

SOUTH AFRICA / JUDGMENT

S v Leema (SS 98/2022) [2023] ZAGPJHC 1415 (5 December 2023)

[2023] ZAGPJHC 1415

COURT

South Gauteng High Court, Johannesburg

BEFORE

Britz

CASE / FILE NUMBER

SS 98/2022

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REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION,
JOHANNESBURG
Case Number: SS 98/2022
In

the matter between: THE
 STATE
 And
 LEEMA,
 TIISETANG SILAS

JUDGMENT

BRITZ, AJ

[1] The accused is the 28 year old Mr Tiisetang Silas Leema. He is arraigned on the following charges:

Counts 1 and 2: Murder read with the provisions of s 51(1) of the Criminal Law Amendment Act, 105 of 1997 ('the CLAA');

Count 3: Robbery with aggravating circumstances read with s 51(2) of the CLAA;

Count 4: Possession of a prohibited firearm of which the serial number or identifying mark has been altered without permission in contravention of s 4(1)(f)(iv) of the Firearms Control Act, 60 of 2000, read with s 51(2) of the CLAA;

Count 5: Unlawful Possession of ammunition in contravention of s 90 of the Firearms Control Act, 60 of 2000; and

Count 6: Being in the RSA illegally in contravention of s 49(1)(a) of the Immigration Act, 13 of 2002.

- [2] In counts 1 and 2 it is alleged that the accused, on 6 November 2021 and at Skomplaas Hostel, Durban Deep, Roodepoort, in the district of Johannesburg West, unlawfully and intentionally killed David Motheo Lekiba (count 1) and Bongane Samoele (count 2).
- [3] The allegations in count 3 are that on the date and time referred to in counts 1 and 2 the accused unlawfully and intentionally assaulted Tebatso Letsokwane and her brother, Tshepo, and with force took an unknown amount of cash, a book and a firearm which belonged to the deceased in count 1 from their lawful possession.
- [4] In counts 4 and 5 it is alleged that on 21 November 2021 and at Matholesville, Roodepoort, in the district of Johannesburg West, the accused unlawfully had in his possession a 9mm Parabellum Calibre Pietro Beretta Semi-automatic pistol Model 92 of which the serial number or any identifying mark had been changed or removed without permission and 15 X 9mm Parabellum Calibre cartridges.
- [5] In count 6 it is alleged that on 21 November 2021 and at Matholesville, Roodepoort, in the district of Johannesburg West, the accused was in the RSA without being in possession of any lawful document or permit authorizing him to be in the RSA.
- [6] With regards to counts 1 to 3 it was alleged that the accused acted in common purpose with other suspects not before the Court.
- [7] During the trial the prosecution was conducted by Adv Mack from the Office of the Director of Public Prosecutions, Johannesburg. The accused enjoyed legal representation by Ms Bovu, an attorney with right of appearance in the High Court, who is employed by legal Aid South Africa, Johannesburg Office.
- [8] The accused entered a plea of Guilty in respect of count 6. Ms Bovu read out a statement in terms of s 112(2) of the Criminal Procedure Act, 51 of 1977 ('the CPA') setting out the admissions of the accused in respect of the charge. The accused confirmed the contents of the statement and same was handed in as exhibit G. The prosecutor accepted the plea. Having regard to the admissions made by the accused in the statement, I was satisfied that the accused admitted all the elements of the offence against him in count 6 and convicted him of that count.

[9] The accused entered pleas of Not Guilty in respect of counts 1 to 5. He offered plea explanations in terms of s 115 of the CPA in respect of all these counts. With regards to counts 1 to 3 the accused denied that he was at any of the scenes of the offences referred to therein. He stated that at the time of the commission of these offences he was at his home in Randfontein with his wife and 2 year old child. With regards to counts 4 and 5 the accused said he was accosted by unknown people at Matholesville on

his way home. He was placed in a car and drove to the police station where he was assaulted to tell the police who killed the deceased

persons in counts 1 and 2. He was searched, but nothing was found in his possession. He was detained. The following day he was booked out and taken to his place of residence where the police searched for a firearm. He was again assaulted. On the morning of his first court appearance, before being taken to court, he was assaulted to make a confession that he killed the deceased persons in counts 1 and 2. At no time was any firearm or ammunition found in his possession.

[10] The accused made several formal admissions in terms of s 220 of the CPA. These admissions were reduced into writing, signed and verbally confirmed by the accused as having been done freely and voluntarily. The document containing these admissions was handed in as exhibit A. The crux of these admissions were the following: the identity, date, place and cause of death of each of the deceased persons as referred to in the indictment; the results of post mortem examinations conducted on the bodies of the deceased persons; photo albums compiled of the scene of demise of each of the deceased persons and the accused's status as an illegal foreigner in the RSA.

[11] After the above mentioned formalities counsel for the State called her first witness, Freedom Matimo Chavalala. He testified that he was a sergeant in the SAPS, stationed at Roodepoort and that he had 14 years' experience in the SAPS. On 6 November 2021 he was on duty and attended a crime scene at Skomplaas Hostel in Roodepoort. He could not remember the exact time of this incident, only that it was during the day. On his arrival there he found his colleague, W/O Lourens, on the scene. The scene was already cordoned off. The scene was a patch under a tree where the body of a male person was laying. There were approximately 10 to 11 cartridges laying around the body. After his arrival a photographer arrived on the scene to take pictures of it. There also arrived officers from the Local Criminal Record Centre to collect the cartridges in accordance with their duties. There were a lot of people gathered around the scene. One of these people was a woman by the name of Malibatso, who indicated that she was the girlfriend of

the deceased. Sgt Chavalala interviewed her on the scene. Later during the trial it transpired that he took down a statement from

Malibatso, which was handed in as exhibit Q. He conceded that he did not make mention of this interview in his own statement and explained that in his opinion it was not important to do so.

- [12] The next witness was Vincent Dube. He testified that he was a Sergeant in the SAPS, stationed at Roodepoort, with 18 years' experience. He was on duty on 6 November 2021 and attended a crime scene at Skomplaas Hostel, Roodepoort, at around 18h30. On his arrival at the scene he found that there were already uniformed officers there. He entered a room in the hostel where he found the body of a male person laying on its side on a bed. The police waited for EMS to arrive on the scene. On their arrival they certified the person on the bed deceased. Sgt Dube observed two bullet wounds to the head of the deceased person, but did not observe any cartridges. A photographer arrived on the scene to photograph it. Sgt Dube testified that he cannot say whether or not any cartridges were discovered on the scene, and if so by whom they were removed.
- [13] Next on the witness stand was Sidiba Sylvester Mokala. He testified that he was a sergeant in the SAPS, stationed at Roodepoort, with 15 years' experience. On 21 November 2021 he was on duty and involved in the arrest of the accused. He was on duty with inter alia Constable Mposola, Sgt Teme and the Investigating Officer, Sgt Mohale. They drove in unmarked police vehicles to Matholesville in Roodepoort. The time was around 18h00 and the visibility still good as it was summer. Sgt Mokale drove in one car with Sgt Mposola and Sgt Mohale and Sgt Teme and an unknown witness drove in a different car.
- [14] When they arrived at Matholesville they parked the cars next to the hostel. The area consists of RDP housing and an informal settlement with lots of people mulling around in the streets all the time. At some point Sgt Mohale pointed the accused they were there to arrest out to them. The accused was alone, walking up and down a street. At some point it looked as if he was approaching a tavern, but it could just as well have been that he was on his way to the tuck shop next to the tavern. Sgt Mokala and Sgt Mohale approached the accused from behind and grabbed him by his wrists when they were close enough to do so. The accused wrestled with the police officers, presumably because they were dressed in civilian clothes, and they brought him down to the ground. They did not search him, or observed any object in his possession. The area has a reputation as a volatile and crime ridden area. During the process of seizing the accused, two gunshots went off in the nearby vicinity. Sgt Makola did not see where it emanated from. The firing
- of the gunshots, however, prompted him and Sgt Mohale to immediately handcuff the accused behind his back and take him to Sgt Mposola's
- car, which was moved closer to the scene of the arrest. As they were putting the accused in the car another two gunshots rang out from a distance further away from where they were. Sgt Makola got into the car with Sgt Mposola and the accused and they drove to the Roodepoort police station, followed by Sgt Mohale and Sgt Teme in a different car.
- [15] On arrival at the police station the accused was taken out of the car by Sgt Mposola. Sgt Mposola there and then searched the accused as there was no time to do so during the arrests due to the gunshots being fired. During the search the accused stood up right next to the parked car. All four arresting officer were on the scene and observed the search. Sgt

Mposola found a firearm of which the serial number was obliterated, concealed on the waist of the accused at the front of his body. On finding the firearm he immediately handed it over to Sgt Makola. Sgt Makolo made the firearm safe, removed the magazine from it and counted 15 live ammunition from it. He put all these exhibits into an evidence bag provided to him by Sgt Teme. The unique serial number of the bag was PA4003944417. He booked the bag into SAP13/1557 and signed the register. A certified copy of the register was handed in as exhibit J. Sgt Makola could not remember whether anything else was found in possession of the accused, as he was concentrating on making the firearm safe and documenting it.

- [16] Sgt Makola denied the accused version that he was made to lay down next to the car at the police station, searched while laying down, that no firearm was found in his possession – only a wallet with money and papers which the police took for themselves – that his head was covered with a jacket he was wearing and that he was beaten by the police with a shoe on his head to disclose the identity of the perpetrators of the two murders at Skomplaas being investigated by Sgt Mohale. Sgt Makole did however concede that he heard one of his colleagues ask the accused about old injuries to his face, but testified that he did not hear the reply from the accused as that was the time he split up from his colleagues to go hand in the evidence, while they took the

accused to the cells. That was the last time he had any contact with the accused.

- [17] The next witness was Ellem Mpeteme. This witness was throughout the trial referred to by his colleagues as Teme, and since I have followed suit from the beginning of this judgment, I will, without meaning any disrespect to the witness, continue to do so for the sake of continuity and clarity. The witness testified that he was a sergeant in the SAPS, stationed at Roodepoort, with 20 years' experience. On 21 November 2021 he was on duty and called upon to assist Sgt Mohale and other officers to apprehend a murder suspect at Matholesville. On their arrival at the scene of the arrest he estimated the time to have been 19h00. It was however still light outside as it was summer. There were lots of people mulling around in the streets. Sgt Mohale pointed out the

suspect and the witness, Sgt Mohale and Sgt Mokala approached the accused from behind. Sgt Teme was under the impression that he

accused was about to sit down at a tavern close to where he was observed. He passed his colleagues and the accused so as to block the accused's path should the accused attempted to run away. This appeared to have been unnecessary as Sgts Mohale and Mokala managed to apprehend the accused and made him to lie down. While this was happening an unknown man who saw what was happening took notice of Sgt Teme, produced a firearm and attempted to fire a shot at Sgt Teme. The firearm failed. Sgt Teme drew his own firearm and fire a warning shot into the air. The unknown man with the firearm ran away between the densely populated shacks, firing shot as he ran. Sgt Teme did not see it fruitful to try and chase this man due to the environmental setup there and decided to rather go and assist his colleagues with the apprehension of the accused. Due to the volatile situation they handcuffed the accused and

placed him in Sgt Mposola's car, without first searching him as they did not immediately see anything untoward in his possession. They then drove to the Roodepoort police station.

- [18] At Roodepoort police station the accused was taken out of the car and made to stand next to it. Sgt Mposola searched the accused and found a firearm and a magazine with 15 rounds of ammunition concealed in the front of his pants at his waist. Sgt Mposola made the firearm safe, while Sgt Teme went to fetch an evidence bag. On his return to the scene of the search Sgt Mokala was in possession of the firearm, magazine and ammunition, which he placed in the evidence bag and sealed it in the presence of the accused. Sgt Mokala went to register the exhibits in the SAP 13 while Sgt Mohale took the accused to the cells. At this stage Sgt Teme saw old scars to the face of the accused and questioned him about it. The scars were old because they were no longer bleeding. The accused informed Sgt Teme that he sustained the scars during a fight he was involve in the previous weekend.
- [19] Sgt Teme denied the accused's version that only a wallet containing money and papers were found in his possession, and no firearm and that he was made to lay down by the police who then covered his face with his jacket and hit him with shoes to identify the culprits in two murders Sgt Mathole was investigating.
- [20] The next witness was Thokozani Emanuel Mposula. He testified that he was sergeant in the SAPS, stationed at Roodepoort, with 19 years' experience. On 21 November 2021 he was on duty and involved as backup in the arrest of the accused at Matholeville. He described the arrest of the accused at Matholeville in the same terms as the previous witnesses. He confirmed that after the arrest of the accused they drove with the accused to Roodepoort police station. There Sgt Makola took the accused out of the car and made him stand next to it. Sgt Mposula then searched the accused and found a firearm of which the serial number was obliterated concealed under the accused's clothing on the front of his body at his waist. He handed the firearm to Sgt Makola who made it safe, discharged the magazine and removed 15 rounds of ammunition from it. The exhibits was sealed in an evidence bag by Sgt Makola in the presence of the accused and booked into the SAP 13.
- [21] Sgt Mposula denied the version of the accused regarding him being assaulted by any of the police who arrested him. He did however mention that when Sgt Makola removed the accused from the car he heard Sgt Makola ask the accused about old scars on his face, to which the accused replied that it was from a fight he was involved in the previous weekend.
- [22] The next witness was Maripa Solomon Mohale. He testified that he was a sergeant in the SAPS, stationed at Roodepoort, with 20 years' experience. He is the investigating officer of the case against he accused. He became aware of the case after 6 November 2021, when he received the dockets for investigation. After receiving the murder dockets he went to have a look at the scenes and discovered that they were very close (about 25

m) to each other. Whilst dealing with the docket pertaining to the deceased in count 1, David Motheo Lekiba, he realised that he had some questions for Mr Lekiba's girlfriend, Tebatso Letsokwane, who had already made a statement which was filed in the docket. He then contacted Ms Letsokwane to come to his office for a consultation. Ms Letsokwane obliged.

[23] When he interviewed Ms Letsokwane she informed him that her statement which was in the docket was not the whole truth and that she in fact saw and knew the people who was responsible for the death of her boyfriend. She explained to Sgt Mohale that when she gave that particular statement to the police it was done in circumstances in which it was life threatening for her to disclose to anyone that she knew the identity of the perpetrators. She explained that the statement was obtained on the scene of the crime within earshot of everybody who was gathered there. She disclosed to Sgt Mohale that she saw the accused, whom she knew as Silas and two other men, Muzet and Muthai, shooting her boyfriend. After seeing this she ran back to her and her boyfriend's residence and locked herself and her younger brother, Tshepo, inside. After a short while she heard someone knocking at the door, calling

her name. Her brother opened the door and the accused and Mozet came inside armed with firearms. Muthai stood guard at the door, also in possession of a firearm. They demanded her boyfriend's money, book and firearm. She gave them the money and book. The three men then left.

[24] The latter statement of Ms Letsokwane was provisionally allowed as exhibit P (the 2nd statement) pending a subsequent application by the State in terms of s 3(1)(c) of Act 45 of 1988. The 1st statement was handed in by consent as exhibit Q.

[25] Ms Letsokwane indicated to Sgt Mohale that the perpetrators are resident at Matholesville and that she would be able to point them out to the police. As a result of this information Sgt Mohale gathered a team of police officers to go with him and Ms Letsokwane to Matholesville on 21 November 2021 to try and apprehend the suspects. The team consisted of Sgt Mohale and the three previous

witnesses.

[26] They drove to the hostel in Matholesville at around 18h00 in two separate cars. In one car was Sgt Mohale, the witness and Sgt Mokala and in another car Sgts Teme and Mposula. They waited inside the cars and surveyed the area through the open gate of the hostel. Ms Letsokwane pointed out the accused to them. Because it was summer visibility was still good that time of the day. The area was very busy as usual and they devised a plan to apprehend the accused, who was walking up and down in a street.

[27] The police officers got out of their cars and approached the accused from behind. Sgts Mohale and Mokala took the lead. When they came next to the accused Sgt Mohale introduced himself to the accused and informed him of the reason for the police to be there. Sgt Teme passed them to block the accused's path should he try to run away. Sgts Mohale

and Mokala each grabbed hold of an arm of the accused. Sgt Mohale informed the accused of his rights and ordered the accused to lay down. The accused refused. Whilst this was happening shots rang out from the direction in which Sgt Teme went to. The police responded quickly to get the accused

into the nearest car, which was that of Sgt Mposule. They then drove with the accused to Roodepoort police station.

- [28] At Roodepoort police station Mposula searched the accused and discovered a firearm and 15 rounds of ammunition concealed on the waist of the accused. The search was conducted outside in the open as unsearched detainees are not allowed inside the police station. After making the firearm safe he handed it to Sgt Mokala who sealed it in an evidence bag in front of the accused and then booked it into the SAP 13. Sgt Mohale took the accused to book him into the cells. He heard Sgt Teme asking the accused about old injuries to his face, but didn't really pay attention to the accused's explanation. He again informed the accused of his constitutional rights and let the accused sign a SAP 14 form confirming this was done and that the accused understood his rights. The SAP 14 was handed in as exhibit K. It related only to the murder charge. The following day the same procedure was followed in respect of the firearm and ammunition charges and the accused was given another SAP 14, handed in as exhibit L.
- [29] Sgt Mohale denied the accused's version that he was assaulted by the police who arrested him before being booked into the cells at the police station. Sgt Mohale referred to the register showing that he booked the accused into the cells on 21 November and that the accused had no complaints. He testified that if the accused had any injuries the officers in charge of the cells would not have allowed the accused being booked in, but would have insisted on an ambulance being called for the accused to be treated. A copy of register was handed in as exhibit M.
- [30] Sgt Mohale further testified that as investigating officer he became responsible for the exhibits in the case. After the firearm and ammunition was booked into the SAP 13, it was administratively transferred to the Firearms register. A copy of this register was handed in as exhibit N. From there Sgt Mohale booked the exhibits out and personally took it to the Forensic Science Laboratory in Pretoria where he booked it in for analysis. The exhibits were still in the same untampered bag that Sgt Mokala sealed it in.
- [31] Sgt Mohale testified that he conducted an interview with the accused as is protocol. The interview process was recorded on a document, handed in as exhibit S. He testified that on conducting the interview with the accused he again explained the accused's constitutional rights to him. The interview was conducted in Pedi and the accused indicated that he understood Sgt Mohale. Sgt Mohale conceded that in some respects he did not complete the interview form with due diligence, but maintained that he did everything by the book, despite the accused's version that his rights were never explained to him.

- [32] During his interview with the accused it became clear that the accused appeared desirous to make a confession. Sgt Mohale therefore stopped the interview and made arrangements for a Peace Officer to take the accused's further statement. He also made arrangements for the accused to be taken to the Peace Officer, Lt Col Mokhobi, stationed at the District Office in Protea, who had no prior knowledge of the accused or the case against him. Sgt Mohale's interview with the accused was conducted on 22 November, and the interview with Lt Col Mokhobi was arranged for 23 November.
- [33] On 23 November, after the accused's return from Protea, Sgt Mohale booked the accused out of the cells to verify the accused's address. He was not ordered by anybody to do this, but did it of his own accord, as it is normal procedure to verify an address of an accused who was not arrested at his place of residence. At the address given by the accused there was no one found at home. The accused gave Sgt Mohale permission to enter and look for his passport under his mattress. Sgt Mohale was unable to find any passport and took the accused back to the police station. He denied that the accused told him previously that he was illegally in the country, that the accused was assaulted and that the search of the accused's home occurred before the accused was taken to Protea to make a confession. When confronted with a note made on the charge sheet by the magistrate on the accused's 1st appearance in court on 24 November, that the accused's face was swollen and injured, Sgt Mohale testified that he had no knowledge of those injuries. The only injuries he ever observed on the accused were old injuries from prior to the arrest of the accused.
- [34] Sgt Mohale was questioned regarding the whereabouts of the witness Ms Letsokwane. He testified that after his interview with her he only had telephonic contact with her. She informed him that after giving her 2nd statement she feared for her life and therefore left her employment and went to Botswana. She did not disclose to him her location in Botswana, but only send him a picture of her passport showing that it expired. The picture was handed in as exhibit R. Sgt Mohale tried to get the witness back to South Africa to testify in court as he deemed her testimony vital to the case against the accused. All his attempts, however, failed, and over time he was unable to reach the witness telephonically as her number fell into disuse. The witness's brother, Tshepo, is 20 years old and still lives in Matholeville. He does however not want to cooperate with the police at all. This behaviour is not strange to Sgt Mahole as Matholeville is known as a volatile area where there is little to no cooperation between the community and the police due to the high level of violent crime in the area.
- [35] Sgt Mohale testified that he did not see the accused again after he booked him back into the cells on 23 November having verified his address. He was unable to explain injuries to the face of the accused noted by the magistrate on the 24th as he was not responsible for taking the accused to court as that was the duty of members of the Uniform Branch.
- [36] After Sgt Mohale's testimony Council for the State requested a trial-within-a-trial to determine the admissibility of what was said to have been a confession made by the

accused.

- [37] The 1st witness in the TWT was Kelebogile Donald Nkgase. He testified that he was a sergeant in the SAPS, stationed at Roodepoort, with 15 years' experience. On 23 November 2021 he was on duty. Under entry 1241 of exhibit M, the OB, at 14h10 he booked the accused out of the cells on instruction from the commander of the Murder Unit to take him to the District Office for purposes of a confession. He had no prior knowledge of the accused or the case against him. Sgt Nkgase was accompanied by Sgt Tshikudu.
- [38] On booking the accused out Sgt Nkgase noticed bruises and swelling on the face of the accused. The injuries did not look fresh, but rather in the process of healing. He did not ask the accused about these injuries, nor did the accused say anything about it of his own volition. The accused also did not complain of anything during his transportation to the DO in Protea.
- [39] On arrival at Protea Sgt Nghase parked the car close to the office buildings. He phoned the Captain who was arranged to take the confession and was informed that the latter was in a meeting. Sgt Nkgase and Tshikudu guarded the accused in the car until the Capt became available. They then took the accused to the captain's office and left him alone in the company of the captain. They went back to where the car was parked. After some time the captain called them, saying they could come fetch the accused. They obliged and drove the accused back to Roodepoort police station where Sgt Nkgase booked the accused back into the cells. He did not observe any new injuries on the accused.
- [40] Sgt Nkgase disputed the accused's version that Sgt Mohale accompanied him and Sgt Tshikudu to Protea, that they stopped along the way and that the accused was assaulted by Sgts Mohale and Tshikudu to say that he killed the deceased. He was questioned about the time he booked the accused back into the cells and testified that the time noted in the OB was incorrect. He testified that he did not write the time in the OB. He attributed the incorrect time to human error. He testified that as far as he knew he booked the accused back into the cells at around 18h00. As a result of this the entry indicating that Sgt Mohale booked the accused out

at 17h15 for address verification could also not be correct since the accused was still with him and Sgt Tshikudu at that time.

- [41] The next witness was Tsholofelo Tshikudu. He testified that he was a sergeant in the SAPS, stationed at Roodepoort, with 15 years' experience. He confirmed the previous witness's testimony regarding transporting the accused to Protea for purposes of a confession. He added that when the accused got into the car at Roodepoort he noticed swelling and scratch marks on the face of the accused. He asked the accused about this and the accused replied that he was involved in an accident. No further enquiries were made or information divulged. He conceded that he did not make mention of this evidence in his statement which was handed in as exhibit T. Sgt Tshikudu confirmed in essence the testimony of Sgt Nkgase as to what happened at Protea. He also disputed that Sgt Mohale went with them to Protea

and that the accused was assaulted by the police on their way to Protea to say he killed the deceased. He was unable to say at what time the accused was booked back into the cells at Roodepoort.

- [42] The next witness was Polokwana Bernard Mokhabi. He testified that he was a Lt Col in the SAPS, stationed at Diepsloot, with 27 years' experience. On 23 November 2021 he held the rank of Captain and was stationed at the District Office in Protea. He was contacted by Lt Col Ramakgola who was the Acting Branch Commander at Roodepoort to take down a confession. As a Captain he was duly commissioned to take down confessions. He did not know the person from whom he was supposed to take down the confession or any details about the charges faced by this person. He only enquired about the language of the confessor and was satisfied to take down the confession after he heard the suspect was south Sotho speaking as it was also his own mother tongue.
- [43] After the arrangements were made he waited for the transport to bring the confessor to Protea. They took time and he was called to a meeting with the General. Whilst in the meeting he received a call that the transport had arrived. He requested them to wait until the meeting with the General was done. After the meeting with the General the confessor was brought to his private office by Sgts Nkgase and Tshikudu. They left the confessor, who later became known to Col Mokhabi as Tiisotsang Leema, in the office where it was only the two of them who were present.
- [44] Col Mokhabi testified that he took out his appointment certificate, showed it to the accused, introduced himself to the accused and explained that he was there to take down a confession the accused wanted to make. He then proceeded at the hand of a pro forma document, which was later handed in as exhibit V, to inform the accused of his constitutional rights and to note down the responses he received from the accused. He also noted his own observations on the form, where required to do so. He and the accused signed each deletion made on the form and also at the bottom of each page. He was satisfied that he and the accused understood each other

as they spoke the same language. The accused indicated that he was desirous to make a statement and that he wanted to proceed without a legal representative being present. Col Mokhabi noticed bruises in the form of dark marks under the eyes of the accused and asked him about it. The accused informed him that those injuries were sustained during his arrest, but did not say how he sustained the injuries. Because the accused did not indicate to Col Mokhabi that he was assaulted to make a confession the Col proceeded with taking the confession. Should the accused have indicated he was assaulted by the police to make a confession the Col would have stopped immediately and would not have taken any statement from the accused.

- [45] After going through the formalities on the pro forma document, Col Mokhabi requested the accused to convey to him the statement he wished to make. Col Mokhabi made notes as the accused spoke. When the accused was done, col Mokhabi wrote a sensible statement from the notes he took. He read it back to the accused. The accused indicated that he was satisfied

with the contents of the statement and both of them signed the document. The statement was taken down at 16h30. When he was done taking the statement of the accused Col Mokhabi called the previous two witnesses to fetch the accused. Col Mokhabi did not see Sgt Mohale at any stage, nor did he have any contact with him until Sgt Mohale served the subpoena to testify on Col Mokhabi.

- [46] Col Mokhabi denied the accused's version that his rights were never explained to him, that he told the Col he knew nothing about the murders in Roodepoort, that he did not know what was written on the statement by Col Mokhabi and that he statement was never read to him and that he was only told to sign, without him knowing what it was that he was signing.
- [47] That concluded the State's case in the TWT.
- [48] The accused testified during the TWT. He told the court that on the day of his arrest he was apprehended by many police official. However only two, of which Sgt Mohale was one, cuffed him. Two policemen grabbed his arms. A third came and kicked his legs out from under him causing him to fall. They then cuffed his hands and feet. He did not know who these people were as they did not say anything to him. After cuffing him they put him in a car and drove with him to Roodepoort police station.
- [49] At the police station they made him lay down in the parking lot. Sgt Mohale search him and found his wallet containing money and paper. Nothing else was found. Sgt Mohale took the money for himself. After searching him, the police pulled his t-shirt over his head and hit him with one of his shoes on his head. He could not see which police hit him. His face became swollen under the eyes and on the forehead as a result of the assault. The police hit him to say who were involved in certain murders. After hitting him he was detained in the cells.
- [50] Early the following morning Sgt Mohale and other unknown police officers booked him out and took him to where he stayed in Randfontein. He pointed out the place to him and the police left him outside while they went inside to search for a firearm. After a while they came out empty handed. They put him in the car and drove with him to Protea. On the way there they again assaulted him with a shoe in his face demanding he should tell them who killed the deceased. All in all he was assaulted three times: when he was searched at the police station immediately after his arrest, when they took him to Randfontein the following day and on the way from Randfontein to Protea.
- [51] The accused was shown the two SAP 14s that were handed in as exhibits. He confirmed that it was his signature on it. He said that the 1st one was given to him by an unknown policeman at Protea and the 2nd one was given to him by Mohale a day later at Roodepoort. He was unfamiliar with the contents thereof as he is unable to read and was never explained of the contents or any of his rights.

- [52] The accused was shown exhibit S. he testified that it was a document Sgt Mohale made him sign in the morning just before he was taken to court for the 1st time. Sgt Mohale assaulted him for the 3rd time and forced him to sign the document. He did not know what he was signing as Sgt Mohale never told him or explained any of his rights to him. He denied Sgt Mohale's version that he freely and voluntarily wanted to disclose to the police what he knew regarding the murders Sgt Mohale was investigating.
- [53] The accused confirmed that he was taken to Protea by Sgts Nkgase and Tshikudu. He testified that Sgt Mohale told him he was going to be taken to Protea and that Sgt Mohale also drove to Protea, but in a separate car. It was in the morning between 9h00 and 10h00 just after they had been to Randfontein.
- [54] At Protea Sgt Nkgase and Tshikudu walked him to an office where he met Col Mokhobi. Sgt Mohale never left his car. Inside the Col's office the Sgts gave the Col certain papers and told the Col to tell the accused to sign the papers. They remained in the office at the door and said if the accused did not want to sign the papers the Col should just put pressure on his handcuffs. The Col pressed the handcuffs and forced the accused to sign the papers by force. The Col spoke in South Sotho. The accused did not know what papers he was signing as the contents thereof was never conveyed to him, nor was any of his rights explained to him. After signing the papers he was taken back to Roodepoort and detained.
- [55] The following morning just before he was taken to court Sgt Mohale forced him to sign exhibit S. This was when he was assaulted for the 3rd time, causing the magistrate to notice the injuries in court. He was never taken for any medical treatment, despite having told the magistrate that he was assaulted by the police and despite the magistrate having noted it on the J15, a copy of which was handed in as exhibit U.
- [56] This concludes the evidence in the TWT. Counsel for the State argued that the confession should be admitted into evidence as the legal requirements for it have been met and the interests of justice required same. Ms Bovu, for the accused, submitted that the confession should be ruled inadmissible as it was not made freely and voluntarily and the rights of the accused were never explained to him.
- [57] Having considered all the evidence in the TWT and the submissions made by the legal representatives I reached the conclusion that a TWT was not really necessary as it was clear from the accused's version that he disputed having made any statement to Col Mokhobi. I ruled that the question whether the accused made a statement to Col Mokhobi was a factual dispute to be ruled upon at the conclusion of all the evidence as a whole, and ordered the trial to resume with Col Mokhobi testifying to the contents of the statement he alleged to have taken down from the accused.

[58] Col Mokhobi continued his testimony. He identified four pages of a document shown to him by Counsel for the State as the statement he took from the accused as well as his notes he made. He testified that the statement was read back to the accused and that he was satisfied with its contents and signed it. He read the contents of the notes and statement into the record. The four pages were added to the existing exhibit V.

[59] The contents of the statement written down by Col Mokhobi are the following: the accused shot one Bongani in the latter's room at Durban Deep, Roodepoort on a date he could not remember, but knew it was approximately two week prior to his arrest. The accused was one of a group of Lesotho nationals which donated money to cover funerals of other Lesotho nationals in the group who

passed away in South Africa. The money so donated was held by a certain Motheo and Bongani. Two Lesotho nationals were killed at

Magaliesburg and the accused and his friends promised the families of those deceased that they would assist financially with the

transportation of the bodies back to Lesotho for burial. They enquired from Motheo and Bongani as to how much money was available

in the Lesotho fund to assist them. They were not satisfied with the responses they got and the accused, Mosetha and Mothai decided to confront Motheo and Bongani face to face the Saturday morning. The accused went to Bongani's room to confront him, while his two friends waited under a tree for Motheo. Bongani told the accused that he was drunk and not in the mood to discuss the matter as he wanted to sleep. The accused reported back to his friends and they decided that when Motheo arrived the accused would go and shoot Bongani, while one of the other two would shoot Motheo. They were armed with firearms they previously obtained from Motheo and Bongani to protect themselves while working at Magaliesburg. When Motheo arrived under the tree the accused went to Bongani's room and shot him three time in the head while he was sleeping. Motheo was also shot under the tree as the accused saw his body laying there when he left Bongani's room. The accused and his two friends went back to Magaliesburg where they were working.

[60] The next witness to be called Machado Chiliboy Moetloa. He testified that he was a sergeant in the SAPS, stationed at LCRC, Krugersdorp. He had 14 years' experience of which 8 years was as a police photographer. On 6 November 2021 he visited a crime scene at Skomplaas and took photos. He compiled a photo-album which was handed in as exhibit C. He also retrieved 13 cartridges and live rounds of ammunition from the scene and sealed it in an evidence bag. He registered the exhibits in the Firearms Register where he worked (a copy of which was handed in as exhibit W) and kept the exhibit in a safe to which only he had access until he handed the exhibit to Warrant Officer Britz on 21 November to take to the Forensic Laboratory for analysis.

- [61] The next witness was Corne Jacobus Britz. He testified that he was a WO in the SAPS, stationed at Krugersdorp LCRC, with 30 years' experience. He identified his signature on exhibit W and testified that he received an evidence bag with seal number PA6002195316 from Sgt Moetloa on 16 November 2021. He kept in under lock and key in a safe only he had access to until he was able to take it to the FSL on 22 November.
- [62] The final witness in the State's case was Percival Ngwato Mosetlha. He testified that he was a WO in the SAPS, stationed at the FSL in Pretoria since 2014 as a ballistics examiner. He identified a statement he made pertaining to this case. The statement was handed in as exhibit X. The contents of the ballistics report in short was the following: He received 2 evidence bags respectively numbered PA6002195316 and PA4003944417. Bag 1 contained 13 x 9mm fired cartridges and 2 x 9 mm cartridges. Bag 2 contained 1 x 9mm parabellum calibre Pietro Beretta semi-automatic pistol model 92 of which the serial number was obliterated; 14 x 9mm parabellum calibre cartridges and 1 x 9mm parabellum cartridge. The firearm was in working order. The cartridges he examined were shot from 3 different firearms of which the firearm he examined was one.
- [63] This concluded the evidence for the State.
- [64] Counsel for the State hereafter brought an application for the admission of hearsay evidence of Tebatso Letsokwane. The evidence Counsel applied to have admitted was the contents of her 2nd statement to the police – in other words the contents of the statement she made to Sgt Mohale in his office on 12 November 2021. (Exhibit P) Counsel read her Heads of Argument on the application into the record. She argued her submissions for the admission of the evidence at the hand of s 3(1)(c)(i) to (vii) of Act 45 of 1988 and with reference to various decided cases I do not deem necessary to repeat for purposes of this judgment. She submitted that the contents of the hearsay evidence was credible and reliable as it was supported by various other pieces of evidence, such as the ballistics report and the confession made by the accused. She further submitted that allowing the evidence would not be prejudicial to the accused, as the probative value of it will still have to be decided at the end of the case as a whole. On the contrary, so the argument went, the exclusion of the evidence would be detrimental to the State's case as it would leave the Court with a gap in the sequence of events. She submitted that the reasons why the witness could not give evidence in court were fully placed on record by Sgt Mohale. These reasons were compelling and showed that Sgt Mohale did everything in his ability to secure the presence of the witness at court, but to no avail. She further pointed out that the State's version in this regard was not at all disputed by the defence. She therefore concluded that the interests of justice required the evidence to be admitted.
- [65] The Defence opposed the application. Ms Bovu argued that the accused would be severely prejudiced by the fact that they would be unable to cross-examine the witness. She submitted that the witness made two statements to the police, which statements differed materially from each other with regards to the murder of Motheo. She further pointed out

that there was no corroboration for the identification made by the witness in the 2nd statement and that the contents of the already admitted confession was at odds with the identification of the witness in her 2nd statement.

- [66] Having considered the submissions made by both legal representatives I ruled the hearsay admissible in the interests of justice.
- [67] Hereafter the accused testified in his own defence. He testified that on 6 November 2021 he was at his place of residence in Randfontein. Although he had been staying there from the time he came to SA in 2019 he could not recall the physical address. He was with his girlfriend, Matswanelo, the entire day doing laundry from 10h00 to 15h00 and remaining home thereafter. Since his arrest his girlfriend went back to Lesotho with their child in order to sort out her documentation.
- [68] He denied that he had a place he used to stay at in Matholeville and a girlfriend who also stayed there. He has never been to Skomplaas Hostel and did not know that place. He was also not familiar with the deceased in counts 1 and 2, nor with the girlfriend of the deceased, Motheo, or with people by the names of Mazet and Mothai. He had no knowledge of the offences levelled against him in counts 1 to 5 as he was not involved in the commission of any of those offences.
- [69] On 21 November 2021, late in the afternoon he was walking alone to a shop in Matholeville. He was suddenly grabbed by force by two unknown men dressed in civilian clothes on the left and right side of his belt. They said nothing when they grabbed him, despite him demanding a reason from them for this strange behaviour. They tried to put him on the ground, but he resisted. A 3rd person also came from behind and grabbed his legs, causing him to fall. The men apprehended him and carried him to a nearby car. They put him in the car and drove off with him. He did not hear any gun fire during his apprehension.
- [70] The men drove with him to the police station. There he noticed a whole convoy driving behind the car he was in. At the police station he was taken out of the car and made to lay down in the parking lot. Sgt Mohale searched him and found his wallet containing money and papers. Sgt Mohale took the money and threw the wallet and papers on the ground. The accused picked it up. After the search his face was covered with the top he was wearing and he was hit several times all over his face with a shoe. Sgt Mohale was one of the attackers. He was unable to identify any of the other attackers. During the attack he was told to disclose the names of the

people who murdered deceased people in case Sgt Mohale was investigating. He told the police he knew nothing of what they were

saying. There was no firearm found in his possession and he did not see any firearm on the scene. There was also no firearm sealed in an evidence bag in his presence. He did not see Sgt Teme on the scene and nobody asked him about any injuries. After the assault he was booked in the cells.

- [71] The following morning he was booked out of the cells by Sgt Mohale who said they were going to take him to his place of residence to search for a firearm there. He, Sgt Mohale and two other unknown police officers drove in two separate cars to his residence in Randfontein. There the police went inside and search the place. They later emerged without any firearms.
- [72] They all got back into the cars and the accused was taken to Protea where he was taken to Col Mokhobi. He did not speak to Col Mokhobi at all. He was forced by Col Mokhobi to sign a document. He did not know the contents of the document as it was not read to him, nor were any of his rights ever explained to him. After signing this document he was transported back to Roodepoort police station and locked up in the cells. The trips to Randfontein and Protea all occurred on 22 November, which was the day after his arrest. On 23 November he remained locked up in the cells at Roodepoort without anything happening.
- [73] On 24 November he was booked out to be taken to appear in court. Before being taken to court Sgt Mohale again assaulted him in the face and said he should disclose the identity of the people who killed the deceased in the cases he was investigating. The accused told Sgt Mahole that he did not know anything about those murders. Sgt Mohale had a document with him, exhibit S, and said since the accused did not want to cooperate he will write that the accused knew the murderers. He then forced the accused to sign this document without reading the contents to him or explaining his rights to him.
- [74] He was taken to court, where the magistrate noted his injuries and questioned him about it. He told the magistrate that he was assaulted by the police. The magistrate made an order that he be taken to the clinic, but this never happened and he never received any medical treatment.
- [75] The Defence closed its case without calling any other witnesses.
- [76] Counsel for the State addressed the Court on the merits and requested convictions as charged on counts 1 to 5. She submitted that the arresting officers corroborated each other as to how and where the firearm and ammunition referred to in counts 4 and 5 were found. She argued that if the firearm was not found in possession of the accused it had to have been found in possession of someone else, which in turn would have meant that that person would have been charged. She further submitted that the State proved the chain of evidence in respect of the firearm and ammunition. She submitted that the accused was linked to the crime scenes in counts 1 and 2 based on three pieces of evidence to wit, (a) the firearm that was found in his possession, (b) the identification in the hearsay evidence and (c) the confession made by the accused. She argued that there was sufficient corroboration for the credibility and reliability of the hearsay evidence in all the evidence as a whole. With regards to the confession she argued that the contents of the statement could only have come from the accused as only a person in the position of the accused would have had any knowledge of what was contained in the statement. She requested that a negative inference should be drawn from the fact that the accused did not call any alibi witness. She further

submitted that the accused was a poor witness who contradicted himself on several occasions and that his version is in any event so improbable that it cannot be believed. With regards to counts 1 and 2 she further submitted that the confession of the accused proved that he acted in common purpose with other suspects not before the court and that both murders were premeditated or planned.

- [77] Ms Bovu, for the accused, argued for an acquittal on counts 1 to 5. She referred to the high standard of prove resting on the State and submitted that the State did not discharge this onus. She requested the court to bear in mind that the alleged eye witness to counts 1 and 2 who is also the complainant on count 3 was not called to testify and that she made two contradictory statements to the police. The only version for this turn of events was that given by the investigating officer. She also requested the court to bear in mind that this witness could not be subjected to cross-examination and that the witness was a single witness who evidence should be evaluated with great caution. She further submitted that the 2nd statement by this witness was contradicted by the ballistics report as well as the confession of the accused, presented by the State. She submitted that firearms can exchange hands easily and that there was no witness with regards to how the deceased in count 2 was killed. She further submitted that the accused was continuously assaulted by the police and that his rights were never explained to him. She maintained that the accused did not make any statement to the Captain at Protea and that the contents of the statement handed in as a confession came from the investigating officer, Sgt Mohale. She further argued that the State failed to prove the existence of any common purpose between the accused and any other person or persons and that the State failed to prove any premeditation of planning with regards to counts 1 and 2.
- [78] It is trite that in all criminal cases the onus rests upon the State to prove the guilt of an accused beyond a reasonable doubt. There is no onus on the accused to prove that he is innocent. If his version is reasonably possibly true and he cannot be convicted on that version, despite the fact that the court does not believe every detail of that version, he must be acquitted. (*S v Shackell* 2001 (2) SACR 185 (SCA))
- [79] The issues to be determined are the following: (a) did the State prove that the accused killed or was involved in the killing on the two deceased persons?; (b) did the State prove that the accused robbed or was involved in the robbery as alleged in count 3; and (c) did the State prove that any firearm and ammunition was found in possession of the accused as alleged in counts 4 and 5?
- [80] Although I do not have any intention to disturb the ruling I have made at the conclusion of the TWT, I deem it prudent and in the interests of justice to evaluate the evidence given therein, for the sake of having that evidence incorporated in the entire body of evidence in this case. There can in my view not be any prejudice to either the State or Defence by evaluating that evidence now. The evidence is on record and I have been addressed fully by both legal representative thereon.

[81] All three the witnesses called by the State made a very favourable impression on me. They all testified calmly, clearly and coherently. It is not in dispute that the accused was booked out by Sgt Nkgase and that Sgts Nkgase and Tshikudu took him to Protea where he met then Col Mokhobi. The accused's initial objection to the admission of the statement Col Mokhobi was called to testify was that he was assaulted by the police to make the statement and that his rights with regards to legal representation and to remain silent were not explained to him. The state witnesses however remained adamant with their version that there was no assault on the

accused and that all his rights were explained to him. Although there were some contradictions between Sgts Nkgase and Tshikudu as to how long it took from the time they took the accused to Protea until they returned and whether they waited inside or outside the car while the accused was in the office with Col Mokhobi, I do not deem these contradictions material. None of them took specific regard to the time and estimating time remains a difficulty for many people, especially with the passing of time.

[82] There is a dispute between Sgt Nkgase and the time entered in the cell register as to when the accused was booked back. This contradiction is somewhat concerning. It does however not carry so much weight that it can be said to vitiate the evidence of Sgt Nkgase. It needs to be remembered that Sgt Nkgase was not the person who completed the cell register, but that that was done by the official in charge of the cells. I accept that the difference in time between the evidence of Sgt Nkgase and the cell register can be attributed to human error on the side of the official who noted the time in the cell register. Sgt Nkgase's version is in any event corroborated by the time noted by Col Mokhobi on the official confession document.

[83] Col Mokhobi struck me as a no nonsense person. He answered all the questions posed to him and did so in a straight forward manner. He was able to explain exactly how he completed the pro forma confession document, what he purpose of each signature on it was and by whom it was made. He even explained the method he use in taking down confessions from suspects and attached the notes he testified to the actual pro forma document for any person to afterwards make sure that the statement he wrote was in accordance with those notes. He did not contradict himself. He was also not contradicted by any of the two sergeants on any material aspect. There was and still is no reason not to believe him.

[84] The accused on the other hand was an extremely poor witness during the TWT. Right from the onset he contradicted the version that was put to the state witnesses at the beginning of the main trial. He kept on contradicting himself as to the number of times he was allegedly assaulted, how exactly he was allegedly assaulted, where and by whom. Most importantly however he contradicted himself with the purpose of these alleged assaults. The initial impression was created that it was the accused's version that he was assaulted to admit to the commission of the murders. If it was not for this there simply would not have been any reason for a TWT. However during the TWT the accused testified that he was assaulted not to say that he was involved in the murders, but to merely give the police the names of the

people who were involved. This change of version on the part of the accused was significant and never explained by him.

- [85] To make matters worse for the accused he was not even able to stick to this new version. When testifying he took everybody, including his legal representative, by surprise when he came up with a completely different version, to wit, that he and Col Mokhobi never had any conversation with each other. The two sergeants who took him to Col Mokhobi simply gave the Col an already completed document and instructed the Col to make the accused sign this document, even if it meant applying force. In light of this latter version of the accused the necessity for a TWT to determine whether the accused made the statement freely and voluntarily, fully apprised of his rights fell away as the issue became a factual question of whether the accused made the statement or not instead of a legal question of admissibility.
- [86] In my view, this latter version of the accused is so improbable that it only has to be stated to be rejected as false beyond a reasonable doubt. I am further satisfied that the contents of this statement displays knowledge and details which the police could and would not have been privy to when the statement was made to Col Mokhobi. Examples hereof are that the two murders were linked; that the two deceased persons knew each other and worked together with the finance of the fund for Lesotho nationals and that the deceased in count 2 was shot three times in his head while he was sleeping. The accused's version that he did not make the statement Col Mokhobi testified about is therefore rejected as false. The evidence of all three state witnesses who testified in the TWT is
- accepted as the truth.
- [87] I now turn to deal with the arrest of the accused. It is common cause that the accused was arrested on 21 November 2021 while walking around at Matholeville on his own. It is further common cause that he was apprehended by Sgts Mohale and Mokala who grabbed his arms from behind. Sgt Teme who was also at the scene approached at some point and to a lesser extent assisted in the apprehension of the accused. It is further common cause that the accused was not searched where he was arrested, but that he was suddenly put into a car and driven to the Roodepoort police station, where he was searched by his arrestors.
- [88] The police testified that the reason for the apprehension of the accused at Matholeville was because he was pointed out by a witness, Tebatso Letsokwane, who was with Sgt Mohale in his car. This version was never placed in dispute. There is also, in my view, nothing inherently improbable in this version. It is the only explanation that makes sense in the circumstances. If not for the pointing out one would have to ask why the police specifically targeted the accused and arrested only him at a busy place where there were many other people they could have targeted. I therefore accept the evidence of the police that the accused was pointed out to Sgt Mohale by Ms Letsokwane.
- [89] All four police officers who testified about the arrest of the accused corroborated each other that the reason for the sudden removal of the accused from the scene of the arrest without first searching him was because of a shooting that started there. Who exactly shot when, at

whom and for what reason is not relevant, as it does not detract from the common cause facts of the arrest of the accused and his removal from the scene. It is however worthwhile to note that the accused is the only witness who testified that he knew nothing about a shooting incident that occurred during his arrest. This was new evidence that came to the fore when the accused was cross-examined by counsel for the State. Before then it was never put to any of the State witnesses that they were fabricating the evidence about a shooting. I am satisfied that the evidence of a shooting is the only evidence that explains the

sudden removal of the accused from the scene. I therefore accept the evidence of the four state witnesses about the shooting.

[90] It is common cause that the accused was searched at the police station in the parking lot before he was booked into the cells. In this regard it was the testimony of all four police officers that the search was conducted by Sgt Mposula. The accused was the only person who testified that it was Sgt Mohale who searched him. The undisputed evidence was that the accused was transported to the police station in a car with Sgt Mposula and that Sgt Mohale followed in another car and arrived at the police station a short while after the accused. On this set of facts I find it more probable that the accused would have been searched by Sgt Mposula

than by Sgt Mohale. There was no reason for the police to have waited for Sgt Mohale before conducting the search. There was also no reason why Sgt Mohale specifically, and not one of the other officers, should have conducted the search. I am satisfied on the evidence before me that Sgt Mposule was the one who searched the accused.

[91] All four police officers corroborated each other that a firearm and ammunition was found in possession of the accused. The accused vehemently disputed this evidence and maintained that nothing except for his wallet was found in his possession and that Sgt Mohale stole the money that was in the wallet. All the police witnesses corroborated each other in essence as to who conducted the search and how it was conducted. There were however also some discrepancies between their testimonies. Sgt Teme testified that once Sgt Mposule discovered the firearm he made it safe and handed it to Sgt Mokala. Sgts Mokala and Mposule testified that the firearm was handed to Sgt Mokala, who made it safe and counted the number of rounds found in the magazine. A contradiction of this nature is in my view not indicative thereof that one or all of the witnesses were deliberately being dishonest and that their entire testimonies should therefore be rejected. As was stated by the SCA in *S v Mkohle* 1990 (1) SACR 95 (A), these contradictions can have a wide variety of innocent reasons such as incorrect recollection or a different viewpoint during the occurrence of the incident under question. On the evidence before me I find the contradictions between the state witnesses on this point to be minor and not at all indicative of any malice. If anything, it proves, in my view, that the police officers were honest witnesses and did not tell a rehearsed and fabricated story to this court.

[92] The accused's version that nothing except for his wallet was found in his possession cannot be said to be reasonably possibly true. The undisputed evidence contained in the SAP 13 and firearms register show that at the time of the accused detention a firearm and ammunition was handed in by Sgt Mokala. This independent and uncontested evidence gives credence to the version of the four police officers that a firearm and ammunition was found in possession of the accused. On the accused's version there is no

explanation for where the firearm came from and why the police would have said it was found in his possession in particular. The State's version in this regard is therefore accepted and that of the accused rejected.

[93] I now turn to deal with the admission of the hearsay evidence of Ms Letsokwane. Hearsay evidence can only be accepted in terms of s 3(1)(c) of Act 45 of 1988., once the court has have regard to the factors mentioned therein. Counsel for the State brought an application for the hearsay evidence in the form of the written statement Sgt Mohale took down from Ms Letsokwane to be admitted. The Defence opposed the application and both parties addressed me fully in this regard. After considering the arguments from both parties I ruled in favour of the State's application and allowed the hearsay evidence. In doing so, I not only had regard

to the factors referred to in s 3(1)(c) referred to above, but also to the words of the SCA in *S v Shaik and Others* [2006] ZASCA 105; 2007 (1) SACR 247 where the court said: 'However sight should not be lost of the true test for the evidence to be admitted, and that is whether the interests of justice demands its reception.'

[94] Sgt Mohale gave comprehensive testimony as to the reasons why Ms Letsokwane could not be called to testify as well as the steps he had taken to secure her presence at court. Except for putting it to him at some point that we only have his word on this aspect his evidence in this regard was largely left undisturbed. There are, in my view clear indicators that point to the credibility and reliability of Sgt Mohale's version in regards to this witness. His testimony that Skomplaas and Matholeville are unsavoury places known for high levels of crime and violence was never placed in dispute. It was also not placed in dispute that the people who live there are in general not friendly towards the police and that there is no real cooperation between those communities and

the police. His undisputed testimony appeared to have been that those communities live by the mantra 'snitches get stitches'.

There is corroboration for the version that Ms Letsokwane's first statement to the police was taken down right at the first crime scene and in full earshot of all the members of the community who stood there. Sgt Chavalala testified that he spoke to a woman on the scene who said she was the wife or girlfriend of the deceased in count 1. From the back of exhibit Q it is clear that he took down this woman's statement and commissioned it. It is not in dispute that this was in fact the first statement taken down from Ms Letsokwane. Living in a place like Skomplaas it is in my view not surprising that she did not want to disclose the whole truth to the police where everybody

could hear her. In the circumstances it also makes sense that she suddenly left her house and work and fled to Botswana and fell out of contact with the police in SA.

[95] The only real difference between Ms Letsokwane's first and second statements pertain to whether or not she saw the shooting of the deceased in count 1. The statements tell the same version with regards to the robbery that later occurred. Ms Letsokwane identified three male persons as the people who shot and killed the deceased in count 1. The shooting incident happened during the day. The people she saw were not strangers to her but people whose nicknames she knew. She saw them twice in a very short period of time – once under the tree and then in her room during the robbery. She spend sufficient time in the presence of these people and had sufficient opportunity to observe them. She was able to give details as to precisely what each one of them said and

did. Although evidence of identity must be evaluated bearing caution in mind, I am satisfied that in this case there were sufficient

safeguards to negate the risk of an incorrect identification. (See *S v Sauls and Others* 1981 (3) SA 172 (A)) There was further never any reason advanced as to why Ms Letsokwane would falsely implicate the accused in the commission of not one offence, but two. According to the accused he did not even know Ms Letsokwane. Logic then dictates that there could not have been any bad blood between them.

[96] There was also further corroboration to strengthen the case for admission of the hearsay evidence. This came in the form of the undisputed testimony of WO Mosetlha and his ballistics report which was handed in as exhibit X. His testimony made it clear that the firearm found in possession of the accused was one of the firearms used in the murder of the deceased in count 1. This evidence was independent and incontrovertible.

[97] The final nail in the coffin on this subject was the contents of the statement the accused made to Col Mokhobi. In that statement the accused placed himself under the tree where the deceased in count 1 was shot and associated himself with what was about to happen to the deceased.

[98] For these reasons I was satisfied that the interests of justice demanded the reception of the hearsay evidence.

[99] The accused did not make a favourable impression on me during this trial. I have already pointed out in this judgment that he changed his version on many occasions, without any explanation. It cannot be said that he was candid at all. As already stated, during the TWT he even took his own legal representative by surprise when he came up with a completely different version than the one she had put to the state witnesses all along. This trend continued even in the defence case. It was then that we heard for the first time that during his arrest he was put in an unmarked police car and not a marked car as put to the state witnesses; that he never saw Sgt Teme put a firearm in an evidence bag; that during the search Sgt Mohale threw the accused's wallet on the ground and that the accused picked it

up; that the accused was no longer able to remember the address where he used to stay despite the fact that he stayed there for two and a half years since his arrival in SA; and that he never had a girlfriend with who he stayed in Matholeville as testified to by Sgt Mohale.

- [100] In essence the accused version is a bare denial. He wants the court to believe that on 6 November 2021 he was at home with his girlfriend doing laundry from 10h00 till 15h00 and that he never left his place of residence during that day. However the accused never gives any explanation as to how he could remember this detail. According to him it was just a usual laundry day. When confronted that it was not a weekday as claimed by him, but a weekend day, during which he normally worked, on his own version, he was unable to explain this anomaly.
- [101] The accused's entire version, as far as it is in conflict with that of the State, is in my view completely improbable. If his version is to be believed the police randomly selected an innocent man walking on the street one afternoon, threw him in a police car and framed him first for possession of an unlicensed firearm and ammunition and then a day later for murder as well. All the evidence before me rebels against such a version. If this was to be true no person would have been safe walking in the street and SA would not have buckled under the high crime rate is currently is.
- [102] The documentary evidence that was handed in clearly shows that the accused was also not honest with regards to the explanation of his rights. All the documentary evidence show that the accused was fully apprised of his constitutional rights from the time of his arrest to his trial.
- [103] The accused's version of police brutality against him is also in my view nothing more than a fabrication too try and circumvent him being brought to book. He constantly contradicted himself as to how many times he was assaulted by the police, when it occurred and where it occurred. Despite a very brave attempt by Ms Bovu at some stage even she had to throw in the towel as her attempts to have the accused make any sense of these alleged assaults bore no fruit. In the end I agree with counsel for the State that if the accused was assaulted as often and in the manner he said he was there would have been much more and much severe injuries than even alleged by the accused. The fact that the charge sheet refers to injuries is neither here nor there. The magistrate is
- not a medical professional. There is no indication of the age or severity of the injuries on the charge sheet. The magistrate could
- only note what she was told by the accused. That on its own is not proof of the truth thereof.
- [104] On a careful evaluation of all the evidence before me I am satisfied that the accused's version is false beyond all reasonable doubt. It is rejected as such. I am satisfied that the evidence of the state witnesses, despite some shortcomings, tell the truth of what happened. I therefore accept the version of the state witnesses as the truth.

- [105] On the evidence before me it is clear that the accused and two other persons not before the court worked together with a common purpose to murder the deceased persons in counts 1 and 2 and that they robbed Ms Lentsokwane and her brother as alleged in count
3. On the strength of the statement the accused made to Col Mokhobi it is incontrovertible that the murders committed in counts 1 and 2 were planned/ premeditated by the accused and his cohorts.
- [106] For all these reasons I am satisfied that the State discharged the onus that rested on it. The accused, having already been found guilty on count 6 pursuant to his plea of guilty, is now also found GUILTY AS CHARGED ON COUNTS 1 TO 5.

W J BRITZ

ACTING JUDGE OF THE HIGH COURT

GAUTENG LOCAL DIVISION

Appearances:

For the State: Adv Mack

DPP, Johannesburg

For the Defence: Ms Bovu

Legal Aid, Johannesburg

Date of hearing:

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