when he came to visit. On the evening of 11 December 2017, his bakkie was parked outside her house but he was not visiting. She heard gunshots and saw the accused get into his bakkie and drove off shortly thereafter.

Dr Roffey:

[72] Dr Roffey was previously a forensic psychiatrist at Valkenberg Hospital. He is now retired. His qualifications and experience were not placed in dispute by the defence. Suffice to say it is impressive. He testified that he was part of a multi-disciplinary panel that observed the accused for about a month and a half, from 10 January 2022 to 28 February 2022, whilst at Valkenberg. Resulting from their observations, they submitted a report in terms of s 79(2) and 79(4) of the Mental Health Act 51 of 1977. The team included two other psychiatrists, a psychologist, the registrar (clerk), a social worker and other staff.

- [73] The report described the nature of the enquiry to include information from the court, psychiatric interviews, physical examination, clinical/medical records, observations of ward psychiatric nursing staff, assessment by clinical psychologist, social worker's report and assessment by an occupational therapist and it concluded that in terms of s 79(4)(b) the accused is not mentally ill or certifiable in terms of the Mental Health Care Act, that he is fit to stand trial in terms of s 79(4)(c) of the Act and that he was able to appreciate the wrongfulness of the alleged offence and act accordingly as meant in s 79(4)(d).
- [74] It was common cause that the team only conducted their observations of the accused four years after the incident, which is not ideal. It was not disputed that the accused was fit to stand trial although he was diagnosed with depression whilst in prison awaiting trial.
- [75] The team also assessed whether, at the time of the commissioning of the offence, the accused had the necessary criminal capacity to be held liable in their opinion.
- [76] Dr Roffey confirmed that he had two interviews with the accused and also managed to telephonically consult with Dr Dhansay, the private psychiatrist who treated the accused shortly before the death of [AM], who also provided him with a report, which was submitted into evidence, regarding this diagnosis of the accused during October 2017.
- [77] According to him, they found no evidence that the accused, as at 11 December 2017, suffered severe depression which could have led to diminished criminal capability.
- [78] In support of the team's findings in this regard, he stated that the accused was only briefly hospitalised from 26 October to 3 November 2017, whereafter he discharged himself. What stood out for him was that the accused expressed anger about [AM] leaving their relationship and that he stated that he could not live without her.
- [79] They could find no evidence of any psychosis at the time of the incident and the accused was only diagnosed with an adjustment disorder and was prescribed Seroquel (only 25mg), which has a calming effect on a patient according to Dr Dhansey.
- [80] With reliance on the Diagnostic and Statistical Manual of Mental Disorders (known as the "DSM5"), the brief admission of the accused, the lack of more severe medication, and the absence of psychosis, hallucinations and or delusions, indicates according to him that there is no merit in the accused's version that he was in a severely depressed state of mind at the time of the shooting incident.
- [81] Dr Roffey testified that there was nothing "abnormal" regarding the conduct of the accused: He had waited for the deceased as he wanted her back and he was aware that she had moved on with another man. The accused therefore had no distortions of reality.

- [82] They could not find evidence from the interviews with the accused that indicates that he suffered from major depression at the time of the death of [AM]. The accused's account to him that the firearm was accidentally discharged, suggested to him that the accused had a clear recollection of what happened and his calculated behaviour after the shots went off, indicated to him that the accused's depressive symptoms were of no significance.
- [83] During cross-examination, the defence attacked the sources used during the panel assessment which led to the submission of the social worker's report and the psychologist's assessment, but their findings that the accused has a good understanding of court proceedings and has knowledge of the charges against him and can account for them, remained unchallenged.
- [84] The evidence and opinion of Dr Roffey regarding the accused's "attempted suicide", was based on experience, psychiatric learning and a well-documented medical history of modern medicine.
- [85] According to Dr Roffey the accused acted in a deliberate manner: "I think it is just a desperate thing to do in a desperate situation and I think it is calculated".

Brigadier Bergh:

- [86] Brigadier P.L. Bergh is a provincial commander at the HAWKS and is an expert in the analysis of movement of handsets as well as communication between different handsets using cell phone networks.[16] He analysed the communications between the handsets and various cell numbers used by the accused and [AM] for the period 19 October 2017 (this is from the day [AM] obtained the interim protection order) to 11 December 2017. His evidence was that the accused had made a 100 calls to [AM] during this period and sent 186 sms messages (excluding any WhatsApp communications which he could not trace) to her whilst he could only trace 8 short calls from [AM] to the accused.
- [87] Specific reference was made in his findings about the movement of the sim cards used by the accused on 11 December 2017. From this analysis he could determine that the accused moved around before and after the shooting incident. He confirmed that one of the sim cards used by the accused was activated through the De Waal tower which services the Cape Town CBD area at 19h18 and then the Airport Approach tower was activated at 20h10, whereafter the Valhalla Park tower was activated at 20h55[17]. Another sim card used by the accused was activated by the Bishop Lavis West tower, which is in the vicinity of the accused's home, at 20h42 and again at 00h42 and at 08h42 on 12 December 2017. The last activation on one of the sim cards used by the accused, was through the Boulevard West Tower at 23h27. According to Brigadier Bergh the accused was driving in a westerly direction towards Cape Town CBD or Claremont after the shooting incident.
- [88] Except that it was put to him that one of the sim cards used by the accused belonged to his mother, his evidence was not disputed in any material way.

Captain Magalis:

- [89] Captain Leon Magalis was the State's final witness. He took over the investigation at a late stage, in preparation for the accused's bail hearing. He testified that the attempts to trace the Glock firearm were unsuccessful. He even went as far as to approach the accused's lawyer in the lower court about the whereabouts of the firearm but received no information from him or the accused.
- [90] The sister of the accused, Lynne Greaves, gave no cooperation or information to trace the firearm. To date, according to the firearm system of the SAPS, the firearm has not been found or used in the commissioning of subsequent offences.
- [91] He confirmed that he was responsible for the collection and filing of the exhibits, which were admitted into evidence, pertaining to the messages Candice Brown had saved on her computer which consisted of WhatsApp messages between [AM] and the accused that [AM] had sent to her for safekeeping, and the messages between Malan and the accused, and [AM] and Malan, which Malan confirmed.

The evidence of the accused:

- [92] The accused testified that the nature of the relationship between him and [AM] was that of a loving relationship. At the time he met [AM], he had already matriculated and received a tertiary qualification. After the birth of [MM], he still stayed with his parents, whilst [AM] and [MM] stayed at the maternal family home. According to him there were times that he stayed over at the house of Ms [OM] but he never lived there.
- [93] When [MM] was about six or seven years old, he and [AM] moved into their house at [...] D[...] Street, Montana. According to him they were happy, but [AM] started to act strangely during about 2011 and had a nervous breakdown. She was hospitalised as she acted violently. Ms [OM], with his help, assisted to obtain help for her.
- [94] According to him the breakdown of their relationship started when she told him that she was seeing someone called Clarence. They argued about her infidelity and his relationship with Melissa.
- [95] According to him his relationship with [AM] was normal although they had their occasional arguments. He denied that he ever assaulted [AM] in the way as testified to by [MM] and as reported by her to the other witnesses who testified.
- [96] About the wrong information given by him in his application for a second firearm licence he explained that he was informed by someone at the firearm dealership or the shooting club, and later by [AM]'s aunt, that because his previous conviction was more than 10 years ago, it did not count.

- [97] Regarding the incident at Malan's house, he explained that after [AM] moved out, he realised that she had a relationship with Malan although she continuously denied such relationship. On 11 October 2017, he was agitated and frustrated with [AM] and took [MM] with him to catch [AM] with Malan. This was after [MM] mentioned that [AM] took a bag with her.
- [98] He confirmed that he got out of the vehicle at Malan's house and that he saw someone peep through the window. He walked around and entered through the backdoor where he found Malan and [AM]. He then fetched [MM] from his bakkie and told her to see what her mother was doing.
- [99] He went upstairs to look for the bag and was accompanied by [AM] and Malan. According to him he never took out the firearm that he had on his person, although he admitted that it could be seen. He denied that he pointed the firearm at Malan or [AM].
- [100] He admitted that he went to [AM]'s workplace the next morning, 12 October 2017, to talk with her regarding their relationship and because he wanted them to reconcile. He saw Ms Brown in the parking area and he admitted that [AM] got into his vehicle. According to him they talked about her relationship with Malan and he asked her to return home so that their family could be reunited. He denied forcing [AM] to go with him or depriving her of her freedom of movement.
- [101] In respect of the interim protection order obtained by [AM] against him, he stated that he received a copy thereof on 21 November 2017 but intended to oppose a final order.
- [102] He denied firing two shots in the vicinity of [MM] during November 2017 whilst on the telephone to [AM] at [...] D[...] Street, Montana. In support of his denial, he stated that there was no damage found at the D[...] Street which was placed before the Court and that he would never place [MM] in any danger.
- [103] Regarding the incident in Long Street, he testified that on the 8th or 9th of December 2017, he saw [AM] and they discussed their relationship. On 10 December 2017, he went with [AM] and [MM] to N1 City for breakfast. Later in the afternoon, he got a lift with [AM] and [MM] to the function at Long Street. At the club in Long Street, he left his firearm in the vehicle of [AM].
- [104] According to him, he asked [AM] for the keys to the vehicle shortly after they arrived as he wanted to sit in the car. [AM] handed him the keys to the car, and he went downstairs. A while later [AM] and both his sisters came to the vehicle. He did not see [MM].
- [105] There was an argument over the car keys. He denied ever pointing his firearm at [AM] as alleged by [MM].

- [106] Regarding counts 9, 10 and 11, he stated that during the evening of 10 December 2017, he could not sleep because he was upset about what was happening between him and [AM]. He took medication to sleep. He slept at his sister Lynne's house and the following morning he was not well. His sister Renee also arrived, and his two sisters made plans to admit him to Melomed Hospital.
- [107] He felt depressed, and his mood was low, he went to his mother's house and stayed there. He was unable to recall whether he made any contact with [AM], but he thinks he did. He could recall that he saw [MM] at his sister's house but stated that he did not speak with her. He later left his mother's place and went to Maxwell Arendse's, his cousin's house. He testified that he was emotional, and sad and wanted [AM] to return to him. He confirmed that on the evening of 11 December 2017, he tried to call [AM] and did not leave a message.
- [108] According to him he wanted to talk with [AM] about her relationship with Malan, but she did not answer him. He was armed with his Glock and parked his vehicle in front of his aunt's house. He walked through the alley to N[...] Street and waited for [AM] as he wanted to commit suicide in front of her. When she drove into the yard he slipped in as the motorised gate was open. He approached the vehicle, took out his firearm and held it in his hand. According to him he told [AM] that he was going to kill himself and she started to shout. He wanted to calm her down and only at that stage saw [MM] next to her in the car.
- [109] [AM] pulled him into the vehicle, and they started to scuffle for the firearm. He explained that [AM] grabbed hold of his hand and that he wanted to get the firearm out of her hand. She had both hands on the firearm when the two shots went off. He did not want to say that she shot herself but this was obviously what he was trying to convey.
- [110] He stated that he had no intention to kill [AM] and that he intended to commit suicide. He denied that he ever said that should [AM] not return to him he would kill her. He explicitly stated that he had no intention to harm [MM] as she was everything to him.
- [111] He admitted that after [AM] was shot, he saw her lying across the seats, that [MM] was next to her crying and that he just left. According to him he was in shock. He went to his aunt's house and left in his bakkie. He called his sister, Lynne, and told her what had happened. He wanted her to find out whether [AM] was fine. Lynne returned his call and told him that [AM] was fine and that their dad had just spoken with her. Lynne told him to get to her house in Woodstock, which he did.
- [112] After he arrived at Lynne's house, he had already drank six or seven tablets that Dr Dhansay had prescribed for him. He recalls that he fell asleep in his sister's car when they were on their way to admit him to the hospital, but that never transpired.
- [113] He explained that when he arrived at his sister's place, he had already left the Glock in the safe at his house at [...] D[...] Street, Montana.

[114] On the morning of 12 December 2017, he woke up at his friend's place in Delft. That was the time he was informed of the death of [AM]. His family arranged that he hand himself over to the SAPS at a friend's house the following day.

[115] Regarding count 12 he denied that he concealed the Glock. According to him he safely stored the firearm in his safe at [...] D[...] Street. He suggested that because he was not present during the search and seizure of his premises, it was stolen by members of the SAPS.

[116] Regarding the family meeting during November 2017 at the maternal family home, he admitted that such meeting took place and agreed that the role players as testified to by Ms [OM] were present. He however denied that he admitted during the meeting that he had hurt the deceased. He stated that [AM] started screaming at him and his mother and that he consequently left. He confirmed that

he continued to send messages to [AM] requesting her to take him back and come home to him.

[117] He admitted that he saw Dr Roffey twice at Valkenberg, albeit according to him very briefly. He denied that he was an aggressive person. He also stated that he is heartbroken that the deceased is no longer alive. He confirmed that since 11 December 2017, he has had no contact with [MM].

Renee Florence:

[118] She is the sister of the accused. According to her she had a good relationship with [AM] and described it as a close friendship. She testified that she often attended girls' nights with [AM] at their house at [...] D[...] Street, Montana.

[119] She was not aware of any abusive behaviour by the accused towards [AM]. She assisted the accused when [AM] was admitted to Stikland Hospital during 2011. She described the accused as being supportive and attentive to the needs of [AM] and that to her the relationship was a loving one.

[120] During 2017 the accused became emotional, cried a lot and became withdrawn. According to her the last family event that the accused attended was in July 2017 and [AM] was also present. She recalled that when [MM] returned from holiday in October 2017, they were at Lynne's house and the accused told [MM] that [AM] had moved out. The accused and [MM] were devastated and crying. According

to her the accused was heartbroken and emotional, and this led to his admission to N1 City Hospital after a suicide attempt. He was thereafter admitted to Melomed Hospital. After his discharge he was worse according to her but continued to see a psychiatrist.

[121] The last time the witness saw [AM] was at the Bishop Lavis Magistrate's court when the accused had to appear for the Interim Protection Order that [AM] had obtained against him. This must have been on 28 November 2017.

[122] She testified that they (presumably the accused's family) were planning on taking the accused back to hospital on 11 December 2017.

[123] She confirmed that she took the accused to Grand West to meet the deceased on 8 December 2017 and that he was in an excited mood that day but that when she saw him on 10 December 2017, his mood had changed. This was on the day they attended the event in Long Street.

[124] Regarding the incident in Long Street on 10 December 2017, she stated that [MM] had reported to her that the accused did not want to give [AM]'s car keys back, whereafter

she and her sister Lynne went to the car where they found the accused on the back seat behind her and [AM] in the driver's seat. She eventually sat in the front passenger seat. According to her the altercation was over the car keys. She denied that the accused had held his firearm against AM's head as testified by [MM]. During cross-examination she stated that [MM]'s version of the incident on Long Street was a fabrication and did not happen.

[125] She went back to Lynne's house the following morning and the plan was to take the accused to the hospital for admission but it did not happen as the accused did not want to go.

[126] She conceded during cross-examination that she was present during most of the court proceedings and for the totality of the accused's evidence.

Mr Malcolm Pillay:

[127] Mr Pillay is a clinical psychologist who assessed the accused and recommended that he be referred for observation. He interviewed, for purposes of his assessment, the accused, his parents and his two sisters. His initial report which motivated the accused's referral in terms of ss 77 and 78 of the CPA was signed on 4 August 2021 although he had already started compiling his report during September 2019. His final report was dated 12 October 2021.

[128] According to him the accused, at the time [AM] was shot, had diminished responsibility due to his mental state before, during, and after the incident. He disputed the opinion by the multi-disciplinary panel headed by Dr Roffey as he was of the view it was too narrow. He confirmed that in his view the accused suffered from a Major Depressive Disorder, had a secondary diagnosis of Generalised Anxiety Disorder and Post-Traumatic Stress Disorder as well as Borderline Personality with dependant traits. His opinion was based on the code reflected on the accused's medical aid record, which is contrary to the report obtained by Dr Roffey from the accused's treating physician.

[129] He also relied on an alleged suicide attempt by the accused on 14 November 2017 based on the accused's medical aid record. These records showed that the accused was admitted to Netcare at N1 on 14 November 2017 and released the next day.

- [130] Regarding the shooting incident he testified that the accused told him in 2019 that there was a scuffle with the firearm, and it was discharged twice and that he went to [AM] to kill himself in front of her. That was his goal and intention on the day of the fatal shooting.
- [131] The highwater mark of his reports seems to be that in his opinion “...It could be argued that Mr Lawrence was not in control of his cognitions, emotions and behaviour on the day of the alleged offence”.
- [132] During cross-examination, he was confronted with the accuracy of his opinion, the one-sidedness of his account regarding the accused’s functioning at the time which completely ignores the countless allegations of ongoing and severe domestic violence and incidents of abuse, and the subsequent diagnosis of the accused with depression during his incarceration. He could not really provide any explanation why his limited assessment should carry more weight than the comprehensive multi-disciplinary panel’s findings. He could also not explain why he did not include the accused’s version of what happened on 11 December 2017 in his report.
- [133] He was also confronted by the report submitted by Ms Abbas dated 18 February 2022, wherein the background information provided to her by the accused and his family differ from that which was reported to the multi-disciplinary panel. He could not provide any explanation as to why it was different, nor could he shed any light of the findings of Ms Abbas.[18] It appears from his reports, that he was provided with a very different explanation as to what had occurred on the night of the fatal shooting than that which was stated in the plea and testified to by the accused.
- [134] Mr Pillay also conceded that whatever the mental state of the accused on the date of the fatal shooting of [AM], it would be irrelevant if it was an accident as alleged by the accused during his evidence.[19]

Legal framework:

- [135] The State bears the onus to prove the guilt of the accused beyond a reasonable doubt and the accused’s version cannot be rejected solely on the basis that it is improbable. Rather, the accused’s version can only be rejected if it is found to be false beyond reasonable doubt.[20]
- [136] In *S v Mbuli* 2003 (1) SACR 97 (SCA) at paragraph 57 the Court, with approval, applied the reasoning in *Moshepi and Others v R* (1980 – 1984) LAC 57 at 59 F-H where the following was said:

“The question for determination is whether, in the light of all the evidence adduced in the trial, the guilt of the appellants was established beyond reasonable doubt. The breaking down of a body of evidence into its component parts is obviously a useful aid to a proper understanding and evaluation of it. But, in doing so, one must guard against a tendency to focus too intently on the separate and individual part of what is, after all a mosaic of proof. Doubts about one aspect of the evidence led in a trial, may arise when that aspect is viewed in isolation. Those doubts may be set at rest when it is evaluated again together with all the other available evidence. That is not to say a broad and indulgent

approach is appropriate when evaluating evidence. Far from it. There is no substitute for a detailed and critical examination of each and every component in a body of evidence. But, once that has been done, it is necessary to step back a pace and consider the mosaic as a whole. If that is not done, one may fail to see the wood for the trees.” [21]

[137] In terms of s 208 the accused may be convicted of any offence on the evidence of a single witness. Such evidence must however be treated with caution. Where there is a material difference between the evidence of a witness and their prior statement, it is the task of the trial Court to weigh up the differences in light of all the evidence before the Court and to decide which evidence is reliable and whether the truth has been told despite any shortcomings.[22]

[138] As in the matter of *Ntshongwana v S*[23], the accused pleaded not guilty to all counts, the most serious charge being the murder charge. Judging from the plea and the expert

evidence tendered by the accused herein, his defence on the murder and attempted murder charges is that he suffered from a mental

illness, and that by reason of such mental illness, he had diminished criminal capacity or responsibility.

[139] This defence is generally referred to as pathological incapacity with reference to s 78(1) of the CPA.

[140] Section 78(1) provides that:

“A person who commits an act or makes an omission which constitutes an offence and who at the time of such commission or omission suffers from a mental illness or mental defect which makes him or her incapable –

- (a) of appreciating the wrongfulness of his or her act or omission; or
- (b) of acting in accordance with an appreciation of the wrongfulness of his or her act or omission, shall not be criminally responsible for such act or omission.’[24]

[141] Section 78(1A) states that: ‘Every person is presumed not to suffer from a mental illness or mental defect so as not to be criminally responsible in terms of s 78(1), until the contrary is proved on a balance of probabilities’ and s 78(1B) provides that the burden of proof with reference to the criminal responsibility of the accused shall be on the party that raises it.

[142] In respect of the murder and attempted murder charges, where the defence of diminished responsibility was raised, the onus is accordingly on the accused to prove, on a balance of probabilities,

that he suffered from an intellectual disability during the commission of the offence which resulted in him not being criminally

liable.

- [143] Contrary to his plea explanation (and not contained in the report of the expert called by the accused), it was the accused's testimony that he went to the maternal family home of [AM] on the night of her death as he wanted to kill himself in front of her. But, instead, a scuffle ensued over the firearm as [AM] grabbed it with both hands and proceeded to pull the accused into her vehicle. Two shots went off whilst she was holding the firearm with both hands, and, so he says, he did not pull the trigger. I understand this to mean that [AM] either shot herself by pulling the trigger or that the firearm accidentally discharged twice without anyone pulling the trigger. It was thus not his evidence that he shot [AM] twice because of an intellectual disability. Rather his evidence is that he did not shoot her, and if that were true, irrespective of whether he had capacity or not, he would not be guilty of the murder or attempted murder charges.
- [144] The State still bears the onus to prove that all the elements of the offence were established and that the accused had planned or premeditated the murder with reference s 51 (1) (a) of the CLAA read with Par1 of Schedule 2 of the CPA.
- [145] In this regard it was held in *S v Raath*[25] that planning and premeditation are recognised as aggravating factors in the case of murder with reference to the well-known cases such as *S v Malgas* 2001(1) SACR 469 (SCA) and *S v Khiba* 1993 (2) SACR 1 (A).
- [146] The concept of planned or premeditated murder is not statutorily defined and must be established by way of evidence.
- [147] In *S v Raath* supra, Bozalek J explained that question of whether a murder was planned or premeditated has been dealt with by the courts on a casuistic basis and stated as follows in para [16] in this regard:
- "The Concise Oxford English Dictionary, 10th edition, revised, gives the meaning of premeditated as to "think of a plan beforehand" whilst "to plan" is given as meaning "to decide on, arrange in advance, make preparations for an anticipated event or time". Clearly the concept suggests a deliberate weighing up of the proposed criminal conduct as opposed to the commission of the crime on the spur of the moment or in unexpected circumstances. There is, however, a broad continuum between the two poles of a murder committed in the heat of the moment and a murder which may have been conceived and planned over months or even years before its execution. In my view only an examination of all the circumstances surrounding any particular murder, including not least the accused's state of mind, will allow one to arrive at a conclusion as to whether a particular murder is "planned or premeditated. In such an evaluation the period of time between the accused forming the intent to commit the murder and carrying out his intention is obviously of cardinal importance but, equally, do not at some arbitrary point, provide a ready-made answer to the question of*
- whether the murder was "planned or premeditated"."
- [148] The State during argument conceded that they had not met the threshold of proving beyond reasonable doubt that the accused had committed counts 4 and 5. On the evidence before me I agree that the accused cannot be convicted of these counts.

- [149] On the other charges the accused denied that he had ever assaulted [AM], that he committed any acts of domestic violence against her, or that he was in breach of the domestic violence interdict obtained by [AM] against him on 19 October 2017.
- [150] His explanation for providing false information when applying for the second firearm license was that someone told him that after 10 years a person need not disclose a previous conviction.
- [151] He denies any incident where he recklessly and negligently endangered the life of his daughter [MM] by shooting two shots in the air and denies attempting to kill her on the night when [AM] was shot with his firearm.
- [152] It was argued on behalf of the accused that the State had failed to prove its case against the accused as the greater part of the evidence was by a single witness, [MM], who was a minor at the time, or based on circumstantial and hearsay evidence. It was also pointed out that the version of [MM] and Malan regarding the pointing of a firearm differed in material aspects.
- [153] In considering the evidence of [MM] I was mindful of the principles applicable when evaluating evidence where there is a conflict of fact in a criminal matter and the warning sounded in *S v Singh* 1975 (1) SA 227 (N) at 228 E-H:

“...it would perhaps be wise to repeat once again how a court ought to approach a criminal case on fact where there is a conflict of fact between the evidence of the State witnesses and that of an accuse. It is quite impermissible to approach such a case this: because the court is satisfied as to the reliability and the credibility of the State witnesses that, therefore, the defence witnesses, including the accused, must be rejected. The proper approach in a case such as this is for the court to apply its mind not only to the merits and demerits of the State and the defence witnesses but also to the probabilities of the case. It is only after so applying its mind that a court would be justified in reaching a conclusion as to whether the guilt of an accused has been established beyond all reasonable doubt.”

Credibility:

- [154] All the state witnesses were credible and reliable witnesses. Even though Ms [OM] had lost her daughter and [MM] had lost her mother allegedly at the hands of the accused, who in breach of a domestic violence interdict, without their consent or knowledge, entered their place of residence, with a loaded firearm with which [AM] was shot twice and [MM] was shot in the foot, they were calm and respectful throughout the trial to the accused. They did not exaggerate the incidents between [AM] and the accused that they had witnessed and at no stage tried to portray the accused as a bad father or partner. Their self-restraint is commendable in light of their loss.
- [155] During cross-examination they remained steadfast and unshaken.
- [156] The evidence of [MM] regarding the years of domestic abuse of the accused against [AM], is corroborated in various regards and I name but a few:

156.1. The WhatsApp messages between [AM] and the accused which she sent to her friend and work colleague Candice Brown that was placed before the Court;[26]

156.2. The messages between [AM] and Malan regarding the nature and history of the relationship between the accused and [AM];

156.3. The messages sent by the accused to Malan;

156.4. The evidence of Ms [OM] regarding the time she was phoned by [MM] as the accused was assaulting [AM] and spraying her with a hose pipe in the driveway;

156.5. The evidence of Ms [OM] that the accused had apologised at the family meeting during November 2017 that he had hurt [AM] during their relationship and that [AM] had told them that the accused had hit her “trunk style”;

156.6. The undisputed fact that [MM] from about November 2017 started experiencing psychological problems and could not attend school for the remainder of the year;

156.7. The reports of abuse by [AM] to the doctor in the presence of Ms [OM] during 2011;

156.8. The reports of abuse made by [AM] to her friend Donna Dirks.

[157] It is a well-known fact that families and victims of domestic abuse such as [AM] and [MM], break their silence with difficulty. This is normally due to fear of retribution or shame of victims remaining in such circumstances. [MM] testified that the domestic violence in her home escalated over the years and that she initially did not know any better. Later, when she became a bit older, she tried to stop her father abusing [AM] by standing in front of [AM] and begging the accused to stop abusing her mother. It is telling that [AM] finally had the courage to move out from [...] D[...] Street in 2017 when [MM] was out of harm's way on holiday with her grandparent. [MM], Malan and Ms [OM] testified that [AM] was threatened by the accused that he would hurt her family if she left him or reported his abuse.

[158] With reliance on the evidence of Dr Roffey and the findings of the multi-disciplinary team, it appears that when [AM] was not willing to forgive the accused for his years of abuse and cheating on her, he threatened to commit suicide as an alternative way to manipulate [AM] to reunite with him. This was also confirmed by [MM] during her evidence.

[159] Despite all that [MM] was exposed to and having lost her mother to an abusive father, who does not admit that he shot [AM], she still, during her evidence referred to him as “my Daddy”.

[160] The only criticism against the evidence of [MM], is the discrepancy between her evidence and that of Malan regarding the incident on 11 October 2017. I agree with the State that this can easily be explained by the fact that [MM] was merely 16 years old at the time, placed in an impossibly stressful situation by the accused who forced her to observe that her mother was with another man whilst he was desperately trying to get her to reconcile with him after his repetitive abusive behaviour. Over and above this, [MM], Malan and the accused all

agreed that the incident at the home of Malan was a moving scene and that the accused:

160.1. took his minor daughter to the house of another man in order to show her what her mother was doing after [AM] had left him;

160.2. intruded into the home of another man where [AM] was present;

160.3. took his firearm, which was visible, with him when he entered through the back door of Malan's house, leaving [MM] in his bakkie;

160.4. begged [AM] to leave Malan and return to him.

[161] Both [MM] and Malan testified that the accused pointed a firearm at Malan in his home. [MM] testified that it was upstairs whilst Malan clearly and precisely testified that the accused pointed at him with the firearm when he entered through the back door when [AM] intervened to protect him.

[162] I accept Malan's version of where and how the accused pointed a firearm at him in his home. I am of the view that the discrepancy in [MM] and Malan's version regarding this incident shows that there is no conspiracy between the witnesses to falsely implicate the accused and just because [MM] differ from Malan in respect of this incident, does not detract from the remainder of her evidence which I accept as true. She made an honest mistake as to where her father had threatened Malan with his firearm whilst they were there. In the bigger picture of the matter, this mistake is of very little relevance for purposes of credibility.[27]

[163] In the WhatsApp messages the accused sent to [MM] the day after their visit to Malan's house, he begged her for forgiveness for what had happened the previous evening whilst sharing inappropriate acts of domestic violence and assault with his 16 year old daughter as justification for his reprehensible conduct. In the circumstance I reject his evidence regarding this incident as false.

[164] I accept the evidence of [MM] regarding the incident that took place in Long Street on 10 December 2017. Firstly, there is no reason why she would fabricate the incident nor was any reason put to her why she would fabricate what she had seen on the day before her mother's death. Her account, and that of the accused and his sister, corresponds in all respects save for the accused and his sister's denial that he pointed his firearm against the side of [AM]'s head. They all agree that he had his firearm with him in the car, went to the car before everyone else, that [AM] then went to the car, that the sisters of the accused went to the car after a report by [MM] and that the accused was sitting behind [AM] in the car. The also all agree that as a result of this incident the whole family left the event and went to the accused's sister's house where the "argument" continued. The sister of the accused

also confirmed that he was not in a good state of mind on 10 December 2017 and more tellingly testified that they (the family) wanted to take him back to Melomed to be hospitalised on 11 December 2017. The only reasonable inference that I can draw from the conspectus of the

evidence before me is that the incident as described by [MM] occurred and the family of the accused realised that he was dangerous and posed a threat to [AM]. The evidence of the accused's sister as to what happened in Long Street the day before [AM] was shot, is rejected. So is the version of the accused.

[165] Unfortunately, the family of the accused did not act on their concerns and the accused, according to his sister, was not willing to be hospitalised.

[166] I now turn to the charge of planned or premeditated murder. It appears to be common cause that the accused was desperate to convince [AM] to come back to him and apparently stopped at nothing to achieve this goal. In this regard he was willing to traumatise [MM] by shooting his firearm in the air whilst speaking to [AM] on the phone to manipulate her into thinking he would hurt their daughter because she did not want speak to him or come back to him. His conduct was so traumatic for [MM] (and presumably also to [AM]) that she started having panic attacks the next day and could not attend school for the remainder of the year. He was, according to his evidence, not even aware that she had not completed the school year. He was willing to go to the home of [AM]'s boyfriend, armed and with their daughter, to convince [AM] and Malan to break up and for [AM] to come back to him. He constantly told [MM] to convince [AM] to reunite with him. He phoned and threatened Malan. He phoned and arrived at the homes of [AM]'s friends to look for her and asked them to convince her to reunite with him.

[167] The letter found by Ms [OM] in [AM]'s handbag, which I find was written by the accused, probably after she had finally left him, in my view summarises the relationship between the accused and [AM] from his perspective:

"To Angela

I don't where to begin but here goes, we've been together for 19 years of which we had good times and bad. We both know the bad out number the good for you all because of my crappy attitude towards life were I just wanted things my way and neglected you and your need and not treating you as my partner but more as a child. I cheated on you from the word go, which I regret to this day. I am SORRY!!!

Then there was the verbal, physical and mental abuse and trauma I put you through since the beginning which I also regret. I broke the beautiful fun loving, outgoing, spontaneous person you are all because I was too busy sleeping around (cheating) and being involved in gangsterism which made me uglier than I already was. My main downfall was my cheating which made me become a jealous man always getting upset when you innocently spoke to other men. I called you name etc.. because I knew what I was doing I accused you around every corner even though you did nothing wrong and I was the one cheating all the time. I'M SORRY FOR EVERYTHING!!!

Over the years of my abuse and cheating I made you become someone you not. Getting involved and looking for attention from other men at your work places, which became a pattern and a cycle. A cycle that needs to be broken like the cycle of me cheating on you and being abusive and treating you like a child. It like every time I treat you badly you get involved with someone at work to get back at me or to get my attention. I'M SORRY!!!.

I put you in hospital and even that didn't stop me from cheating and being abusive. You went through hell being there and I made promises about changing and going for counselling but it never happened. I never had to cheat on you to begin with you fell in love with carl because I neglected you. You fell in love with Clarence because I neglected you. You fell in love with Malan because I neglected you. We both know its not true love its you lacking love and attention and looking an hanging on to the fact that someone needs you and makes you feel good even though you know its not love you still hang on to it. the feeling of being gloved, need and appreciated are feeling I had to show you but I didn't because of my crappy life style. I'M SORRY!!!

I had to stop my crap 7 years ago, actually I never had to hurt you to begin with. The list can go on and on. I just want you to know that I am working on bettering myself. Life without you is hard and I regret my actions every second of every day. When you are ready to put the past behind us, I will be here. I am willing to give it my all to win back your trust and your love. I know all this is my fault. Everything is. The first thing the father told me yesterday was not to get involved with anyone as I will be doing it for all the wrong reasons. He told me to be strong and work on me so I can be a better man. A real man for you and [MM]. I love you and will never stop loving you. I will always be here for you if you should need anything. I would like to make this work through and means necessary, counselling etc.. if and when you are ready. I', sorry for not leaving you be, giving you time to find yourself and be angry. It's time for me to leave you alone. Just know I truly do love you and will always be here. I messed up I'm sorry. We still have a lot to speak about and sort out when you ready.

Love, your High School Sweet Heart."

[168] Mr Booth, whilst initially denying that the accused had written the letter, referred to the signature at the bottom thereof as some form of scribble. However, if one has regard to the "scribble" at the end of the letter, and if one compares it to the "scribble" on exhibit "R", the signature on exhibit "T", and the signatures on exhibit "HH", I find that it does not require a handwriting expert to confirm that the signature on exhibit "W" is that of the accused.[28] During cross-examination, the accused admitted that it was his signature, but stated that he could not remember having written the letter, and even disputed his handwriting, suggesting that "someone else" may have written the letter, and that [AM] may have forged his signature. This kind of evasive and non-committal answers by the accused characterised his evidence throughout. Only in respect of aspects he felt strongly about, such as who took his fingerprints when he applied for the second firearm licence, was his answers clear and unambiguous.

- [169] The accused made a poor impression. He persisted with making allegations against [AM], to what end I do not understand, and was still fixated on the relationships she had during their relationship whilst admitting that he also had other relationships.
- [170] From the evidence it appears that the accused on the day of [AM]’s death, and after he had held her at gunpoint the previous evening, tried to contact her on at least 3 occasions without success. He then contacted her friend Donna Dirks, by sending her the “praying hands” emoji.[29] This means that he obviously knew [AM] and [MM] were at her house and that he was hoping that Donna would convince [AM] to reconsider taking him back despite his behaviour. [AM] and [MM] left her friend’s house in the belief that they would be safer at the maternal family home.
- [171] But there, at the perceived place of safety, the accused was waiting. Unbeknown to [AM] and [MM] the accused slipped, with his loaded competition firearm, into the yard of the maternal family home, with his bakkie parked at his aunt’s house. He was even dressed in dark clothing. In my view the fact that he took his competition firearm, the Glock, constitutes evidence that he clearly had the intention to finish what he had started the previous day in Long Street.
- [172] From the evidence found on the crime scene and having regard to the forensic reports, the evidence of [MM] and the accused’s own version, I find that the accused was standing at the open door of [AM]’s vehicle and pushed her back into the vehicle using his superior position. She desperately tried to push him away, causing the first shot to go astray and hit her in the abdomen. Without a doubt the shock of this shot was enough for her system to capitulate, and her upper body fell on the knees of her daughter. The accused, one would expect, had it been an accident as he proffered during his testimony, would have immediately released his hold on the firearm and tried to assist [AM], the woman he had pursued and promised the world since she had left him. Instead, another shot was fired. This time it was at close range and under her chin. A fatal wound and accurate shot, which caused her to die in a few seconds.
- [173] What does the accused do after the second shot? He ran away, got his vehicle, drove it home and, on his version, stored the Glock in his safe and phoned his sister to enquire about the well-being of [AM]. He then proceeded to drive around until about midnight according to the evidence of Brigadier Bergh.
- [174] The accused in my view knew exactly what he was doing. He went to the maternal family home, Glock in hand, with the intention to kill [AM].[30] He intended to kill [AM] with the first shot but when he failed, he fired the second shot to kill her.
- [175] His ill-conceived plan to disappear for a few days and to get rid of the Glock, was not very well thought through. His family consequently arranged for him to turn himself in and thereafter, supported him when he averred that he did not know what he was doing as he was depressed.

[176] In my view the conduct of the accused was deliberate and planned. In the matter of S v PM 2014 (2) SACR 481 (GP) at paras 35-36, the court defined the term planned and premeditated murder as two different concepts although it has the same consequences. Premeditated was defined as 'something done deliberately after rationally considering the timing or method of so doing, calculated to increase the likelihood of success, or to evade detection or apprehension' and planned as 'a scheme, design or method of acting, doing, proceeding or making, which is developed in advance as a process, calculated to optimally achieve a goal'.

[177] On the evidence the conduct of the accused was premeditated, and I reject the accused's version of the events on the night of the murder as false. The killing was no accident. He failed to prove his defence of diminished criminal capacity and in any event the State had proved beyond reasonable doubt that he had intended to kill [AM] and knew what he was doing was wrong.

[178] Based on the same set of facts, the accused in my view had no regard to the safety of [MM] when he shot [AM] twice in the confines of her vehicle, an arm's length away from [MM]. Whilst I cannot find that the accused went to the maternal family home with the aim of killing [MM], he must have foreseen the possibility of her death and was reckless as to whether her death ensued, i.e. *dolus eventualis*. [31]

[179] In respect of count 2, I am of the view that it is reasonably possible that the accused could have believed that he was not required to make mention of his previous conviction and further was already in possession of a licence for the Taurus. I consequently find the accused not guilty on this charge.

[180] I stand by my ruling to admit the hearsay evidence in the interests of justice.

[181] I, for the reasons stated above find as follows:

Count 1: Guilty

Count 2: Not Guilty

Count 3: Guilty

Count 4: Not guilty

Count 5: Not guilty

Count 6: Guilty

Count 7: Guilty

Count 8: Guilty

Count 9: Guilty

Count 10: Guilty

Count 11: Guilty

Count 12: Guilty

De Wet AJ

Acting Judge of the High Court

Dates of Hearing: 12 and 13 October 2022, 17 October 2022 to 20 October 2022, 24 October 2022, 25 October 2022, 7 November 2022, 20 to 22 November 2022, 16 to 19 January 2023, 20 to 23 February 2023, 17 and 18 April 2023, 20 April 2023, 23 to 25 April 2023, 03 May 2023, 31 May 2023, 19 and 20 June 2023, 22 June 2023, 4 August 2023, 7 August 2023, 17 and 18 August 2023, 21 August 2023, 30 August 2023, 31 August 2023, 4 and 5 September 2023, 16 October 2023, 18 October 2023, 20 October 2023, 6 to 8 November 2023, 13 and 14 November 2023, 18 January 2024, 14 February 2024, 30 February 2024, 8 March 2024 and 31 May 2024.

Date of Judgment: 12 June 2024 On behalf of The State: Adv EA Kortjie Office of the Director of Public Prosecutions Western Cape Email: ekortje@npa.gov.za On behalf of the accused: Mr William Booth Email: william.booth@wbooth.law.za

- [1] S v Baloyi [1999] ZACC 19; 2000 (2) SA 425 (CC) at para [11], Sachs J in his judgment refers to the analogous situation in the United States in respect of which Donna Wills wrote: “Besides being an unacknowledged epidemic in our society, “domestic violence is the leading cause of injury to women, a major factor in female homicide, a major risk for child abuse and major precursor for future batterers and violent youth offenders. The State cannot ignore the human tragedies that are caused by domestic violence” (citation omitted) “Mandatory Prosecution in Domestic Violence Cases: Domestic Violence: The Case for Aggressive Prosecution“(1997) 7 UCLA Women’s Law Journal 173 at 174-5
- [2] The Domestic Violence Act (“DVA”) was amended due to the unacceptably high rate of domestic violence, femicide and gender-based violence. It aims to improve the protection available to victims by expanding the definition of domestic violence and addressing procedural issues in order to provide better protection to victims. More recently and on 24 May 2024, the National Council on Gender-Based Violence Femicide Bill and the National Prosecuting Authority Amendment Bill were signed as a further step to ensure the safety and protection of women and children.
- [3] Various papers and articles have reference: P Makhananda, Experience of Abuse: Why wives do not leave, Master’s Thesis, January 2018, University of Fort Hare; Ilze Slabbert, Sulina Green, Types of Domestic Violence experienced by women in abusive relationships. Social Work 2013:49 (2)

<http://socialwork.journals.ac.za/>

- [4] The names of the deceased, her mother and her daughter are redacted to preserve to some extent their privacy.
- [5] The exhibits handed in by agreement and which I had regard to, included a Psychiatric Report in respect of the accused dated 24 February 2022, the plea explanation of the accused in terms of section 115 of the CPA, admissions in terms of section 220 of the CPA, the post-mortem report by Dr Bronwyn Inglis, a photo album containing photographs of the deceased, blood alcohol report (deceased) by Forensic Analyst Zanele Mzaca, a photo album containing photographs of the scene at N[...] Street by Constable Juan Booysen, a photo album containing photographs of the scene at D[...] Street by Constable Lauren Williams, various ballistic reports by Captain Renqe, a medico-legal report by Dr HC Kruger pertaining to [MM], a medical report by Dr WJ van Zyl, an orthopaedic surgeon, a firearm application submitted by the accused (4/01/2017) SAP 271, a Capturing of the application on the Firearm Enhance System by Mrs Piet, the interim protection order (19/10/2017) obtained by [AM] in terms of the Domestic Violence Act 116 of 1998, computer print-outs (file) of the communication between [AM] and the accused (deceased's workplace), a photo album containing aerial photographs by Sergeant Ruthven Malakazi, Constable Juan Booysen's bundle of areas relevant to the incident on 11 December 2017, a letter purportedly addressed to [AM] by the accused and found [AM]'s mother, A letter from Stikland compiled by Dr E Groenewald regarding the treatment of [AM], the witness statement of [AM]'s mother dated 12 November 2018, various reports by Mr Pieterse, the counselling psychologist of [MM], various screenshots of cell phone messages from the accused to

[MM] dated 12 October 2017 and 2 April 2021, statements by [MM] dated 13 October 2022 and 13 December 2017, statement of Candice

Brown dated 29 May 2018, screenshots of chat communications between Malan and [AM], an affidavit in terms of section 212(4)(a) of the CPA of Brigadier Petrus Lodewikus Bergh – cell phone mapping of the cell phone numbers of the accused and [AM], sick notes of the accused before 11 December 2017, reports by Mr Malcolm Pillay dated 4 August 2021 and 12 October 2021, a Social Work Observation Report by Ms Mgidini, a letter dated 15 August 2023 from Dr Dhansay, a psychiatrist as well as a report by Dr Dhansay about the treatment of the accused, a Forensic Psychometric report for the accused by Ms. Maryam Abass, clinical psychologist and CD Video footage of the scene.

- [6] It was common cause during the trial that the accused always carried a firearm with him, usually the Taurus but he also had the Glock which he used for shooting competitions as it is more accurate. He was a member of the Cape Peninsula Shooting club and well-trained in the use of firearms. Extensive equipment including a reloading machine and cartridges were found at his home in D[...] Street.
- [7] The WhatsApp and its contents were not disputed by the accused.

- [8] Exhibit “S”. The final note in the Domestic Violence file in Bishop Lavis on 1 February 2018 was: “Applicant deceased. Matter struck from the roll.”
- [9] The report of Dr. Dhansay recorded as follows: “ Mr. Lawrence reported seeking medical help after the breakup with his partner in order to come to terms with the breakup and the consequences thereof. He presented with anger symptoms and insomnia of two weeks duration which began after the relationship ended. During his stay in the ward Mr. Lawrence received psychotherapy related to the breakup. He was also commenced on psychotropic medication during his hospitalization. He was discharged from hospital on the 03 November 2017 on Seroquel 25mg. Mr. Lawrence felt that he no longer required further treatment as his ex partner was not prepared to engage in any couples therapy. The diagnosis upon discharge was an Adjustment Disorder with Depressed Mood. At the time of his discharge Mr. Lawrence reported an improvement in his presenting symptoms. His mood was objectively and subjectively euthymic and he was apsychotic. Mr. Lawrence decided not to follow up with myself and was discharged from my care. I also met with his father Mr. Henry Lawrence and his sister Lynn Carmaine Greeves to explain to them my findings and Mr. Lawrence’s decision to discharge himself.”.
- [10] The State submitted two reports from Mr Pieterse, a counselling psychologist, which confirms this evidence.
- [11] She is studying computer networking online.
- [12] Mr Pieterse confirmed that [MM] suffered from a post-traumatic stress disorder (“PTSD”) and “tended to experience anxiety and depression and relapse in anticipation of court dates due to the fear of seeing her father in person in court.” He confirmed that he has had 32 counselling sessions with [MM] at the date of his second report in October 2022.
- [13] The accused did not deny sending the message and merely stated that he could not recall sending the message. He also did not dispute taking her to Malan’s house or that he had his firearm with him. He only disputed that he pointed the firearm at Malan or [AM].
- [14] This message is so many ways echo’s the content of the undated letter the accused had written to [AM] which was found by Ms [OM] in her handbag to which I will return.
- [15] [AM] sent Malan various message such as: “This man abused me for 19 years and it’s going to take a while for me to get over it”; “It took everything out of me the night I told my parents and his parents...I didn’t cry, I watched my parents cry and I still didn’t cry but when I’m alone I cry all the time” and “Wayne booked himself out of hospital and took [MM], made [MM] call me and tell me if I don’t come to the house is (sic) going to kill himself and her...I called the police and his family and got [MM] home safely...I need to take [MM] to the doctor as she is in no state to write exams, I also have to the school and speak to the principle and to the police station to make a case”.

[16] He is trained in Analyst Notebook, Text Chart and Chart Explorer.

[17] This indicated that the accused was driving in an eastern direction toward the maternal family home before the shooting incident.

[18] Maryam Abbas, a clinical psychologist, concluded in her report dated 18 February 2022 as follows: “During this assessment, Mr Lawrence expressed symptoms suggestive of depression which were deemed to be appropriate to his current

forensic circumstances. His reports of experienced perceptual phenomena were not considered to be associated with any mental

illness. Assessment on the MMPI indicated a pattern of inconsistent respondent, exaggerated claims of emotional and psychological

turmoil and a moderate pattern of faking good which invalidated the results and did not provide a true reflection of Mr Lawrence’s

current psychological functioning. Neuropsychological assessment results indicate no major deficits in his functioning with no

evidence of simulation”.

[19] “COURT: Yes, but again, I understand that but how does that assist me to consider diminished responsibility if it was an accident? I’m

just trying to understand. You’re nodding your head? MR PILLAY: I agree with you. COURT: And just on that note, the evidence is now that he went there to go because he wanted to commit suicide in front of her but again, I don’t see that in your report despite the fact that you had five sessions with him. That that was the reason why he was there. Do you have any explanation for that? MR PILLAY: No.”

[19] “COURT: Yes, but again, I understand that but how does that assist me to consider diminished responsibility if it was an accident? I’m

just trying to understand. You’re nodding your head?

MR PILLAY: I agree with you.

COURT: And just on that note, the evidence is now that he went there to go because he wanted to commit suicide in front of her but again, I don’t see that in your report despite the fact that you had five sessions with him. That that was the reason why he was there. Do you have any explanation for that?

MR PILLAY: No.”

[20] S v V 2000 (1) SACR 453 (SCA) para [3]

[21] See S v Radebe 1991 (2) SACR 166 (T) on 183 c-e; S v Ramulifho 2013

- [1] SACR 388 (SCA) and *S v Hadebe and Others* 1998 (1) SACR 422 (SCA) at 426 f-h the Appellate Court.
- [22] See *S v Mafaladiso en Andere* 2003 (1) SACR 583 (SCA) at 584 which was quoted with approval in *Sekoala v S* (579/2022) [2024] ZASCA 18 (18 February 2024) at para [29] by Mbatha JA.
- [23] (1304/2021) [2023] ZASCA 156; [2024] 1 ALL SA 345 (SCA) (21 November 2023)
- [24] Sections 77, 78 and 79 of the Criminal Procedure Act 51 of 1977 were amended by the Criminal Procedure Amendment Act 4 of 2017. The words ‘mental defect’ was replaced with ‘intellectual disability’.
- [25] (A82/2008)[2008] ZAWCHC 72; 2009 (2) SACR 46 (C) (10 December 2008)
- [26] On 29 May 2017 [AM] told the accused that she is sending the messages between them to her mother as she stated she was scared that she would kill herself and felt someone needed to know what was going on. The accused answered by stating: “I promise you that you don’t want to do that, I promise you”. On the same day he made various treats further treats.
- [27] In this regard and in the matter of *S v Oosthuizen* 1982(3) SA 571 (T) at page 577 A-B it was stated that the manner in which to approach a situation as this, is as follows: “All that can be said is that where a witness has been shown to be deliberately lying on one point, the trier of fact may (not must) conclude that his evidence on another point cannot safely be relied upon. The circumstances may be such that there is no room for honest mistake in regard to a particular piece of evidence: either it is true or it has been deliberately fabricated. In such a case the fact that the witness has been guilty of deliberate falsehood in other parts of his evidence is relevant to show that he may have fabricated the piece of evidence in question. But in this context the fact that he has been honestly mistaken in other parts of his evidence is irrelevant, because the fact that his evidence in regard to one point is honestly mistaken cannot support an inference that his evidence on another point is a deliberate fabrication.”
- [28] Section 228 does not oblige a Court to call in a handwriting expert when disputed handwriting has to be compared and a lay person, such as [MM], can also provide an opinion to the Court subject to the warning that faulty conclusions can be drawn. See *R v Kruger* 1941 OPD 33.
- [29] This is interpreted as pleading.
- [30] In *S v Taunyane* 2018

- (1) SACR 163 (GJ) the court held as follows: ‘In deciding whether or not [the] appellant killed the deceased in circumstances where such killing was planned or premeditated, the test is not whether there was an intention to kill. That had already been dealt with in finding that the killing was an act of murder. The question now is whether or not [the] appellant “weighed-up” his proposed conduct either on a thought-out basis or an arranged-in-advance basis’.
- [31] In the unreported judgment of J Kruger v The State, Case Number A347/2013 (17 December 2014), Rogers J explained the elements of attempted murder as follows: “The elements of the crime of attempted murder are (i) an attempt (ii) to kill another person unlawfully (actus reus) (iii) with the intent to kill and with an appreciation that the killing will be unlawful (mens rea). The state of mind required for attempted murder is the same as for murder. The difference lies in the actus reus – in the case of murder, the act allegedly perpetrated by the accused must have actually resulted in death. As is well known, intent to murder includes a state of mind in which the accused foresaw the possibility of death and was reckless as to whether death ensued, ie dolus eventualis (see S v Combrink 2012 (1) SACR 93 (SCA) para 17). The same state of mind suffices for attempt to murder (s v Huebsch 1953 (2) SA 561 (A) at 567D-568A; S v Nango 1990 (2) SACR 450 (A) at 457b-f; Snyman Criminal Law 6th Ed at 294).”

[Ad1]

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