

SOUTH AFRICA / JUDGMENT

S v Williams and Another (CC74/2021) [2025] ZAWCHC 148 (27 March 2025)

[2025] ZAWCHC 148

COURT

Western Cape High Court, Cape Town

BEFORE

Da Silva Salie

CASE / FILE NUMBER

CC74/2021

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IN THE HIGH COURT OF SOUTH AFRICA

(WESTERN CAPE DIVISION, CAPE TOWN)

REPORTABLE

Case number: CC74/2021

In the matter between:

THE STATE

versus

BRENT CLAYTON WILLIAMS

Accused 1

REAGAN DAVIDS

Accused 2

Coram

: Da Silva Salie, J

Written Judgment delivered

: 27 March 2025

Counsel for the State

: Adv. Evadne Kortje

Counsel for Accused 1

: Adv. Nel

Counsel for Accused 2

: Adv Omar Arend

JUDGMENT DELIVERED ON THURSDAY, 27 MARCH 2025

DA SILVA SALIE, J

Introduction:

Fajr – the Sunrise Prayer and the events around 4am on 31 January 2020:

[1] Fajr is the sunrise prayer[1], one of five daily prayers in the religion of Islam, performed by worshippers throughout the world. Shortly after 4am during the summer months, Muslim worshippers in the Western Cape pray the morning prayer, as the sun rises at that time of the year. As devout Muslims, 75-year-old Mr. Hashim Ahmed Dennis (“Mr. Dennis”) and his wife of 47 years, 70-year-old Mrs. Kulsoem

Dennis (“Mrs Dennis”), got up to prepare for the daily sunrise prayer. They each commenced with the taking of Wudu, the cleansing ritual necessary before performing prayers. Whilst her husband was preparing this ritual washing in the bathroom, Mrs. Dennis was seated on their bed, reciting passages from the Holy Quran[2] before they would pray Fajr at 4h30 that day. As would be the daily norm, she had earlier opened the sliding door to their self-contained flatlet at 6 Conifer Close, Northpine, a well-known routine so that her daughter or grandchildren, who are resident in the main house, could join them or pop in. From behind her she heard the voice of an intruder who with brutal force attacked her by hitting her head, neck and chest area with a gun. She hailed, “Allahu-Akbar” (God is Great) with every inflicted blow until she hit the floor.[3] Severely injured and in shock, she lay on the floor, pretending to be dead as her burqa (headscarf) fell softly over her face and she kept her eyes closed. She could hear shoving noises in the room as it was ransacked and as her husband returned from the bathroom, he too was also mercilessly assaulted by the intruders. When it quieted down, she got up and found her husband on the floor, deceased, bleeding from various stab wounds.

[2] Shortly after 4h00am on that morning, Mr. Brent Williams (“Williams”) is captured on the CCTV surveillance cameras, driving his bakkie towards 6 C[...] Close, the home which he shared with his wife, two children and his elderly parents in law, Mr. and Mrs. Dennis. He dropped off the two men whom he hired to confront his in-laws, giving them access through the front safety gate and door whilst he waited during this time at the nearby Caltex garage. Moments

after the savage attack, the two assailants are captured running back to the bakkie of Williams and getting in front next to him. The bakkie is captured with Williams driving away with his co-perpetrators seated in front.

[3] Ms. Ibtisaam Dennis, (Ibtisaam) the wife of Williams and the mother of their two children, called the police and her sister as she uncovered the home invasion and the attack on her parents. When she heard the sounds from her parents' bedroom at 4h18am, she made the harrowing discovery that the home had been invaded by two intruders, her parents had been attacked, and she narrowly escaped a similar fate by a knife when she confronted the intruders. In a quick-thinking action, she slammed the glass sliding door leading from the main house to that of her parents' flatlet and locked herself and her children in a safe space. Mrs. Dennis was hospitalized and made a slow recovery from a near death experience and substantial injuries. Police investigation pointed out her son-in-law, Williams, as the mastermind behind the attacks.

[4] This is the judgment of the trial which followed. Mr. Brent Williams was charged with Mr. Raegan Davids, appearing as accused 1 and 2 on the following (5) five counts:[4]

Count 1: Housebreaking with intent to commit murder read with the provisions of Sections 262 (2) of the Criminal Procedure Act, No. 51 of 1977.

Count 2: Robbery with aggravating circumstances read with the provisions of section 51(2)(a) of the Criminal Law Amendment Act, No. 105 of 1997, read with Part II of Schedule 2.

Count 3: Attempted Murder of Kulsoem Dennis read with the provisions of Sections 258 of the Criminal Procedure Act, No. 51 of 1977.

Count 4: Attempted Murder of Ibtisaam Dennis read with the provisions of Sections 258 of the Criminal Procedure Act, No. 51 of 1977.

Count 5: Murder of Hashim Ahmed Dennis read with the provisions of sections 256, 257, 258 and 276(1) of the Criminal Procedure Act, No. 51 of 1977, also read Section 51(1) of the Criminal Law Amendment Act, No. 105 of 1997.

[5] At the commencement of the trial, counsel for both accused confirmed that both their clients are aware of and understand the applicable prescribed sentences of life imprisonment.

[6] On 6 February 2024 both accused pleaded not guilty to all five counts.

[7] The accused tendered no written plea explanation but made formal admissions in terms of section 220 of the Criminal Procedure Act, No. 51 of 1977.[5]

[8] On 10 February 2025, shortly before the close of the state's case, accused 1, Williams, passed away and the trial proceedings continued against Davids, accused 2. For the purposes of this judgment, I will continue to refer to the late Mr. Brent Williams as accused 1 or Williams.

Facts not in dispute:

[9] The following facts are common cause:

[9.1] Accused 1, (Williams) was the estranged husband of Ibtisaam. She is the biological daughter of Mrs. Dennis and the late Mr. Dennis.

[9.2] Ibtisaam and Williams lived at 6 C[...] Close, N[.], B[...] with their two minor children. Her elderly parents lived with them at the same address.

[9.3] The marital relationship between Williams and Ibtisaam had deteriorated and they had been sleeping in separate bedrooms over the past 4 years. Ibtisaam had referred the disintegration of the marriage and complaints in 2019 to the Muslim Judicial Council (MJC). Marriage counselling had proven unsuccessful, and a hearing to terminate the marriage by way of Fasakh (termination of the bonds of marriage by judicial decree in terms of Shariah) was set down imminently for 13 February 2020.

[9.4] Mr and Mrs Dennis lived in a separate flatlet on the same premises at 6 C[...] Close.

[9.5] There were tensions in the home environment that led Williams to approach a colleague, Ms. Agatha Williams ("Agatha") to arrange for persons to invade and attack his in-laws in what he described as a way to "neutralize" his marital problems.

[9.6] In the early hours of 31 January 2020, Williams drove his two co-perpetrators in his red-maroon Isuzu bakkie to the vicinity of 6 C[...] Close.

[9.7] Mr. and Mrs. Dennis as devout Muslims, started their daily routine by waking up for the morning prayers at or around 4h00 am including opening the sliding door of their flatlet slightly.

[9.8] At approximately 04h20, the two perpetrators entered the main house and proceeded into the flatlet of Mr. and Mrs. Dennis.

[9.9] One of the perpetrators was armed with a firearm and demanded money from Mrs. Dennis.

[9.10] She was repeatedly struck on her face, neck and chest, whereafter she fell to the floor.

[9.11] She remained on the floor and pretended to be dead.

[9.12] When Mr. Dennis entered the bedroom on way from the bathroom, he was repeatedly stabbed by one or both perpetrators.

[9.13] Ibtisaam, who was in the main house, heard a noise emanating from her parents' flat and went to investigate. She discovered that there was unusually bright light shining from her parents' bedroom and that the sliding door leading to her parents' flatlet was wide open. Upon calling out what the person was doing there, another intruder rushed towards her with a knife in his hand, dressed in dark clothing with a beanie.

[9.14] She managed to swiftly close the sliding door leading to the main house. The perpetrator was unsuccessful in gaining entry to the main house. The two perpetrators fled the premises with two mobile phones belonging to the deceased and Mr. Dennis.

[9.15] Ibtisaam reported the invasion to the police and summoned their urgent attendance. Her mother received medical treatment at Kraaifontein Day Hospital for the injuries she sustained. The deceased, however, sustained fatal injuries and was declared dead at the scene of the crime.

[9.16] Minutes after the home invasion and attacks, accused 1 (Williams) collected the two perpetrators in his red-maroon Isuzu Bakkie, where he waited for them nearby. (Footnote [6])

[9.17] Williams was arrested on 20 May 2020 and on 21 May 2020 he made a statement to a commissioned officer in the South African Police Service.[7]

[9.18] Dr Shawn Omri Jacobs conducted a post-mortem examination on the body of the deceased and concluded that the cause of death was “multiple stab wounds to the body”. [8]

[9.19] Accused 2 (Davids) was arrested on 10 June 2020 but disclosed no alibi to the investigating officer.[9]

Facts in dispute:

[10] The following facts are disputed:

[10.1] Whether the person who accused 1 (Williams) hired and conspired to commit the invasion, robbery and attacks was accused 2 (Davids) along with an unknown perpetrator. Whilst Williams acknowledged that he had arranged for 2 people to invade the residence and confront his in-laws, he denied that he intended for them to be attacked, murdered or robbed. In light of the fact that Williams passed away during the commencement of this trial and the trial only proceeded against accused 2 (Davids) it is not necessary to make a finding on that aspect, save to the extent that I deal with it later in this

judgment.

[10.2] Whether Williams, Davids and the other perpetrator were responsible for the murder of the deceased, the attempted murder of both Mrs. Dennis and Ibtisaam Dennis and robbery of the two cell phones.

Summary of the Evidence:

[11] The State called 10 witnesses whilst Davids testified in his own defence. He called no other witnesses.

[12] Before I turn to summarise the evidence tendered by the state and the defence, I set out the exhibits which were handed in, marked accordingly and formed part of the record.

[12.1] Admissions in terms of section 220 of the Criminal Procedure Act, No. 51 of 1977, Accused 1, Brent Williams.

[12.2] Admissions in terms of section 220 of the Criminal Procedure Act, No. 51 of 1977, Accused 2, Reagen Davids.

[12.3] Post-mortem report by Dr Shawn Omri Jacobs.

[12.4] A photo album containing 124 photographs of the scene at 6 Conifer Close, Northpine by Constable Marvin Gregory Morris.

[12.5] Affidavit by Constable Marvin Gregory Morris regarding the collection of exhibits.

[12.6] Medico-legal report (J88) by Dr Marlon Willemse for Kulsoem Dennis.

[12.7] Medical report by Dr Disca Staper for Kulsoem Dennis.

[12.8] Section 212(12) affidavit by Sergeant Opperman, a data analyst.

[12.9] Section 212 affidavit by Warrant Officer Justin Edward Zimmerman, video surveillance footage and compilation of still photos.

[12.10] Statement by Brent Williams to Colonel Edward William Clark dated 21 May 2020.

[12.11] SAPS 14A of Brent Williams before the statement.

[12.12] A photo album containing photographs during the taking of the statement of Brent Williams by Constable Lubabalo Goniwe.

[12.13] Warning Statement

- accused 1, Brent Williams.

[12.14] Warning Statement

- accused 2, Reagen Davids.

[12.15] Section 212 affidavit by Sergeant Masixole Tumtuman, regarding the facial identification.

[12.16] Photo Identification parade by Captain Van Reenen with witness Ibtisaam Dennis.

[12.17] Statement from Ibtisaam Dennis dated 31 January 2020.

[12.18] Statement from Ibtisaam Dennis dated 11 February 2020.

[12.19] Affidavit by Brigadier Petrus Lodewikus Bergh.

[12.20] Annexure to the statement of Brigadier Petrus Lodewikus Bergh.

[12.21] Cellular phone screenshot analysis by Captain Charl Louw.

[12.22] Further admissions by Accused 2, Reagen Davids.

[12.23] Affidavit by Warrant Officer Rebecca Kimberley Francis-Pope, DNA analysis.

[12.24] DNA Reference Sample for Reagen Davids.

[12.25] Affidavit by Warrant Officer Rebecca Kimberley Francis-Pope, Comparative DNA analysis with the reference samples of the accused.

[12.26] Minute of the inspection in loco conducted by the Court on 12 February 2024.

[12.27] Affidavit by Constable Marvin Gregory Morris regarding the inspection in loco at 6 Conifer Close, Northpine with sketch plan.

[13] An exhibit containing all videos including video footage of the scene, CCTV surveillance footage, photo-identification parade and in loco inspection were stored and tendered into evidence on a USB as exhibit 1.

[14] The Court's inspection in loco was conducted at various locations: 6 Conifer Close, Northpine, Northpine Technical College, Caltex Garage (Old Paarl Road), the R300 cell phone tower and 1F Happiness Street, Wesbank (residence of accused 2).

The State's Case:

[15] The following is a summary of the evidence presented by the state.

The scene at 6 Conifer Close, Northpine, Brackenfell

[16] Sergeant Croy and Warrant Officer Krige

[16.1] The members are affiliated to the Visible Policing Unit at Kraaifontein. They are responsible for attending complaints, patrolling and general crime prevention. In the early hours of 31 January 2020, shortly after 04h00am they attended to the complaint. It was a 14 Alpha complaint which is the code that indicates a complaint which involves danger. Given their location at the time, they arrived within 3 minutes.

[16.2] Upon their arrival, an elderly lady opened the door, covered in blood. She was hysterical and exclaimed: "they hit him". They made their way to the flatlet bedroom and found her husband on the floor of the bedroom covered in blood.[10]

[16.3] The officers immediately checked around the house in search of the perpetrators, however, they did not find anyone. They reported the matter to the standby detective, Sergeant Rapiya, and other relevant police officers such as the provincial task team and paramedics were called to the scene. Given the injured state of the elderly lady and that the ambulance had not yet arrived, Sergeant Croy transported her and her older daughter to the Kraaifontein Day Hospital. The scene was guarded by the other attending officer, W/O Krige.

[16.4] W/O Krige testified that when they approached the front door at the scene, he noticed that the safety gate was open. There were no signs of forced entry. An elderly lady answered to their knocking, covered in blood and in a highly emotional state concerned about her husband. The bedroom which she led them to was in a disturbed state, with items strewn around and her husband lying in a pool of blood. On closer inspection, it was evident that he did not display any signs of life.

[16.5] It was reported to him by Ibtisaam as to what she heard and saw that morning. Ibtisaam was in a state of shock and became lightheaded.

[16.6] During the cross-examination of W/O Krige, he explained that Ibtisaam informed him that the person she saw coming from her parents' bedroom looked at her as if he recognised her. He further stated that she was shocked and traumatized from seeing her father lying on the floor.

The video surveillance footage[11]

[17] Constable Croy testified regarding the video surveillance footage that was collected from the scene and nearby areas which included video footage, and photographs of a vehicle (bakkie) with registration number CF 4[...] driving next to the Northpine Technical School on 31 January 2020 between 4h10 and 4h29.

[17.1] At 4:14 there are three people in the front cabin of the vehicle of accused 1.

[17.2] At 4:22 the relevant vehicle turns from the direction of Oregon Way into the direction of Coetzenberg Way.

[17.3] At 4:31 there is only one person in the front cabin of the vehicle turning in the direction of the Northpine Way.

[18] The CCTV footage collected from the surveillance cameras of the Caltex Garage (opposite the Shoprite warehouse in Old Paarl Road, Brackenfell on Friday 31 January 2020) depicts bakkie at 4h31 till 4h33. At 4:32 the vehicle exits the Caltex Garage and turns into Old Paarl Way in the direction of Brackenfell. At 4h38 the vehicle stops along Old Paarl Road (opposite the Caltex garage), and two persons are captured running towards the vehicle and getting in. One of the two people is taller than the other.

[19] The video footage evidence was not disputed by the defence nor the testimonies of the above witnesses. This Court accepts the evidence of both Constable Croy and Warrant Officer Krige as credible and reliable.

K[...] D[...]

[20.1] Mrs. D[...] testified via closed-circuit television.[12] She is 74 years old and was 70 years of age at the time of the incident. She was married to the deceased for 47 years. The couple had three adult children, S[...], I[...] and W[...]. On 31 January 2020, they stayed at 6 Conifer Close, in a flatlet at the back of the property. At 4h00am herself and her husband woke up for the morning prayer. She was sitting on her bed reading the Holy Quran, facing the window. The sliding door was to her left side, slightly ajar. She heard a voice asking her in Afrikaans: "Where is the money". As she turned around, she noticed that an intruder was nearly on top of her. The male person had a green scarf around his face just below the eyes. She said in Arabic "God is great" as he proceeded to hit her on her head and chest with a gun. He also struck at her with successive blows on the right-hand side of her head, hitting her ear and neck. She was unable to recall how many times she had been struck, but during the attack, she fell forward and onto the ground. She pretended to be dead.

[20.2] Whilst in that position, she heard things being thrown around in the room. As she was on the floor, with her eyes closed, next to the bed, she could not tell where her husband was. She remained on the floor for a while until everything became quiet, and she got up. She could not see how many people were in the bedroom because she had her eyes shut. She testified that whilst she was on the floor, she heard her daughter's voice followed by the sliding door of the main house being slammed shut.

[20.3] She got up and went to her husband's side. She saw the bed pedestal door opened and it was onto her husband's chest, which she pulled away. She saw blue lights through the bathroom window. Her husband was on the floor in a pool of blood, making no movements and she knew at that time that her husband was no longer alive.

[20.4] She left the bedroom and looked in the backyard but saw no one. She went to the fence using the swimming pool ladder to call out for help from her next door neighbour. Given her state of shock, she could not exclaim anything and got down from the ladder and went into the main house to look for her daughter.

[20.5] The sliding door was locked; she opened it with her set of keys which was still in her room. She moved towards the front door of the main house with keys in her hand to respond to the attending police officers. She, however, did not use her keys for the front door as it was unlocked, and the security gate was also half open.

[20.6] I[...] came from the passage door, and she could not speak. She began to cry unconsolably. After that, she was taken to the hospital. She was admitted to Tygerberg Hospital and due to her hospitalization, she was unable to attend her husband's funeral on the Friday afternoon. She was discharged the day thereafter, on Saturday, 1 February 2020.

[20.7] She was treated for sustained injuries on her head, neck, chest and right side of her face as well as a fractured breastbone and left rib injury. She also had an injury on her left index finger and was administered stitches in her right ear due to a perforation.

[20.8] She testified that she did not have a good relationship with her son-in-law, accused 1, referring to a previous disagreement.

Herself and her husband kept to themselves.

[20.9] She testified that as per norm, she went to the bathroom before her husband that morning to take Wudu (ritual cleansing) in time to do their prayer. Their sliding door would be unlocked and opened for I[...] to join them.

[20.10] The evidence of Mrs. D[...] was not disputed by the accused. This witness gave her an account of events in a truthful manner, she refrained from embellishing her evidence, testified only to aspects which she bore within her personal knowledge. I am satisfied that her evidence is credible and reliable and is accepted by this Court.

Ibtisaam Dennis

[21.1] Ibtisaam testified that she is 47 years old, resident at 6 C[...] Close, N[...]. She was married for 15 years to Williams. At the time of the incident, their two children, a girl and boy were aged 7 and 10 respectively. Williams and herself purchased the home in 2012 from her parents, the original owners. A flatlet had previously been extended for her parents to reside with them. The main house and the flatlet have sliding doors opposite each other approximately 3 metres apart, forming a small quad between the two sections. The one side of the interleading quad was enclosed by the windows of the main house and the other side opened into the back yard. Her older sister, Wiedaad stayed not far from their house.

[21.2] Both her and Williams worked for the City of Cape Town. Williams was a refuse truck driver/supervisor, and she worked as an administrative clerk. Both she and Williams contributed in different respects to the household and family expenses.

[21.3] She described her father as caring, loving, considerate and a devout Muslim. He was well-liked in the community. Her parents were the first residents in the area. She described the relationship between Williams and the deceased as relatively good. However, when Williams and herself had arguments, her husband would ignore her parents. Williams had a strained relationship with her mother, who had a protective relationship towards her grandchildren, something which annoyed Williams.

[21.4] The morning routine at home was that Williams left for work first. She normally wakes around 3h30/ 4h00 am for the first early morning prayer, whereafter she would pop in with her parents, get ready for work. Her parents would prepare the kids' breakfast before school and her father would then do the school run including taking them to madrassah in the afternoon. She testified regarding the marital difficulties as well as her diagnosis of breast cancer and surgery in

2016. The marital relationship had broken down over the years. Williams moved into their son's bedroom. Whilst he was initially supportive of her diagnoses, he later became disinterested, and their relationship completely disintegrated with brewing tensions. There were 3 sets of keys for the household, held by herself, Williams and one set in her parents' use.

[21.5] On 30 January 2020, she had supper with her children and her parents. Her father attended the evening prayer at the nearby mosque and returned around 21h30. She went to bed at 22h30, after locking the safety gate and front door. All doors and windows were locked. She did not hear her husband arrive home that time. His vehicle usually makes a noise when he arrives home, and this would alert her if and when he got home. She locked the sliding door of the main house, to which her parents also held a key to access. Neither Williams nor herself had a key to access her parents' flatlet.

[21.6] On 31 January 2020, shortly after a 4h00am alarm went off and just before the sunrise prayer time, she heard a banging noise coming from her parents' room. She was still in bed when she heard the noise again. Concerned, she walked towards the sliding door of her house to investigate. As the sliding door was open and the curtain pulled back behind the tie back, she realized that their home was being invaded.

[21.7] She armed herself with a knife from her kitchen. Her children had woken up by this time and came after her. She returned them to the bedroom but in order not to alert an intruder, she did not switch on the children's bedroom light. She put her children into her bedroom and although she was afraid, she continued towards the sliding door to see her parents. She saw the sliding door leading to her parents' flatlet, half open and saw the silhouette of a person through the net curtain of her parents' bedroom. The main lights in her parents' bedroom were on, instead of the usual bed lamp. It sounded as if items were being thrown around in the room and she could hear strange voices. She shouted in Afrikaans "Djy wat maak djy daar". (Translated as: "You, what are you doing there?"). After she shouted it again, a taller man exited from her parents' bedroom.

[21.8] Their eyes locked and he looked at her as if he recognised her. He leaped towards her across the small quad. She described that the man wore dark-coloured blue jeans, and a dark large check shirt with a jacket over it and had a beanie on his head until just above his eyebrows with a bobble on top. She saw his face, with big eyes, pointy nose, dark of complexion like features of a black adult male with no facial hair. Whilst she did not see any scarring, she recalled his face to look as if it had acne scars. He was a bit taller than her height of 1,63 metres and he had a lean build.

[21.9] The person was armed with a knife in his left hand. She saw something white like a cloth around the handle part of the knife and the blade protruding. She saw the person for a few seconds, moving towards her but she quickly closed the sliding door on what she recalls as his second step towards her. As she flipped the lever of the door down in a locking motion, the man appeared to be throwing himself onto the sliding door as if he wanted to break the sliding door. She still had the knife in her hand. She quickly closed the curtain so that the intruder could not see inside the house. She was frightened. Her children had come up from behind her to see what was happening and both were crying. She pushed them into her bedroom. She noticed that her son's bicycle had been moved from its usual position in front of the fireplace in the lounge, and her son asked her to safeguard his new bicycle. She took the bicycle and locked herself and her children in the main bedroom. She phoned 10111 and reported the intrusion. She contacted her husband, but there was no answer. She also called her sister, Wiedaad and her neighbor whilst remaining in the bedroom. She continued to hear thudding noises from her parents' bedroom including screams and the voice of her father which lasted 2 to 3 seconds and then it went quiet, with no sound or voice from her parents' bedroom. Her daughter cried, and they were afraid. Both her children started getting sick, with

a runny tummy and vomiting. When she heard her mother's voice, engaging with the police officers, she emerged from the bedroom and saw her mother bleeding from her head. The front door was open. She accompanied the police officer to her parents' bedroom where they saw her father, deceased, lying on the floor of his bedroom.

[21.10] She made several attempts to contact her husband as he was not at home at the time. His whatsapp calls went through onto ringing mode, but he did not answer notwithstanding repeated attempts. He also did not return home later that day, nor did he attend her father's Janaazah (Muslim burial) later that Friday. His behaviour and absence were conspicuous. She recalled threats that he made to her before the date of the incident and that he had previously stated during marriage counselling that he wanted her, the children and her

parents to vacate the home. She recalled him being very upset when the counsellor told him that a court would not evict them from the property.

[21.11] On the Sunday thereafter, the 2nd of February 2020, Williams arrived in his bakkie outside the house, opening the garage door. He was hungover with an unknown male. She called the investigating officer and reported that her husband had arrived at the house. Williams left shortly thereafter. This was the last time she saw him. She never spoke to him again nor did he contact their children. He was arrested some 4 months later, during May 2020.

[21.12] The only property missing from her parents' room was their two cell phones. She gave the police a description and an identikit of the intruder was compiled.[13]

[21.13] During her testimony, whilst explaining the areas depicted in exhibit D, she identified the knife[14] that accused 2 had in his hand when he came from her parents' bedroom towards her. She identified accused 2 by his sharp nose and large eyeballs. She was certain of the fact that he was the person who came towards her with a knife on that fateful morning.

Photo identification parade and dock identification by Ibtisaam in respect of accused 2:

[21.14] Ibtisaam testified that later during the investigation, when called upon to view the surveillance footage, she identified her husband wearing his lumo yellow municipality work t-shirt and his maroon vehicle, an Isuzu bakkie. She also participated in a photo identification parade; however, she pointed out another person as being someone similar to the person who had lunged at her with the knife. She explained that seeing accused 2 in person is more ideal and capable of her recognizing him than the facial photographs which were shown to her during the photo lineup. She explained that the black and white copies, the photographs of suspects as opposed to seeing them in person and her nervous state contributed to her not being able to identify one of them as accused 2. She also testified that she had not seen accused 2 before the date of the incident.

[21.15] She further explained that during the photo-identification parade, she was stressed, traumatised and worried about herself and her children. She was afraid that the perpetrators would come back to their house.

Critical evaluation of the evidence of Ibtisaam and caution rules relating to her evidence:

[21.16] In my assessment and evaluation of the evidence of this witness, I am mindful of several relevant factors. Firstly, much of her evidence was not disputed by either of the accused. In essence, accused 1 took issue with aspects relating to the breakdown of their relationship which is irrelevant to the issues at hand. Accused 2 denied that this witness could have identified him as the person who was present at the scene that morning and who had come to her with a knife. His counsel confronted her ability to identify accused 1 in the dock and aspects relating to his features which she did not mention in her statement or during the photo line-up. Whilst this witness was, in addition to the trauma of the loss of her dad and the attacks on that day, still clearly very upset and disappointed in the breakdown of the marriage in what can best be described as unresolved acrimony between herself and Williams, I did not find that the distraughtness in her marriage and unresolved emotional aspects towards her former husband detracted from the value of her evidence. Whilst she gave irrelevant accounts of the upheaval and discord in her marriage, I did not find that this in any way discredited her accounts of the events of that day and her observations. Whilst she is a single witness in various respects of that day, in particular the moment when she confronted the intruders, and the identification of the intruder as accused 2, I am mindful that she made detailed observations during the incident notwithstanding the stressful situation, which illustrate to this Court that she was alert and observant in the moments which unfolded that morning. She noted the exact time as 04h18 when she heard the disturbing noises from her parents' bedroom; she went to investigate and quickly realized that there must be an invasion in process when she approached the sliding door of her lounge on route to her parents' flatlet. She armed herself with a knife from the kitchen, returned and made further detailed observations.

The curtain of her lounge sliding door was pulled back and tied behind the curtain tie back, something which she was confident she had closed before she went to bed including locking the sliding door as usual. She also noted that her son's bicycle was moved from its usual position in the lounge and had been placed in the passageway facing the front door. She was immediately alarmed by the bright light, which was coming from her parents' bedroom, given that they would always just have a dim light glowing during the morning prayer time. She noticed that her parents' sliding door was more open than the usual ajar and she noticed the silhouette of a man through the sheer curtaining of her parent's bedroom. Whilst she stood at her opened sliding door, she called out to the person who she could see standing in her parent's bedroom and importantly testified that the person who stormed out of the opposite flatlet was a taller person as opposed to the shorter person whom she initially had seen. She noted that the person approaching her had a white cloth wrapped around the handle of the knife, which most likely was the white sock of the deceased which was later found blood stained in the garden close to where the knife was retrieved by police officers. She described the attacker as a man who was dark skinned, sharp nose, lean built and taller than her 1.63 metres height. She observed within seconds the type of clothing he wore, the colour of the clothes and the details of the beanie on his head. She stated in her police statement that she was confident that she would be able to identify the man if she were to see him again (Annexure S, paragraph 12 of her statement made on the

date of the incident.) Her statement reads: “I can identify the guy that I saw if I can see him again.” She described him as a tall African male. Whilst it is common cause that accused 2 is a coloured male, it is not in dispute that he is dark skinned and can be confused to be an African male. Counsel for accused 1 took issue that had the witness indeed seen his client on that morning, it is significant a fact that she did not notice or recall that he has a scar on his left cheek. I consider it prudent to deal with the strength of this argument and aspect.

[21.17] The witness did not switch on the light of her children’s bedroom which would otherwise have shone light on the quad. As per her testimony, she elected not to do so from inside the house to refrain from any alert to the intruders. It is most probable that the perpetrator who had run towards her, had he born a scar or other identifiable feature on the left of his face, it would have been overshadowed by the darkness of the bedroom window on his left. The light of the backyard and that coming from the flatlet would have been able to illuminate the right of his face as he is approaching the witness. Logically the left side of his face would not have been as visible to the witness standing opposite him.

The photo lineup identification parade pointing to another as the intruder:

[21.18] Photo lineup parades are considered more of a police investigation tool and approached by our Courts with caution, irrespective of whether a suspect had been pointed out during the photo lineup or not. The video footage of the photo identification parade was viewed in Court – marked as exhibit 1. This witness took a measure of time to try to do the identification and repeatedly expressed difficulty during the photo identification parade to recognize the person whom she had seen that morning from the photos. She also held up the images in front of her, a suggestion that she needed to see the person standing in front of her to be able to recognize him akin to the position she was in when she saw him that morning. She expressed to the police officer who administered the identification parade that she was not that confident of the recognition of the person as the intruder. She concluded the parade by pointing out to a different person, even though the image of accused 2 was amongst the images.

[21.19] In *S v Mpilo* 2021 (1) SACR 661 (WCC) at para 23 the Court, in dealing with criticism of identificatory evidence, stated the following:

“The appellant’s counsel criticized the identificatory evidence because the witnesses had not mentioned the features of the driver’s face which had caused them to identify him with the appellant. Now I know that points of this kind are often raised in criminal trials, but I am not impressed by them. It is often that a face presents itself with one, let alone two or more remarkable features. Nevertheless, human beings are highly adept at recognizing faces and voices. A constellation of multiple minor variations in standard facial features combines to make a facial appearance which in its own way is as unique as a fingerprint. The laborious process followed by identikit artists in teasing out from a witness the facial features of a perpetrator shows that people can readily match a face to a perpetrator without being able to verbalise a description.”

[21.20] The power to hold parades is vested in SAPS officials, section 37(1)(b) of the Criminal Procedure Act 51 of 1977 which provides that any SAPS official may make any person alleged to have been involved in a crime available for identification in such condition, position or apparel as the police official may determine. The Act and section provide the only legislative basis for the conducting of a parade, with certain rules which have been developed to ensure the fairness of an identification parade. These rules serve as guidelines to ensure the enhancing and reinforcing of evidential cogency of the parade. Whilst non-compliance with these rules will not affect the admissibility of the parade but rather have a bearing on how much weight the parade and the witness's identification carries. (See *S v T* 2005 (2) SACR 318 (E) para 16.) The primary goal of a photo identification parade is to obtain evidence of identity from eyewitnesses, helping investigators determine if a suspect is the person who committed the crime. Its value as evidence in the trial however remains a decision for the Court to make.

[21.21] Hoffmann and Zeffert in *The South African Law of Evidence* 4th edition: Rule 8 of the rules relating to identification parades reads as follows:

“The suspect and persons in the parade should be more or less of the same build, height, age and appearance and should have more or less the same occupation and be more or less similarly dressed.”

[21.22] It must be borne in mind that the identification in casu was a photo identification parade as opposed to a corporeal (live) line up. The photos did not and could not comply with the requirement that the suspects and persons in the parade be more or less of the same build and moreover with the same complexion given that the “photos” were black and white photocopies. It can hardly be said that the witness was afforded the opportunity to consider the complexions of their skins, an aspect she was specific about in her statements to the police. She also had an opportunity to note the perpetrator's build and height during the incident, however, with a zoomed in photo of each participant's face, fell short of allowing her to make an identification taking into account those physical features which she had observed in the moments when the perpetrator leaped towards her at the sliding door.

[21.23] An identification parade, including a photo line-up parade, does have its benefits in the administration of justice, however the quality of the parade must necessarily be a question of degree. I need to mention that it is unfortunate that an in-person line-up identification parade was not convened during the course of the investigation. This would have allowed the witness to see the full physique of the participants in the parade including their complexion, height, build etc. However, it is so that the parade was conducted during the Covid lockdown period in June 2020 with strict Covid protocols which had to be observed, and which I understand from the State's submissions was not possible during this time, hence the resort to the photo line-up. In any event, I cannot agree that the quality of this photo parade was of the required nature and quality that the outcome thereof can be compelling or telling. If anything, its outcome is in my view neutral and does not advance nor hinder the state's case and so too it does not advance that of the defence.

[21.24] I do not consider the photo identification parade as an aspect which detracts from the weight of this witness' evidence and the details to which she had testified. Additionally, her exclaiming at the intruders and slamming the glass sliding door is corroborated by her mother who testified that she heard her daughter's voice, and the sliding door slamming shut, which required her to open it with her own key when she went into the main house. Notably, the surveillance footage also depicts one perpetrator as being taller than the other, a fact which this witness had pertinently pointed out. It must be borne in mind that in her police statements as well as her evidence in Court, she maintained that she was able to identify the person who came at her that morning if she were to see him again. The photo line-up parade can hardly be considered as a reliable

opportunity for the witness to potentially "see him again".

[21.25] A photo, zoomed in of various faces, does not amount to seeing the person again in the flesh. A photo of a person's face is not three dimensional, it does not give the viewer an ability to view the person's full physical presentation, movement, gestures and facial movements more so a photocopy image. Whilst dock identification ought to be considered with caution, I am satisfied that considering several relevant factors set out hereinbefore and notwithstanding the required exercise of caution to her testimony, the Court can rely on her evidence as being credible, reliable and trustworthy in material aspects.

Agatha Williams

[22.1] Ms. Agatha Williams ("Agatha") testified that she was a colleague of Williams, and they also enjoyed a social relationship. She is a neighbour of accused 2, living diagonally opposite his residence and she knows him by two nicknames, "Madala" and "Kaffer". Accused 2 was familiar to her as she was a friend of his mother and that he would come to her house to look for his girlfriend, Ms. Latania Smith ("Latania") who would often visit her.

[22.2] During November or December 2019, Williams was looking for two guys to do a job for him. He initially created the impression that he was asking on behalf of a friend. She testified that one day, after Williams had dropped off all of their colleagues, she was alone with him in the refuse truck when he asked her if she knew a hitman to do a job for him. She understood that his reference to "hitman" was to do a murder. She felt strange and nervous about the enquiry. She observed him to be aggressive and serious during this conversation. This topic of hitman continued on another day when they were at work. He wanted one to sort out what he termed as his "huismense" (fellow residents). He did not specify to her who exactly from his home he was referring to.

[22.3] In the beginning of January 2020, she testified she was booked off sick from work when she introduced Williams to Davids at her home. Accused 1 was very interested in accused 2 in relation to the "job" he had for him. She informed accused 1 that his name was Reagan and that he was Letania's boyfriend. It however was of concern to her that Williams had such interest in accused 2 as the latter is a known gang member in the area. Her concerns intensified

as she saw William's vehicle a couple of times at the home of Davids after she had introduced them to each other.

[22.4] During the early hours of 31 January 2020^[15], around 2h45 to 2h50 am she received a phone call from Williams. The call was disconnected, and she was concerned. She called him back. Williams told her that he was fed up with the people at his house.

[22.5] Williams arrived at her house shortly thereafter, at around 3h00 that morning. He was there a short while, hooting outside. She went to speak with him, and he seemed to be intoxicated telling her that he could not take it anymore as his wife does not want him at home. He left in his vehicle. She saw him driving to the home of accused 2, resident opposite her.

[22.6] Williams did not arrive at work on Friday, 31 January 2020. She only saw him later that day when Williams, Letania and Kirk, her boyfriend at the time, started to drink together at her home. Williams looked withdrawn and emotional. He slept over at her place.

[22.7] The following day, Saturday, Williams took Letania and their daughters to Cloetesville. She phoned Williams later to enquire where they were and when they would be returning home. They arrived home later in the afternoon. She only saw Williams the Sunday morning, when both Williams and Davids were outside her house. Davids was searching for something in the front (inside) of Williams' vehicle. Shortly thereafter Davids drove away with Williams' bakkie but he returned after about an hour or so. They left for the beach.

[22.8] The evidence of Agatha connects Williams and Davids, with Williams seeking a hitman for a "job" in Davids and in particular to attack the residents of his home. Her account of events also portrays the events of the early hours of the date of the incident when Williams attended her home at 3h00 am and advancing to the home of Davids. She not only informs the Court that the two accused are known to each other, but also that accused 2 was sought by accused 1 as a hitman or to carry out the job as a hitman (murderer) for him which was of concern to her. Williams had also confided in her as to his frustrations with his wife and parents-in-law and the tensions at home in what he portrayed as highly unfair towards him. Shortly before the gruesome attack on the victims at his home, he shared with Agatha that he had reached his tethers end with him and went to the home of Davids, sometime around 3h00am on the morning of the incident supporting the evidence that accused 1 was one of the co-perpetrators

whom he had hired as a hitman and who dropped off and collected from the residence at 6 Conifer Close. Her evidence was not challenged by the defence. I am satisfied that Agatha was truthful in her testimony. I found her evidence to be credible, reliable and trustworthy.

Letania Smith

[23.1] Letania is the girlfriend of Davids and resided together at 1F H[...] Street, W[...]. Their home is diagonally opposite the residence of Agatha. They were both unemployed in January 2020. She testified that on 30 January 2020 she gave her cell phone to Davids and thereafter, before midnight she went to bed. Davids was still in possession of her cellphone. Whilst she woke up sometime during the night, Davids was still not in the room and he still had her phone. She was

asleep until she woke up shortly after 6h00am when she assisted David's younger brother to prepare for school. Her cell number was 074 331 7543. When she went to bed and at the time when she gave her phone to Davids, he was working on his vehicle in the yard of their home.

[23.2] When she woke up, the cell phone was on the pedestal next to her bed however Davids was not home. She assumed that Davids had placed in on her pedestal sometime during the early hours of the morning. She only saw him at 12h00 that afternoon on the Friday, 31 January 2020. He had money in his possession which he explained was from the sale of a cellphone. She did not use her cellphone in the early hours of the morning when the incident happened. The cellphone was in the possession of Davids. As to cellphone messages between her number and that of accused 1, she testified that the message sent to Williams on 20 March was sent by Davids after his release from prison.

[23.3] The evidence of Letania was not disputed by the accused save for the fact that during cross examination, counsel for accused 1 put to her that the cellphone was returned to her pedestal between midnight and 1h00am. On re-examination she maintained that she did not use the cellular phone during the early hours of the morning in question nor did she get any calls from accused 1 during that night.

Evaluation of the evidence of Letania:

[23.4] Letania testified in a manner which was logical and coherent, and I am satisfied that this Court may accept the evidence as credible and reliable. The upshot of her evidence is that her cellphone and cellphone number were in the possession and use of Davids during the early hours of the morning when this incident happened. Her evidence is corroborated by circumstantial evidence and in particular the cellphone evidence presented to her during her testimony and other cellphone evidence.

Cell phone evidence

Brigadier Petrus Lodewikus Bergh[16]

[24.1] Brigadier Bergh testified regarding his analysis of the communication between the cell phone numbers of Willaims, Agatha and Letania. This evidence illustrated that there was active communication between their numbers during the early hours of the morning of the date of the incident.

[24.2] This professional evidence was not placed in dispute. The cellphones of Williams and Letania (in possession of Davids as alleged by the State) at the time before, during and after the incident were also pingging off the same cellphone towers, illustrating that the two cellular phones / numbers were in the same location at the time of the offences. Cross-examination by counsel for Davids that it could be that pingging could be from towers far away, it was the evidence of this witness that during the early hours of the morning there is no cellphone congestion due to the limited amount of usage and as such would accurately reflect the pingging of nearby towers.

[24.3] This evidence was not disputed. I could not find that there is any basis to refute the strength of this evidence, the interpretation of the cellular phone evidence, the chronology and the value of the evidence to the events in question. The cardinal value of this evidence assists this Court in the exchanges between the numbers of the cell phones alleged to be in use by Williams, Davids and Agatha during the early hours of the morning of the incident and the location of the phones used by Williams and Davids. It was apparent that at the times during which the various calls were placed, it is clear that the two accused were in communication and after the communication ceased, the pinging of the 2 cellphones together from cellphone towers in the area implies that both accused were travelling together in the direction of the 6 Conifer Close, Northpine, the home of the victims and accused 1.

Captain Charl Louw[17]

[25.1] Captain Louw testified about the screenshots from the WhatsApp messages between Williams, Agatha and Latania which illustrate communication between the numbers intensifying up until the early hours of the morning of the incident.

[25.2] The evidence was not disputed, nothing substantial came from cross examination and I am satisfied that this Court can accept the evidence as credible and reliable.

Dr Shawn Jacobs:

[26.1] Dr Jacobs conducted the post-mortem examination of the deceased, in short, the deceased had suffered in excess of 9 penetration wounds, by a sharp object. Many of the injuries were fatal and caused by substantial force, causing fractures of the rib, including a wound to the left lung which was fatal. The force of penetration went through the thoracic spaces and penetrated the lung.

[26.2] The injuries, in particular that were inflicted on the chest and the left upper arm caused an excessive and speedy amount of blood loss. The cause of death was determined as multiple stab wounds to the body.

[26.3] The post-mortem report and testimony were not placed in dispute. This Court accepts this testimony as reliable and credible.

Sergeant Thandisizwe Rapiya

[27.1] Sergeant Rapiya is the investigating officer in the matter. He testified that the second perpetrator had not been located from his investigations. Davids did not give any statement as to his whereabouts on 31 January 2020[18]. Sergeant Rapiya testified how the investigation led to the arrest of both accused, Williams and Davids, as well as the collection of other evidence in the matter.

[27.2] The evidence was not disputed by the accused, and I am satisfied that this Court may accept the evidence as credible and reliable.

Formal admissions in terms of section 220 of the Criminal Procedure Act, No. 51 of 1977

[28] The following formal admissions were made by accused 2.

[28.1] That the deceased in this case was at all material times correctly identified as Hashim Ahmed Dennis and marked WC/14/0294/2020, being the person mentioned in the Indictment.

[28.2] Dr Shawn Omri Jacobs performed a medico-legal post-mortem examination on the body of the deceased.

[28.3] That the facts and findings as set out in the said post-mortem report, completed at the time of the examination are correct.

[28.4] That the findings related to the cause of death of the deceased as determined at the post-mortem examination and noted on the said post-mortem is correct. That the said post-mortem report can thus be accepted by agreement as exhibit C.

[28.5] The photographs 1 to 124 taken by Constable Marvin Gregory Morris of the scene at 6 C[...] Close, N[...], B[...] are admitted as correct. These photographs and the accompanying statement are admitted and may be marked as Exhibit D.

[28.6] That during the crime scene investigation conducted by Constable Marvin Gregory Morris at 6 C[...] Close, N[...], B[...] exhibits were collected and sealed in forensic bags, the accompanying statement about these exhibits is admitted as correct and may be marked Exhibit E.

[28.7] The video recording taken by Constable Marvin Gregory Morris at 6 C[...] Close, N[...], B[...] of the relevant scene, is admitted as correct and may be marked as exhibit 1 (USB flash drive containing all relevant video footage).

[28.8] That the injuries Kulsoem Dennis sustained are correctly reflected in the medico-legal examination report (J88) compiled by Dr Marlon Willemse, from Tygerberg Hospital, the contents are admitted as correct, the exhibit F refers.

[28.9] That the declaration by Dr Dusica Staper about the injuries and the medical treatment of Kulsoem Dennis are correctly reflected in the said declaration, the contents are admitted as correct, the exhibit G refers.

[28.10] That Davids was at all relevant times in a romantic relationship with Latania Smith.

[28.11] That during the course of the investigation of the matter, Captain Charl Louw obtained the detailed billing of the following cell number 061 [...] and that the information so obtained was correctly downloaded, handled, and not altered and thus a correct reflection of the activities on the said items for the relevant times.

[28.12] That during the course of the investigation of the matter, Captain Charl Louw obtained the detailed billing of the following other relevant cell numbers;

[28.12.1] 073[...] , the cell number belonging to Agatha Williams.

[28.12.2] 061[...] , the cell number belonging to Agatha Williams.

[28.12.3] 074[...] , the cell number belonging to Letania Smith

and that the information obtained was correctly downloaded, handled, and not altered and thus a correct reflection of the activities on the said items for the relevant times.

[28.13] That Sergeant Alrod Reagan Opperman, a Specialist Forensic Investigator and Data Analyst, stationed at the Operational Command Centre, Western Cape downloaded the following devices:

[28.13.1] Apple A1723 cell phone belonging to accused 1.

[28.13.2] Vodaphone Smart Tab 3g tablet belonging to Agatha Williams.

[28.13.3] Huawei VNS – l31 cell phone belonging to Letania Smith.

[28.14] The information obtained was correctly downloaded, handled, and not altered, and is admitted. The affidavit compiled by Sergeant Alrod Reagan Opperman is admitted as Exhibit H.

[28.15] That Captain Melvyn David Baardman obtained the following video surveillance footage during the investigation:

[28.15.1] SJS Security, video footage, and photographs of a vehicle (bakkie) with registration number CF 4[...] driving next to the Northpne Technical School on 31 January 2020 from 4h10 till 4h29.

[28.15.2] Caltex Garage opposite the Shoprite warehouse in Old Paarl Road, Brackenfell on Friday 31 January 2020, the relevant time when the vehicle(bakkie) with registration number 43046 at 4h31 till 4h33.

[28.15.3] Caltex Garage opposite the Shoprite warehouse in Old Paarl Road, Brackenfell on Friday 31 January 2020, the relevant time when the vehicle(bakkie) with registration number 43046 at 4h31 till 4h33.

[28.15.4] Caltex Garage opposite the Shoprite warehouse in Old Paarl Road, Brackenfell on Friday 31 January 2020, the relevant time when the vehicle(bakkie) with registration number 4[...] at 4h38 in Old Paarl Road,

[28.16] That video recordings are a correct depiction of the relevant times, and the authenticity thereof is admitted, and accordingly was marked as exhibit 1 (USB flash drive containing all relevant video footage).

[28.17] That Warrant Officer Justin Edward Zimmerman, a forensic analyst at the Forensic Science Laboratory: Western Cape compiled a report on the still images of the suspects as well as photo enhancement of the aforesaid video surveillance footage, the contents, correctness and authenticity of the affidavit and photographs are admitted as Exhibit J.

[28.18] That accused 1 was duly warned of his rights in terms of the constitution, and freely and voluntarily, whilst of sound and sober senses and without being unduly influenced made a statement to Colonel Edward Cark on 21 May 2020. The statement is admitted as exhibit K.

[28.19] That the SAPS 14A explained to accused 1 by Colonel Edward Clark is correct, the contents thereof are admitted as Exhibit L.

[28.20] That the photographs 1 to 37 taken by Constable Lubabalo Goniwe during accused 1's interview with Colonel Edward Clark at Kraaifontein, SAPS are admitted as correct. These photographs and the accompanying statement were admitted and marked as exhibit M.

[28.21] Accused 1 was duly warned of his rights in terms of the Constitution, and freely and voluntarily made a warning statement to Sergeant Rapiya on 21 May

2020. The warning statement is admitted as exhibit O.

[28.22] Accused 2 was duly warned of his rights in terms of the Constitution, and freely and voluntarily made a warning statement to Sergeant Rapiya on 11 June 2020. The warning statement is admitted as exhibit P.

[28.23] That the exhibits referred to in exhibit E were sent to the Forensic Science Laboratory with forensic seals intact.

[28.24] Warrant Officer Rebecca Kimberley Francis-Pope, a forensic analyst at the Forensic Science Laboratory: Western Cape compiled a report on the DNA analysis of the exhibits in paragraphs 4 and exhibit C, the contents, correctness and authenticity of the report are admitted, as exhibit X.

[28.25] That on 10 June 2020, Sergeant Rapiya completed a DNA reference sample collection kit from accused two, with seal number 19DBAQ5357, exhibit Y refers.

[28.26] That the reference samples collected for Mr. Brent Williams were correctly collected, handled, sealed, not contaminated or altered, and handed to the Forensic Science Laboratory with forensic seals intact.

[28.27] Warrant Officer Rebecca Kimberley Francis-Pope, a forensic analyst at the Forensic Science Laboratory: Western Cape compiled a supplementary report comparing the DNA analysis of the exhibits the contents, correctness and authenticity of the report are admitted, exhibit Z refers.

[28.28] The correctness and integrity of the DNA analysis at the Forensic Science Laboratory was admitted.

[28.29] Ibtisaam Dennis is the registered owner of a red maroon, Isuzu Bakkie with registration number CF4[...].

[29] That concluded the state's case.

Defence Case

Reagan Davids

- [30] After the close of the State's case, Davids elected to testify and called no witnesses.
- [31] He testified that he is 33 years old and lives at 1F Ha[...] Street, W[...]. He had been in a romantic relationship with Letania for ten years. He was a drug dealer by trade and had three guys working for him. He did not know accused 1 until they were introduced for the purposes of a business relationship by selling diesel on behalf of accused 1. He testified that there is a wooden structure as well as the main house. He shared a bedroom with Letania in the main house.
- [32] He confirmed that his nicknames are "Madala" or "Kaffer". On 30 January 2020, he was at home and used Latania's cell phone to listen to music. However, he placed her phone next to her bed shortly after 1h00am on 31 January
2020. He denied that he had any cell phone communication with Williams that morning. He testified that Latania woke up when he returned her cellphone at that time.
- [33] He testified that he slept in the shack and woke up the following day. He got his brother ready for school. He had money later that day and told a lie to Letania that he sold a cell phone in Bellville. He denied that he was taken to Northpine by his co-accused to break in and attack his parents in law.
- [34] Davids maintained that the extent of his relationship with his co-accused was for the purpose of him selling diesel on his behalf. He denied that he phoned or sent messages to Williams using Latania's phone.

Contradictions and adaptation of evidence

- [35] The accused only revealed during his evidence that he used to sell diesel for accused 1 and that they shared a business relationship to this extent. He only disclosed during his evidence that he was a drug dealer, thereby explaining that he had access to money. It was not put to Latania during her evidence that he having R1000 after the incident on 31 January 2020 was not as a result of him selling a cellphone in Bellville but that he had saved the money from the proceeds of his drug dealing business. It was also not put to Latania that he could not access her WhatsApp messages and that his use of her cellphone was exclusively for playing games and music. Latania was not afforded an opportunity to answer or respond to this averment and the claim only arose during the evidence of the accused. He also never disputed the evidence of Letania Smith

that she only saw him at 12h00 that afternoon of 31 January 2020. However, during his evidence he maintained that he was the person who got his brother ready for school that morning and not Latania and that he was at home and sleeping at the residence during the early hours of the date of the incident.

- [36] The accused was inconsistent as to what mechanical works he performed on his vehicle in the early hours of the morning of the incident. Whilst initially he indicated that he spent the night/morning until he went to bed working on his vehicle's CV joints, he later testified that he had been fixing the vehicle's carburetor.
- [37] He baldly denied that he had communicated with accused 1 on the morning of the incident and gave no explanation as to how this happened, as the phone was in his possession.
- [38] He also could not explain why there was a WhatsApp message sent from Letania's phone to accused 1 on 20 March 2020 in which the content of the message indicates that he is the author. As to questions from his counsel that others could have accessed his property and used the cellphone, he denied that this was possible, effectively closing the possibility of the cellphone being used by another person during the crucial hours of that fateful morning.
- [39] In my evaluation of the accused's evidence, I could not find it possible for anyone other than the accused himself to have communicated with Williams during the early hours of the morning. This is so as all other possibilities were clearly eliminated, leaving the use of the cellphone and number squarely in the hands and possession of the accused. The belated claim that he could not access her messages as it was password or code encrypted, was not put to Latania nor to the cellphone experts or the state witnesses who testified regarding the trail of cellphone communication. I am unpersuaded that he did not have the cellphone at the time, that the communication to accused 1 was not placed by him including the message to accused 1 on 20 March 2020.
- [40] The version of the accused was tailored as the proverbial shoe pinched. He adjusted his evidence so as to distance himself from evidence placing him in the company of Williams and that he was in contact with Williams during the hours leading up to the incident shortly after 4h00 am on 31 January 2020. Whilst he maintained that his only contact and interaction with accused 1 was for the purpose of him selling diesel on his behalf, he could not give a clear account of what that business entailed. He struggled to explain certain basic details which certainly he would have known of the diesel sales had that in fact been the connection between him and Williams. The accused made a poor witness, and on a conspectus of all the evidence, the version of accused is unsustainable and beyond reasonable doubt false. The version of the accused contained numerous contradictions, inconsistencies and improbabilities and is not reasonably possibly true. In the premise, it follows that it is rejected where it conflicts with the evidence of the state witnesses. I am satisfied that the State has proved the charges against the accused beyond reasonable doubt and that the accused ought to be convicted of the charges against him.

Discussion:

- [41] I agree with the state's submission that Ibtisaam's evidence on the identification of the accused is credible and reliable. Whilst she did not point him out in the photo identification parade, and as discussed above, she was consistent with her description of prominent eyes, a long or sharp nose, the description of complexion and a thinnish built. There was

sufficient lighting when she observed the accused. He came from a distance of 2.8 meters reducing in distance as he approached her and centimetres away from her face after she slammed the door. This witness did not simply stumble across a random incident, for she went to inspect the worrisome sounds in the room of her parents. By the time she had approached her sliding door, she was convinced that there was a home invasion in the process, that she went to the kitchen and returned with a knife to protect herself, her parents and her children. She kept a lookout to see what attack was inflicted on her parents. In *S v Basson and Fredericks* 2025 JDR 0704 (WCC) the court at para _30_ referred to eyewitnesses who can be classified as “altruistic eyewitnesses”. They are not merely witnesses at a scene who had been confronted with an attack or a crime in the process, but such a witness advance into the area of attack to preserve an interest/s greater than themselves, in this case, her parents’ well-being. She did retreat when she saw the attack unfolding on her parents, she remained at the sliding door and called out to the perpetrator who she could see through the curtaining of her parents’ room. In fact, she called out to the intruder twice and after her second exclaimed enquiry, a taller perpetrator advances to her from the bedroom. She slammed the door closed, keeping an eye on the perpetrator in the seconds during which this action unfolded. She did not simply identify the accused in Court as the person whom she saw that morning, but she gave a detailed account of his features, which accords with the features of the accused. Her identification of him does not stand alone, so to speak, as it is corroborated with various other details which she gave at the time of the incident in police statements and which to some extent accords with the surveillance footage. She testified that their eyes were locked when he came out of the flatlet and that as she pushed the sliding door closed, he proceeded to run into the glass door. However, his body banged against it, without breaking through the glass. In the confession by accused 1, he stated that the person who he dropped off at the residence that morning and whom he picked up shortly after the attack, asked him if the glass door was bullet proof. This corroborates the evidence of Ibtisaam that the intruder attempted to break the glass door unsuccessfully to launch his knife attack on her. A fact which only the attacker

could have known, in fact, minutes after the event. Whilst the confession of Williams that Davids was the person whom he had hired to invade the home on that morning cannot be used to implicate Davids, it is permissible to accept Williams’ statement that the person whom he enlisted to cause the invasion had shared with him that the glass door was impenetrable, corroborating the version of events of Ibtisaam and that she would have been up close to the intruder, with only a glass door between them.

Dock identification

[42] In *S v Bailey* 2007 (2) SACR 1 (C) it was held that dock identification is similar to the value of leading questions in evidence in chief. However, although dock identification is limited in evidential value, it is not inadmissible save in special circumstances. As discussed above, the dock identification does not stand on its own and follows a logical and coherent account of events and observations by Ibtisaam. I am satisfied that there is sufficient corroboration and accuracy to her description which supports the identification of Davids as the perpetrator.

Single witness

[43] *S v Sauls and Others* 1981

(3) SA 172 (A) at 180E-F

‘There is no rule of thumb test or formula to apply when it comes to a consideration of the credibility of the single witness. The trial Judge will weigh his evidence, will consider its merits and demerits and, having done so, will decide whether it is trustworthy

and whether, despite the fact that there are shortcomings or defects or contradictions in the testimony, he is satisfied that the truth has been told.’

[44] Ibtisaam is a single witness with regard identification of the accused. This witness testified in a clear, logical and chronological manner and notwithstanding lengthy testimony and cross-examination, she stood her ground and did not contradict herself. I am satisfied that notwithstanding the rules of caution to her evidence as both an eyewitness to the identification of the accused as well as her evidence as a single witness, her evidence remains satisfactory. Her evidence is corroborated by the cell phone calls between the cell number of accused 1 and Letania Smith’s, the statement of accused 1 and Kulsoem Dennis. Her identification of the accused was spontaneous and consistent and must be considered with her statements

to the police during the photo identification.

Evidence by the accused

[45] The proper approach to the evaluation of an accused’s version was tersely stated by Zulman JA in *S v V*, [19] as follows:

‘It is trite that there is no obligation upon an accused person, where the State bears the onus, “to convince the court”. If his version is reasonably possibly true, he is entitled to his acquittal even though his explanation is improbable. A court is not entitled to convict unless it is satisfied not only that the explanation is improbable but that beyond any reasonable doubt it is false. It is permissible to look at the probabilities of the case to determine whether the accused’s version is reasonably true but whether one subjectively believes him is not the test. As pointed out in many judgments of this Court and other courts the test is whether there is a reasonable possibility that the accused’s evidence may be true.’

[46] In my evaluation of the version of the accused, he gave an unfavorable impression during his evidence. His version of the accused cannot be reasonably possibly true in light of the evidence of Ibtisaam Dennis, cellphone evidence, video surveillance footage, the testimonies of Latania and Agatha, all of which create an ineluctable inference and web that the accused was the perpetrator at the scene and who committed the offences.

Circumstantial evidence and premeditation/planned murder:

[47] Counsel for the accused argued that the requirements for circumstantial evidence have not been met and in the result, it cannot be held that the only reasonable inference to be drawn from the proven facts are that the accused committed the offences in question. It begs me to deal with this argument in some detail. It is trite law that the interpretation of circumstantial evidence is the test enunciated in the oft quoted case in R v Blom 1939 AD 188:

[47.1] The inferences sought to be drawn must be consistent with all the proven facts. If it is not, the inference cannot be drawn, and

[47.2] The inferences sought to be drawn from the circumstances proved must not only be consistent with all the proven facts but that the proven facts should be such that they exclude every reasonable inference from them save the one sought to be drawn.

[48] As also stated in the judgment of S v Mashiane en Andere 1998 (2) SACR 664 (NC):

“The Court must not take each circumstance separately and give the Accused the benefit of any reasonable doubt as to the inference to be drawn from each one so taken. It must carefully weigh the cumulative effect of all of them together, and it is only after it has done so that the Accused is entitled to the benefit of any reasonable doubt which it may have as to whether the inference of guilt is the only inference which can reasonably be drawn. To put the matter in another way; the Crown must satisfy the Court, not that each separate fact is inconsistent with the innocence of the Accused, but that the evidence

as a whole is beyond reasonable doubt inconsistent with such innocence.” (My underlining)

[49] The following circumstantial evidence is relevant to the counts against the accused:

[49.1] Accused 1 met accused 2 after he looked for a hitman.

[49.2] Accused 1 was seen at accused 2’s house shortly after their meeting.

[49.3] Accused 2 communicated with accused one from Letania Smith’s cell phone.

[49.4] Accused 1 drove in the direction of accused 2’s house opposite after he left Agatha Williams at 3h00am on 31 January 2020.

[49.5] There was communication between the two accused before going to Northpine, however, their phones were pinging from cellphone towers along the route from Happiness Street to Conifer Close.

[49.6] Accused 1 is seen with two passengers driving towards Conifer Close shortly before the gruesome attacks at 6 Conifer Close.

[49.7] Accused 2 and an unknown person were dropped by the home of accused 1 and entered the premises with keys, which keys could only be that of accused 1.

[49.8] Accused 2 was dropped with his co-perpetrator armed with a knife and a gun.

[49.9] Whilst they accessed through the main house, they went directly to the flatlet through the lounge and sliding door of the main house at a time when the flatlet door was known to accused 1 to be open for prayer time after 4h00am.

[49.10] Kulsoem Dennis and the deceased were attacked, with the severity of the injuries to both indicative of the intent to fatally attack them. Although the television set was moved from the wall fitting and the bicycle moved, the intruders left only with cell phones given that they were disturbed and had to escape over the walls at the back as opposed to exiting via the front door through which they entered without force. Given Ibtisaam's entrance upon the scene and locking the sliding door, the intruders had to leave only with items which could be taken over the wall easily where they dumped the knife and the deceased white sock which was over the handle of the knife.

[50] The accused could not adequately explain the overwhelming evidence implicating him as the perpetrator and his bald denials that he was asleep at home at the time did not hold any water nor could it overcome the mounting evidence against him. The only reasonable inference to be drawn is that the accused was one of the perpetrators who broke into the house, having been enlisted by accused 1 in a premediated attack on the deceased and Mrs. Dennis, acting in concert with accused 1 and his co-perpetrator in the commission of the offences. I could not infer however from the evidence that the knife attack on Ibtisaam was premeditated, as when they entered, they passed her bedroom and went directly to launch the gruesome attack on her parents. The excessive infliction of injuries with a sharp object is indicative that the accused had the direct intention to murder the deceased. The attack on Ibtisaam, I conclude from the sequence of events, was directed in the moment when she came across them and attempted to intervene to protect her parents.

[51] *S v Trainor* 2003 (1) SACR 35 (SCA) at p41 para [9] the Court held:

"A conspectus of all the evidence is required. Evidence that is reliable should be weighed alongside such evidence as may be found to be false. Independently verifiable evidence, if any, should be weighed to see if it supports any of the evidence tendered. In considering

whether evidence is reliable, the quality of that evidence must of necessity be evaluated, as must corroborative evidence, if any.

Evidence, of course, must be evaluated against the onus on any particular issue or in respect of the case in its entirety. The

compartmentalised and fragmented approach of the magistrate is illogical and wrong.”

[52] When evaluating the proven facts, the circumstantial evidence is so overwhelming that there is only one reasonable inference in that the accused is guilty beyond reasonable doubt, and that the attack was planned and that he acted in common purpose with accused 1 and the second assailant. In determining whether I can draw an inference that the attack on the victims was planned, is evident from the facts of this case and the circumstances in which these crimes were committed. The facts herein are so peculiar and pointing to the fact that the commission thereof was well orchestrated, which required planning and insight so as to have caught these unsuspecting elderly victims off-guard and at a time when their morning routine was well known their son in law, accused 1. It is evident that these attacks were the result of a consistent plan which accords with the evidence of Agatha who testified that accused 1 and 2 met on several occasions prior to the incident. The entry into the home was with access and not forceful, and the flatlet was entered when it was known to accused 1 (shared with his co-perpetrators) that the two elderly victims would be awake for prayer and would have opened their sliding door as usual, from which the intruders could gain access.

[53] It follows that the accused committed the murder as per counts 1 to 5 of the indictment, and that the murder was planned or premeditated, acting in common purpose with Mr Brent Williams and the unknown perpetrator.

Order:

[54] For the reasons set out above, I am satisfied that the state has proven the charges preferred against the accused beyond reasonable doubt and that the onus upon it had been discharged. Wherefore, I find the accused guilty in respect of counts 1 to 5.

[55] In the result, I make the following order:

[i] Count 1: Housebreaking with intent to commit murder read with the provisions of Sections 262 (2) of the Criminal Procedure Act, No. 51 of 1977. – The accused is found guilty as charged.

[ii] Count 2: Robbery with aggravating circumstances read with the provisions of section 51(2)(a) of the Criminal Law Amendment Act, No. 105 of 1997, read with Part II of Schedule 2 – the accused is found guilty as charged.

[iii] Count 3: Attempted Murder of Kulsoem Dennis read with the provisions of Sections 258 of the Criminal Procedure Act, No. 51 of

1977. – the accused is found guilty as charged.

[iv] Count 4: Attempted Murder of Ibtisaam Dennis read with the provisions of Sections 258 of the Criminal Procedure Act, No. 51 of 1977 – the accused is found guilty as charged.

[v] Count 5: Murder of Hashim Ahmed Dennis read with the provisions of sections 256, 257, 258 and 276(1) of the Criminal Procedure Act, No. 51 of 1977, also read Section 51(1) of the Criminal Law Amendment Act, No. 105 of 1997 – the accused is found guilty as charged.

DA SILVA SALIE, J

JUDGE OF THE HIGH COURT

WESTERN CAPE

- [1] Fajr or Subh is the Arabic word for dawn, performed during the period between the appearance of dawn and the rising of the sun – “I am a Muslim” by Sheikh Abubaker Najaar published August 1994
- [2] The Holy Quran is the divine book or scripture of Islam
- [3] Muslims say “Allahu Akbar” when injured or in times of pain, injury or distress as a declaration of faith, seeking solace and strength in God in the face of hardship.
- [4] Indictment
- [5] Exhibit A, B and W
- [6] Exhibit 1
- [7] Exhibit K, L and M
- [8] Exhibit C
- [9] Exhibit P
- [10] Exhibit D, photo 60 to 65
- [11] Exhibit 1
- [12] In terms of section 153 of the Criminal Procedure Act, No. 51 of 1977
- [13] Exhibit Q
- [14] Exhibit D, photograph 121
- [15] Exhibit U and U1
- [16] Exhibit U and U1
- [17] Exhibit V
- [18] Exhibit P
- [19] S v V 2000
- (1) SACR 453 (SCA) para 3.

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