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REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA, GAUTENG LOCAL DIVISION, JOHANNESBURG

**CASE NUMBER:107/2016
DPP REF: JPV80/2016
ENNERDALE 215/08/15**

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| (1) | <u>REPORTABLE: YES / NO</u> |
| (2) | <u>OF INTEREST TO OTHER JUDGES: YES/NO</u> |
| (3) | <u>REVISED.</u> |

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DATE

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SIGNATURE

In the matter between:

THE STATE

and

CARLON LEBATIE

ACCUSED

J U D G M E N T

WRIGHT J

THE CHARGES

1. Mr Carlon Lebatie is a man in his mid-thirties. He is charged with a first count of murder, read with section 51(1) of Act 105 of 1997 in that he murdered Ms Tia Dollie on or about 22 August 2015 at or near a veld opposite [...] Dixon Street, Extension 9, Ennerdale, Johannesburg. There is no reference to section 51(1)(a) rather than simply to section 51(1). There is no allegation in the indictment or the summary of substantial facts that the murder was planned or premeditated. Given the conclusion to which I come below, nothing turns on the point.
2. The second count is robbery in that on or about 22 August 2015, at or near Extension 9, Ennerdale he assaulted Aubrey Stigling and took from him by force a computer modem. Count 2 makes no mention of aggravating circumstances nor is there mention of the Criminal Law Amendment Act 105 of 1997. Count 2 replaced the original count 2 which had alleged the murder of a foetus. This replacement, which happened shortly before the trial started, was by agreement.
3. Ms N Naidoo appeared for the DPP. Mr S Hlazo appeared for Mr Lebatie. The trial started on 8 February 2017. Mr Lebatie pleaded not guilty to both counts. He gave no plea explanation.

ADMISSIONS

4. Mr Lebatie made a number of admissions recorded by me as such under section 220 of the Criminal Procedure Act 51 of 1977 with the consent of Mr Lebatie. These admissions are contained partly in exhibits A, B1 –B9, C1 – C19 and D1 – D14. In short, it was admitted that Ms Tia Dollie is the deceased, she died on 23 August 2015 of strangulation sustained on or about

23 August 2015 at or near an open veld opposite Dixon Street, Extension 9, Ennerdale. It is not here admitted that the body was found in the veld opposite [...] Dixon street rather than simply Dixon street. I shall deal later with exhibit F in which the admission is made that the body was found in the veld opposite [...] Dixon street. The body of the deceased sustained no further injuries from the time wounds were inflicted on 23 August 2015 until the post-mortem examination was conducted. This examination, conducted by Dr Morule is correct. The autopsy and related admissions are contained in exhibit B. Exhibit C refers to two black cables and “*1 used toilet paper*” found by the police in the veld on the scene where the body was found on Sunday 23 August 2015 and contains photographs of the scene where the body was found. Exhibit D is a series of aerial photographs of the veld in question and some housing. I labelled as exhibit E a copy of a typed opening address by Ms Naidoo. Exhibits F and G, containing other admissions made under section 220 are dealt with below.

THE EVIDENCE FOR THE STATE AND FURTHER ADMISSIONS

5. Ms Roxanne Watson testified. She lives in 3rd Avenue, Ennerdale. She knows Mr Lebatie. They were friends. At about 11:15am on Saturday 22 August 2015 she was at home. Mr Lebatie and Kevin Pitt came to her house and the three of them smoked. Mr Lebatie was not himself. He was clearly under stress. Ms Watson, Mr Lebatie and Mr Pitt smoked on and off until about 8pm that night when Mr Lebatie and Mr Pitt left. At about midnight Mr Lebatie phoned Ms Watson on her cellphone from his cellphone. He asked Ms Watson if she had a pipe to smoke. She said yes. Mr Lebatie and Mr Pitt came back to Ms Watson's house shortly thereafter. She met them at the laundry window. Mr Lebatie looked for matches on the floor and then disappeared. Ms Watson asked Mr Pitt where Mr Lebatie had gone. Mr Pitt replied that Mr Lebatie had gone to steal a car. Mr Pitt then left. Ms Watson then went to her lounge window, looked out and saw Mr Lebatie pushing a car down the road. Mr Lebatie was then helped by Mr Pitt. The car was stolen from the same complex where Mr Lebatie used to stay. The two men pushed the car past Ms Watson's house. Not more than ten minutes later Mr Pitt arrived back at Ms

Watson's house. He was in a state and asked to be let in saying that Mr Lebatie was looking for him. Ms Watson's mother let Mr Pitt in. He sat on a mat and said that he and Mr Lebatie had been "*blomming*", that is Mr Pitt had been hanging out with Mr Lebatie and a pretty girl. Mr Pitt said that he thinks that Mr Lebatie had raped and killed the girl. Ms Watson told Mr Pitt that he is lying, saying to him "*you bogus me*". That topic was left there.

6. On Sunday, 23 August 2015 at about early evening Mr Lebatie phoned Ms Watson and asked her to meet him at the nearby graveyard, just one street away. The reason why Mr Lebatie wanted to meet at the graveyard was because he had stolen a car in Ms Watson's street and he did not want to be seen on that street. Ms Watson met Mr Lebatie and they went to a SPAR shop where he bought her a cold drink and a chocolate. They walked back along 1st Avenue. Ms Watson asked Mr Lebatie what girl Mr Lebatie was with the previous night. Mr Lebatie replied "*Tia*". Ms Watson asked "*Tia from Extension 3 ?*" Mr Lebatie replied yes. Ms Watson said to Mr Lebatie that Mr Pitt had said that Mr Lebatie had raped and killed this girl. Mr Lebatie replied, using the following or similar words "*God forbid. If something happens to Tia people will blame me*". Ms Watson understood this to be a denial.
7. Ms Watson spoke to Mr Lebatie about three weeks after the weekend in question. Mr Lebatie had been arrested for the murder of Ms Tia Dollie. He had not been arrested for or charged with the car theft or any other crime. He was in prison and he phoned Ms Watson. Ms Watson asked Mr Lebatie if he did it. Mr Lebatie replied that he had and that he does not know what was wrong with him. Both Ms Watson and Mr Lebatie knew and understood that they were speaking about the murder of Ms Dollie. As Mr Lebatie answered that he had done it Ms Watson put her cellphone on speaker. Apart from Ms Watson, Mr Lebatie's answer was heard by Ms Watson's brother Brent Watson, Brent Watson's girlfriend Laverne Lomborg and Mr Pitt, those persons being present with Ms Watson. Ms Watson did not record the conversation and her cellphone was subsequently stolen.
8. On 22 December 2016 Mr Lebatie phoned Ms Watson on her sister in law's phone. He asked her if she was going to testify against him. She said no.

9. Ms Watson had known Ms Dollie as having been in the same school as Ms Watson but in a grade higher than Ms Watson. Ms Watson did not know if Ms Dollie and Mr Lebatie knew each other or had any kind of relationship.
10. In cross examination Ms Watson readily conceded that what she, Mr Lebatie and Mr Pitt had been smoking on 22 August 2015 was mandrax and crystal meth. She denied that these drugs had affected any of them other than to make them “*jol*” and to make her feel “*hyper*”. Mr Lebatie was out of sorts on that day because of his wife having had an affair with a policeman.
11. Further in cross examination Ms Watson said that when Mr Pitt had come to her house ten minutes after he had helped Mr Lebatie push the stolen car Mr Pitt, looking scared, had said that he and Mr Lebatie had met the girl at the SPAR shop and that they had gone to smoke at 1st Avenue. Mr Pitt said that he thought Mr Lebatie had raped and killed “*a pretty girl from extension 3*”.
12. It was put to Ms Watson that when Mr Lebatie phoned Ms Watson from prison the conversation was about how they missed each other and Ms Watson had asked when Mr Lebatie was coming out of jail. The death of Ms Dollie was not discussed. Ms Watson rejected these allegations as lies. Ms Watson said, in answer to a question by me that she had never had a relationship with Mr Lebatie but they had been friends.
13. It was put to Ms Watson that after Mr Lebatie got bail, she and others came across Mr Lebatie and his son and she complimented the son on his getting bigger. Ms Watson denied meeting Mr Lebatie after his release on bail. She said that she saw Mr Lebatie, after his release, for the first time, on the day she first testified, namely 8 February 2017. Ms Watson said that she had been told by her mother’s lodger, Mr Gift Thomas a former street person that after Mr Lebatie had been released on bail Mr Lebatie had gone to the Watson house and smoked with Mr Thomas. Ms Watson said that she was not there, she having moved in with her boyfriend. Ms Watson denied speaking to Mr Lebatie after 22 December 2016.
14. It was put to Ms Watson that the reason why she and her crowd missed Mr Lebatie was because he was their drug supplier. She described this as a lie. It

was put to Ms Watson that Mr Lebatie could not think of a reason why Ms Watson would lie in court.

15. It was put to Ms Watson that she was protecting Mr Pitt and substituting him for Mr Lebatie. She denied this.
16. During re-examination Ms Watson said that when Mr Pitt was sitting on the mat at the Watson house some ten minutes after she had seen Mr Lebatie and Mr Pitt pushing the stolen car Mr Pitt said that he had seen Mr Lebatie making a fire in the veld at about the same time that Mr Pitt had heard a girl scream. The veld in question is in Extension 9, Ennerdale. This veld, that Mr Pitt was referring to, was known as the "*Shoplefte paadjie*". Mr Pitt had told her that he had heard the scream and seen Mr Lebatie making the fire just before he had arrived at the Watson house some ten minutes after he and Mr Lebatie had pushed the stolen car. Mr Pitt had told her further that he, Mr Lebatie and Ms Dollie had got into a car driven by a man by the name of Toy. Ms Dollie had said that she wanted to get out of the car. Toy had said no and that he would drop her at home. Toy then made a U-turn and was pulled over by the police. Mr Lebatie and Ms Dollie got out and walked towards the "*Shoplefte paadjie*". Toy was then tested by the police using a breathalyser. Toy then dropped Mr Pitt in Felix street. Mr Pitt followed Mr Lebatie and Ms Dollie. Mr Pitt heard a scream. A police officer arrived on the scene and spoke to Mr Pitt, asking him what he was doing. Mr Pitt said that he went up a different "*paadjie*" where he saw Mr Lebatie stoking a fire. Mr Lebatie saw Mr Pitt and asked him "*Kevin, is dat jy ?*".
17. This evidence of Ms Watson, during re-examination is substantially more detailed than her evidence in chief or in cross examination on the topic of what Mr Pitt had told Ms Watson at her house about ten minutes after he and Mr Lebatie had been seen pushing the stolen car.
18. In paragraph 8 of exhibit E, the opening address by Ms Naidoo, the statement is made that Mr Pitt will testify that he "*witnessed a scream and the fire*" in the veld where the deceased was found. The opening address was made and exhibit E handed up before Ms Watson testified. The contents of paragraph 8 go some way towards suggesting that Ms Watson was not fabricating when

she provided more detail in re-examination than in chief or in cross-examination on what Mr Pitt had said to her on the mat at her house particularly regarding Mr Pitt having seen Mr Lebatie making a fire in the veld.

19. I allowed Mr Hlazo to re-open cross-examination. Ms Watson said that her detailed testimony, in re-examination as to what Mr Pitt had told her on the mat was more detailed than her earlier evidence on the same topic simply because it had slipped her mind. Mr Hlazo, who must have been in possession of Ms Watson's written statement to the police did not seek to cross-examine Ms Watson by way of alleging any material discrepancy between her testimony in court and her written statement. Both Ms Naidoo and Mr Hlazo correctly conceded that Ms Watson had not been asked by either counsel about Mr Pitt having said anything about a fire.
20. Mr Hlazo put it to Ms Watson that Mr Lebatie, Mr Pitt, Ms Dollie and Ms Watson were together on Saturday 22 August 2015 and smoking drugs the effect of which is to cause hallucination. Ms Watson denied the alleged effect.
21. Ms Krystle Birkenstock testified. She had been a friend of Ms Dollie. Ms Birkenstock was also a friend of Mr Lebatie. They had been friends for about 5 years. On Saturday 22 August 2015 Ms Birkenstock was at home in 1st Avenue, Ennerdale with her boyfriend, Grant. Also present were two other friends, Malcolm and Wayne. Ms Dollie came to visit in the late afternoon. She was looking for a man named Bejorn. She wanted Bejorn to fix two blackberry cellphones. Bejorn was not there. Ms Dollie waited and then left after about two or three hours. It was dark when she left. About two hours thereafter she arrived back with Mr Lebatie and Mr Pitt. They had walked to Ms Birkenstock's house. Ms Dollie then left for a second time at about 22h10. A few seconds later Mr Lebatie left. A few seconds after that Mr Pitt left. None of the three came back. Malcolm and Wayne had left when Mr Lebatie, Ms Dollie and Mr Pitt had arrived.
22. Prior to Ms Dollie, Mr Lebatie and Mr Pitt leaving at about 22h10 Mr Lebatie and Ms Dollie were speaking quietly together but Ms Birkenstock could not hear what was said. Suddenly Mr Lebatie burst out in anger at Ms Dollie because she, according to Mr Lebatie owed him a "lolly", that is a pipe for

smoking drugs. Mr Lebatie demanded from Ms Dollie anything she might have on her in lieu of the pipe. Ms Dollie did not respond. She tried to leave by going outside and asking a man named Denzel, who had a car, if she could get a lift with him. Denzel did not give Ms Dollie a lift. Ms Birkenstock knows this because Denzel came into the house and told her.

23. Ms Dollie and Mr Lebatie had been close friends who would hang out together on a daily basis and smoke. About two months before Ms Dollie died Ms Dollie, Ms Birkenstock and a third woman, Simone Apollis bumped into Mr Lebatie at an Engen garage. Mr Lebatie asked Ms Dollie about his pipe. He threatened Ms Dollie saying "*Jy gaan sien*" and "*Ek gaan jou steek*". What Mr Lebatie meant is that he would stab Ms Dollie with a knife. The three women walked away. The friendship between Ms Dollie and Mr Lebatie soured thereafter.
24. On 22 August 2015 Ms Dollie told Ms Birkenstock that she was three months pregnant. Because Ms Dollie was somewhat chubby Ms Dollie was not visibly pregnant. Ms Birkenstock did not know if Mr Lebatie knew if Ms Dollie was pregnant.
25. Ms Birkenstock said that smoking crystal meth made her energetic. It made Mr Lebatie aggressive if he was in a fight or argument. She and Mr Lebatie often smoked together.
26. Ms Birkenstock said that after Mr Lebatie was arrested he contacted her on Facebook saying that he was in jail for murdering Ms Dollie. He asked Ms Birkenstock if she thought he did it. She said no. A few days before Ms Birkenstock testified Mr Lebatie contacted Ms Birkenstock via Facebook again and asked her the same question and got the same answer. Between these two Facebook communications the two had no contact.
27. Ms Birkenstock explained in cross-examination that the Engen garage incident had two components. The three women met Mr Lebatie at the Engen garage. When he threatened Ms Dollie saying "*Jy gaan sien*" and "*Ek gaan jou steek*" he was not armed. The three women went into the Engen garage shop and Mr Lebatie walked in the direction of his house which is across the road. When the three women came out of the shop Mr Lebatie was back and in

possession of a small knife. He then threatened Ms Dollie. Ms Birkenstock told him not to. Ms Birkenstock explained that she had forgotten, when she first testified on the topic, the second part of the incident in which Mr Lebatie produced a knife. In answer to a question by me as to what Mr Lebatie had said during the different parts of the incident Ms Birkenstock said that, in the first part, when Mr Lebatie had no weapon, Mr Lebatie had said to Ms Dollie “*Jy gaan sien*” and “*Ek gaan jou steek*”. During the second part of the incident Mr Lebatie, then brandishing a knife, threatened Ms Dollie saying, twice “*Jy gaan sien*”.

28. It was put to Ms Birkenstock that there was no lolly pipe incident between Mr Lebatie and Ms Dollie. It was further put that there was no such encounter at an Engen garage.
29. Ms Birkenstock testified that on numerous occasions, when Ms Dollie and Ms Birkenstock were at Ms Birkenstock’s house during that time between the Engen garage incident and 22 August 2015, Ms Dollie, in the absence of Mr Lebatie, told Ms Birkenstock that Mr Lebatie was continually on at Ms Dollie about the pipe.
30. It was put to Ms Birkenstock that Mr Lebatie denied ever threatening Ms Dollie. Ms Birkenstock replied that she, Ms Dollie and the third woman at the Engen garage, that is Simone Apollis were present and witnessed the threats.
31. It was put further that Mr Lebatie would deny having produced a knife.
32. It was put further that the relationship between Mr Lebatie and Ms Dollie had always been good.
33. It was put further that there was no outburst or anger by Mr Lebatie towards Ms Dollie at Ms Birkenstock’s house on the evening of Saturday 22 August 2015.
34. It was put to Ms Birkenstock that the fact that Ms Dollie left with Mr Lebatie in the late evening of 22 August 1915 showed that there was no problem between the two. Ms Birkenstock replied that she could see that Ms Dollie was unhappy. In fact, Ms Dollie had delayed departing for about ten minutes after Mr Lebatie said they should go. Ms Birkenstock said that Ms Dollie, as soon as she walked out of the house, had tried to get a lift with Denzel.

35. It was put to Ms Birkenstock that Mr Lebatie would say that on the evening of Saturday 22 August 2015 he and Mr Pitt met Ms Dollie at the SPAR shop. She asked Mr Lebatie if she could go with them because she wanted to smoke and had nothing with her. Ms Birkenstock said she was unable to comment on this allegation as she was not there.
36. It was put further that Mr Lebatie would say that a lolly pipe cost only R50 and he could have bought one easily. Ms Birkenstock replied by asking why Mr Lebatie kept harassing Ms Dollie about the pipe.
37. It was put further that Mr Lebatie would say that Ms Dollie never owed him a pipe. Ms Birkenstock replied by referring to Mr Lebatie's demands for the pipe.
38. In answer to a question by Mr Hlazo as to whether or not Mr Lebatie and Ms Dollie had come together to Ms Birkenstock's house prior to 22 August 2015 Ms Birkenstock said yes, they had come to smoke but she could not remember when.
39. It was put further that Mr Lebatie would testify that before 22 August 2015 he and Ms Dollie used to hang out together and smoke without any problem between them. Ms Birkenstock queried this by saying that Ms Dollie had disappeared for some time and then re-appeared on 22 August 2015. Ms Birkenstock knew that Ms Dollie was staying with her boyfriend, Leno in Extension 3. Ms Birkenstock knew this as her friend, Simone had told her so. Ms Birkenstock did not know the address.
40. It was put further that Mr Lebatie would say that Ms Dollie, up to 22 August 2015, was living with a man called Manas in Extension 5. Ms Birkenstock replied that Ms Dollie and Manas used to go out together but that they had broken up long before the Engen garage incident.
41. Ms Birkenstock stated that she did not know if Mr Lebatie knew the whereabouts of Ms Dollie in the period leading up to 22 August 2015.
42. It was put to Ms Birkenstock that Mr Lebatie would say that all his lady friends, including Ms Birkenstock and Ms Dollie referred to him as a protector as he always made sure that no harm came to his lady friends. It was further put that he had no reason to harm Ms Dollie.

43. Mr Stigling testified. He knew Ms Dollie, Mr Lebatie and Mr Pitt. On 22 August 2015 Mr Stigling, in the early evening, approached Ms Dollie, Mr Lebatie and Mr Pitt opposite the SPAR shop. Mr Stigling asked Ms Dollie to come with him. She did not answer. As Mr Stigling turned to go Mr Lebatie grabbed him and grabbed Mr Stigling's computer modem out of his hand. Mr Lebatie said that Mr Stigling owed him. Mr Lebatie is younger, bigger and stronger than Mr Stigling. There was nothing Mr Stigling could do but walk away saying "*you will see*". Mr Stigling contradicted himself by saying that that is all Mr Stigling said but then saying that he also said to Mr Lebatie that he did not owe Mr Lebatie anything.
44. It was put to Mr Stigling in cross-examination that Mr Lebatie, prior to taking the modem, said to Mr Stigling that the latter owed him money for drugs and kept promising to pay. It was put further that Mr Lebatie would say that he would take the modem and keep it until he got paid. It was specifically put that Mr Lebatie got Mr Stigling's tacit permission to keep the modem after the modem had been taken.
45. In cross-examination, Mr Stigling said that the time of the incident was about 7pm or 8pm when it was starting to get dark.
46. Mr Jerome Morgan testified. He started off his testimony apparently confused as to whether or not he knew Mr Lebatie or had seen him before the day of testimony, 10 February 2017. Mr Morgan said that he was at a shop one night when he was approached by Kevin, Tia and Carlon.
47. It was common cause in the trial that these persons are Mr Pitt, Ms Dollie and Mr Lebatie, respectively. Mr Morgan referred to Kevin, Tia and Carlon throughout his evidence. It was not suggested to him in cross-examination that these persons were other than Mr Pitt, Ms Dollie and Mr Lebatie. Mr Morgan, when asked who Carlon is described and pointed to Mr Lebatie sitting in the dock. In my view, Mr Morgan's apparent confusion in the beginning of his evidence as to whether he knew Mr Lebatie is irrelevant.
48. Mr Morgan testified that at the shop Mr Morgan was approached by Mr Pitt, Ms Dollie and Mr Lebatie. Mr Lebatie said that he desperately needed money. Mr Morgan said that there was money at a place called Lawley. Mr Lebatie

said let's go. Mr Pitt, Ms Dollie and Mr Lebatie got into Mr Morgan's car. He drove along Katz street in Extension 9, Ennerdale until he was stopped by the Metro Police. Mr Morgan marked this spot at X on the photo on D14, that is about one house along Katz street from its corner with Samuel street as one moves from Samuel street to Dixon street. Mr Lebatie and Ms Dollie got out of the car and walked together up Katz street in the same direction as Mr Morgan had been driving. By this time it was dark. After speaking to the Metro Police for about twenty to twenty-five minutes Mr Morgan, with his only passenger Mr Pitt, did a U-turn in Katz street and then immediately turned left into Samuel street. Mr Morgan then dropped Mr Pitt off in Felix Street.

49. Mr Morgan was clear that he dropped off Mr Pitt so that the latter could meet Ms Dollie and Mr Lebatie at Shoprite Checkers. This shop was marked as C by Mr Morgan on the photo on D14 at the top middle of the photo if this rectangular photo is held with its length going sideways. It is across a veld from the point Y where Mr Morgan dropped off Mr Pitt. Point Y is on the right extreme of the photo. I estimate the distance from point Y to point C, across open veld at about 200 – 300 metres.
50. Mr Pitt testified. He knows Mr Lebatie and had done so for about a year. He knows him through Ms Watson. At about 11am on the morning of 22 August 2015 he went to Ms Watson's house. Ms Watson, Brent Watson, Laverne Lomborg, Gift Thomas, Mr Lebatie and Mr Pitt smoked together on and off the whole day. Mr Lebatie kept leaving and coming back with more drugs. Mr Lebatie was sad. At about 8pm Ms Watson's mother said that Mr Pitt had to go. Mr Pitt and Mr Lebatie left. At the nearby SPAR shop they came across Ms Dollie. That was the first time Mr Pitt had seen Ms Dollie. Mr Lebatie asked her to come with them. She did not want to. Mr Lebatie insisted, and asked her for his pipe. The three walked on.
51. They came across Aubrey, that is Mr Stigling. Mr Lebatie forcefully took Mr Stigling's modem. Mr Stigling said to Ms Dollie words to the effect of "*see what Carlon is doing*". Ms Dollie kept quiet. Mr Lebatie said to Mr Stigling that this was for the money that Mr Stigling owed Mr Lebatie for drugs. Mr Stigling said that he did not owe Mr Lebatie anything. Mr Pitt, Ms Dollie and Mr Lebatie

walked on to G's house. (It appears to be common cause that this is the house that Krystle Birkenstock shares with her boyfriend, Grant.)

52. At this house were Krystle Birkenstock, her boyfriend Grant, Simone and two other persons not known to Mr Pitt. Ms Dollie went to the toilet. When she came back she, Ms Birkenstock, Mr Pitt and Mr Lebatie smoked. Mr Lebatie asked Ms Dollie for his pipe. She suggested they go to her house to fetch it. After a while Ms Dollie smoked a cigarette at the door and then stood outside. Mr Lebatie went outside and stood with her. Mr Pitt, Ms Dollie and Mr Lebatie then left together and walked off. Ms Dollie was not happy to go with them. She kept slowing down and lagging behind. Mr Lebatie said to Mr Pitt that she always smokes his drugs and that that night Mr Lebatie was going to "*dalla*" her. Mr Pitt said that this word means to have forceful sex. Mr Pitt kept quiet.
53. Mr Lebatie had a number of stolen cellphones on him. He wanted to sell them. The three walked on until they got to the Engen garage. At the Engen garage Mr Pitt saw Jerome Morgan. Mr Morgan is known as Toy. Mr Lebatie told Mr Pitt to ask Mr Morgan if he wanted to buy a cellphone. Mr Morgan expressed an interest but said that he did not have money on him. Mr Morgan suggested that he take Mr Pitt, Mr Lebatie and Ms Dollie to Mr Morgan's house to get money and that he would bring them back. The three got into Mr Morgan's car. At a T-junction Ms Dollie said she wanted to go home. Mr Morgan said that he would drop her at home. Mr Morgan made a rough U-turn and was then pulled over by Metro Police. The police gave Mr Morgan a breathalyser test. When Mr Morgan had stopped his car Ms Dollie got out of the car. Mr Lebatie then got out of the car. Mr Lebatie and Ms Dollie walked off together. Mr Morgan spent about five minutes with the police.
54. Mr Morgan gave Mr Pitt a lift. They drove past Eden's Tavern. This tavern is in Samuel street. Shortly thereafter Mr Pitt asked Mr Morgan to drop him off. He did this because he wanted to catch up with Ms Dollie and Mr Lebatie particularly because Mr Lebatie had said that he was going to "*dalla*" the deceased. Mr Pitt knew that if he was present Mr Lebatie would not harm the deceased. Mr Morgan dropped off Mr Pitt and drove away. Mr Pitt walked until he heard a woman's faint scream. He walked towards the scream. At that point a different Metro Police car pulled up outside the house of its driver, a

different Metro Police officer to those who had stopped Mr Morgan earlier. Mr Pitt told the officer that he was waiting for his girlfriend. Mr Pitt then walked on. It was after midnight. He walked along a path in the veld. He saw a fire being lit by Mr Lebatie. At least it was Mr Lebatie's figure. He saw Mr Lebatie putting grass on the fire. Mr Lebatie then walked along a path. Mr Pitt walked along his path. Their paths converged. Mr Lebatie, sounding surprised said "*Pitt is that you?*" Mr Pitt said yes. Mr Pitt had kept his eye on the person making the fire, namely the person he spoke to when their paths converged. The person was Mr Lebatie. Mr Pitt asked Mr Lebatie where the girl was. Mr Lebatie said that he had left her at Eden's. Mr Lebatie then phoned Watson from one of his cellphones. Mr Pitt heard the conversation. Mr Lebatie asked Ms Watson if she had a mandrax pipe. She said yes. The two men went to Ms Watson's house where they met her at the laundry window. Mr Lebatie then left. She went to the lounge window. Mr Lebatie came back and asked Mr Pitt to help him steal a car. They went to Mr Pitt's cousin's house where they found a car. One of the car's windows was already broken. They pushed the car away. A short while later Mr Pitt ran to Ms Watson's house and told her that Mr Lebatie was stealing a car. He told her that he thought Mr Lebatie had raped, murdered and burnt a girl in Extension 9. He told her that he had seen Mr Lebatie lighting a fire and adding grass to it. She did not believe him saying that he was "*bogus*", meaning high on drugs.

55. Mr Pitt spent the night at Ms Watson's house. Late the next morning Mr Lebatie phoned her. At one point she gave the phone to Mr Pitt. Mr Lebatie told Mr Pitt to keep his mouth shut or he would be hurt. Both Mr Lebatie and Mr Pitt knew what Mr Lebatie was referring to. This was Mr Pitt having seen Mr Lebatie lighting the fire. Mr Pitt ended the call. Mr Pitt did not see Mr Lebatie again until the Monday after the weekend in question when he identified Mr Lebatie at the police station.
56. Mr Pitt marked photographs admitted as part of the exhibits. Mr Morgan had stopped his car in Katz street at point X on the photo on D14. I estimate the distance from point X to the corner of Katz and Samuel streets at about 10 – 15 metres. Point X is about 70 – 80 metres from the corner of Katz street and Dixon street. Point X is on Katz street between Samuel and Dixon streets. I

estimate the length of Katz street, between Samuel and Dixon streets at about 90 metres.

57. I make the following observation. If one proceeds along Katz street, from the bottom right of the photo on D14 to the top left of the photo, as the rectangular photo is held with its length sideways, as Mr Morgan testified he had been driving before being stopped by the Metro Police, and one proceeds passed Samuel street which begins as a T-junction and going right from Katz street, one reaches, a suburban block later, Dixon street which begins as a T-junction going right from Katz street, that is parallel to Samuel street. As one proceeds along Katz street from its intersection with Samuel street to the intersection of Katz street and Dixon street there is veld on the left. As one proceeds passed Dixon street there is veld to the left and to the right. As was later to emerge in the trial Metro Police officer Mathonsi lives at [...] Dixon street. This house is the 5th house, on the right hand side of the road as one proceeds along Dixon road having turned right into Dixon road from Katz street as depicted in the photo on D2. Officer Mathonsi's house was marked as A2 by Mr Pitt on the photo on D2. Exhibit G, paragraph 13, contains the common cause fact, recorded as an admission under section 220 that this is the house of officer Mathonsi at [...] Dixon street. I note that the distance from A2 to point B, the place where Mr Pitt said he saw Mr Lebatie lighting a fire at about 15 – 20 metres.
58. Mr Pitt marked as E on the photo on D6 the location of Eden's tavern. It is about six houses along Samuel street from its corner with Katz street. The distance from this corner to point E is, on my estimate about 40 metres.
59. In cross-examination it was put to Mr Pitt that Mr Lebatie had sat in the back of Mr Morgan's car with Ms Dollie and that Mr Pitt was in the front. It was further put that Mr Lebatie and Ms Dollie had got out of Mr Morgan's car on different sides. Mr Pitt replied that Mr Lebatie had sat in front, that is on the left side of Mr Morgan and Ms Dollie had sat behind Mr Lebatie. They both exited the car on its left side.
60. It was further put that as Mr Lebatie and Ms Dollie walked away Ms Dollie suggested that they go to Eden's Tavern. Mr Lebatie told Ms Dollie that he did

not want to go there as he did not drink alcohol. The two then parted company. Mr Lebatie did not see Ms Dollie again.

61. In cross-examination Mr Pitt conceded that even though Mr Lebatie had told him that he was going to “*dalla*” Ms Dollie and that Mr Pitt had just heard a woman scream he did not tell the Metro Police officer, who stopped his car, about the scream. This was because Mr Pitt was on drugs even though he did not have drugs on him. He did not want to arouse the suspicions of the officer.
62. Mr Pitt said in cross-examination that there were trees in the immediate vicinity of the place where Mr Lebatie had made the fire. He said these trees were short trees. He said that he did not know when the aerial photographs in exhibit D were taken. (I observe that in these photos, on D2 and D14 there appear to be no trees in the immediate vicinity of the place where Mr Pitt says Mr Lebatie made a fire.) Mr Pitt said that there is grass about knee height at the place where Mr Lebatie made the fire.
63. When challenged in cross-examination about the lack of light Mr Pitt said that the crystal meth he had been smoking “*wakes you up*” and improved his vision. In answer to a question from me he said that he would have seen Mr Lebatie making the fire irrespective of whether he, that is Mr Pitt, had been smoking crystal meth or not. Mr Pitt said that the flames lit up Mr Lebatie.
64. In cross-examination Mr Pitt conceded not having told the following persons that he feared for Ms Dollie after Mr Lebatie had told Mr Pitt that he was going to “*dalla*” Ms Dollie:
 - 64.1 The Metro police who had stopped Mr Morgan - Mr Pitt said that he had not told these police of his fear for Ms Dollie because he had not thought about it.
 - 64.2 The Metro Police officer who stopped his car at his house and asked Mr Pitt what he was doing - Mr Pitt told the officer that he was waiting for his girlfriend. Mr Pitt said that because he was on drugs he did not want this fact to become known to the police officer.
 - 64.3 Mr Morgan and Ms Dollie – Mr Pitt said that he could not have told Mr Morgan or Ms Dollie because Mr Lebatie was present and would have overheard. Mr Pitt was scared of Mr Lebatie who is bigger than him.

(This answer does not account for the time when Mr Pitt and Mr Morgan were alone in Mr Morgan's car before Mr Morgan dropped off Mr Pitt.)

65. Mr Pitt did not mention his suspicion that Mr Lebatie had murdered Ms Dollie to Ms Watson when he and Mr Lebatie met her at the laundry window of her house. He did so, according to him, about ten minutes later, that is after the car theft incident.
66. It was put to Mr Pitt in cross-examination that the drugs he had smoked on the night in question had caused him to hallucinate. Mr Pitt denied this, saying that God had spoken through him, in particular when Mr Pitt asked Mr Morgan to drop him off.
67. Mr Pitt stated that after he met Mr Lebatie when their paths converged and Mr Lebatie told Mr Pitt that Mr Lebatie had left Ms Dollie at Eden's he, Mr Pitt did not go to Eden's to check. He said that this was because he did not think of it.
68. It was put to Mr Pitt that Mr Lebatie did indeed come accross Mr Pitt when their paths crossed. Mr Lebatie had taken a different path to the one indicated by Mr Pitt. Mr Lebatie took his path, rather than the path Mr Pitt said he took because the latter path was too dangerous because of robbers. Mr Lebatie said to Mr Pitt that Ms Dollie had told Mr Lebatie that she was going to Eden's. It was put by Mr Hlazo to Mr Pitt that Mr Lebatie's route, to the place in the veld where he would come across Mr Pitt was to have walked along Katz street, with open veld to his right after intersection of Katz and Dixon streets. At a point marked L1 the photo on D2 by Mr Hlazo, Mr Lebatie veered right into the veld. In the veld, about 20 metres later is a rubbish dump to the right of the path Mr Lebatie was taking. Mr Lebatie walked passed this dump to the point where he encountered Mr Pitt.
69. Exhibit G is a list of admissions to the effect that Mr Pitt met Mr Mathonsi, a Metro Police officer outside the latter's house at [...] Dixon street, Ennerdale Extension 9. Mr Pitt told Mr Mathonsi that he was waiting for his girlfriend. Mr Pitt then walked back in the direction from which he had come "*from towards A1*". Mr Mathonsi watched Mr Pitt walk away. The time of this common cause encounter is not stated in exhibit G.

70. Exhibit F is a suspect's warning statement made by Mr Lebatie to the police on 28 August 2015.
71. Mr Kapito was the next person called by Ms Naidoo. He is from Malawi. He seemed initially not to understand the oath as put to him. I explained the nature of the oath to him in English and he appeared to understand. Ms Naidoo, Mr Hlazo and Mr Lebatie expressly confirmed that they were happy for Mr Kapito to testify in English. Mr Kapito testified in English in a manner sufficiently fluent for me to conclude that he understood both the nature of the oath and what he was asked and the answers he gave during his testimony.
72. As at 22 and 23 August 2015 Mr Kapito was employed at Eden's. There had been a name change of Eden's to Teeza's at one stage. (It appears to be common cause that nothing turns on the name change.) Mr Kapito worked as a manager, as a waitron serving customers, as a bouncer and as a person who searched patrons entering Eden's. He had known Ms Dollie for about six or seven years as a person who had frequented Eden's between about once and three times a week until about seven or eight months before the night in question. At that point Ms Dollie stopped frequenting Eden's.
73. On the night in question Mr Kapito was on duty at the main gate of Eden's, searching persons who entered the tavern. He was on this duty from about 7:30pm to about 2:00am. From the lighting he could clearly see those persons entering the tavern. There was no other entrance through which patrons could enter the tavern. While he was on duty at the gate between 7:30pm and about 2:00am Ms Dollie did not enter the tavern. (Mr Kapito's evidence is, at best for the state, relevant only if I accept Mr Pitt's evidence that Mr Lebatie had told him that he had left Ms Dollie in Eden's rather than at Eden's.)
74. Mr Leno Rudd testified. Ms Dollie had been his girlfriend and had lived with him, at his house in Extension 3, Ennerdale for about a year prior to her death. She was about to move out to go and live with her sister at the time of her death. This was because she was about three or four months pregnant by Mr Rudd. Mr Rudd did not know a man by the name of Manas, as had been put by Mr Hlazo to Ms Birkenstock as the man with whom Ms Dollie had lived prior to her death. Mr Rudd was not cross-examined.

75. Constable Mulaudzi testified that he has been a police officer for seven years and was stationed in Ennerdale at the time in question. He saw the deceased's body on the morning of Sunday 23 August 2015. This was in a veld in Extension 9, Ennerdale. It had burn marks on the right thigh and upper torso. Next to her body was a Chesa Nyama take away food container that looked like it had been used to start the fire. He also found a black electrical cord and a tissue paper. He identified the place where he found the body as the place which had been marked B by Mr Pitt on the photo on D2 as the place where the latter had seen the fire. (As I stated above, point B is about 15 - 20 metres from point A2 which is the point where Mr Pitt and officer Mathonsi had come across each other.)
76. He said that if one stood at point A1 on exhibit D2 (that is the place where Mr Pitt said he was standing when he heard a woman scream) one could see across the veld to the place of the fire at point B. Constable Mulaudzi said that any bushes between A1 and B were not more than knee height. I estimate the distance from A1 to A3 at about 15 metres. Constable Mulaudzi estimated the distance from A3 (where Mr Pitt said he had stood on his path at a particular point and seen the fire and Mr Lebatie or his figure at the fire) to point B at about 6 metres. This estimate is obviously way too short. The distance is far greater. Constable Mulaudzi was more comfortable estimating distances in footsteps. He estimated the distance, from point A3 to point B at about 75 paces. This estimate is a lot closer to the actual distance. In court Constable Mulaudzi estimated the length of a metre with reference to the stenographer's table. He estimated its length at about 1 metre. Counsel and I estimated the length of the table at about 3 metres.
77. I marked on exhibit D2 with a J a spot on Katz street along the route which Mr Hlazo had suggested to Mr Pitt in cross-examination that Mr Lebatie had taken, while walking along Katz street before Mr Lebatie veered right into the veld at the spot marked L1. Point J is about the closest point on Mr Lebatie's route, on Katz street, as suggested by Mr Hlazo, to point B. Constable Mulaudzi estimated the distance between point J and point B at about fifty paces. He was not cross-examined on this point and I estimate fifty paces to

be about accurate. Constable Mulaudzi gave unchallenged testimony that a person standing at point J would see a fire at point B at night.

78. Constable Mulaudzi said that Katz road, that is the tar road running from the right middle of D2 to the middle bottom of D2, as D2 is held with its length going sideways, is well lit by street lights. He said the street lights are on the side of Katz road closer to point B. The street lighting continues all the way along Katz street.
79. Constable Mulaudzi said that a person standing at point X on D14, that is where Mr Morgan had been stopped by the Metro Police, and who wanted to go from there to extension 3, at night, walking, would have to go along Katz road, with the veld and point B to his right, all the way passed the police station and then onwards towards Extension 3. The import of this evidence is that such a person would not cut across a veld, particularly near point B. This evidence was not challenged.
80. Dr Morule conducted the post-mortem examination. The cause of death was strangulation by a rope or cord like ligature. The ligature could have been the thin black cable seen in photo 27 in exhibit C19. The burns on the body occurred post-mortem. No dust or soot was found in the victim's nostrils, trachea or on the tongue as would have been the case had the burns occurred before death. Dr Morule pointed to photograph 8 on C9 and photograph 9 on C10. Clear islands of flesh that had not been burnt appeared in a larger area of burnt flesh. This was another indication that the burning was post-mortem.
81. In answer to a question by me Dr Morule said that he thought that the body had been burnt and then placed where it had been found. He based his evidence on the fact that the area of burnt ground was less than the area of burning on the body. At the end of the post-mortem report, at B9 under the heading "*Additional Observations*" appear the words "*The burns cover +- 35cm of the total body surface and appear post-mortem.*" This cannot literally be correct. Either the "*35cm*" means 35 square centimetres or 35%. From the photographs of the body particularly photo 8 on C9, photos 9 and 10 on C10, photos 11 and 12 on C11 and photos 13 and 14 on C12 it is obvious that the

burns cover far more than 35 square centimetres. I can accept that the burns cover 35% of body surface area.

82. Dr Morule also said that it was possible that the body could have been burnt where it was found.
83. Dr Morule said that he had no comment when I told him that Constable Mulaudzi had testified that the latter had found a Chesa Nyama container at the body which he thought had been used to start the fire. I pointed Dr Morule to photo 25 on C18. This photo shows what could be a take-away food container, apparently black with a red and white chequered pattern. Dr Morule said he could not comment. Constable Mulaudzi was not asked if this container was the container referred to by him in his evidence.
84. The photos of the body on the scene, particularly photo 8 on C9, photos 9 and 10 on C10, photos 11 and 12 on C11 and photos 13 and 14 on C12 show a significant concentration of burnt grass under and around the body.
85. In photo 8 on C9 immediately to the right of the body, as one looks at the photo one can see the food container that appears more clearly in photo 25 on C18. This container appears also in photographs 10 on C10, 11 on C11, 12 on C11 and 13 on C12. The container is not in the same position in photo 25 on C 18. It is obvious that the container was moved during the photographing of the body.
86. Towards the end of the post-mortem report, on B9 is the heading "*Exhibits*". Under the heading is the word "*Description*". To the right of this word are the words "*Disposal Of Speciman*". Under these words appear the words "*Card Box Paper With Cell NO 074 341 9143 with the name Bjorn.*" Ms Birkenstock had testified that Ms Dollie had come to visit Ms Birkenstock in the late afternoon of 22 August 2015. Ms Dollie was looking for a man who could fix cellphones. Ms Birkenstock pronounced the name of this man as "*Bejorn*" with the j pronounced as an English y. The Scandinavian name Bjorn is pronounced more or less the same way. This may be an indication that Ms Dollie, dead or alive at the time, was close to the Bjorn referred to in the post-mortem report. Either the Bjorn referred to in the post-mortem report is the Bejorn referred to by Ms Birkenstock or he is not. Either way, I make nothing

of the coincidence in name. If it is the same person then this may be confirmation of the fact that Ms Dollie and Bejorn had something to do with each other on the day in question. However, the name Bjorn, written on the “*Card Box Paper*” with a cell number does not necessarily tie Bjorn to the crime, either as perpetrator, co-perpetrator or as a person with knowledge of the relevant events.

87. Dr Morule confirmed in cross-examination, that as appeared from his post-mortem report at B9 under the heading “*Specimens Retained*”, that he had caused scalp, hair, nail, vulval, vaginal and cervical specimens to be sent for analysis.
88. Ms Naidoo and Mr Hlazo agreed that it was common cause that no results had been obtained from the specimens which implicated Mr Lebatie. Mr Hlazo confirmed that this agreement could be recorded as an admission by Mr Lebatie under section 220. Ms Naidoo did not say whether or not there were results which pointed to any other person.
89. Ms Dollie’s body was found partly naked. Her jeans had been pulled down to her right ankle. They had been pulled off her left leg and foot completely. She is not wearing panties. These admitted facts appear from photos 8 on C9, 9 and 10 on C10, 11 and 12 on C11 and 13 and 14 on C12.
90. Constable Mulaudzi did not specify at what time of the morning he found the body. On B5 (iii) Dr Morule certified that death occurred “*as informed, on 2015/08/23 AT 09H30.*” What is admitted here is not that the death occurred at 9:30am but that somebody told this to Dr Morule. On B2 the admitted statement is made by forensic officer Ndou that he received the body on 23 August 2015 at “*11h35*”.
91. Ms Naidoo closed her case and Mr Hlazo called Mr Lebatie. He testified fluently in English.

THE DEFENCE CASE

92. Mr Lebatie spent the day of 22 August 2015, from about 11:00am, in the company of Mr Pitt at Ms Watson’s house. Ms Watson was present and the

three of them smoked mandrax and crystal meth in the garage on and off until about 7pm or 7:30pm. During the day Mr Lebatie and Mr Pitt left the Watson house on a number of occasions to buy more crystal meth. There were other people present at the Watson house during the day but they were in the main house rather than in the garage.

93. Crystal meth causes, among other things, hallucinations particularly in the form of hearing and seeing things that are not real. Mandrax can cause a loss of awareness of where one is, poor vision and fainting for a few seconds. A person gets high whether he or she smokes one bag of crystal meth or twenty bags. Mr Lebatie did not hallucinate on 22 August 2015.
94. Mr Lebatie and Mr Pitt left the Watson residence in 3rd Avenue mid-Ennerdale at about 7pm to 8pm. They walked to G's house in 1st Avenue. This is two streets away from 3rd Avenue but there is a main road in-between. Mr Lebatie does not know the name of the main road. On the way to G's house Mr Lebatie and Mr Pitt decided to buy another bag of crystal meth at the SPAR shop on 1st Avenue. As they got near to the SPAR shop Mr Lebatie heard his name "*Carlton*" being called. He looked around and it was Ms Dollie who had called him. She asked if she could join the two men in looking for a pipe. The three of them went to G's house, particularly because Mr Lebatie did not have a pipe as he had left his at the Watson house. G's house was a place which Mr Lebatie knew would have a pipe.
95. At G's house Ms Birkenstock gave Mr Lebatie a pipe. He loaded it. Ms Dollie, Mr Lebatie, Mr Pitt, Ms Birkenstock, Grant and then Mr Lebatie again smoked the pipe and in that order.
96. Mr Lebatie went to the toilet and then into a different room and stole a cellphone which he assumed belonged to Wayne. Mr Lebatie then went back to where Ms Dollie and Mr Pitt were and said that they should go. Mr Lebatie went out of the house followed by Ms Dollie and then Mr Pitt. Mr Lebatie said that he wanted to sell the stolen phone. Mr Pitt suggested they look for a buyer at the Engen garage. The three persons walked to the Engen garage which is in 1st Avenue mid-Ennerdale.

97. On the way to the Engen garage they came across Mr Stigling. Mr Lebatie asked him for the money Mr Stigling owed him for drugs. Mr Stigling replied that he was looking for a person who could buy his modem. Mr Stigling said he wanted R150 for the modem. Mr Lebatie told Mr Stigling that the latter owed him R400. Mr Lebatie suggested that he take the modem and that then Mr Stigling would owe him only R250. Mr Stigling complained that he had no money to buy drugs. Mr Stigling asked Mr Lebatie for at least R50 and then Mr Lebatie could take the modem. Mr Lebatie said words to the effect of "*Give me the modem. We'll make a plan.*" Mr Stigling said words to the effect of "*Okay, take it, I will see you again.*" Then Mr Lebatie took the modem and gave it to Mr Pitt. That was the last Mr Lebatie saw of the modem. This incident occurred at about 9:30pm to 10pm.
98. Mr Lebatie then bought two cigarettes at a "*Nice and Cheap*" 24 hour shop opposite the Engen garage. He gave one to Ms Dollie. A car pulled up. Mr Pitt approached the car and spoke to the driver. Mr Pitt called Mr Lebatie and introduced him to the driver of the car, Mr Pitt referring to the driver as Toy. Mr Lebatie and Toy, that is Mr Morgan agreed that Mr Morgan would buy the cellphone stolen by Mr Lebatie from G's house for R300. Mr Morgan had said that he did not have money on him but that he would take them to Mr Morgan's place in Lawley where Mr Morgan's money was. Ms Dollie sat behind Mr Morgan, that is on the right hand side of the car. Mr Pitt sat in front and to the left of Mr Morgan. Mr Lebatie sat in the back behind Mr Pitt. The car was driven along Katz street. At a T-junction Mr Morgan stopped the car at the stop sign. Ms Dollie got out and then Mr Lebatie also got out. Mr Lebatie told Mr Pitt that if he comes back from Mr Morgan then Mr Pitt could find Mr Lebatie and Ms Dollie at G's place in 1st Avenue. They walked together along Katz street back in the direction from which the car had come. Very shortly thereafter Mr Morgan made a U-turn with his only passenger, Mr Pitt in the car. At that moment Mr Lebatie became aware of a Metro Police vehicle. Mr Morgan was stopped by the police.
99. Mr Lebatie and Ms Dollie carried on walking along Katz street. Ms Dollie wanted to go to Eden's tavern. Mr Lebatie did not want to go to Eden's as Eden's was a drinking spot and he did not drink alcohol. He kept walking,

trying to get Ms Dollie away from Eden's. She insisted on going to Eden's. About six houses along Katz street after its corner with Samuel street Ms Dollie insisted that she wanted to go to Eden's. Mr Lebatie said she could go. She said they would meet up the next day. They gave each other a hug. Mr Lebatie watched Ms Dollie walk back to the corner of Samuel street. Once she got there he knew she would be safe because Eden's is only a few houses up Samuel street. Many people were hanging around outside Eden's.

100. After leaving Mr Morgan's car the two had walked along Katz street. To their left were bushes. To the right were houses. Mr Lebatie marked the photo on D2 with the letters TD, the spot where he and Ms Dollie split up. Point TD is about five houses along Katz street between Samuel street and Dixon street. They had walked back in the direction from which Mr Morgan had driven his car along Katz street.
101. Mr Lebatie and Ms Dollie had parted ways between about 11:30pm to midnight. Mr Lebatie carried on walking along Katz street. He was walking away from Samuel street. At the corner of Katz and Dixon streets he saw that it was pitch dark in the veld ahead and to the right. He carried on walking along Katz street. He intended to walk along Katz street because it was lit. As he got to the point marked L1 on a photo at D2, that is a point roughly 40 to 50 metres passed Dixon street he decided to take a path into the veld. This gave him a short cut. That part of the veld was lit by the lights of a nearby clinic. As he turned into the veld there was, immediately to his right a rubbish dump, marked L3 on the photo at D2. Because that area is frequented by robbers he looked for a weapon in the rubbish dump. He found a piece of tar. He picked it up and walked on. He came across Mr Pitt a bit later on at the point marked P3 on the photo on D14. They greeted each other. Mr Pitt asked where the girl was. Mr Lebatie replied he had left her as she had said that she was going to Eden's.
102. Mr Lebatie wanted to smoke the remaining half tablet he still had on him. He phoned Ms Watson to ask if she had a pipe. This was at about 12:30am to 12:45am. He and Mr Pitt went to Ms Watson's house and met her at the laundry window. It had taken the two men about 20 – 25 minutes to walk from where they had met in the veld to the Watson house.

103. Mr Lebatie denied that Ms Dollie ever owed him a pipe. He denied any outburst at G's house towards Ms Dollie.
104. Mr Lebatie said that Ms Dollie had sold him drugs from a house belonging to Manas which house is behind that of the house in which Mr Lebatie had stayed sometime earlier.
105. Mr Lebatie denied ever threatening Ms Dollie at all. He denied any threat or knife incident at the Engen garage. He often met his friends, for example Ms Birkenstock and Simone Apollis at the Engen garage which was across the road from where he lived.
106. Mr Lebatie denied saying to Mr Pitt that he was going to "*dalla*" Ms Dollie. He said that there had never been a problem between him and Ms Dollie.
107. Mr Lebatie admitted phoning Ms Watson from prison but denied that she had asked him if he had done it. The death of Ms Dollie was not discussed.
108. Mr Lebatie said that Mr Pitt was hallucinating in his claim that he saw Mr Lebatie stoking a fire in the veld. There was no fire. The lights in Dixon street face the houses, that is away from the veld and away from the place in the veld where the body was found at point B.
109. In cross-examination Mr Lebatie said that he was 35 years old at the time of trial. He was 34 at the time of the murder of Ms Dollie. Ms Dollie was 21 when she died. He had known her for six years. He had therefore known her from the time she was 15 years old and he was 28 years old. She was not really a child because she frequented drug houses. It had never occurred to him to estimate her age. If he had not supplied her with drugs she would have got them elsewhere. She was using drugs before they met.
110. Mr Lebatie said that Mr Pitt had a motive to lie to the court. After Mr Pitt and Mr Lebatie had left Ms Watson's laundry window they walked down the road and saw a car that they could steal. Mr Lebatie said that he could get R6 000 for the car and that Mr Pitt would get R3 000. Mr Lebatie sold the newly stolen car, at about 3am or 4am but never gave Mr Pitt his share. During the theft Mr Lebatie handed the speakers of the car to Mr Pitt. The two men had spent about 35 – 40 minutes together in stealing the car. Mr Lebatie had left Mr Pitt very close to where the car had been stolen. It was about five houses from the

Watson house. Ms Naidoo challenged Mr Lebatie saying that none of this detail had been put to Mr Pitt in cross-examination. Mr Lebatie said that he had told Mr Hlazo of this.

111. Later that Sunday morning Ms Watson phoned Mr Lebatie. She wanted money for nappies for her baby. Mr Lebatie sent her R100 via his son.
112. Mr Lebatie and Mr Pitt were acquaintances rather than friends.
113. Mr Lebatie said that when he met Ms Watson at about 11am on Saturday 22 August 2015 she had given him R50. In total he then had about R600 or R700. During the day he spent most of the money on drugs and cigarettes leaving him with about R60 or R70 at the time he was driven off in Mr Morgan's vehicle with Mr Pitt and Ms Dollie.
114. When Ms Dollie had got out of Mr Morgan's car Mr Lebatie also got out of the car and followed her. He told her that they were going to G's place. Because she insisted on going to Eden's he let her go.
115. Mr Lebatie spent about 20 – 25 minutes with Ms Dollie after Mr Morgan and Mr Pitt had left and before Mr Lebatie and Ms Dollie split up. Mr Lebatie had watched Ms Dollie take about 5 – 8 minutes to walk from the place they parted to the corner of Katz and Samuel street. From that time it took Mr Lebatie about 10 minutes before coming across Mr Pitt in the veld. As he walked he saw no fire and heard no scream.
116. It was common cause between Mr Pitt and Mr Lebatie that there was no other person in the veld at the time.
117. Mr Lebatie denied that Mr Morgan had been stopped by the Metro Police at point X on the photo on D14 as marked by Mr Morgan. He said that the Metro Police had stopped Mr Morgan at a point Mr Lebatie marked MP on the photo on D3. This point is where Katz street, coming down the photo from top to bottom as the rectangular photo is held with its length sideways, approaches a T-junction with a tarred road at the bottom of the picture. Mr Lebatie marked, as MU on the photo on D3, the point where Katz street meets the main road. Mr Lebatie does not know the name of this road. This road is one block from Samuel street. Dixon street is one block from Samuel street but in the opposite direction. In other words Dixon street is two blocks from point MU.

118. Mr Lebatie found out about Ms Dollie's death on Facebook the next day, Monday.
119. In cross-examination Mr Lebatie said that on arrest about two days after the night in question he had explained everything to a police officer named Sharne Buys. She asked him if Ms Dollie had been at Eden's. Later officer Buys told Mr Lebatie that she had examined the video footage of Eden's and seen Ms Dollie at Eden's with a man holding a beer but with his back to the camera. Ms Naidoo asked Mr Lebatie why this version had not been put to Mr Kapito. Mr Lebatie replied that this was his first trial. He said that he had called as a witness the investigating officer in the present case who was present in court as Mr Lebatie spoke. Ms Naidoo suggested that the evidence about officer Buys was a recent fabrication because of the fact that Mr Hlazo had not cross-examined Mr Kapito along these lines and because not only Mr Hlazo but also Mr Lebatie himself had confirmed that exhibit F could be admitted under section 220.
120. After Mr Lebatie's evidence, Mr Hlazo closed the defence case.

FINDINGS

121. Having considered all the evidence, I am of the view that the evidence of Ms Watson, Ms Birkenstock, Mr Stigling and Mr Morgan is reliable. They appeared not to embellish their evidence. They seemed to answer questions honestly and without any attempt to evade the question. Where there are discrepancies within the evidence of each witness or between these witnesses I put this down to lack of orchestration between them and the ordinary fallibility of honest witnesses. Ms Watson, like the other witnesses referred to, readily conceded having smoked drugs. She could have embellished her testimony by saying that she had asked Mr Lebatie if he had killed Ms Dollie rather than simply if he had done it. She did not.
122. I do not see any sinister significance for the state in Ms Birkenstock breaking the Engen garage incident into two parts. She was never asked if the incident had two parts. I gained the impression that she had honestly not been astute

to break the incident into its two parts when she first related the Engen garage episode.

123. In my view, the contradiction in Mr Stigling's evidence about precisely what he said to Mr Lebatie during the modern incident is so minor as not to reflect adversely on his reliability as a witness.
124. Ms Watson, Ms Birkenstock and Mr Pitt gave evidence to the effect that on Saturday 22 August 2015 Mr Lebatie was not his normal self. In my view, this evidence, considered either in isolation or together with all the other evidence does not point to the guilt or otherwise of Mr Lebatie.
125. Mr Pitt was at times evasive in cross-examination. His reasons for not alerting the four persons he could have alerted to Ms Dollie's danger may possibly be true but I have a reasonable doubt that they are true. Mr Pitt was equivocal about whether or not he had identified Mr Lebatie at the fire or whether he simply followed the figure at the fire until their paths met. I shall return to this point. Mr Pitt claimed in evidence at one point that God had spoken through him. He claimed that crystal meth improves one's vision.
126. I have a reasonable doubt as to the overall reliability of Mr Pitt's evidence. I limit the import of his evidence only to the common cause meeting between him and Mr Lebatie in the veld and to other parts of the evidence where Mr Pitt's evidence is corroborated either by other witnesses, by Mr Lebatie or by the admissions. I accept Mr Pitt's evidence that he saw a fire, at night, at point B shortly before his path crossed that of Mr Lebatie and that, at a minimum for the state Mr Pitt saw a figure at the fire and followed the figure until the figure turned out to be Mr Lebatie. The photographs referred to above and the evidence of Constable Mulaudzi prove that there had been a fire at point B. These photographs and the evidence of Constable Mulaudzi do not prove the time of the fire. However, Mr Lebatie denied having seen a fire or any other person in the veld besides Mr Pitt. In my view, the possibility that Mr Pitt saw a fire, at point B, which was unrelated to Ms Dollie is remote in the extreme.
127. There is no evidence suggesting that Mr Pitt was on the scene when the body was found on the Sunday morning. It cannot reasonably be inferred that he extrapolated his evidence, that he saw a fire the night before, from the

remains of the fire on the Sunday morning. In my view, the state has proved beyond a reasonable doubt that Mr Pitt saw the fire when says he did, that is shortly before he identified and encountered Mr Lebatie in the veld.

128. In my view it is probable, beyond a reasonable doubt that the body was burnt where it was found. If the body was burnt and then moved it means that the person or persons who carried the body did so while the body was burning. This is so as there was much burnt grass under and around the body as found in its burnt state. In my view, the possibility that the body was carried while it was burning is extremely remote. If I am wrong, then in my view it is irrelevant that the body may have been burnt and then moved to the place it was found. I say so because considering all the evidence in the case that other place had to be very close, at most a few metres, to the place where the body was found.
129. I hold that the state has not proved beyond a reasonable doubt the “*dalla*” threat allegedly made by Mr Lebatie to Mr Pitt against Ms Dollie. This threat, denied by Mr Lebatie, was made by Mr Lebatie, according to Mr Pitt when the two men were alone, walking out of earshot of Ms Dollie after having left G’s house. The state has not proved that late the next morning, that is the Sunday morning, Mr Lebatie told Mr Pitt over the phone to shut up or he would get hurt.
130. Mr Lebatie’s evidence was that, after he and Ms Dollie parted ways, he decided to continue walking along Katz street. The veld, at the place where Ms Dollie’s body was found was to his right and very dark. That veld was known to be frequented by robbers. Katz street had lights. He would use the relative safety of Katz street and its lights to walk to his destination, ultimately G’s house where he would be able to find a pipe. After walking about 40 metres along Katz street, after Dixon street, (and passing point J which is about 50 paces from point B where the body was found) and with the veld on his right he suddenly decided to take a shortcut into the veld. This part of the veld had some light. Soon after he entered the veld he passed a point about 30 metres away from point B. As he entered the veld he searched for a weapon in case he needed to defend himself against robbers. This version is not reasonably possibly true. If robbers were a concern for Mr Lebatie he

would not have entered the veld at all. This is particularly so as, on Mr Lebatie's version the robbers he feared would have had a double advantage over Mr Lebatie as they would have been in the dark, unseen and Mr Lebatie would have been visible in the relative light. This finding places Mr Lebatie in the veld, very close in time to Ms Dollie as last seen alive, and in a place very close to where her body was found. In my view, Mr Lebatie was there for a reason other than taking a shortcut.

131. I bear in mind of the warning by Smalberger AJA in **S v Mtsweni 1985(1) SA 590 AD** at 593 I - 594D against inferring guilt necessarily from dishonest testimony by an accused person. However, Mr Lebatie, on his own evidence is a drug dealer, a car thief, a cellphone thief and is well known to the police. On his own evidence, he sold drugs to and smoked drugs with Ms Dollie from the time she was 15 years old. He stated in evidence that he is a protector of his female clients and friends. He is clearly streetwise. In testimony he gave evidence fluently and confidently. In my view he is not a naïve person. He did not lie about the reason for his having been in the veld in an attempt to avoid being labelled a thief or drug dealer. He lied in an attempt to avoid the compelling inference, which inference negates all other reasonable inferences, that he was with Ms Dollie when she met her death.
132. The evidence of Ms Watson that Mr Lebatie admitted killing Ms Dollie buttresses a finding that Mr Lebatie was in the veld for a guilty purpose in relation to Ms Dollie rather than for innocent reasons. The evidence of Ms Birkenstock concerning the knife threat by Mr Lebatie to Ms Dollie at the Engen garage, Ms Birkenstock's evidence that Ms Dollie had complained to her about being harassed by Mr Lebatie for his pipe and Ms Birkenstock's evidence of Mr Lebatie's outburst in anger at Ms Dollie at G's house further strengthen the case for the state that Mr Lebatie was angry with Ms Dollie.
133. Mr Lebatie had both motive and opportunity to murder Ms Dollie.
134. Mr Lebatie, short of money and anxious to get cash to buy drugs agreed to be taken by Mr Morgan to Lawley so that Mr Morgan could give Mr Lebatie R300 cash for the stolen cellphone. Mr Lebatie chose to go to Lawley rather than simply wait for Mr Morgan to fetch the money and come back to the Engen

garage. On the way, however, Mr Lebatie changed his mind about the importance of clinching the cellphone deal. When Mr Morgan stopped his car and Ms Dollie got out Mr Lebatie immediately got out of the car. He did so because, on his version, Ms Dollie had got out of the car. He got out to follow her. This necessarily means that it was more important to him to follow Ms Dollie than to pursue his previously important task of clinching the cellphone deal. The precise place where Mr Morgan stopped his car and Ms Dollie got out differs depending on whether Mr Morgan or Mr Lebatie is correct. It matters not. On either version Ms Dollie and Mr Lebatie got out of the car a few houses away from the corner of Katz and Samuel streets. In my view, Mr Lebatie got out of the car and followed Ms Dollie for a nefarious purpose. Mr Lebatie said that he had noticed the Metro Police stopping Mr Morgan only after Mr Lebatie had followed Ms Dollie out of the car.

135. It is possible that Mr Lebatie and Mr Pitt, acting together killed Ms Dollie. It is not the evidence of either man that this is so. No motive for Mr Pitt to kill Ms Dollie was suggested in evidence. Mr Pitt, on his own evidence lied to officer Mathonsi about his reason for being opposite the officer's house, that is perhaps 20 metres from where Ms Dollie's body was found. Mr Pitt had the opportunity to kill Ms Dollie. If the two men acted together then Mr Lebatie is necessarily guilty, it being no defence to count 1 that Mr Lebatie had an accomplice if indeed he had one.
136. In my view, the possibility that Mr Pitt, acting alone or at least not with Mr Lebatie but with another person or persons, killed Ms Dollie is remote in the extreme. There is no evidence for such a finding.
137. In my view, the failure of the state to establish an approximate time of death, other than through the combined evidence of Mr Pitt and Mr Lebatie read with the relevant admissions does not detract significantly from the strength of the state's case.
138. In **R v Blom 1939 AD** 188 at 202 – 203 it was held that when reasoning by inference the inference sought to be drawn must be consistent with all the proved facts and these facts must be such that they exclude every reasonable inference from them save the one sought to be drawn. By no stretch of the

imagination is Mr Lebatie's guilt inconsistent with any proven fact. In my view, no reasonable inference may be drawn from any proven fact which points to his innocence.

139. I consider the likelihood that the murder was planned or premeditated. The possibility that Ms Dollie went voluntarily into a dark veld is remote in the extreme. There is no evidence that when Mr Lebatie walked along Katz street and into the veld he had any weapon or ligature. In my view, it is reasonably possible that in the heat of a confrontation an intention to harm, assault or rape Ms Dollie suddenly turned into an intention to murder. If Mr Lebatie did not have a ligature on him when he entered the veld he could have used any ligature which he found for example the black cord found next to the body. The state has not proved beyond a reasonable doubt that the murder was planned or premeditated.
140. On the robbery count, Mr Pitt's evidence is confirmed by that of Mr Stigling. Against Mr Lebatie are two additional factors. Firstly, at the time of the modem incident Mr Lebatie was short of money and in need of money to buy drugs. He was unhappy about the outstanding debt owed to him by Mr Stigling. Secondly, Mr Hlazo had put it to Mr Stigling that the permission given by Mr Stigling to Mr Lebatie to take the modem was tacit. In evidence Mr Lebatie said that the permission was express. In my view, the state has proved beyond reasonable doubt that Mr Lebatie, anxious for money and irritated by non-payment by Mr Stigling grabbed the modem from the considerably smaller and weaker Mr Stigling without the latter's permission, tacit or express.

VERDICT

1. Count 1 – Murder – guilty
2. Count 2 – Robbery - guilty

**JUDGE OF THE HIGH COURT,
GAUTENG LOCAL DIVISION,
JOHANNESBURG**

On behalf of the State: Adv N Naidoo
084 264 4178

Instructed by: DPP

On behalf of the Accused: Adv S Hlazo
082 835 0583

Instructed by: Legal Aid South Africa

Date of Trial: 8 February 2017 – 21 February 2017

Date of Judgment: 23 February 2017