

SOUTH AFRICA / JUDGMENT

S v Pietropaolo (SS076/2018) [2020] ZAGPJHC 448 (2 November 2020)

[2020] ZAGPJHC 448

COURT

South Gauteng High Court, Johannesburg

BEFORE

Mokgoatlheng

CASE / FILE NUMBER

SS076/2018

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IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION

HELD AT JOHANNESBURG

CASE NO: SS076/2018

DATE: 2020/11/02

In the matter between

THE STATE And VINCENZO PIETROPAOLO

J U D G M E N T

MOKGOATLHENG, J: This is the judgment in the matter of S v Vincenzo Pietropaolo, a 61-year old male person but since this trial has endured for about two years he is apparently 63 now. He is charged with murder in that on or about the 25 ...[inaudible: mic squelching] ...2017 at or near Number 64 High Street, Rosettenville, in the District of Johannesburg, he unlawfully and intentionally killed one, Pasqualino Pietropaolo, an adult male, and this murder is read in conjunction with section 51(1) of Act 105 of 1997 and further read with section 258 of Act 51 of 1977.

The second count is robbery, in that on or about near the place mentioned in count 1, the accused did unlawfully assault with the intent to rob and took by force out of the possession of the said, Pasquale Pietropaolo, an adult male person, a firearm to wit:

1. A 9mm Parabellum Calibre FN; Model: Browning semi-automatic pistol with serial number: T19668, his property or the property in his lawful possession and;

2. A 9mm Parabellum Calibre Star model, semi-automatic pistol with serial number: 1441985, belonging to Alfonzo Pietropaolo.

The aggravating circumstances being present is that the accused wielded a dangerous weapon to wit a firearm and inflicted grievous bodily injuries during the commission of the robbery, and the robbery is read with section 1 of Act 51 of 1977, that is the aggravation by using a firearm, and section 260 of Act 51 of 1977.

The third count is unlawful possession of a firearm, which is a contravention of sections 103, 117, 120 and 121 and Schedule 4 of Act 60 of 2000, which is the Arms and Ammunition Act, and further read with section 250 of Act 51 of 1977, in that on 13 November at or near Number 9 Iris Street, Brackenhurst, Palm Ridge, in the District of Ekurhuleni, the accused did unlawfully and intentionally ...[incomplete].

Sorry, I read the wrong section. That is Count 4; it will not be Count 3. That is Count 4.

In that on 20 March 2017 to 17 November 2017 at or near the District of Central Johannesburg, Ekurhuleni, and Johannesburg North, the accused did unlawfully and intentionally have in his possession a firearm to wit a 9mm Parabellum, Calibre Star, Model: Semi-automatic pistol, serial number: 1441985, without holding a license or permit or authorisation issued in terms of the Arms and Ammunitions Act.

Count 4 is the contravention of the Arms and Ammunition Act, in that the accused contravened section 1, 103, 117, 121 and 121(A) and Schedule 4 of Act 60 of 2000, further read with section 250 of Act 51 of 1977, the unlawful possession of ammunition, in that during the period mentioned and the place mentioned in Count 4, the accused did unlawfully have in his possession ammunition to wit:

- At least nine rounds of ammunition without being the holder of a license in respect of a firearm capable of discharging that ammunition;
- A permit to possess the ammunition.
- A dealer's licence or manufacturers licence, gunsmith license, import/export or in transit of a transporters permit issued in terms of the Arms and Ammunition Act, or was otherwise authorised thereto.

Count 5 ...Count 6 that is, the accused is accused that on or about 13 November 2017 near Honeydew in the District of Johannesburg North, he did unlawfully and intentionally perform the following act with the intent to attempt to defeat or obstruct the course of justice by dismantling the Star firearm with serial number: 1441985 that he had used to kill the deceased in Count 3 and by removing the number plates from his vehicle in an attempt to defeat the ends of justice.

Count 3 as referred to, it is the alleged murder on 13 November 2017 at or near Iris Street, Brackenhurst, Palm Ridge in Ekurhuleni, that the accused did unlawfully and intentionally kill one, Emmanuela Gilana, an adult Caucasian female.

The accused was legally represented throughout the commencement of the trial and he pleaded not guilty to all the charges after same were put by the prosecutor. Mr Weinstein, who then represented the accused, confirmed that the pleas were in accordance with his instructions and addressed the Court and advised the Court that there are certain admissions which the accused has made. Further, that the accused has also made a statement in terms of section 112 and the admissions were made in terms of section 2020, both of the Criminal Procedure Act

Mr Weinstein then read the statement in terms of section 112(2) and read with sections 112(1)(B) of Act 51 as amended, and it reads as follows:

“I, the undersigned, Vincenzo Pietropaolo, identity number: 5602235103189 do hereby state. I am an adult and I am the

accused in this matter. I reside at 60 ...[indistinct] Lane, Pender Street, Boskruin, Randburg. I do hereby make this statement freely and voluntarily and out of my own accord without any influence, pressure, duress, compulsion, intimidation, persuasion or coercion of any nature whatsoever.

Having received legal advice as to the force and effect hereof, well knowing and understanding the consequences of making this statement, including that I will be found guilty of the charges or a lesser charge to which the statement relates, will on the strength thereof be punished be sentenced to a term of imprisonment.

In respect of Count 3 of the particulars of charges I admit that Emmanuela Gilana Pietropaolo, an adult Caucasian female aged fifty seven, identity number: 6102240141083, refers to the deceased, died on or about 13 November 2017 at Number 9 Iris Street, Brackenhurst, Palm Ridge where she lived at the time of her death, referred to in the statement as her home, as a result of multiple gunshot wounds, and that at the time of her death the deceased ...[inaudible: machine dragging] ...of jurisdiction of the above honourable Court.

I further admit that on or about 14 November I attended at the home of the deceased shortly before she suffered gunshot wounds. At the request of the deceased who had communicated with me a few days earlier requesting me to deliver to her at her home further documents, in addition to those that I had delivered to her relating to a motor vehicle belonging to me which I had agreed to be sold or traded in by her son Craig, and the proceeds thereof to be used by him to purchase a vehicle for himself.

I attended at the home of my late father where I met a party interested in purchasing the home. I travelled from my father's home to the home of the deceased, thereafter leaving my late father's home at approximately 21h05. The distance from my late father's home to the home of the deceased is approximately ten minutes' drive and approximately eight to ten kilometres. I had no intention to see the deceased, my intention being to place the documents in the post box at her home.

I arrived at her home and just gotten out of my vehicle to do so. The deceased must have seen my vehicle arrive. She opened the main gate and asked me why was I there, to which I replied and stated above and asked to come to the front door so she could see the documents. I did so.

The deceased of her own accord, and without any provocation from me or reason attributable to me on reaching the front door at or about 21h15, launched into an oral attack against me, including pushing me from behind. Included in her attack against me was a racist vitriolic attack against my girlfriend, who is of the Indian race and myself, sending me into a rage and causing me to suffer an emotional storm, during which I without any premeditation or intention to do so discharged the firearm of all the ammunition with which it was loaded, being approximately nine bullets, into the upper body of her person of the deceased, hereby causing the death of the deceased.

As I have myself during about 2010 being the victim of an armed robbery, being a car hijacking at gunpoint, have since during or about that time continuously carried a firearm with me for personal protection of myself and my family and companions as the home in which my late father previously lived where I regularly visited him lived with, or for a period of time was not in a safe or secure area, and as my father himself was murdered in his home during a home invasion and robbery.

At no time whatsoever did I intend to harm, injure or cause the death of the deceased, carry a firearm with me with the intention of injuring or causing the death of the deceased, intended or carry with me for the purpose of threatening or intimidating the deceased in any manner whatsoever.

The discharging of the firearm by me was as a result of the emotional storm caused by the deceased, and which occurred so quickly that I was unable to control myself or prevent same. I am deeply remorseful for and deeply regret the death of my wife and for the emotional pain and headache which this has caused our children, my wife's sister and our family and friends.

In respect of Count 2, being the robbery, I admit that the firearm bearing serial number 14419854, is a 9mm Parabellum Calibre Star Model super and it is a semi-automatic pistol belonging to Alfonzo Pietropaolo. I removed the said firearm from the home of my then deceased father, Pasquale Pietropaolo, shortly after the police had left the home of my late father in whose possession the said firearm had previously been without the knowledge of the owner thereof, Alonzo Pietropaolo, with the intention of permanently ...[indistinct] Alfonzo Pietropaolo of the ownership thereof within the jurisdiction of the said above honourable Court knowing that it was illegal, and that by doing so I was stealing the said firearm thereby committing the offence of

theft of the said firearm.

In regards to Count 3 I did unlawfully and intentionally have in my possession a firearm to wit a 9mm Parabellum Calibre Star Model Super semi-automatic pistol, serial number 1441985 without holding a license, permit or authorisation issued in terms of the Act, knowing that doing so is illegal thereby committing the offence of being in possession of a firearm without holding a duly issued license, permit or authorisation in respect thereof.

Same as above stated I deny all charges against me.”

Mr Ngodwana on behalf of the State advised this Court that the State is not accepting the statement in terms of section 112(2) which was prepared and read into the record by Mr Weinstein on behalf of the accused. Consequently he requested this Court that this statement must be treated as admissions, to which the Court responded that the document may be handed in as EXHIBIT A, but not necessarily as admissions because admissions are only made in terms of section 220 of the Criminal Procedure Act. It was so agreed and the statement was handed in as EXHIBIT 1.

Thereafter Mr Ngodwana on behalf of the State he read the admission in terms of section 220, which as I was advised, were discussed prior to them being made and read into the record with the accused’s attorney, Mr Weinstein, and the statement in terms of section 220 by the State read as follows:

“The accused makes hereby the following admissions in respect of Count 1 to Count 6; that the person referred to in Count 1 of the indictment is the deceased, Pasquale Pietropaolo, an adult male person and that he died on or about 20 March 2017 at the crime scene referred to in Count 1, and that the cause of death was determined to multiple gunshot wounds and that the deceased or his body did not receive any further injury subsequent to the injuries sustained at the crime scene referred to in Count 1 until such time as Dr Ramalesho performed a post-mortem examination on his body on 22 March 2017, and that the findings and observation by Dr Ramalesho Ramela appearing on the post-mortem report dated 16 January 2018 are true and correct and that the post-mortem report is admitted into evidence and handed to Court by consent of both the defence and the State as EXHIBIT C.

The affidavit of Constable Shongwe, the key to the sketch plan and the photos, the handling of exhibits from the crime scene which is admitted as evidence handed in by consent as EXHIBIT D; that it correctly depicts the crime scene referred to in Count 1.

Further, that the person referred to in Count 3 of the indictment as the deceased is, Emmanuela Gilana Pietropaolo, an adult female person and that the deceased died on or about 13 November 2017 at the crime scene referred to in Count 3, and that the cause of death was determined to be multiple gunshot wounds, and that the deceased or the body did not receive any further injuries subsequent to the injuries sustained at the crime scene referred to in Count 1 until such time that, Dr Amatha Abra Abathu, performed the post-mortem examination on her body on 15 November 2017, and that the findings and observations of Dr Imafa Abra Abathu appearing on the post-mortem report dated 8 March are true and correct, and that the said post-mortem report is admitted as evidence and handed in to court by consent of both the defence and the State as

EXHIBIT E.

That Sergeant Vusumuzi Mfana Nkosi visited the crime scene referred to in Count 3 in the indictment and took photos of the crime scene.

Further, that the affidavit of the said “Vusumuzi Mfana Nkosi”, the key to the sketch plan and the photos thereto are admitted as evidence and handed in to Court by consent as EXHIBIT F, and that these correctly depict the crime scene referred to in Count 3.

Further, that EXHIBIT F1 was prepared by Sergeant Vusumuzi Mfana Nkosi which is admitted as evidence and handed in by consent. It refers to the collection, the sealing and packaging of all exhibits found at the crime scene referred to in Count 3, and that the accused further admits that these exhibits were all sent to the forensic science laboratory for ballistic comparison, and that the accused further admits that on or about 13 to 18 November 2017 he was residing at number 60 Jacaranda Lane, ...[indistinct] Street in Boskruin, Randburg, and that the accused further admits that the police visited his house in the early hours of 14 November 2017 and further, the accused admits that Constable Bruce Mathebula visited the house mentioned in paragraph 13 above and took some photographs.

That the accused person admits that the firearm referring to paragraph 17 above was found in his possession at the time of his arrest and that it was seized by the police unit and sent to the ballistic unit for comparison, and that the affidavit in terms of section 212 of the Criminal Procedure Act 51 of 1977 is the ballistic report prepared by, Warrant Officer Alisa Kgani, and that all the exhibits found at the scene in respect of Count 3 to Count 6 respectively were also gathered and delivered to him.

Further, that the affidavit is submitted by consent and handed in as evidence marked EXHIBIT H, and that the accused person admits that the firearm referred to in paragraph 17 above is ballistically linked to the cartridges found by the police on 13 November 2017 at the crime scene referred to in Count 3.”

These two reports, the section 112 statement and the section 220 statement were both signed by the accused on 1 November 2018 after consulting with the defence counsel, Mr Weinstein.

The Court actually pertinently asked Mr Weinstein whether he had in fact discussed these admissions in both statements, he agreed. Then he told the Court that there is reference to two bullets which are marked A12 and A13, which he and the State have agreed specifically to exclude from any admissions that were made by the accused.

I then asked the accused personally now, does the accused admit that he signed the section 220 admissions and the section 112 statements; that is the two statements. The accused says, “yes I did”.

Then the State called its first witness, Craig. He is the son of the accused. He is twenty four years old. He specifically came to testify in particular with regards to Count 3. That is the alleged murder of his mother by his father, the accused before Court.

He says, on 13 November he was at 9 Iris Street in Brackendown [Brackenhurst?] with his mother, Emmanuel Gilana. He says it

was around about half past 6 [18h30] in the evening. He had dinner with his mother and his mother showed him the vehicle papers that he, Craig, had been requesting, apparently from his father, the accused, because he says the car he was driving was registered under the ownership of his father but he wanted same to be traded in so that he could purchase another vehicle.

At about 8 o'clock [20h00] he says he left for his girlfriend's place. He says it is a small walk, four to five minutes, to the girlfriend's place. He got into his car and he says he was at the girlfriend's place up to about 11 o'clock in the evening and she [the girlfriend] showed him a post in Facebook. In that post in Facebook there was a report about a shooting in Iris Street.

He [Craig] then sent a message to his mother to ask if she was okay. Craig received no response or reply. After about half an hour the brother to Craig ...I think it is Kevin, phoned and told Craig to go home because the police had called him and told him that their mother had been shot. But then he said, no, but maybe do not go home, come to my place first. So he went to Kevin's place where a trauma counsellor had already arrived.

A discussion ensued with regards to what had happened but this was ruled by the Court to be hearsay evidence, but Mr Ngodwana

argued that it be provisionally admitted but he would call direct evidence in corroboration thereof. Mr Weinstein said no, he does not have a problem with that and the Court then provisionally admitted the said hearsay evidence.

Craig and Kevin went to the mother's residence once they were assured that the scene was cleaned up. They found there the gate being opened. There was bullet debris across the walls. There was blood everywhere. Further, Craig testified that the relationship between his father and mother was not very good. They were always arguing. They were all fighting each other. It was not a healthy relationship at all.

At the time when the deceased was killed, that is the mother to Craig, the accused was staying in Randburg. He [Craig] had never visited his father there. He just knows that his father used to stay in Randburg. That is after the father had got estranged from the mother and they ceased to live together, and this was about four years ago in 2014, but they were still married and were getting divorced but nothing was still finalised.

He further stated his parents always fought, meaning argued. When asked if the accused, that is his father, was ever insulted by his mother he says, well, this was a frequent occurrence, but he thereafter testified that the death of his mother had broken him as a person and his whole life had changed and he had to move to a new place and she now lives a whole new life.

He never received any counselling but he was adamant that the registration documents of the vehicle, which was supposed to have

been transferred from the accused's name into his name to facilitate the selling thereof, these papers were delivered in the morning of 13 November, meaning that he contradicts the evidence given by the accused that he had repaired or gone to the house of his wife at about 9:00 in the evening and that he had deposited these transfer papers into the post box. In other words, he contradicts that. Meaning in other words that, there was no reason for accused 1 to have come to the house of his wife after having delivered the papers in the morning. There was absolutely no reason.

This is actually the evidence: "If the papers were delivered on that morning do you perhaps know the reason why the accused person would be at the premises late in the evening to see your mother?" Craig's answer is: "There was no reason because they have never in the period when they were separated seen each other without communicating something before. So there was no communication and his mother never spoke of any arranged meeting or anything of that sort."

He was pertinently asked if his mother would venture to visit ...[incomplete]. In other words, if the accused had ventured to visit the mother apparently the mother would have informed him because he [Craig], as he had testified, had dinner with the mother after 6:00 and the mother was not expecting any visitor after he [Craig] was there and had left.

She [the mother] actually advised him, or it was his view that the mother was about to watch a movie. He knows that his father had a licenced firearm. He has never had occasion to see an occasion where his father had threatened his mother with a firearm. Craig was taken under cross-examination by Mr Weinstein. It was put to him that: "Is it not true that your late mother turned you [Craig] against your father?" He says:

"That is not true, his relationship with his father up to the time he left his mother was fine, but because he [the father] and the mother had had irreconcilable differences he did not attempt to mend any of that pain. He was left to watch his mother on two occasions attempt to kill herself because of heartbreak she had suffered because of the infidelity of the countless stories of affairs that he [Craig] had to listen to all the time from his mother about the continued betrayal of the father to the mother."

He also sadly recounts that when he [Craig] ...apparently this version was told to him by the mother, when he was conceived during ...she was conceived during a ten year affair with another woman, he [Craig] was shown messages on her mother's phone between the two of them fighting. She came home distraught when he was talking with other women on WhatsApp. Apparently they also traded insults with each other. The mother would call the accused a cheater, a pig and other various names.

He conceded that his mother accused his father of being in a relationship with another woman at the time they separated four years ago. Apparently this is the same lady of Indian decent with whom the father was having an affair. Her mother never met this lady but she felt betrayed and never knew this lady on a personal level.

There was some discussion about whether there was incorrect Indian number. He says he was not aware that the father had placed the Indian the vehicle, which would have necessitated that there should be two sets of change of ownerships filled which would be in respect of the old engine which was replaced by the new one.

In any case, he says he received a text message from the mother on that day the mother was killed and his mother told him that on that very morning about 9 o'clock she had found the papers in the post box so these papers had been delivered and consequently he is adamant that there was no need for the accused to have visited the mother in the evening.

It was put to him that when they were in the front door or the front of the premises his mother launched a verbal oral attack against the accused using hate speech, racist terminology and swearing for no reason given by him that night. He says, well he would not be aware of that because he was not there.

He says his father did have a quick temper, that is the accused, and it was put to her that the conduct of her mother who was taunting him and spewing racist hate speech and swearing at him and obviously looking down upon the fact that was involved in an affair with an Indian person or a woman of Indian originals. Craig says there is no proof of any of that which had happened but he concedes that during the heated arguments he had witnessed hate speech used by both the mother and the father and insults, putting one another down in disrespectful tones.

It was put to her that, but in this case the mother had used the "K" and the "C" words, both of them. I wonder how that is possible. I know in South Africa there is rational sensitivity, people are afraid to mention that a person calls one Kaffir or another one called another a Coolie. To be politically correct Coolies ...we talk about "K"

word and "C" word but the hate speech is encapsulated because of our racial past in calling other persons Kaffirs or

Coolies or hot en tots.

Further, Craig says he cannot understand why his father would be carrying a firearm in the first place when he had come to deliver papers. He [Craig] knows as a fact that the father never carried a firearm, it always stayed in a safe, so he does not know what he was doing in terms of carrying it for defending anyone.

Craig says his mother was a fairly big bodied lady. He just remembered one exchange where there was physical confrontation

between the father and the mother, it was her pushing the father but it was nothing consequential. He does not know or remember his father being a physically aggressive person but he knows that they hurled insults at each other.

He [Craig] says, when he left on the 13th he left his mother in a peaceful manner. She was comfortable and she was going to watch movies, but he is adamant that his mother never wanted the accused to come to the house unless she had forewarned the mother.

The next witness was Christiaan Van Rooyen. He is a neighbour of Emmanuela Gilana Pietropaolo. He just lives across the road separated by a main road, about ten to twenty metres away. It is a quiet street. The accused is their neighbour.

On the 13th he was watching television at about 21h00 or 21h15. I was whilst watching TV he suddenly heard gunshots. He did not know where they were coming from but they sounded like they were inside his house; that is how close his house is to where the gunshots were emanating from.

He says there were about three or four intermittent shots and these were interspersed by a break of about ten seconds in between, and then there was another volley of shots which were fired again, four or five. Well this tallies with the allegations of the statements made by accused 1 in his section 112 statement that he emptied nine bullets out of his firearm into the person of the deceased. But the evidence of Van Rooyen is that four, five, three, four, but this was not continuous. Three, four, then there was a pause of twenty to thirty seconds but there was definitely a pause, it would be shorter.

He was shown then an album, but before then he says, he saw a dark coloured vehicle reversing out of Emmanuela's driveway, meaning that when the accused drove away, as he alleges, after having shot the deceased Emmanuela, Van Rooyen actually saw the car reversing.

I may just mention that subsequently after the recall of Van Rooyen, Mr Greyling, who was now appearing for the accused put it to Van Rooyen that he could not have precisely seen that vehicle because there was a tree which interspersed the space between the deceased, Emmanuela's, yard and driveway because at that stage ...I am mentioning it now, the accused had changed his version that he never shot the deceased and that he had made the section 112 statement admitting to those facts.

At the incompetence of his attorney, who had never actually explained the effects or the result of making a statement, because he says at that stage he had never been given access to the contents of the docket, and that if he had been he would never have made that statement; that is the background. But what is important is, Van Rooyen is insistent that he did see a car getting out of the driveway around about that time.

And I may just mention, that time tallies with the time which is given by the accused. There could be a difference of a minute, two minutes, one minute, five minutes, ten minutes, but it was around about that time, 21h00, but he is adamant that he actually saw that car. But what is important, this is an impartial witness. He does not say I saw Enzo's car. He says he saw a car, so less it be said that this is a bias witness he does not say he saw accused 1's car. He says he saw a car. Then he informed the security company to tell them what was happening. That is when he saw the car reversing out of the driveway. He said because of the shooting he also told them to

phone the paramedics.

Under cross-examination he says look, he is not sure about the interspersing of twenty to thirty seconds because things happened so fast. It is understandable and it is a long time, a year ago, but it was not or two seconds, there was definitely a pause and it was like a long pause. It was not anything that was so quick, and this evidence was corroborated ...I will come to that. It was corroborated by a gentleman also who gave evidence who apparently was also in the vicinity.

He says these bullets literally sounded like they were in his own house because he actually ran to the bedroom and there was chaos. He actually switched off the lights but he is adamant that there was a definitive pause.

The next witness to testify was, Ms Khumari Rani Morange, who testified that she is the girlfriend of the accused before Court. They had met about two years prior and on that particular day, 13 November, she had met the accused. They done some groceries

together and apparently the accused then told him that he was going to meet an agent in Turffontein apparently, or Rosettenville who was going to buy the house or inspect the house because it was on sale.

Sorry, they did not go together to get groceries. Apparently the girlfriend told the accused that, oh, I want to go and get some groceries at Pick n Pay and he says, you know what, I need to collect my washing.

Then the girlfriend says he stays about ten minutes away from the accused before Court in Boskruin. When he was not coming forth on that very day, she [the girlfriend] phoned the accused before Court and he told him that he was running late because he had to meet this agent and buyer. It was approximately 7 o'clock.

He actually invited him to have supper but he said no, no, no, I have got to do this and he left. He says he was worried because he understood and appreciated that because his dad was living in Rosettenville this is where the accused was going to meet this

agent. It was not a safe place.

He [the accused] called at 8 o'clock and said I am now at Rosettenville and she in turn said please be careful and he told him to hurry because he wanted to see him because the accused said he is just about twenty to twenty five minutes away, so he will come and sort out the garage door. Apparently she was being given problems by a garage door to which the accused had said he would fix up. He ultimately said, you know what, I cannot make it, I will come tomorrow because it is late. She then, because she was tired, went to bed.

Subsequently after agreeing, the next morning when she woke up, in her WhatsApp there was a message which read "I am sorry baby; I killed her, something like that. I am going to jail. I really love you." That is the message in the WhatsApp the following morning.

She panicked. It was about quarter past 5 in the morning, she was preparing to go to work. She normally looks at her messages around about that time. Tried twice or thrice to phone the accused, no answer. She got into her car, drove to his complex and at the gate spoke to the security and said she wanted to see Enzo.

Then the security officer there told her that, oh no, Enzo has been arrested and she asked for what and she said he shot his wife.

She then phoned her sister and contacted also Enzo's brother and also contacted Enzo's wife, Sonja, and informed them about what she had heard.

She was taken through cross-examination and he says the accused kept his personal life personal and private, they never discussed about his wife Emmanuela, but she knew that the accused had a wife.

At one time she had visited the accused at the police station and she wanted an explanation. I just said to him "Enzo, please let me know. Tell me what happened." He never responded, and then she was asked to leave because her two minutes was up.

Alfonzo Pietropaolo, the brother to the accused before Court, testified that on 20 March his father, Pasquale Pietropaolo, was killed. At the time he was residing, together with the father and the accused before Court, at 64 High Street, Rosettnville. The house belonged to the father. The father was ninety years old. He was a healthy person.

He could have had some prostrate problems or a hearing impediment, but there was nothing wrong with him. He was very active. He still drove himself around and he did all the work in his garden, which was his passion. He was a very, very healthy person,

ninety. It was not like he is bedridden.

I will come to this aspect when we deal about the circumstantial evidence of how he could have died and why there was no struggle

evident from the bed sheets and the duvet and the pillows.

He testified that every morning they had a routine apparently. As usual I got up very early to go to work. I always go to work early because I open the shop. He is a retail manager. He and the fiancé; Sonja, they got dressed ready to go. They left the house as per usual, 6:50 or somewhere around there and they got dropped at work as usual.

When they left, that is himself and Sonja, the accused was in the house and the accused was at that time employed, and according to him, Alfonzo, they had moved into their father's house in January and normally when he and Sonja left for work they would leave the father, as well as the accused, and that is 99 per cent their routine. Sonja also gave the same evidence that 99 per cent of the time they leave first. They leave the accused and the father, and on this particular day the same thing had happened.

When he was at work, around about 9:20, he got a call from Mrs Racutti [?], a neighbour who advised him that Susan, the domestic worker of his father, or their domestic worker, had reported to her that she had repeatedly rung the bell and repeatedly phoned the deceased's father's cellphone, there was no response.

He [Alfonzo] proceeded making the same calls. He even used the landline which he had at the time. Still on both these phones there was no response. Then he phoned the accused because of this silence. Mrs Racutti herself had said the doorbell was not being answered.

Apparently he struggled for some time to get the accused and very tellingly he says eventually he got through and the accused said he was at work, he would try and contact, I believe, Mrs Racutti. Then he [the accused] also said he was going to try and get the security to go to the premises to see what was happening because he [Alfonzo] did not have a car. The accused before Court offered to drive and see what was going on at the premises. After some time the accused phoned him and said he better come home because something bad had happened.

He was driven by one of his colleagues, which is Alfonzo. When he arrived at 64 High Street there were police there inside the premises. There were people. He went straight to his father's bedroom and tried to wake him up. He did not respond. He went outside. The condition of the house from the entrance when he got in he saw the whole entrance was in disarray. There was a lot of clothing, open travel bags. He had to make his way through this disarray to the death room. At that stage he could not establish whether any items were stolen because at that stage he was in a traumatised state.

He returned to the bedroom of his father and saw that the safe was open. That is the first thing that he notice, that there were a lot of papers strewn in front of the safe and the weapons were missing because he could notice that because when he moved in with the dad his father had taken custody of his firearm and stored that firearm, together with the father's firearm in the safe.

He is not sure whether there was any ammunition, he cannot remember, but his observations are certain that there were two firearms in that safe. He is a licensed owner of the firearm. It is a 9mm semi-automatic firearm. The license was shown in as an exhibit. He has a licence to possess the firearm. Then he also had a competency permit. The serial number of the firearm is 1441985. He informed the police about the fact that his firearm was also in the safe and it was missing with his dad's firearm.

He was asked pertinently, who was in possession of the keys to the safe? Who had the keys to the safe before 20 March?

His answer was, my father was the only person that had access to the safe. In other words, if you want to open the safe you have got to the key of the safe from the father. His father kept all the document in that safe, bank accounts, ID book, and passport. There was even jewellery.

He was asked by Mr Ngodwana how is the security around the premises and the house. He says they had walls around the house and there was electric fencing, but he does not believe there was electric fencing at the back because the walls were so high.

Then there were burglar bars inside of the back room. There was storage at the back of the house. The house had two motorised security doors. One was a door, one was a gate, and these were operated individually using two separate remote controls, and there was a steel gate at the stairs coming into the house which could be locked and padlocked, and the front door which is the only access from that side of the house was a wooden door which had a lock which could be locked from the inside and could only be opened by key.

He was asked if there were any indications that there was forced entry into the house. He said he does not believe there was.

There was a lot of commotion.

He was asked if there were any other items stolen, like for instance, besides the firearms, TV's. He says it is only when he came back inside the house that he noticed that everything was in place, and this is a person who lives in that house. When he looked around, nothing wrong, everything was in place, except there were items strewn all over the passage and towards the door.

He was pertinently asked, was there nothing stolen except for those two firearms? He says the TV's, the furniture; everything seems to be in place.

He testified that between of themselves, that is the accused person, as well as himself, he is the one who normally leaves first to go to work 99 per cent of the time, and on that particular day he and the girlfriend, Sonja, they just did as usual, they left.

And curiously, he says, when he left or was leaving he had the door open, that is when they were in the passage with Sonja, and he saw that here comes the accused out of his room and he recalls saying, oh, are you still here, and he said, no, I overslept, meaning that this is corroboration that there was a routine in this house. This injunction that I overslept confirms the routine that normally when Alfonzo and Sonya are leaving the accused is also awake and about but they leave him in the house. He says the relationship between the accused and the deceased's father was not good because the deceased's father did not like the lifestyle of the accused before Court.

He was shown photo number 44, which is the photo which depicted the safe inside the bedroom of the deceased's father. He further testified that on photo number 65 he you can see that there is a TV unit with a TV in the father's bedroom. This also was not taken by these phantom thieves or housebreakers.

He was asked if he had ever seen the firearm after it was lost. He says no, I have not. He says at the time it looked like a break in and so it was said it was stolen. He believed that his own brother, the accused, had his own firearm. He does not know if he carried it often.

He was taken under cross-examination. He did not change his version, he stuck to his version, and he also testified that he knows that his father possessed a firearm because he kept it in the safe and he had it in the safe for many years. He himself never had access to the safe. And in the safe also the mother's jewellery was kept in that safe. And what surprised him, although he does not say that, when he entered the room because he knew that the father is the only one who had access to the keys to the safe, he saw the keys in the safe in the room, you can see picture 55 and picture 44. When the doors of the safe are opened you could see, oh, here are the keys of the safe.

Does he know what happened to the jewellery? He says, he believes it was found strewn in between the mayhem around the house. Was it found? He says, yes, it was subsequently found and it was split between himself and his brother, the accused before Court.

He was asked on the ...[indistinct] of that fatal day was your father inside your house? He says yes. And was your

brother inside the house? He say correct. Did you check the doors were locked when you left? He says, basically the back door was locked, the one used when you are going to the back veranda. I closed the front door, the wooden door. The gate outside the wooden door only had a latch. That is the burglar door.

I did put the padlock on because my brother was still there so I did not feel he was going to go to work, and so there was no need for me to lock it. We drove out of the driveway, one motorised gate. We had the remote and they ensured that the gate was closed automatically.

If you look at the photos of the house in Rosettenville it is obvious that there were two garage doors, and he says these were opened with a remote. In other words, you do not just come and open them physically and close them physically. You gain access in egress by operating the remote control, and this was generally the routine every morning and every afternoon when they return from work.

On the day of this father's demise when he entered the front door it was already unlocked. It was put to him under cross-examination that it is possible that there was a forced entry that he did not see. He says, well it could be possible but I did not see it and I do not know, and he does not recall doing a full inspection of the premises, even the surrounding areas.

He and his brother never had any relationship. They did have a relationship in the past but subsequently they hardly even spoke to each other after the mother's death.

On 18 July 2019 you handed in 167 live ammunition to the police. He says, correct. These bullets were found in a plastic bag. My brother, the accused, took them with because he said he was going to hand them in to the police, and because he and Sonja were going on holiday he said his brother would take care, but he never did hand those bullets to the police.

He kept on asking the accused before Court, what have you done with these bullets? Have you handed them over to the police?

He did not, and he [Alfonzo] himself then took those 167 bullets inside that paper bag and handed them to Ndaloose at Moffatt View [?] Police Station.

He was taken under cross-examination by Mr Weinstein, as I said. It was put to him that in his statement he had said he handed in over 167 live ammunition and two 9mm pistol magazines. There was an objection from the State but he persisted that apparently the two magazines were handed over to the police, and one magazine was for his weapon and the other one he cannot recognise because he does not know it.

He never asked Susan, the domestic servant, what had happened. He did not even ask Mrs Racutti because he was in such a state, but he is adamant that all the windows around the house all have burglar proofing. This the Court can confirm because the photographs taken by Nkosi, he took photographs all around the house. You can see that all the windows had burglar proofing. He never discussed the possibility that his brother [the accused] could have killed his father.

The next witness was, Constable Aphane, he is a constable with five years' experience. He is stationed at Moffatt View, that there were problems at 64 High Street, Rosettenville. He went there on 20 March after this radio control message which said a murder had already been committed there. He went there with Ntombela and they found a security office and they also found the accused. They introduced themselves, and the two white males, that is Alfonso, the brother to the accused and Enzo, the accused, took them inside the house to show them the deceased person, their father.

They went in using the front door and the first thing they noticed, there were bags on the floor. One bag was closed and the other was open. There was clothing outside this closed bag. They reached the bedroom. The accused pointed out his father who was lying on the bed. He was covered in a white duvet, and the duvet there were bullet holes on it. Next to the wardrobe on the floor there was clothing belonging to the deceased and there were also two cartridges which were inside that room on the floor, and on the body of the deceased he noticed three bullet holes, as he called them.

He asked the accused, could he possibly know what had happened, then the accused said I was not present in the house. Then he asked him, what was taken from inside the house. Then the accused instead of answering took them into another room where they found a wardrobe, and of course there was a big safe which was mounted on the wall inside the wardrobe and the accused told them that they have taken two firearms from the wardrobe. That is the report the accused made. When they looked inside the wardrobe, meaning inside the safe, there were two magazines. One was loaded, the other was not loaded and there was a brown bag containing live ammunition.

Thereafter they proceeded to the sitting room. There were items lying on the ground. They searched that room trying to find if they could link anything to the suspects. There was nothing found in the sitting room. Everything in the kitchen was also normal. It looked as if nobody had entered into the kitchen. They used the kitchen door to proceed outside. The kitchen door was in normal condition, not broken.

He was asked, as you exit the kitchen door what was there? He says there was a veranda and there was a door on it, and this door also showed no forced entry. They proceeded outside the yard inspecting the windows and the walls, particularly the electric fencing to find out or discover whether it was cut. Nothing wrong there, everything okay. So if there were persons who came there they jumped with the live electricity on, on the fencing, it was not cut. Or they could have vaulted at the back there where there is a very high wall.

Then they saw one window where they thought, oh, all the windows are normal except one. When they went they say this window was broken. They asked the accused if he knew about the breakage of this window. He informed them, oh, it was broken since his father had left the keys inside.

He says they found the two magazines, as earlier testified. They enquired, whose magazines are these, and then the accused said one of these belongs to his father and one of the other belongs to the brother. So they surmised after being asked by Mr Vondwana that, the intruder must have taken the two firearms and left the two magazines. He says, well, it would appear so, and that to them came as a surprise because no person could take the firearms that he was going to use and leave behind the magazines which he needs to operate and fire the firearms. These are valuable items.

Then he was shown photo number 1, which is the entrance to the house and he was also shown photo number 10 and 14 and he identified all the clothing which was strewn on the floor being depicted on the photos.

Photo 13 was a bag lying on the floor next the wardrobe Photo 17 and 18 they found in the sitting room and photo 71 it is in the bedroom of the deceased where they were taken by the accused and he was pertinently asked, how was the condition of the deceased at the time when you arrived. He was shown photo 73 and photo 74 and he says photo 73 shows a duvet and that was covering the deceased, and this is where he saw three bullet holes on the said duvet.

I can make this comment now, although I am summarising the evidence. That duvet was perfectly laid. It was not dimpled to show that there was a struggle; it was just perfect with three holes on it. The bed around also was not trampled along, it was perfectly laid out, and the body of the deceased father of accused 1 was also lying, when it was first taken a photo of, without it being turned over. It was lying in a sleeping position, and the cartridges were found in front of the bed ...the two cartridges, and it appeared, according to Aphane, that the person who discharged the firearm was standing next to the bed, bam, bam, bam. That is where the cartridges fell, and the inference this Court will have to draw, if it is possible, is whether there was a struggle between the deceased and the alleged intruder or intruders. I will come to that

later.

Then he discovered also that photo 85 and 86, this is where the deceased laid on, and she explains that when you arrive there as the deceased was lying there were two remote controls on top of the bed next to the deceased's body ...two remote controls. They were there undisturbed. The deceased was facing the window in an Easterly direction as he was lying there and he is adamant that he saw a magazine and a bag which was containing live ammunition.

This was confirmed later by Alfonzo who says, his brother undertook to deliver these to Ndlalose but he never did until he himself had to take them. Then what was surprising about these magazines. One is loaded and the other was not loaded. That is the magazines.

The Court then asked a few questions in clarification. I asked him if he knew what a Kruger coin looked like ...asked Aphane. He says, well, he knows what a Kruger coin is, he has seen a Kruger coin. Then the Court asked Mr Weinstein and the defence, and Mr Ngodwane, but pertinently Mr Weinstein, can you comment what is the value of a Kruger coin because this Court thinks it can take judicial notice of the fact that a Kruger coin is valued between twenty plus to R50 000. Mr Weinstein agreed.

In other words, these intruders they left a twenty thousand worth Kruger coin in the safe, they never took it. There is a photo which shows that Kruger coin. Mr Ndlalose calls it a bracelet. Certain of these Kruger coins are not loose; they are used in a form of a bracelet. I have seen them. You solder the Kruger coin with a chain and you can hang it from your neck ...these rap stars ...hip hop stars, they like doing that, so it is not surprising.

Further, he was referred, that is Aphane, to paragraph 7 of his statement which refers to the contact details of Ms Lindiwe Sweetness Khumalo from the emergency medical services. She is the one who came and declared Mr Pasquale Pietropaolo dead and her contact details were there.

He was adamant, Aphane, that there was nowhere where it was broken into and that the only thing that we found were two cartridges inside the bedroom of the deceased. I do not think he realised the essence of the answer he was giving.

This Court can interpret that with hindsight because if he says there was nowhere broken into the only thing they found were two cartridges in the bedroom of the deceased. It means those cartridges were introduced by somebody within the walls of the house because there was nowhere broken into. It is either that person had a key, went in, shot the deceased, went out and closed.

Then Warrant Officer Ndlalose came, they showed him the cartridges lying on the floor. They took him to the room where they found the safe. They showed him the magazines and the bag containing ammunition and then they exited using the back door which you used when you got out. You go through the veranda at the back ...sunroom. This is what Sonja called it.

He was taken through his paces about how one fires a firearm. This Court is not going to comment on that because he says he is a policeman, he knows how you fire a 9mm pistol. Every other day he is at the rank, so what he is basically saying, a 9mm semi-automatic Parabellum cannot operate itself. It cannot just go off, pow, pow, pow. You have got to squeeze and press the trigger for it to go on. So in other words he is assuming that there is no possibility that the deceased's father of accused 1 could have killed himself. Meaning, he had to shoot himself three times in other words, bam, bam, bam. I will deal with that when I deal with the circumstantial evidence in the analysis.

He was taken through cross-examination and pertinently Mr Weinstein asked him, did you when you arrived ask the persons at the scene how they found the gate? Did they find the gate, that is the burglar gate in front and the wooden door closed or open?

Aphane says we asked them and they explained to us that the door was closed and locked.

He was pertinently asked, who explained that to you? Well, he says, it is the accused. In other words, the accused himself

says when he arrived there the burglar door and the wooden door were locked. That is the accused himself saying that. Now the question is, who gained entry and how did this person gain entry into that house? That is the million dollar question.

Then, did you ask how the accused and his brother, Alfonzo, had gained access into the house when they arrived at the crime scene, both of them, explain to us? That they had used the back kitchen door.

He was asked, did you inspect the back kitchen door? He says, yes, I was right next to that door. I inspected the locking

mechanism closely to see whether or not a person could have broken the said locking mechanism. He cannot recall how the mechanism worked but all he can say is that that door itself there were no signs of any forced entry there. There was nothing like even a scratch or that somebody had attempted to put a knife there.

It was put to him that the house was possibly ransacked and what he is testifying to is that you as a police officer, an assumption from that. He says though as I observed it was like as if somebody was looking for something, but one observed that there was no forced entry.

Now, inside the house there are two firearms that were taken. Now again, inside the house there are valuables but these were not touched. It does not happen occasionally that you could find a plasma television. He said it is not an old television set that is left in a scene like that. Actually here there were two plasma television sets. One small television set was in the bedroom of the old man and the other one was in the sitting room.

Mainly you would find that things are being taken out of the wardrobe, but not like in this case. There are photographs of the wardrobe which shows you the wardrobe in the bedroom of ...I think it is Alfonzo and also in the bedroom of the deceased's father of accused 1, the things are hung properly. There are items strewn around but in the wardrobe the items there are left properly hung.

He was asked, why do you think that somebody would steal two firearms and not the magazines and the ammunition, then it seems to me it is a surprise that you leave the magazine for the firearm, you will take the firearm that you are supposed to use with that magazine, but people like robbers or criminals they would not leave such things. To me it was a surprise.

He was adamant that he was told about the two guns being taken away by the accused and these were taken from the safe and the accused was adamant that the two magazines were inside the safe, also that 167 rounds of ammunition were also contained in the safe. And he says, Aphane, through his own experience as a police person there is a market for these things. There is a market for firearms. There is a market for magazines. There is a market for ammunition.

He was pertinently asked by Mr Weinstein, do you think that this person had time, meaning the person who had gained entrance into the house, although we do not know how? He says yes, I believe that this person had time. And you know what, M'Lord, actually this person is the one that fired these shots and he was inside the deceased's room.

Sonya Alvarez, that is the partner of Alfonzo, the brother to the accused. He says on 20 March they were staying together with Alfonzo and the accused and the old man. Before 20 March they had come there as from 15 January and he says everyday they get up and go to work. After getting ready they always leave, it is routine. They leave the accused and the old man behind and thereafter the accused would go and leave the old man behind. He says, previously on that day he overheard Alfonzo when he came across the accused in the corridor asking him, are you still here and the accused says, yes, obviously. Then they left and closed all the doors, closed the gate, got into the car. They use one car. He dropped Alfonzo at work. And he also says he did hear the accused telling Alfonzo that I overslept, and he said this was odd because normally Enzo leaves before us. 99 per cent of the time that is what happens.

Thereafter he got a phone call during the day to say that the deceased has been phoned several times by Susan, that they cannot get in, even the neighbour, so they started phoning desperately to see what could possibly have happened. She thereafter received a call from Alonzo, that was at half past 10, who said something terrible has happened.

Then she also went to the house. Alfonso was also taken there and he saw that there were clothes spread all over. They both went into that room, that is himself and Alfonso and daddy was dead in there. It was very emotional for them. The whole house was upside down. It looked like a robbery. Even their bedroom, all the drawers were upside down.

And curiously Mr Ngodwana asked her, any valuable items that were missing. No, no, no, not from us. Absolutely not.

That is Sonja's answer. The only thing I overheard was that the guns were missing from the safe.

Subsequently she received a call from Gumandi [?], that is the girlfriend of the accused here before Court. She was distressed and she asked her, do you know what Enzo has done, and this is subsequent. Then she said apparently Enzo had shot his wife. This was now in November.

She also testified that she heard that there were firearms taken at the time of the incident of 20 March and that one of the firearms was Alonzo's gun and the other was the father's gun. He says, he did not even know that these were in the safe.

She was taken under cross-examination. She stuck to her version but what is noteworthy is, when she was asked by the Court she says there are two doors at the back, one did not lock, it just had a little hook, and this is the door that leads you into the sunroom. The door which leads you through the kitchen, that door had a padlock and a key and you can lock that.

And what is critical, she says that door leading from the kitchen into the house itself at the back it is a metal door. And

apparently, this door which has a hook, you unhook it from inside before. You must unhook from inside so that you can get an exit because it does not lock. She is adamant that no, no, no.

She was asked by this Court, would you open it from outside? She says no, you cannot really open it. You need to open it from inside, and she says, that kitchen door, after you have unhinged ... unlocked the hook on the actual door, you gain entrance into the sunroom. That door when you go into the kitchen it was a metal door. It is locked. It has keys, and it was not damaged.

Then the front door is a wooden door but there is a burglar bar, meaning a burglar gate that closes the entrance. So before you can get to the wooden door you get to unlock the burglar proof gate and it gets locked. After opening it up you get into a small stoep, then you get the wooden door, and also that wooden door you have got to unlock it before you can get into the passage.

Ndlalose gave evidence also. Ndlalose confirms and corroborates the evidence of Aplane because when he as a senior police officer was called on to the scene he also took rounds of the perimeter of the house. He noticed that all the windows had burglar proofing except the back of the brick wall, which is high. Three quarters of the house is enclosed by electric fencing, and that electric fencing was not cut.

He was also shown the photo 44. He could identify a bag with live ammunition, not to the magazines, and he saw that the ammunition was live. He must have looked into that. He was also shown photo 50, this is the Kruger Rand, but he assumes it is a bracelet. Whether it is a bracelet or not or a Kruger Rand, it is a golden bracelet, or gold plated bracelet, or a brass plated bracelet. He can see it from the photo.

Then photo 65 he identified the plasma TV. He also phoned the pillows on photos 69 and 70, and he also identified photo 71, the deceased's cupboard. The sheet he refers to as a sheet, Aphane referred to as a duvet. When I look at the photos it looks like a sheet. The pillows are black, one is white, photo 68 and 69 and photo 73 showed three bullet holes which were fired through the white sheet. Then photo 75 shows two cartridges which were found on the side of the bed.

He says, he is thirty six years as a detective and when he observed the scene he concluded that the deceased must have been shot there with a pillow that must have been placed on his body and the person fired a shot from him. This sounds like speculation, but Mr Weinstein took him to task about, why would he say so, and he says he surmises that it is what could have happened because Mrs Kukta [?], the immediate neighbour whose house is ten to fifteen metres immediately next to the house of ...[machine off/on] ...she says she never heard any shots, so Ndlalose' summation or observation ...you can even call it speculation or conclusion, he says these were muffled shots. It means somebody must have put something like a pillow and shot through the pillow, that is why the neighbours did not hear any shots. I am not a firearm expert, but a 9mm Parabellum semi-automatic firearm when it is shot the sound is loud, and I am not saying that.

Van Rooyen, the neighbour of Emmanuela, says he was watching TV when he heard staggered shots, bow, bow, bow, bow. There was a lull, bow, bow, bow, and these is evidence in this court uncontroverted that these shots were fired from a 9mm semi-automatic Parabellum because the shots which were fired through the 9mm were linked to the death of the deceased, Emmanuela. Anyway.

And he says, he made inquiries, that is Ndlalose, from Enzo and Alfonzo, the two sons of the deceased, and they both told him they do not know what actually happened, and he says he could see that this is an inside job. The first reason why he came to this conclusion is the area itself.

They are having a high volume of crime in Rosettenville and in his view criminals cannot just take firearms and leave 167 rounds of ammunition and leave two magazines behind, because most criminals if they steal firearms they want to sell these firearms and they cannot even leave this ammunition behind because they want to sell the ammunition.

He was asked by Mr Weinstein, what did the safe contain? He says well, it ...[machine off/on] ... and there were jewellery boxes, money and Kruger Rands and ammunition, and also there was a magazine, and including there is a plasma TV, and he received information that one firearm belonged to the brother of the accused, that is Alfonzo. But Alfonzo himself says he made a report at the police that his firearm was stolen.

He, subsequently during November, was approached by some police and he received information that the accused before Court was actually

arrested in Brackenhurst and that he was accused to have shot his wife and that a firearm was used, and subsequently discovered that when he met Constable Maluleka, who was the investigating officer, he told him that the firearm which was used to kill or murder the accused's wife was Alfonzo's firearm which was allegedly stolen in Rosettenville on 17 March when his father was murdered.

He says he had to question the accused at Brackenhurst. He was questioned by Mr Greyling when he recalled Mr Ndlalose.

Ndlalose said he took a warning statement and he pertinently says the accused said he did not want a statement, but he [Ndlalose] went ahead and asked him certain questions. I am not going to repeat them.

That information is inadmissible because Ndlalose at no stage did he say he warned the accused of his Constitutional right in terms of section 35(5)(f) of the Constitutional. That is a right to be silent. He does not have say anything. If he says anything it may be used against him. That is very critical. So the answers given by the accused before Court and which were annotated by Ndlalose in the warning statement pro forma form are ruled inadmissible and this Court will not refer to them.

Ndlalose was taken through cross-examination. He stuck to his evidence, he never deviated from his evidence. He is adamant that after receiving the information from Aphane he asked the domestic worker questions. Susan said she did not get inside the house, she ended up at the gate. She pressed the intercom, there was no answer, then she went to the neighbour. The neighbour was also questioned. She also did not get inside the house. So the first people to get inside the house in actual fact was Alfonzo and the accused before Court.

He says he checked for blood around the pillows and there was no pillow, but the sheets where the deceased was lying there was blood and critically he says, the pillow had black gunpowder. I suppose he means gun resin.

When you fire a shot the explosion of the cartridge or the bullet forces out the projectile and during that the resin, which is gunpowder in a sense, gets emitted and it showers itself in the immediate vicinity from where the gun is fired. So in other words, the person who shot the deceased was nearby the bed. That is the conclusion he makes, Ndlalose.

He talks about the possibility of the sound of the firearm, which was muffled, because he says he walked around to establish whether the gunshots could have been heard from outside, so he was trying to establish the actual distance from the neighbour's house as opposed to how far it is from the premises where the crime scene was, and he says it was about a distance of fifteen metres.

When it was put to him that the neighbour must have heard the gunshots he says, no, the neighbour was pertinently asked whether she had a gunshot. She said no. Actually Mr Weinstein put it to him that a muffled sound of a 9mm firearm is very loud. Ndlalose agreed that is very, very loud. And then he comes with a proposition that it possibly could not be heard because the sound was muffled by superimposing a pillow on the muzzle of the gun.

Now this what Weinstein says. He said, he is surprised that the intruder would have stolen firearms but no jewellery and no money and no live ammunition and no two magazines. Can you think of a reason why that would have happened? Then he says 100 per cent. The criminals the first thing they target is firearms, ammunition, plasma TV's and money. They will not leave those things behind.

Then he was asked, can you think of a reason why they left these things behind? Then he says, it shows that there was no intruder from outside because these things were left behind, it was an inside job, that both doors were not forced open. I mean they even checked the roof, according to Ndlalose. We even checked the roof of any possibilities that maybe they might have got inside through the roof, or even the windows outside, but that possibility could not be established. It did not exist because everything was alright, it was okay.

And then of course he testified that even the Zimbabweans, and I am not saying it he, he does not even think the Zimbabweans could have got into that house because the first thing the Zimbabweans steal is clothing. He did not say that, in that area. And here no clothing was stolen. Properly prim and properly packed and thrown on the floor, which shows that even the Zimbabweans did not do this job?

Then he brought in a new aspect into the case. He says there was an alarm system in the house. Apparently when the accused's

father slept that alarm was activated and when the accused, Alfonzo and Sonja left he surmises that that alarm would also be activated

because why would somebody, according to him, have an alarm in the house and not activate it when he sleeps at night, why? It is a reasonable question.

And when all the other three adults have left the house and the old man is still sleeping why would he switch the alarm off, and there is also a panic button so if there is an intruder this panic button is activated. And when you sleep, he says, you arm the alarm.

Well if there is somebody in the house of course you disarm the alarm because you do not want the alarm to be tripping and be activated and that time the alarm is said to be passive, and he confirms that he was told by Alfonzo and Sonja, apparently, that they had left the accused behind when they went to work.

He also confirmed when they showed him photo number 6 that it is a steel door which is at the back of the kitchen, and photo numbers 7, 8 and 9 they showed him. That door you cannot open it when you are outside. It is locked from inside. He means, that is the door which separates the sunroom from the patio outside and from the kitchen.

He is adamant that the wires on the electric fencing were not nipped, the were not cut and he surmises that the deceased, the father of the accused, was killed or murdered between 8 o'clock and 9 o'clock in the morning because the domestic worker, Susan, says she arrived at 9:00, and the accused himself says he left after 8 o'clock that morning, meaning that the accused left between 8 o'clock and 9 o'clock, just before Susan came.

Now, if there was an intruder there he only had an hour to break in, search every room there ... there are about three/four bedrooms, take out all the drawers, open the safe, strew clothing and suitcases all around the house, shoot the deceased, lock again and vanish like the wind. He could not have had more than an hour, according to Ndlalose. Even according to the accused here he says he left after 8 o'clock that morning. It was put to him by Mr Weinstein, then the accused must be excluded as a suspect because it could have happened after he [the accused] had left.

Then police officer Ndlalose, he is a Warrant Officer, he says you know what, in a period of thirty years in my experience that could never have happened, never. It is an inside job. That is what he says. Then he says I found Constable Ntombela and Aphane and the family members were there, but when we searched the crime scene it shows that there was no intruder because both doors that were leading from outside into the house ...[inaudible: machine dragging] ...somebody was inside. It did not come from outside because if it came from outside it must have been forced entry.

Or the other possibility is, if he came from outside he must have had keys to the front burglar gate door. Then he must have had keys to the wooden front door, but also he must have had a padlock to the front door key ...padlock plus keys to the frame. The same story behind. You can only open the veranda door from inside, it is a hook, but you cannot open it from outside. You have got to be inside to unhook it.

So it means you must have been in the house, open the kitchen door to gain access on to the sunroom and you get to the sunroom door which has a hook. Then you unhook it, then you go outside, and this is what happened apparently because when Ndlalose and Aphane came the accused and Alfonzo had opened the premises.

It could not be Susan because she says she never went in. It could not be the neighbour because the neighbour never went in. There were some security guys there, they never went in. Alfonzo and the accused told Ndlalose and Aphane that they gained access through the back door, "they told him", and they could not have gained access ...the front door rather. They gained access through the front door. How they gained access, they must have had keys.

So logic dictates that either the accused or Alfonzo killed the deceased because they are the first to gain access. That question will have to be resolved by the further evidence in this case. I am just mentioning it on the probabilities of this case, and Ndlalose is adamant that there was no intruder because both doors, front, back, intermediate doors, they were not forced open.

It was put by Mr Weiner [Weinstein?] that well, are you saying you suspected that it was either Alfonzo or his wife or the accused who could be responsible for killing or murdering the old man? Then he says, as I have explained before, that is Ndlalose speaking, we suspected that this was an inside job. Definitely sure, and as a result all of them became suspects at the time. This is a reasonable policeman.

He does not say I did not suspect Alfonzo. I did not suspect Sonja. I did not suspect the accused. All three of them were suspected because they had access to the house, it was an inside job. Then thereafter through a process of elimination obviously they isolated the real suspects, and it was never disputed, Alfonzo and Sonja left the accused in the house.

This Court also to unravel this conundrum I asked the warrant officer. You say you became a detective in 1991. He says yes, and that is my experience and of the area itself. He has been stationed at Rosettenville, and then almost every day they receive three to four robberies and maybe one murder. Every day. Do they take clothing, these intruders? Do they take clothing, handbags, shoes, jackets, suits? He says normally they target plasma TV's. Then they target jewellery. And then he says they do not take clothes.

Then he says I am sorry, I am going to say what I am going to say. In most houses were you find that they employed Zimbabwean ladies that is where you will find that they take everything. When you arrive there you find that the domestic is a Zimbabwean, there are no clothes. Then they say, oh, this is a Zimbabwean job, the did the house robbery, but generally the intruders target jewellery, plasma's, money, guns, ammunition. They do not leave those things behind. Even Kruger Rands they will not leave behind.

And he actually says, I do not think they will leave a Kruger Rand behind, more especially that it goes for about £400. I did not say that, he says that. I said it is about R20 000. He says he knows they cost about £400 and they were in the safe and the magazines and the ammunition. Then he also says a 9mm Parabellum cannot fire itself.

Thereafter the evidence of Oliviera was led. He also is the one who received information about a shooting at 9 Iris Street,

Brackenhurst. He was part of the Community Policing Forum. He was told he had to look for a white gentleman driving a blue Toyota and this is what they transmitted to all the members of the Community Policing Forum. And of course subsequently after this information was processed he also took part in the search for this car which was apparently seen by Van Rooyen driving out of the driveway of the late deceased mother of Kevin and Craig.

He says subsequently he traced this car which was apparently being ...they were supposed to be told by the ...[indistinct] Flying Squad to proceed to a location where this car was spotted and shortly thereafter he did see this car and there was a gentleman whom he recognises as the accused trying to remove the registration plates of the vehicle as they approached.

He approached him. He did not offer any sort of argument. Thereafter the police immediately arrived and the accused was arrested. And he says, when the accused was interviewed by the police he was there and they searched the house, he was also there, and he saw when they found two 9mm firearms, one of them was dismantled. And he says curiously he noticed that the accused had packed his bags as if he was about to leave on a long journey and the machine was apparently washing the clothes that he was wearing. The police recovered these two firearms. One he says it was definitely dismantled, it is now common cause. He was taken through cross-examination.

What is important is that he surmises that when the accused was leaning towards the front of the vehicle he could possibly be removing the registration plates, but he cannot positively say that.

It was put to him that the accused was looking for his key, which he had misplaced or lost when he was getting out of the car. He came back to come and look for it in the front, so there is that possibility and he conceded that he was outside next to the car, that he was bending in front of the vehicle. He says he cannot dispute the version that was put to him but he finds it difficult to accept that, and this was a blue Toyota Corolla.

Then the next person who testified was Mr Calitz. He testifies that on that night, 13 November, he was at number 5 Iris Street in Brackenhurst. He heard a couple of gunshots. Then there was a pause and then he heard more gunshots after that. Then he went out to go and check what was happening because these gunshots sounded relatively close. Some people were running out of their houses to go and check what was happening. He says the pause between the four shots fired and the subsequent three or four shots fired was about ten seconds.

Then he proceeded because he saw the front gate open. When he got to the streets he looked and he saw a vehicle exiting and he thought this vehicle might be involved in the shooting, and then he tried to take down the registration numbers of this vehicle.

This vehicle went over a speed hump, not fast. He was driving gradually as if he is going out on a Sunday picnic. Then he drove to a stop street, parked or stopped. Then he ran to the house and there is a ...[indistinct] who came out to come and tell him that someone has been injured. He looks in the direction of the car and he took down the registration number.

He says he thought, even in the dark, that car is DT or BT 69 or 39. It is obvious he cannot catch the lotto, this guy, but he gave a description of a vehicle to the police and then he says you know what, in the statement which was put to him that he gave the registration number DT39 8V GP, he says yes, that is correct. And he says the colour because it was at night it looked like dark purple or blackish and it was a Toyota 86, he is sure about that.

Then the next witness was Kevin, the other son of the deceased Emmanuela and the son of the accused before Court. He confirms that he knows about the fact that Craig, his younger brother, was in the process of purchasing a vehicle which is a Corsa, and in order to do that he needed to sell the vehicle which was registered in the name of his father, and he is certain that the purpose of that father's vehicle were dropped on that particular day, and he imagines that the registration documents matched the new engine number because he is certain that the delivered papers matched the engine number and that his father put them in the box that morning.

He says this he was told through an SMS or a WhatsApp from his mother that the papers had been dropped off, and that evening she had shown them to him because he was assisting with the change of ownership of the vehicle. He says if these papers were delivered at any other time except in the morning the mother would have told him. She would have informed him on that. He says it is so that the mother was never happy that the father should come there without announcing himself, meaning the accused; that is why actually these papers were left in the post box.

He was taken through cross-examination. Nothing eventual eventuated.

The next evidence was delivered by the tracking expert, Mr Du Preez. He is an executive for Technical and Operations C Track Fleet Manager. They install elementary systems in vehicles, trucks, buses. For eighteen years he has had this experience of installing trackers or tachographs into motor vehicles. He says he has been rolling out these tracking units into South African Police vehicles. Around about 29 000 he was involved in rolling out.

He prepared a report regarding the movement of the motor vehicle to wit registration: DTV 38HV GP. It is the vehicle of the accused. This report was submitted and Mr Ngodwana advised the Court that this report was discussed with accused's

attorney, Mr Weinstein, so that in order to save time it was established that this vehicle of Mr Weinstein, can he tell the Court

from 8:22 in the evening, that is on the day of 13 November when Emmanuela, the mother of Keith and Craig and the wife of the accused

before Court was murdered. Then he referred us to page 8 of ...[incomplete].

Then he says on 13 November he used the projector which was before Court to describe the movement of this vehicle, which is referred to as the C Track movement report. So this was actually seen by this Court. It was displayed in this court how it functions, and he says you can see that this vehicle which belonged to the accused at 8:22 that evening it was driving near Bel Air Drive, driving at eighty six kilometres per hour.

This machinery is primed to report and update the movement of a vehicle every two minutes. Then this vehicle proceeded to Henie Albert Street in Meyersdal, Alberton. It went through the same street and then ultimately it is in ...[indistinct] Street in Brackenfell, and then it was driving around there and then subsequently went to Mispel Street. And at 20h40 it was in Iris Street. This is where the deceased, Emmanuela, lives, and it was driving at thirty seven kilometres an hour.

Then the vehicle went back to Henie Street and then it was stationary for a couple of minutes and then the ignition was switched off, meaning it was fully stationary. Then at 21h14, close to half an hour later, the vehicle started up at the same location where the ignition was switched off in Henie Albert Street. It proceeded again to Iris Road, Brackenhurst, driving slowly at two kilometres an hour.

At 9:18 the vehicle came to a stop in Iris Road in Brackenhurst and the ignition a minute later was switched off, meaning that the vehicle was stationary. Then there was no movement on the vehicle. Twenty seven seconds later the ignition went off, meaning that the vehicle was now stationary close to two and a half minutes.

Then after two and a half minutes it was again turned on, the vehicle, but it was still stationary until 9:20. Thereafter it started moving from the location where it was switched off to ... [indistinct] Street. Then it proceeded driving to Marlborough Street near Klip River Drive and then it proceeded. And then about a couple seconds ago it proceeded. Again it proceeded around to High Street in Rosettenville. Now this is where the accused lives, and there it was stationary for a couple of seconds near Oak Street, Oakdene. It proceeded driving along and it was actually switched off later. Then almost 10:36 that evening it went to Carrie [?] Road.

What is important about the movement of this vehicle is that at 9:20 ...9:18 it was at Iris Road and it was at the time when Van Rooyen who was watching TV, he says after 9:15 plus. He was watching TV when he heard the shots.

Now at that time the vehicle through this tachographs was right there at the vicinity. So in other words, this report places the accused's vehicle at 9 Iris Street at around about the same time that the shots were fired which killed the deceased. This is scientific evidence, it is not guesswork.

During cross-examination the accuracy of this machine was not put into any doubt. This gentleman says he has fitted about twenty nine thousand vehicles with this device which tracks the movement of motor vehicles, and he explained that it is done through the ages of an internet connection. It is not like you throw bones like the Sangoma's do. This device tracks the vehicle through internet connection.

I am satisfied that Mr Du Preez is an expert. Even his expertise was never put into any doubt and consequently that evidence, as I say, was never disputed.

Thereafter the State closed its case and Mr Weiden [Weinstein?] launched an application for a discharge in terms of section 174 of the Criminal Procedure Act. He argued for a discharge. That application was refused and this Court wrote a judgment and it was delivered on 14 March 2019.

Then Mr Weiden said he was going to take this judgment on review to the High Court. This Court gladly said please do. That was never done. This case was postponed I do not know how many times for the papers to be drawn. One reason was we were going to brief a senior counsel. Another reason was the senior counsel is not available; we are going to get another one. Countless reasons were given, but in the final analysis this section 174 judgment was never taken on review and the matter then resumed.

When it resumed apparently the instructions of Mr Weiden, he was fired by the accused, who then decided that he is going to represent himself and I warned the accused that this is a very, very serious case and he knows, as explained to his lawyer at the beginning of the trial which was ascertained by this Court, that if he is found guilty of any of the murders, that is the murder of his wife, or the murder of his father, there is a possibility that if he is convicted he may be sentenced to life imprisonment. Despite that he said no, he wants to think the matter over. I mean the matter was postponed again and again and again.

Sorry, I forgot to mention the dates. This judgment was delivered on 14 March and then it was again in court because I surmised that the accused's attorney would need to apply for the record and bring the application and brief counsel, as he says, so it was postponed to 22 June. Thereafter it was postponed to 3 August. Thereafter it was postponed to 7 August. Thereafter it was postponed to 30 October, 4 November. 12 November. 29 November. 11 November, before then. 4 September, before then. 9 September, before then. Then it was postponed to the whole of several dates in 2019.

Then I was advised that counsel is not available, can we postpone it to 17 March 2020, then counsel will draw the papers. In the final analysis that never happened and subsequently Mr Weinstein advised this Court that his instructions were withdrawn.

The accused then told this Court that he will instruct the Legal Aid Board. Then the matter was postponed for the accused to instruct the Legal Aid Board. It was postponed for another lengthy period to enable the Legal Aid to obtain a record of these proceedings.

Subsequently the records of these proceedings were prepared. I was reading from them here, and it was subsequently handed over to the accused and the accused then fired his Legal Aid Board attorneys because he was adamant that he wants to represent himself after having consulted with Legal Aid. That is before Mr Greyling came into the picture.

Then I postponed it twice for the accused to be certain that he is clear and thought through this decision of his that he wants to represent himself. I think he postponed it on three occasions. Then he said, no, he is adamant that he is going to represent himself.

Then the accused thereafter being told that, well, if that is exactly what he wants to do despite the warnings given to him by this Court he may proceed. Then he launched an application before this Court, acting for himself, that he wants to withdraw the section 112 statement and he also wants to withdraw the section 220 statement.

These two statements referred to the plea of guilty in respect of the charges with an explanation that the accused shot at his wife after the wife had spewed hate speech against his girlfriend, calling her the “C” and the “K” word, and he was overtaken by a violent storm.

Without thinking he discharged his firearm, meaning that the defence now, which he was proffering to this Court was the defence of automatism, which basically means that he was not cognitively aware of what he was doing. He suffered from cognitive disassociation in the mind. We read some of us about people who sleepwalk. A guy who sleepwalks and goes out, takes a stroll in the garden. Twelve midnight he comes back and then he sleeps, and then when you ask him what were you doing in the garden last night he says when, he cannot recall. So the accused was basically saying he does not recall how he fired the bullets at his wife. He just got into this violent storm ...its influence. He fired nine bullets he does not recall.

With all the resultant noise from a semi-automatic 9mm Parabellum he fires nine shots, and then people like Van Rooyen and people like ...I think it is Calitz, they hear the shots but he is next to his wife, he does not hear those nine shots, and the people there are able to say they were staggered shots of four, five and then there was an interval which was about five, ten seconds, and thereafter four, five shots were fired.

Then this Court after listening to argument from the accused he also said that it was not through his own volition that he signed the section 112 statement, neither was it his own volition to sign the section 220 admissions. His attorney never explained to him what the result would be if he signed those documents and what the consequences would be. He was never advised of his legal rights. He was never even shown. No document was shown to him, like this Track C recording of Mr Du Preez.

The post-mortem was never shown to him. The post-mortem of his wife and the post-mortem of this father was never shown to him. The photos were never explained to him. There are about 110 photos here and there is another 50 photos. All these photos were never shown to him. If they had been shown to him he would never have agreed to sign those statements.

Now this Court pertinently asked him if he understood the contents of the statements. He said yes and that he signed the same

voluntarily, yes. And he also says his attorney was actually hopeless in short, he never assisted him. There are even

witnesses when he read, for instance, the docket and also read the contents of the docket and read the questions asked by his legal

representative, Mr Weinstein. He realises that he did not put or pose pertinent questions regarding the instructions, which he [the accused] had given him to ask.

Consequently he was not properly and fairly represented, that is why he wants the Court to accede to his request that the section 112 report and the section 220 admissions should be withdrawn.

This Court went out of its way to tell the accused that in terms of our law section 220 admissions can never ever be withdrawn. After you acceded and acquiesced to the section 220 admissions and you have signed and the Court has ascertained from you whether you understood what you were signing and you say yes, and that it was done freely and voluntarily, you say yes. You cannot now renege and say I want this to be withdrawn. So I quoted to him.

This Court went out of its way to go the library and I got him two cases relation to this ... [indistinct] that in terms of *S v Rautenbach* and *S v Bello*, two cases I gave them to him and I read them out here in court to show him that in terms of these cases it says, even if your attorney or advocate is so useless that he cannot spell his own name ...[machine off/on] ...stop him during the course of him reading that 112 statement or the 220 admissions statement, you cannot be heard afterwards to say I did not agree to those because you are listening, like he is listening now to what is being read on your behalf.

So the authorities say that that cannot be done unless in very extraordinary circumstances. This Court has once acceded to

such an application where an accused person says this attorney was speaking Afrikaans to me and I am Zulu speaking, I did not understand

a word what he was saying, and there was no interpreter. I had to say to this attorney, yes, yes, without understanding fully.

But to give him the benefit of the doubt, even against SCA decisions this Court acceded to that application.

But in this instance here Mr Weiner is a very experienced attorney. I mean he was here for about one and a half years, close to two years, representing the accused. He even launched several applications. He is an experience attorney, he asks reasonable questions. This Court with the experience this Court has I am satisfied that the accused was properly represented during the time of Mr Weinstein and the application was accordingly dismissed.

Thereafter the accused then decided, oh, now I want to be represented by an attorney. Then we gave him another opportunity. I do not know, three months, ninety days, to again consult with an attorney of his choice. He actually said he is going to enlist a private attorney.

Subsequently then he said, well, he thinks he will enlist the services of a Legal Aid practitioner and Mr Greyling then made an appearance before this Court to say that he is instructed by the accused through the Legal Aid Board to represent him.

Then this case was again postponed because his instructions, which I had previously heard from the accused, he wanted to recall all the witnesses who had testified to again be subjected to cross-examination because according to him Mr Weinstein did not properly cross-examine these witnesses, and that happened through the ages of attorney counsel Mr Greyling, sorry, when he called all

the witnesses which the accused wanted to be recalled, all of them. Secude, Aphane, Ndlalose, Craig, Kevin, Kenneth Mathebula, Nkosi, the photographer, and these questions which the accused had said Mr Weinstein never posed to the witnesses were, I take it, after consultation after with Mr Greyling, were put to the witnesses and these questions have been summarised, and I can tell you after going through these questions, through all these witnesses, nothing startling was revealed. They stuck to the evidence which they had given before this Court.

So in short, the accused cannot claim or say that this Court never acceded to any of the demands he made. So Mr Greyling

posed all the questions to all these witnesses and they took an oath and re-answered all the questions which were posed and extrapolated

from the record of the proceeds because Mr Greyling already had the full record of the proceedings. And all the evidence of the accused was obviously traversed of all the witnesses as testified to by the witnesses.

Thereafter the accused closed his case and Mr Greyling and Mr Ngodwana then argued the matter before me. And further, the other side must take this Court made in respect of the evidence is that the accused leaves first. 99 per cent of the time the accused will leave first and then Alfonzo and the partner, Sonja, will follow.

What was peculiar is that on this particular day the routine was turned around. The accused remained because he said he had overslept and then Sonja and Alfonzo left, but as previously testified when they reached he corridor, that is Alfonzo, he was surprised to see that the accused is still around and the accused gave him the explanation that he overslept, so as a result they left first on that particular day and they were followed thereafter by the accused who says he left at about after 8:00.

So I say Secudu's evidence relates mainly to the fact that when the accused was arrested he was present. It does not take the evidence any further. Then that concludes the evidence which was adduced in the case.

Mr Ngodwana argued that the State has proven its case beyond all reasonable doubts in respect of all the charges and that the evidence

of the accused is not reasonably possibly true and that it must be rejected as a fabrication because he has proffered different versions to this Court and that he must be found guilty on all the charges.

Mr Greyling argues that the version given by the accused is reasonably possibly true and that he is entitled to the benefit of the doubt in respect of all the charges and that he must be acquitted.

In our law the State has the onus to prove the evidence of the accused to be not reasonably possibly true. Meaning, when you reverse the submission or the contention it means that the state must prove its case on each and every charge which it has proffered against the accused beyond a reasonable doubt.

Meaning that the State must proffer evidence or must adduce evidence which is so couchant that any reasonable person listening to that evidence, especially a Court which has analysed that evidence can come to the conclusion that that evidence is cogent, it is reasonable, it is credible and it has married, and that taking all the evidence which adduced by all the witnesses before this case that I cannot be argued that the accused's version which he proffers in this court it is reasonably possibly be true, and that does not mean that the accused has got to tell the truth, as long as the evidence he adduces in this court is reasonably possibly true he is entitled to the benefit of the doubt and he must be acquitted.

But the test is the evidence which the accused must proffer or testify to comes after the State has presented its evidence, it is not the other way around. The State must first present its evidence and it must be of such credible cogency that it can be argued that the State has managed to prove its case beyond a reasonable doubt.

There are several cases which this Court can refer to. The test is encapsulated in the decision of *S v Meyden*, *S v Mbuli*, *S v Lubaxa* and this regards whether the State has made out a case after the State has closed its case.

This Court has listened attentively to the evidence adduced by the State and I will start firstly with the section 112 statement made by the accused after having pleaded not guilty to all the charges.

This Court finds that the accused made that statement in terms of section 112 freely, voluntarily, without compulsion and that it was intentionally made.

So when he says in that statement that he [the accused] shot his wife with the 9mm Parabellum semi-automatic and that he did so because his wife had spewed racial insults against his girlfriend who happens to be of Indian descent, and that he [the accused] lost his equilibrium mentally and suffered from a mental storm which compelled him to shoot his wife and discharge the firearm against his wife without premeditation, without having plans, without having thought about it.

In other words he is saying he is invoking the defence of automatism, as I have said, meaning that he suffered from intellectual and cognitive ...[indistinct] he did not know what he was doing, he only realised afterwards what he did.

This Court rejects that defence and finds that the accused deliberately knew what he was doing. It was premeditated because the evidence is that he went to the premises, number 9 Iris Street in Brackenhurst allegedly to deliver the transfer documents of the ownership of the vehicle which Craig, his son, wanted to sell in order to buy a Corsa.

Now two witnesses, Craig and Kevin, gave evidence to the effect that their mother, the deceased, informed them that these documents were placed in the post box in the morning of 27 November. And what is more, the deceased informed Kevin through WhatsApp or an SMS to that effect, meaning that there was no valid reason whatsoever which compelled the accused to go to his wife at that ungodly hour, 9 o'clock or past 9, and fit in those documents in the post box as he alleged. There was no necessity for him to do that.

Subsequently, the accused when he gave evidence he recanted that he himself had gone to the premises of his wife at that particular time in order to put the change of ownership documents into the post box and that he shot his wife. He denies it in the version he gives before Court and says he was lying, that is his evidence. He said I was lying. And when he was asked by this Court why were you were lying. He says, well, he does not know what conceivable reason impelled him to lie, but that is not correct, it never happened, he never shot his wife.

I give two versions under oath before this Court. The first version, he has signed a statement to the effect that he shot and killed his wife. The second version, he denies having done that and he says he was not telling this Court the truth and he cannot explain why he did not tell this Court the truth when he said he had shot his wife, and he cannot give this Court any cogent explanation why his attorney could have written a statement, which his attorney must have got instructions from him to say and allege that information in the 112 statement to say that he is the one who shot his wife.

But there is further evidence through Du Preez, through the tracking device which records that about eighteen minutes to twenty past 9 on that particular day when his wife was shot dead or murdered, his motor vehicle was at the vicinity. So he is place at the vicinity by scientific forensic evidence which is tendered by an expert with years of operating this tachograph machine through which he was able to track the roads on which the motor vehicle of the accused had travelled.

But Van Rooyen also gave evidence that he is a neighbour of the deceased, Mrs Pietropaolo, that he was watching TV, and that after 9:15 ...around about 9:20, he heard these shots being fired from across the road. They sounded as if they were fired from his own house. There was about nine shots. Four or three were fired initially with a staccato rhythm and there was an intersperse period when the firearm was not activated, and thereafter five or ten seconds it was again activated and the deceased, Mrs Pietropaolo, was shot dead.

Further, there is evidence by Calitz who also heard the shots being fired at about the same time and they gave chase and tried to trace the motor vehicle which was seen exiting out of the complex in which Mrs Pietropaolo, the accused's wife was shot dead. They traced the motor vehicle and they got information that it was traversed the highway. They traced it right up to the place where the accused stays, so it was a question of less than twenty minutes to be exact that it was established where he stays.

There is also independent evidence when the girlfriend of the accused before Court went to the complex where he stays looking for the accused after the girlfriend had independently received a confession through a WhatsApp from the accused that killed and he is going to jail.

She went to go and confirm from the accused whether this was in fact correct. The security at the gate, according to his girlfriend,

told the girlfriend that, yes, this gentleman he is not here, he has been arrested. For what? For having shot his wife.

So the denial by the accused before Court that the section 112 statement was inadvertently made because of the incompetence of his attorney, it cannot cut ice. It cannot be true because there is other independent evidence which was adduced in this court which corroborates the murder by himself of his own wife.

There is physical evidence in the post-mortem report that the wife died of multiple gunshot wounds and the accused himself says he emptied nine bullets into the wife's person. He says that. And the accused himself signed a section 220 admission statement wherein he admits that his wife died as a result of multiple gunshot wounds and that the post-mortem which was performed on his wife and the findings of the post-mortem are correct, and the findings are that the wife died of multiple gunshot wounds, so that is also independent evidence which proves how the wife died, and this independent evidence is admitted by himself, the accused.

He later tried to recant but he was advised by this Court which found that in terms of the decision in *R v Rautenbach* and the decision in *S v Bello*, once a person has made section 220 admissions he cannot renege or resile from them.

The accused therefore in this court has not offered any reasonable cogent credible version which answers the question, who shot and murdered the deceased's wife of the accused.

In any event, there is another set of independent evidence which links the accused to the murder of his wife. The firearm which was used to kill and murder is wife, the ballistics conducted in the ballistic laboratory of ballistics in Pretoria links the bullets which were pumped into the body into the body of Mrs Pietropaolo to the firearm which was found in the possession of the accused.

The accused himself gave evidence that these two firearms, one was dismantled and one was not dismantled. The one which was

dismantled he did not take it to the police when his father was allegedly shot at and murdered in March 2007. His evidence is that after the police had left he [the accused] found two firearms in between two bags. He did not hand in these two firearms to the police, and when the Court and the prosecution asked him why did you not hand the firearms to the police, because according to you, you do not who killed your father and you knew that this matter is under investigation. I mean this is a gentleman who is sixty three years old now, and you knew that your father died as a result of bullets being pumped into his body.

Now here you find two firearms which could possibly be linked to the death of the person who shot your father. There could possibly be fingerprints which are on the firearm which he retrieved from the floor in between the two bags. Possibly if his version was reasonably possibly true that he does not know who killed his father, how can you get rid of that evidence?

He stays seven months and twenty four days being in possession of the firearm which he used to kill his wife. He does not hand it over to the police, and it was fortuitous that he was found by the police in possession of that firearm, because remember, after using it on his wife he drove away trying to get away and the community protection forum was fortunate to give a description of the car which was eventually followed up by Calitz and company and they eventually traced the accused right into the complex in which he lives, and they did not know where the accused lives. They just traced him because of the complex in which they found him as they were following the motor vehicle, and he came out of the vehicle. He does not deny that they found the firearm in his possession. He does not deny. They also found the dismantled firearm in his possession. He does not deny that.

The accused admitted the photos which were taken on the scene by Nkosi and these photos conclusively showed that there were two cartridges which were found at the house in Rosettenville, which shows that the old man, his father, was shot at.

But these other photos in relation to the death of his wife also show that when the wife was shot she was inside the house, not at the door as he wants to make this Court believe that the wife pushed him out. The wife was shot inside the house and this Court has to find ...[indistinct] that the accused shot and killed the wife after planning and premeditating the death of the wife by shooting her.

It is not like it is a spur of the moment thing which happened which pushed the accused, as he says there was a storm which engulfed him which made him to be cognitively dissociated with his brain and intellect and he acted like a robot and just shot the wife, because after shooting the wife he had the presence of mind to make a getaway. I mean ...[indistinct] to get away, and Calitz says when he got to the complex where the accused stays he had a suitcase packed. He wanted to make a getaway. He wanted to evade justice.

So consequently then this Court believes the evidence of Aphane, Ndlalose, who came onto the scene ...now this is the death of the father, who came on to the scene after the father was killed, that there was no entry which was forced from outside. No entry at the doors at the back, the doors in front, around the windows. The electric fence was not cut. This was a planned inside job. You can see even the way the disarray was organised of the clothes inside the house. This was an improvised, planned crime scene.

This alleged intruder does not take a bag containing 167 rounds of ammunition. He does not take the magazines which were found.

One magazine was fully loaded, the other one was not. They do not even take the two 9mm Parabellum semi-automatic pistols, one belonging to the old man and one belonging to Alfonzo. They do not even take it, because according to the accused the police did not find it. The intruder never found these two firearms. The police, all of them, they searched but they never found the firearms. He is the one who found the firearms. He does not take the firearms to the police, he keeps them.

When he is asked why you did that he says that is the most stupid thing I have ever done, I do not know why. No, that explanation is not reasonably possibly true; he is lying, because he used one of the firearms to murder his wife.

What intruder comes in and does not take a Kruger Rand which is spewed on the floor. He does not take the two firearms. He does not take the bullets. He does not take the Kruger Rand. He does not take the jewellery. Alfonzo says the jewellery was divided between the accused and himself. They do not take the clothes. They do not take the television set. There is no breakage whatever to speak of in the house at Rosettenville High Street.

The accused himself cannot point out to any forced entry except to tell us that one time his father once broke a window in the front wooden door. He broke one of the panels of the window because he had forgotten the key inside that enabled him to contrive and open that wooden door.

But you see the joke is, you cannot get to the wooden door because before you open the burglar gate, and that burglar gate is always locked when Alfonzo and Sonja left. They say they locked the burglar gate, so whoever gained access to the house could not do so without the key to the burglar gate. Neither could he do so without the key to the door. Neither could he do so without unhooking from inside the door which is attached to the sunroom ...it gives you access into the sunroom. Neither could this person gain access to the kitchen door from the sunroom which gives you access into the kitchen, and that is a metal door.

So to get into that house you had to jump that high wall. There was no indication that that high wall was traversed, or you had to dismantle or cut the electrical fencing. There is no evidence whatsoever that that happened. Or you must gain entry through one of the windows, but all the windows have burglar proofing, and no burglar proofing in any of the windows was either bent or cut.

Some of the evidence we listened to in court, these intruders they normally come with jaws of life. They will cut even the burglar proofing. Use a grinder. Use a spanner. Use something. Here nothing, nothing. There is no scratch on the perimeter of the premises, nothing. There is double garage doors which are opened by a remote. This has not been disputed. Even those there is no proof that anybody could have gained access through them because Alfonzo's wife and himself say they operated them. In any event, Aphane says he found two remote controls which opened access to the garages on the bed of the father.

Ndlalose has thirty years' experience. He is a Warrant Officer with thirty years' experience as a detective in the same area. He says when he inspected the premises he and Aphane ...Aphane came to that conclusion first without discussing it with Ndlalose that this is an inside job. These intruders who break into a house and take nothing worthwhile, they took nothing worthwhile. They did not even take the guns. That the evidence is, which is undisputed by the accused, these guns Alfonzo testified to that, his gun was kept by the old man in the safe and the old man kept his gun in the safe, and the old man kept the key. He is the only one who could access the safe, unless of course you kill him and you take the keys and this the evidence ineluctably show that this is what happened, and this is evidence which is the only reasonable inference out of all inferences, the only one.

In this case see R v Blom 1939 which says:

"If there is circumstantial evidence the inference which is drawn by the Court must be the only reasonable inference."

And this is what this Court is drawing. The only reasonable inference is that nobody got inside that house. The person who killed the deceased was inside the house. It was an inside job as related by Aphane and also related by Ndlalose. Ndlalose even went to an extent of looking at the room man. The only thing he did not do was to dig six feet down below the foundation. He even looked at the roof, no entrance.

Now the deceased must have been killed. This is the evidence, either by Sonja and Alfonzo, but they left before the accused on that particular day, so the accused was only left in the house with the old man. The other person who could have killed the old man is the old man himself. I mean this is ridiculous actually. It means the Court must find that the old man shot himself three times. I do not know how you do it because he was lying like a baby, so that possibility is also discarded because it cannot be reasonably possibly true because even the evidence of the accused himself is that that firearm was not inside the house, because he [the accused] found the firearms outside of the passage between two bags, so it leaves only the accused.

The accused's evidence is I left at past 8, and the other evidence by Susan is that he came there when Ndlalose asked her. He was there at 9 AM, and this is the time when he started phoning around, so Ndlalose was correct when he says the deceased was killed between 8:00 and 9:00, and the evidence without a shadow of doubt shows that he was killed by somebody who was inside.

So this evidence ineluctably shows beyond any doubt, and the State does not have to prove its case beyond any shadow of doubt, just beyond reasonable doubt. But here this Court can find that beyond any doubt and beyond all doubt it is the accused who killed his father. The evidence points to that.

And also, beyond any doubt and beyond all doubt it is the accused who killed his wife, and the Court can also find that beyond all doubt it is the accused who is guilty of trying to intentionally and unlawfully tried to evade and interfere with the course of justice, and this he did by dismantling the firearm. Why would any sane person dismantle a firearm unless you want to hide

evidence, so this Court can safely find that beyond all reasonable doubt he intended by keeping these firearms to make himself guilty, to attempt to defeat or obstruct the course of justice by dismantling the firearm. I can give him the benefit of doubt whether he intended removing the registration numbers on the front of his vehicle when he was found by Calitz. It is reasonably possible that he was looking for a key, although it does not make sense, but this Court, as I said, even if he lies as long as those lies are reasonably possible true this Court has got to accept that version.

It is possible, as argued by Mr Weinstein, that he was looking for this key in front of his vehicle, fine. But the dismantling of the firearm is definitely defeating the ends of justice, and he also admits he did not have the right to possess Alfonzo's firearm. He did not have the license to possess Alfonzo's firearm.

He also did not have the right to possess his own father's firearm. He never had the licenses for both, so he makes

himself guilty of possession of two firearms without having a license. And he also did not have the license to possess the

ammunition, which was fired from those firearms, so he made himself guilty of the possession of at least nine rounds of ammunition which was in one of the magazines.

Even the State does not have to prefabricate and try and say which ammunition was fired from the firearm which killed and murdered his father, and which ammunition was used to kill and murder his wife. The fact that he is the one who had the firearm which he shot through and discharged with his father's death a minimum three bullets and it is not his firearm that he used, because if it was a licensed firearm I am sure he could have given it to the police.

Consequently he is guilty of being in possession of that firearm, and he is also guilty of being in possession of a firearm which is not his which he utilised to discharge ammunition which rendered and killed and murdered his mother, and the same argument pertains to the firearm which he used, although it is ballistically linked to the firearm which he used, and I take it that is his father's firearm. It does not matter whether it is a dismantled firearm or his father's firearm which he used, but the point is, one of the firearms was ballistically linked to the bullets and the cartridges which were discharged on his mother.

So he makes himself guilty of possession of at least nine rounds of ammunition in Count 5, and in Count 4 he makes himself guilty of the firearm with a serial number 1441985. And in Count 2 he makes himself guilty of robbing his father of the firearm, one 9mm Parabellum calibre FN model Browning semi-automatic pistol with serial number T19668, which was the property in the lawful possession of and belonging to Alfonzo who had entrusted this firearm to be cared for by the old man, and this Court finds that it is obvious that he intended to deprive Alfonzo of his firearm. He actually says that in his statement in terms of section 112, and this was intended to rob and take by force out of Pasquale Pietropaolo, his father, that firearm because he was in charge of it.

This Court also finds that the accused killed his father when he was sleeping. There is no indication that there was a struggle

inside the house, none whatsoever. The most cruellest thing a son can do to his father is to kill his father who is aged, ninety years. He could never even have offered any resistance. Kill the father in his sleep. He has not taken this Court into his confidence to tell us why he killed the father. Be that as it may, the circumstantial evidence ineluctably shows and proves that he killed the father.

Consequently he is found GUILTY AS CHARGED ON ALL THE COUNTS because as I say, all the evidence, the photographs, the ballistics, the evidence of all the witnesses is accepted by this Court, and the version given by the accused in respect of all the charges is found not to be reasonably possibly true. But, in his own 112 statement he admits certain of his offences.

Consequently he is found GUILTY AS CHARGED.

MOKGOATLHENG, J

JUDGE OF THE HIGH COURT

DATE: 23/07/21

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