

REPUBLIC OF SOUTH AFRICA



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

CASE NUMBER: 20/2017  
DPP REF: 10/2/11/1-205/2016

- (1) REPORTABLE: NO  
(2) OF INTEREST TO OTHER JUDGES: NO  
(3) REVISED.

09/02/2018  
DATE

C K Matshitse  
SIGNATURE

In the matter between:

**THE STATE**

and

**OBAKENG GRACIOUS SKHOSANA**

**ACCUSED**

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**J U D G M E N T**

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**MATSHITSE AJ**

## **THE CHARGES**

[1] Mr Obakeng Gracious Skhosana (Hereinafter referred to as Accused or Obakeng) is charged with:-

[1.1] First count is that of Robbery with aggravating circumstances, in that upon or about the 20 March 2016 and at or near Ontdekkers Road, in the magisterial district of Johannesburg, the accused did unlawfully and intentionally assault Victor Albert Edwards and did and there and with force rob Victor Albert Edwards, of a 9mm Parabellum pistol, with one magazine and at least 3 live rounds of ammunition, his property in his lawful possession, aggravating circumstances being the use of firearm.

[1.2] Second count of murder, read with section 51(1) of Act 105 of 1997 in that upon or about the 26 March 2016 and at or near David's Tavern, in the Magisterial District of Johannesburg, accused did unlawfully and intentionally kill Sibusiso Effort Ndlovu (hereinafter referred to as Sibusiso or deceased) a male person by shooting him.

[1.3] Third and Fourth counts attempted murder in that upon or about date and place mentioned in count 2 the accused did unlawfully and intentionally attempt to kill Tumelo Olifant and Thando Mfono.

[1.4] Fifth count of Contravening the provisions of section 3 of the Firearms Control Act, Act 60 of 2000, in that on the above date and at or near the place mentioned above, in count 2, accused was unlawfully found in possession of a firearm namely a 9mm Parabellum semi-automatic pistol with serial number 747002 and one magazine, without holding a licence, permit or authorisation issued in terms of the Act to possess those firearms.

[5] Sixth count of Contravening the provisions of section 90 of the Firearms Control Act, Act 60 of 2000, in that on the above date, and at or near the place mentioned above in count 2, accused did unlawfully possess ammunition to wit three (3) 9mm Parabellum calibre cartridges/live rounds, without a licence, or permit, or dealers, or manufactures, or gunsmith, licence or import or export or in-transit permit or authorised thereto in terms of the Act or authorised to do so.

[2] Adv Mahommed appeared for the DPP and Adv Qoqo appeared for Mr Skhosana. Mr Skhosana pleaded not guilty to all six counts. He gave no plea explanation.

### **ADMISSIONS**

[3] Adv Qoqo made a number of admissions recorded by me as such under section 220 of the Criminal Procedure Act 51 of 1977(CPA), with the consent of Mr Skhosana. These admissions are contained in exhibits "A", which incorporated exhibits "B-"C".

[3.1] In short, it was admitted that Sibusiso Ndlovu is the deceased, he died as the results of the injuries that he sustained on 26 March 2016 of Haemorrhagic Shock following Gunshot wound to the abdomen, being Exhibit "B" Post-mortem report.

[3.2] Dr Lunga Shongwe conducted the post mortem examination on the deceased.

[3.3] The facts and findings of post mortem examination recorded by Dr Lunga Shongwe are true and correct.

[3.4] The content of Report by Authorised Medical Practitioner on the completion of medico-legal examination (J88 form), detailing injuries of Tumelo Olifant is true and correct

[4] Before the State could proceed with its case per agreement Exhibit "D" was also accepted as evidence in terms of the provisions of Section 212 of the Criminal Procedure Act, being affidavit by Warrant Officer Esmeralda Hills which stated among others that she received a sealed evidence bag with number PA 4001233061 which contained

[4.1] One (1) 9mm Parabellum Calibre Llama Model VII semi-automatic pistol with serial number 747002 with one magazine

[4.2] One (1) 9mm Parabellum calibre fired cartridge and

[4.3] Two (2) 9mm Parabellum calibre cartridges

## ISSUES IN DISPUTE

[5] The sole issue for determination by this court is

[5.1] Who came with the firearm at David's Tavern, is it Mr Obakeng Skhosana (accused) or Mr Tumelo Olifant (Tumelo)

[5.2] Between the two of them, accused and Tumelo, who fired the shot or shots that injured Tumelo on his left-hand shoulder and cause the death of Mr Sibusiso Ndlovu (the deceased) and that same bullet injured or scratched Mr Thando Mfono on his right-hand thigh

[5.3] Who robbed Mr Victor Albert Edwards of his firearm; and

[5.4] Did the State prove the chain of evidence up to its analysis?

[6] At the close of the State case accused brought an application in terms of section 174 of the Criminal Procedure Act, for his discharge, which application was opposed by the State and the court denied the said application. Thereafter accused testified and closed his case without calling any further witnesses.

## **THE EVIDENCE FOR THE STATE**

[7] **Mr Sebotsa July Tshabalala** (hereinafter referred to Tshabalala) testified that in the early hours of the 26 March 2016, that is around 12h00, he was at David's tavern, which is at Princess Squatter Camp.

[8] He was busy playing a game of dice, when Tumelo, approached him and told him that Obakeng has shot him on the left-hand shoulder, when he looked at him, Tumelo was wearing a yellow t-shirt, he saw that there was blood on his left-hand shoulder, on the collar bone.

[9] At that moment he then saw Obakeng passing behind carrying a firearm on his right-hand side, he grabbed him from behind, they wrestled for the said firearm and people who were around them assisted him, he managed to dispossessed him of the firearm.

[10] He went to collect the motor vehicle in order he can take Tumelo to the hospital he then heard that Sibusiso Ndlovu was also shot, and the same bullet that hit the deceased on his stomach also hit Thando Mfono on the thigh, he took them to

the hospital. Thereafter he called the police and he handed over that firearm, that he had taken from Obakeng, he give the firearm to Sgt Machakela.

[11] The area that they were playing a game of dice was well illuminated, the spot light and about 4 small globes around there were the source of light.

[12] Prior to this incident Obakeng was known to him and that there where no animosity between them

[13] He was cross-examined and he further testified that he and Tumelo were close friends. During this incident they were at the same place but he was concentrating on the game of dice. People in that area were drinking alcohol, and was also drunk, but he could appreciate everything that was taking place around him.

[14] He did not see who shot who, he only heard two sounds of (from) a firearm, he was concentrating on the game of dice, he was only alerted by Tumelo at the time that he informed him that Obakeng has shoot him.

[15] It was put to him that it is Tumelo who came with the firearm, and he was showing it off when Obakeng reprimanded him, he became aggressive and Obakeng wanted to take out a cell phone from his pocket in order that he can call the police, it is then that Tumelo pointed him with that firearm he was playing with it, showing off. He denied, emphasised strongly so, that if Tumelo had brought a firearm he could have shown it to him, since they are very very close to each other.

[16] It was put to him that as a result of Tumelo pointing him with the said firearm he grabbed it and they started wrestling for it and Tumelo's finger was on the trigger of that firearm, he then pulled the trigger where a bullet came out thereafter he let it go and he run away. The firearm comes from Tumelo and he is just protecting him by testifying that he took the firearm from accused. He strongly denied that he took the firearm from Tumelo and he is protecting him, he emphasised that he took the firearm from Obakeng.

[17] He further testified that after grabbing Obakeng from behind, they fell on the ground and that is where they were wrestling for the firearm. He was not scarred at the time he grabbed Obakeng, he only became scarred after the whole incident of disarming him of it. He was also referred to his statement that he made to the police

wherein he did not mention that “after grabbing Obakeng from behind they fell down” of which he replied that they did fell down and that is where he disarmed him

[18] The Next State witness was **Thando Mfono**, (herein referred to as Thando), who testified that he has never attended any school, he does not know his date of birth, he was supposed to attended special school, of people who are referred to as slow leaner's

[19] On the 26 March 2016 in the early hours of the morning he was also at David's Tavern, while he was playing a game of dice, there were two tables of games dice, he was concentrating on that game, Tumelo came to Tshabalala and he informed him that Obakeng has shot him. He notice Tumelo's T-shirt, which was yellowish in colour, that it had some blood stains on the left-hand shoulder. They were not playing on the same table. On that day Sibusiso was not playing the game of dice.

[20] He heard a sound of firearm he then turned around upon which he saw that Sibusiso was falling down, he also realised that he was hit on his right thigh by the same bullet that had hit Sibusiso, however by the time that bullet hit him it did not have power. He did not see who fired the shots.

[21] He then run at the corner, he saw that Obakeng was holding a firearm on his right-hand. Tshabalala then grabbed him from behind they fell on the ground, Tshabalala then said he got the firearm, people must leave Obakeng, thereafter Obakeng run away. He confirmed that the place was packed with people there. Where he run to at the corner it can be about 9,9 meters from the tables of the games of dice.

[22] The place was well illuminated by the spot's light and other globes. It was well lighted to such an extent that one was able to can see the dice they were playing with. Tumelo and Tshabalala were close friends but Tumelo, Tshabalala and Sibusiso where working together. There was no animosity between himself and Obakeng they are

friends they grew up together from child wood time.

[23] During cross-examination he testified further that even though there were a lot of people moving around he was able to can see when Tshabalala and Obakeng

were wrestling on the ground fighting over the firearm. He strongly emphasised that it is Obakeng who had the firearm and he was holding it on his right-hand side.

[24] The next State witness was **Tumelo Reginald Olifant** (hereinafter referred to as Tumelo), who testified that on the 26 March 2016 in the early hours of the morning he was at David's tavern. There were two tables of games of dice taking place, Tshabalala and Sibusiso were at different tables.

[25] He was coming from outside, when he met up with Obakeng. He greeted him, Obakeng then said to him why should he greet him since they do not know each other, of which he asked him what is that he is trying to say that cause they grew up together, Obakeng then replied that he will crash (smash) his head cause he does not know him. They were standing about 2,2 meters apart from each other.

[26] Then he saw him cocking (bridging) a firearm, he tried to run away, in order to go and ask help from his friends, where upon Obakeng shot him on his left-hand shoulder, next to the neck. Where they met it was dark, but where the games of dice were being played it was well illuminated by spots light and globes. He managed to see that it was a firearm because he saw its barrel and it was also shining.

[27] Upon reaching where Tshabalala was playing, he tried to draw his attention but he was concentrating on the game of dice, as he was running then Obakeng had chased him, he saw Sibusiso approaching Obakeng, confronting him, Obakeng did not want to listen to what he was saying, he just shot him, he was about 4 meters from where he was when he saw Sibusiso approached Obakeng, by that time he had managed to draw Tshabalala's attention and he informed him that Obakeng has shot him on the shoulder. Then Obakeng came by and Tshabalala went behind him and grabbed him, threw him to the ground, they fell to the ground, they wrestled for the firearm which was on Obakeng right-hand. Tshabalala managed to wrestle the firearm from him, Obakeng then stood up and run away.

[28] He, Tshabalala and Sibusiso are friends and Obakeng was aware that the three of them are friends. They were then taken to hospital, himself Sibusiso he is not sure of Thando, if he did accompany them to the hospital since he was becoming dizzy and disoriented.

[29] During cross-examination he testified further that Sibusiso was not playing any dice, but he was just a spectator at the table which Tshabalala was playing the

game of dice, Sibusiso saw him running and Obakeng was chasing him. Sibusiso was about 3,2 meters from Tshabalala. At time he was informing Tshabalala that he was shot, Sibusiso was not yet shot at.

[30] He was confronted with the version of accused as it was put to Tshabalala, of which he denied that he was the one who came with the firearm and he was playing with it, he testified that it was Obakeng who had the firearm and he confirmed that he shot at him after he had greeted him and Obakeng said why should he greet him since they are not friends with each other, and further that they never wrestled for the firearm and or pulled its trigger. It was Obakeng who shot at him.

[31] He was referred to what he had stated in his statement that he had made to the police regarding this matter which is contrary to what he has testified in court, he was referred to paragraph 2 of his statement which he had stated that "...I then went to the toilet...when I came back, I met a group of four people, I then greeted Obakeng... he then shot me on my righten shoulder. He shot three times but only one bullet got me... Sebotsa then over powered Obakeng from behind and he manage to took (take) the firearm from Obakeng. Sebotsa disarm Obakeng and run to the police with the firearm. Later I heard that Sibusiso was also shot on the stomach by the same suspect (Obakeng)" of which he replied that the person who took down his statement was a Venda speaking person, he is a Sepedi speaking person but he was narrating his story to this police officer in Setswana. He did not tell the police everything that he wanted to say. After two days he went to the police and informed them about what had happened. He denied that what he has testified to before court it's a fabrication it is actually what happened.

[32] It was put to him that he and Tshabalala knew about this firearm, since also he was comfortable to walk around with it after the shooting. He denied that they knew anything about the firearm, yes Tshabalala was carrying the firearm up until he handed it over to the police.

[33] He confirmed that he and Tshabalala are best friend they can even lie, to protect each other even to die for each other, like Tshabalala did by saving his life by taking the firearm from Obakeng.



[34] The next State witness was **Sergeant Tebogo Donald Machakale**, who testified that he is employed by the South African Police Services, stationed at Roodepoort Police Station.

[35] On the 26 March 2016 he was on duty at around 04h10 he received a complaint that there was a person with a dangerous weapon. He proceeded to Princess Squatter camp, since one is unable to can drive inside the squatter camp, they met with Sebotsa Tshabalala and Thando Mfono at the old Engene garage, Sebotsa then handed to him a firearm pistol with a magazine. Upon checking it he found one fired (spend) cartridge inside it's chamber and inside the magazine he found two live rounds (cartridges).

[36] The serial number of the firearm was 747002. He sealed everything inside a forensic bag number PA 4001233061 and registered the said firearm on SAP 13 509/2016 Exhibit "G1" he never tempered with the said firearm or forensic bag.

[37] Lastly the State called **Sergeant Godfrey Chilaluke** who in short testified that after the docket in this matter was registered on the 26 March 2016 it was allocated to him as the Investigating Officer.

[38] He went to accused residential place on several occasions and he could not find him, he was on the run, he only found his mother. However, he was not involved upon his arrest.

[39] He personally signed out a firearm from SAP 13, Exhibit G2, which is a firearm Register, and it was sealed inside a forensic bag, of which he could not remember the seal number, he delivered the said forensic bag to Pretoria at Forensic Science Laboratories. The forensic bag was not tempered when he took it and he also did not temper with it.

[40] During his cross-examination it was put to him that accused never run away from his residential place. Of which he replied that accused was not sleeping at home but in the bushes.

[41] Per agreement between the State and the Defence the statement of **Victor Albert Edwards** was submitted as evidence in terms of the provisions of section 213 of CPA and was made Exhibit "H".

That was the State case.

## THE DEFENCE CASE

[42] At the end of the State's case accused applied for his discharge in terms of the provisions of Section 174 of the Criminal Procedure Act 51 of 1977. For reasons that I gave at the time, I refused that application. In summary I considered that there was a prima facie case against the accused

[43] Accused testified that at around 12h00 on the 26 March 2016 he was at David's tavern consuming alcohol and playing a game of dice, Tumelo came to the game in possession of a firearm. He played with it and he reprimanded him, he did not listen he then informed him that if he is not going to stop he was going to contact the police.

[44] He continued playing with it, he attempted to take out his cell phone from his trouser, he then pointed him with same firearm on his chest. He became scarred and he grabbed it, they then wrestled for it, as they were busy scaffolding over it, it then discharged (a bullet). After hearing the sound of the firearm, he then run home. He never went back.

[45] He denied what the State witnesses testified to, more particularly Tshabalala, Thando and Tumelo and also that he never run away from his home he was always at his home. He further denied that six days earlier he robbed the complainant, Mr Edwards of his firearm.

[46] During his cross-examination he testified that he cannot remember where he was on the 20<sup>th</sup> March 2016 and originally, he testified, that he does not know where Princess and Collect Streets are.

[47] He was ask how long he has been residing at Princess Squatter Camp, he said he grew up there, but if his memory served him well he might have lived there for 7 years, and he is familiar with the surrounding area, he knows where Kia and Hyundai garage is and also the shopping complex.

[48] He testified further that there was only one table of game dice and he was on his full senses even though he had consumed alcohol. He confirmed that at the game of dice there is always a Knox man, who is in charge of the game, how the game is played and reprimand anyone who misbehave in the game.

[49] The reason he reprimanded Tumelo is because he was standing next to him and playing with the firearm. Other players also reprimanded him, but he did not listen. Tumelo never said anything he just pointed him with a firearm and it was for about 20 seconds. As they were wrestling for the firearm others did nothing.

[50] He cannot remember which side of his was Tumelo standing, he cannot remember which direction was the firearm pointing during the time they were fighting (wrestling) for it, further he cannot remember if it did change its direction it was pointing at any stage during the struggle over it, he cannot remember how long did the swinging from side to side take. He does not know how Tumelo got to be shot on the should.

[51] He confirmed that Princess Squatter Camp is not far from Roodeport Police Station. After running from the scene, he never called or went to the police to inform them about what took place at David's Tavern, further since the 26 March 2016 up to his arrest in November 2016 he has never left or run away from his place of residence even his mother can come and confirm that. He has never gone to David's Tavern. He has never seen the police at his place of residence.'

[52] He knows that Tumelo, Sibusiso and Tshabalala were friends. He and Tumelo used to travel in the same train to school, but they were attending different schools. He and Thando grew up together, her mother used to baby sit him.

That was the defence case, no further witnesses were called

## EVALUATIONS AND FINDINGS

[53] In *S v Nyembe*<sup>1</sup>, Van Oosten, J held as follows at para [8] – "...In **S v S. [2012] ZASCA 85** the Supreme Court of Appeal held: 'A court does not look at the evidence implicating the accused in isolation to determine whether there is proof beyond reasonable doubt nor does it look at the exculpatory evidence in isolation to determine whether it is reasonably possible that it might be true. The correct approach is set out in the following passage from *Mosephi and Others v R* LAC (1980 – 1984) 57 at 59F – H: The question for determination is whether, in the light of all the evidence adduced at the trial, the guilt of the appellants was established

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<sup>1</sup> 2014 (1) SACR 105 (GSJ)

beyond reasonable doubt. The breaking down of a body of evidence into its component parts is obviously a useful guide to a proper understanding and evaluation of it. But, in doing so, one must guard against a tendency to focus too intently upon the separate and individual part of what is, after all, a mosaic of proof. Doubts about one aspect of the evidence led in a trial may arise when that aspect is viewed in isolation. Those doubts may be set at rest when it is evaluated again together with all the other available evidence. That is not to say that a broad and indulgent approach is appropriate when evaluating evidence. Far from it. There is no substitute for a detailed and critical examination of each and every component in a body of evidence. But, once that has been done, it is necessary to step back a pace and consider the mosaic as a whole. If that is not done, one may fail to see the wood for the trees.”

[54] In order to avoid falling into the trap of failing to see the wood for the trees as per the warning expressed above I propose to take a step back and consider the entire evidence as a mosaic, consider the strength and weaknesses in the evidence and consider the merits, demerits and the probabilities<sup>2</sup>.

[55] It is the duty of the State to prove the case against the accused beyond a reasonable doubt, 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<sup>3</sup>.

[56] The version of the State in short is to the effect that on the 20<sup>th</sup> March 2016, accused together with another suspect, robbed the complainant, Mr Victor Albert Edward, of his firearm with serial number 747002, and on the 26 March 2016 with Mr Edward’s firearm at David’s Tavern accused attempted to kill Tumelo Olifant by shooting him on his left shoulder, and kill Sibusiso Ndlovu by shooting him on the

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<sup>2</sup> *Modiga v The State* (20738/14) [2015] ZASCA 94 (01 June 2015) See also *S v Chabalala* 2003 (1) SACR 134 (SCA) para 15.

<sup>3</sup> *S v Trainor* 2003 (1) SACR 35 (SCA) para [9].

stomach, and died as a results of that, and the same bullet that hit the deceased on the stomach hit Thando Mfono on his right, and as such he also attempted to kill him.

Accused version on the other hand is to the effect that Tumelo came with that firearm, and he was playing with it, showing it off, whereupon he reprimanded him, but Tumelo became angrey and he wanted to call the police then Tumelo pointed him with it, they wrestled for and after it had discharged a bullet and hearing a sound he run home.

[57] It is not in dispute that the firearm,

[57.1] that was robbed from Mr Edwards on the 20<sup>th</sup> March 2016 is the same firearm that was used on the early hours of the 26 March 2016 at David's tavern. The question for determination is who came with it, is it the accused, or as accused has submitted, is it Tumelo Olifant?

[57.2] that all the parties that are involved here are known to each other, they stay together, grew up together at Princess Squatter Camp

[57.3] that the shooting took place at David's tavern and it was well illuminated, to such an extent that one was able to can see the dice which the players were playing with it;

[57.4] that Tumelo was shot on the left-hand shoulder, as fully shown on exhibit "C";

[57.5] that Sibusiso died as a result of Haemorrhagic shock following gunshot wound to the abdomen as fully stated in exhibit "B";

[57.6] that Warrant Officer Esmeralda Hills received a sealed evidence bag number PA4001233061 and after examining evidence that she found inside that bag, she came to the conclusions as fully stated in paragraphs 6, 7 and 8 of her affidavit being Exhibit "D" which in short stated that the pistol functions normally and the mechanism thereof was found to be self-loading, but not capable of discharging more than one shot with single depression of the trigger and it was further manufactured or designed to discharge centre-fire ammunition and the fired cartridge was fired from the same firearm (pistol)

## CHAIN OF EVIDENCE

[58] I may pause here and mention that the defence dispute the chain of evidence of the said evidence (forensic bag PA 4001233061). They strongly objected to the two exhibits G 1 and 2 submitting that how does one come to the conclusion that the exhibits that have been written there are one and the same as the one that was handled or put in the forensic bag number PA 4001233061 because the said forensic bag number was never entered in any of the said exhibit, therefore there have been a break in a chain of evidence.

[59] The chain of evidence/custody can technically be defined as the movement and location of real evidence from the time it is obtained to the time it is presented in court. In practical terms, a chain of custody is the documentation and /or testimony that proves that the result or conclusion that the State seeks to prove is based on the evaluation of evidence that has not been altered or tampered with in any way since it was obtained. In other words, this can mean that the evidence from the State should reflect the “paper trail” or chain of custody of the firearm and /or forensic bag number PA 4001233061 that contained the evidence as received by Sgt Machakela up to the time that Warrant officer Hill dealt with it. The State should be able to account for the whole period, from the moment the evidence was collected up to the time the evidence, or a report regarding the evidence, is submitted in court during the trial. The court must be satisfied that the evidential material is relevant to that specific case

[60] According to Exhibit H, Mr Edwards, has stated that at around 23h00, he left his home while carrying his firearm 9mm Parabellum Llama with **Serial Number 747002**, he was robbed the said firearm by two people, that he is unable to can identify.

[61] Tshabalala testified that he dispossessed the firearm from Obakeng and he kept it up until he handed same to Sgt Machakela, he never tempered with it. Sgt Machakela testified that he received the firearm from Sebotsa Tshabalala, upon checking it had a serial number 747002 and he took same and sealed it in a forensic bag number PA4001233061 he entered the same evidence on a SAP13 509/2016,

Exhibit "G1". Sgt Machekela testified that he never tempered with the forensic bag he left it still sealed

[62] According to column 3 of exhibit "G1" it is stated that 1 x 9 mm Llama Parabellum Serial number 747002, 1 x Magazine, 2 x live rounds and 1 x Cartridge according to column 5 of the same exhibit it has been written 29-03-2016 that "item be transferred to f/arm register and at column 6 of the same exhibit it is written transferred to SAP 13 F/A 13/42/2016.

[63] Sgt Chilaluke testified that he took the same sealed forensic bag to Pretoria Science Laboratories and he never tempered with it. He cannot remember the forensic bag number but he is sure that he took the same forensic bag that contained the firearm that was handed over by Sgt Machakela, because he found it from Firearm register. According to exhibit G2 at column 2 it is written transferred from SAP 13 General 13/509/2016 and at column 3 thereof it is written 1 x 9mm Llama Parabellum serial 747002 firearm, 1 x Magazine 2 x live rounds, 1 x cartridges, and at column 5 it is written 29-03-2016 received and 2016/06/20 Exhibit 3.1-3.4 Sgt Chilaluke for forensic, signed and thereafter it is further written 2016-09-07 items booked back.

[64] The State on the other hand has submitted that there is no break in the chain of evidence, the police had to transfer the exhibits, to firearm register, yes the serial number of the forensic bag was not entered but the same forensic bag which was written by Sgt Machakela was received by Warrant Officer Hill still sealed with no tempering.

[65] I belief that the same firearm that was robbed from Mr Edward with serial number 747002 was the same firearm that Sgt Machakela received from Tshabalala and if one has to trace it (its chain), it was entered in the SAP13 (exhibit G1 and 2) Sgt Chilaluke took the same exhibits as mentioned in SAP 13 to Pretoria FSL and the same firearm with same serial number was received by Warrant Officer Hill still intact.

[66] Therefore, I have come to the conclusion that the documentations and evidence that have been presented by the State managed to prove the chain of evidence that the firearm that was robbed from Mr Edwards, and handed over by Tshabalala to Sgt Machakela and Sgt Chilaluke took to Pretoria FSL is the same

firearm with the magazine and ammunitions as it was examined (analysed) by Warrant Officer Hill there was no tampering or break on its chain.

### **CONTRADICTION ON THE STATEMENT MADE TO THE POLICE**

[67] The defence submitted that Tumelo and Tshabalala were not honest and credible witnesses, the court should disregard their testimonies, it relied on their statements that they have made to the police, and submitted that whatever they have testified to before court are material contradictions to their statements.

[68] There have been several decided cases when it comes to the issue of a statement that has been made before a police officer. In *S v Mafaladiso*<sup>4</sup> it was held that “the juridical approach to contradictions between two witnesses and contradictions between the versions of the same witness (such as, *inter alia*, between her of his *viva voce*, evidence and a previous statement) is, in principle (even if not in degree) identical. Indeed, neither case is the aim to prove which versions is correct, but to satisfy oneself that the witness could err, either because of a defective recollection or dishonesty. The mere fact that it is evident that there are self-contradictions must be approached with caution by the court.

[69] Discrepancy in statement caused by one sentence only – could be interpreted in one of two ways – must be read in the context of the whole statement. First the court must ascertain what the witness meant to say in order to determine whether there was a discrepancy and the extent of the discrepancy. The court must take into account the following: the fact that a statement to the police was not subjected to cross-examination, language and cultural differences between the witness and the person who took the statement, and the fact that the police did not require any explanation of a statement. Secondly, not every error by, or discrepancy in the statement affects the witness’s credibility. Thirdly, the different versions must be evaluated holistically.

[70] This evaluation includes the circumstances in which the versions were given, reasons for the discrepancies, the effect of the discrepancies on the witness’s credibility and whether the witness had sufficient opportunity to explain the

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<sup>4</sup> 2003 (1) SACR 583 (SCA) (593e – 594a-h)



discrepancies. Lastly, the witness's statement to the police must be weighed up against the witness's viva voce evidence, to consider all the evidence and to decide whether it is reliable or not and to decide the truth has been told despite any shortcomings"

[71] In *S V Mkhle Nestadt*<sup>5</sup> JA held that

Contradictions per se do not lead to the rejection of a witness' evidence .... They may simply be indicative of an error (*S v Oosthuizen* 1982 (3) SA 571 (T) quoting from 576G-H :) .... it is stated that not every error made by a witness affects his credibility; in each case the trier of fact has to take into account such matters as the nature of the contradictions, their number and importance, and their bearing on other parts of the witness' evidence. No fault can be found with his conclusion that what inconsistencies and differences there were, were 'of a relatively minor nature and the sort of thing to be expected from honest but imperfect recollection, observation and reconstruction'. One could add that, if anything, the contradictions points away from the conspiracy relied on (98f-g)

[72] In *S v Bruiners en Ander*<sup>6</sup> It was stated that 'the purpose of an affidavit was to obtain the details of an offence, so that it could be decided whether a prosecution should be instituted against the accused, It was not the purpose of such affidavit to anticipate the witness's evidence in court, and it was absurd to expect of a witness to furnish precisely the same account in his evidence as he would in his evidence in open court"

[73] During the testimony of Tshabala he was adamant that after grabbing Obakeng from behind they fell to the ground, which fact was also confirmed by Thando when he testified that Tshabalala grabbed Obakeng from behind and two feted him and they both fell to the ground, of which Tumelo confirmed that Tshabalala grabbed Obakeng from behind and threw him to the ground and that is where they wrestled for the firearm and he managed to take it from him.

[74] Tumelo testified that during the time that he made that statement, the police officer was speaking TshiVenda, and his home language is Sepedi but he was narrating his story in Setswana and further that he did not tell everything that he wanted to say, he went to the police after two days and told them everything that he

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<sup>5</sup> 1990(1) SACR 95 (A)

<sup>6</sup> 1998 (2) SACR 432 (SE) quoted in the case of *S V Khoza* 2014 JDR 200 (GP)

left out. Right from the beginning when ask about his statement to the police he indicated that, some of the things were not mentioned and somewhere not the way that he explained it to the police. In the circumstances one can expect that surely there will be some discrepancies or contradiction on Tumelo's evidences.

[75] What must be borne in mind, however, is that the conclusion which is reached (whether to convict or acquit) must count for all the evidence. Some of the evidence might be found to be false; some of it might found to be unreliable; and some of it might be found to be only possibly false or unreliable; but none may simply be ignored. See *S v Van der Mayden*<sup>7</sup>

[76] Police statements are renowned for their inaccuracy and lack of detail<sup>8</sup> Therefore, I have approached these discrepancies made by both witnesses in their statement and in their testimony with circumspection and I belief that notwithstanding the fact that there are short comings, more so to Tumelo's statement, like he failed to mention that he saw when Obakeng shot the deceased and also that he met with accused, when he was coming from the toilet and accused was in the company of other 4 people, both of them, Tshabalala and Tumelo, have told the truth and they were credible witnesses.

[77] The defence also submitted that Thando's evidence should also be disregarded, simply because he testified that he is a slow learner and he did not properly see what was happening when he had run to the corner. He could not see anything because the were a lot of people moving around as such he is also not a credible witness.

[78] I do not agree with the defence submission, Thando has a speech impediment(defect), notwithstanding that fact, his testimony was coherent and clear. I belief he has seen what happened he did see Sibusiso when he was holding his stomach and falling down, he testified that Sibusiso was behind him that is why when he turned around he saw him and also the bullet that hit Sibusiso ricochet and hit him on the thigh. He was very adamant that he did see Obakeng holding a firearm on his right-hand side and also witnessed when Tshabalala grabbed Obakeng from behind and two feted him to the ground wrestled for the firearm. Accused testified that he grew up with Thando and more so his mother was taking care of Thando

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<sup>7</sup> 1999 (1) SACR 450 (WLD) @ 450b

<sup>8</sup> *S v Xaba* 1983 (3) SA 717 (A) at 729-730; *S v Rautenbach* 2014 (1) SACR 1 (GSJ) para [128];

(babysitting him) He regarded Thando as his little brother, there was no animosity between them.

[79] The question therefore is why would Thando falsely implicate Obakeng, whom I believe he was closer to him than to Tshabalala and/or Tumelo and/or Sibusiso. One could hear and see from the way he was testifying that he was very very adamant about what he saw, he did not hear it from someone, if he wanted to implicate Obakeng he could have also testified that I did see Obakeng shooting Sibusiso, but he said I did not see it but only turned after hearing a sound of a firearm and upon turning he saw Sibusiso holding his stomach, and when he looked at his thigh he was struck by the same bullet that had struck Sibusiso. Therefore, I have come to the conclusion that he was credible and truthful witness.

### **THE ACTUAL SHOOTING**

[80] With regard to the shooting the evidence is that of a single witness, that is, of Tumelo. When it comes to the evidence of a single witness the court has to approach the said evidence with caution. In terms of s 208 of the Criminal Procedure Act, an accused can be convicted of any offence on the single evidence of a competent witness. It is, however, a well-established judicial principle that the evidence of a single witness should be approached with caution, his or her merits as a witness being weighed against factors which militate against his or her credibility. The correct approach to the application of the so-called 'cautionary rule' was set out by Diemont JA in *S v Sauls and Others* 1981 (3) SA 172 (A) at 180E-G ...5i-j, 6a-d: ...her judgment illustrates the dangers of what has been called "a compartmentalized approach" to the assessment of evidence, namely an approach which separates the evidence before the court into compartments by examining the 'defence case' in isolation from the 'State case' and *vice versa*.

[81] In the words of Nugent J in *S v Van der Meyden* 1999 (1) SACR 447 (W) at 449c - 450b: 'Purely as a matter of logic, the prosecution evidence does not need to be rejected in order to conclude that there is a reasonable possibility that the accused might be innocent. But what is required in order to reach that conclusion is at least the equivalent possibility that the incriminating evidence might not be true. Evidence that incriminates the accused and evidence which exculpates him, cannot both be true – there is not even a possibility that both might be true – the one is

possibly true only if there is an equivalent possibility that the other is untrue'. See *Stevens v S*<sup>9</sup>

[82] I found the following safeguard for the reliability, as opposed to credibility, of Tumelo's evidence to be the fact that according to the evidence from the State witnesses, Tshabalala and Thando were playing dice at different tables, and Tshabalala testified that he heard two gunshot sounds, but he continued playing or concentrating on the game of dice. Tumelo testified it took sometime to be able to can get Tshabalala's attention.

[83] Thando testified that he heard Tumelo informing Tshabalala that he was shot on the shoulder thereafter he heard a sound of a firearm which made him to turn around

[84] Both Tumelo and Thando were very adamant that they saw a firearm in the hands of Obakeng and they confirmed that Tshabalala wrestled for the firearm with Obakeng on the ground.

[85] If one looks at the evidence of accused, I am alive to the fact that the state bore the onus to prove the guilt of the accused beyond a reasonable doubt and that there is no onus on the accused to proof the truthfulness of any explanation which he gives nor to convince the court that he is innocent, however he alleges that it is Tumelo who came with the firearm and he was playing with it, he reprimanded him also people who were playing the game of dice also reprimanded Tumelo, and Tumelo did not stop, he continued playing with it, when accused spoke to him he became aggrasive to such an extended when accused was attempting to take out his cell phone to call the police Tumelo allegedly pointed him with the same firearm on his chest. Where was the Knox man, he is the one who was responsible for the game, he was supposed to reprimand Tumelo?

[86] However the way Obakeng testified how they wrestled over the firearm is contrary to the probabilities. He testified that at the time that Tumelo pointed him with the firearm, he grabbed it from the barrel side, which means the barrel of the firearm was pointed or it was more on his side, they were all along standing when they were wrestling for firearm, he cannot recall if at any stage did the firearm barrel turn and

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<sup>9</sup> 2005 [1] All SA 1 (SCA).

pointed to the direction of Tumelo, he cannot recall how long did this wrestling went on, as they were wrestling for that firearm, it means the game of dice was continuing, notwithstanding that possibilities that they must have disturbed other players, who continued with their game and they were not bothered by people who were fighting next to them, they must have pushed and shoved each other, and there where more than twenty people in that table, and according to accused he was the one who was throwing the dice. Which means he must have decided to leave everything, including his money that he had bet with.

[87] Probabilities are that since the barrel of the firearm was pointed on the side of accused, according to accused version it meant that by the time Tumelo pulled the trigger, the person who was likely to get injured (shot at) must have been accused or another person who was on the side of accused. In any event according to accused the only shot he heard was that one which injured Tumelo on his left-hand side. Then after running away why would Tumelo remain and continue to shot Sibusiso, who is still his friend and did nothing to him.

[88] Accused testified that after the hearing the sound of the firearm he did not look as to see if there was anyone who got injured or not, he was scared he run home. After that he did nothing up to the time the police came to arrest him. Even when the police came, visited his home, they could not find him, even though he testified that he was at his home all along. His actions after the incident are not of an innocent person. Since he testified that originally, he wanted to call the police to inform them about the firearm, why when he is free he did not take steps to contact them even when he was aware the Roodeport Police Station was not far from Princess Squatter Camp.

[89] Zulman JA's stated as to the onus proof in *S v V*<sup>10</sup> that:

"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 beyond any reasonable doubt it was false. It is permissible to look at the probabilities of the case to determine whether the accused's version is reasonably possibly true,

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<sup>10</sup> 2000 (1) SACR 453 (SCA) at 455a–c

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."

[90] His version is just a fabrication as a result I reject his testimony that it is Tumelo who came with the firearm and I believe that he is the one who came with the said firearm and shot Tumelo, Sibusiso and the bullet that struck Sibusiso also struck Thando.

### **COUNT 3 ATTEMPTED MURDER THANDO MFONO**

[91] Regarding Count 3 Attempted Murder of Thando Mfono the State submitted that the accused should be convicted on the basis of *dolus eventualis*. Thando testified that the bullet that struck him is the same bullet that had struck Sibusiso and by the time it hit him it did not have any power.

[92] It should be noted that the same requirements (elements) of proving the offence of murder are applicable when it comes to proving the offence of attempted murder

[93] The principle to determine what form of intent to murder an accused should be convicted of has been proved was expressed in these terms by Holmes JA in *S v/s Siwahla*<sup>11</sup>

1. The expression "intention to kill" does not, in law, necessarily require that the accused should have applied his will to compassing the death of the deceased. It is sufficient if the accused subjectively foresaw the possibility of his act causing death and was reckless of such result. This form of intention is known as *dolus eventualis*, as distinct from *dolus directus*.

2. The fact that objectively the accused ought to reasonably have foreseen such possibility is not sufficient. The distinction must be observed between what actually went on in the mind of accused and what would have gone on in the mind of a *bonus paterfamilias* in the position of the accused. In other words, the foreseeability must not become blurred. The *factum probandum* is *dolus*, not *culpa*. These two different concepts never coincide.

3. Subjective foresight, like any other factual issue, may be proved by inference. To constitute proof beyond reasonable doubt the inference must be the only one

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<sup>11</sup> 1967 (4) SA 566 (A) at 570B-F:

which can reasonably be drawn. It cannot be so drawn if there is a possibility that subjectively the accused did not foresee, even if he ought reasonably to have done so, and even if he probably did so.

[94] It is not in dispute that the area at David's Tavern was packed with people now the question is did accused foresee that by shooting or trying to shoot at Sibusiso he might miss his target and as a result kill or injure another person and further that the same bullet might hit another person and there by cause him to die or cause some injuries. That is, did he have intention to "kill" Thando or not or he should have foreseen, subjectively so, that by shooting Sibusiso, the same bullet might struck another person and he reconciled himself with that action

[95] How does one determine that intention, because it is clear from the evidence that accused did not have any direct intention of shooting Thando, it was stated in S v/s Van Aardt <sup>12</sup> Kgomo AJA at 659d-g stated that "I am in respectful agreement with the following statement by the Namibian Supreme Court in S v Van Wyk 1992 SACR (1) 147 (NmS) at 161e-h: The State is, from the nature of things, seldom able to offer direct evidence of the accused state of mind at the time of the assaulting the deceased and must therefore rely on inferences to be drawn from the circumstances of the assault (including its nature and duration), the nature of any weapons used and the nature, and the position of the injuries inflicted. These must in turn be weighed up against any other circumstances (such as the consumption of drugs or alcohol) which may indicate may indicate that the accused did not foresee the consequences of his actions. This does not involve piecemeal assessment or process of reasoning. All relevant facts that bear on accused's state of mind and intention must be cumulatively assessed and a conclusion reached as to whether an inference beyond a reasonable doubt can be drawn from these facts.

[96] It is further not in dispute that alcohol was being consumed and with the exception of Tumelo all the parties who are involved in this matter where somehow under the influence of alcohol. Since there was no direct intent to shoot Thando, can

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<sup>12</sup> 2009(1) SACR 648 (SCA)

I safely infer that the actions or conduct of accused fulfil the requirements stated in Sewahla case.

[97] Accused testified that notwithstanding the fact that he had consumed alcohol he was in the position to can appreciate what he was doing, I believe that when accused shot Sibusiso who was in the crowded area he was aware and considered it a reasonable possibility that by shooting at Sibusiso the same bullet might miss him or hit another person but, he was reckless as to such fatal possibility, he embarked on or persisted with his actions of shooting at him therefore I believe the State has proved beyond reasonable doubt that accused by so doing attempted to kill Thando.

### **COUNT 1 ROBBERY WITH AGGRAVATING CIRCUMSTANCES**

[98] Count 1 is reliant upon or closely link to the outcome of the question who came with the firearm. Since I have reached the conclusion that it is the accused before court who came with it the next question which the court need to answer is was the accused involved in the robbery of Mr Edward on the 20<sup>th</sup> March 2016.

[99] In the case of *S V Twala*<sup>13</sup> the full court had to decide whether the conviction of accused was in accordance with justice, where accused was convicted of armed robbery and murder on the basis that he had been found in possession of the firearm, the murder weapon long after the incident.

[100] On this count 1 the State is relying on the doctrine of recent possession, that this incident at David's tavern took place within six days from the time Mr Edwards was robbed of his firearm.

[101] The defence submitted that Mr Edwards was robbed by two males and it's their submission that Tumelo and Tshabalala are the once that robbed Mr Edwards.

[102] In *S v Skweyiya*<sup>14</sup> Eloff AJA said the following in regard to the aspect of the "doctrine":

"It is the requirement that the goods must have been recently stolen. The nature of the stolen article is an important element in the determination of what is recent . . . If

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<sup>13</sup> 2014 (1) SACR (KZP) 414 at p422

<sup>14</sup> 1984 (4) SA 712 (A) at 715C



the article stolen is of the type which is usually and can easily and rapidly be disposed of, anything beyond a relatively short period will usually not be recent. The court has accordingly to ask itself '... is the article one which could easily pass from hand to hand, and was the lapse of time so short as to lead to the probability that this particular article has not yet passed out of the hands of the original thief.'"

[103] The doctrine of recent possession permits the court to make the inference that the possessor of the property had knowledge that the property was obtained in the commission of an offence and in certain instances was also a party to the initial offence.<sup>15</sup> The court must be satisfied that (a) the accused was found in possession of the property; (b) the item was recently stolen. When considering whether to draw such an inference, the court must have regard to factors such as the length of time that passed between the possession and the actual offence, the rareness of the property, the readiness with which the property can or is likely to pass to another person.<sup>16</sup>

[104] Whether in any particular case the possession may be said to be "recent" depends upon the nature of the property stolen, and upon all the other circumstances of the case. If the property is such that it would ordinarily change hands rapidly, a very short period only would suffice. If the property is not of a negotiable character, the period would be longer. Furthermore, the class of person to which the possessor belongs must also be taken into account. It is impossible to lay down precise rules, and even the giving of examples may be dangerous. Suffice it to say that the important point is not the number of hours or days that have elapsed between the theft and possession, but the gravity of the suspicion which the possession, in the circumstances, raises against the possessor.<sup>17</sup>

[105] There is no rule about what length of time qualifies as recent. It depends on the circumstances generally and, more particularly, on the nature of the property stolen. If the property stolen is a firearm, like in this matter, it might take sometimes in order for a firearm to exchange hands, more so when it has been obtained unlawfully or illegally. Even when a person applies to own a firearm, legally, there

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<sup>15</sup> *S v Skweyiya* 1984 (4) SA 712 (A); *R v Bharolu* 1945 AD 813 at 822-823; *R v Nxumalo* 1939 AD 580 at 587.

<sup>16</sup> *Skweyiya* above.

<sup>17</sup> *Mothwa v The State* (124/15) [2015] ZASCA 143 (1 October 2015)

are stringent requirements that needed to be satisfied or followed before a person can be given a licence to possess a firearm

[106] Courts have repeatedly emphasised that the doctrine of recent possession must not be used to undermine the onus of proof which always remains with the State. It is not for the accused to rebut an inference of guilt by providing an explanation. All that the law requires is that having being found in possession of property that has been recently stolen, he gives the court a reasonable explanation for such possession.<sup>18</sup> In this case all three state witnesses, Tshabalala, Thando and Tumelo, saw accused being in possession of a firearm.

[107] Mr Edward was robbed a firearm with serial number 747002 and the firearm that was handed over to Sgt Machakela which had same serial number, there is no direct evidence that accused was one of the two people that robbed Mr Edwards the abovementioned firearm, the only fact that the court can do is to draw an inference that he was one of those people that robbed Mr Edwards his firearm.

[108] Circumstantial evidence may furnish proof both of the commission of the crime and of the person who committed it. See *Wills Circumstantial Evidence* 7 ed at 343. The conduct of the accused in relation to the property cannot be disregarded. See *R v Burton* (1854) 6 Cox CC 293. In *R v Tshabalala and Others* 1942 TPD 27 at 30, the court held that when the property is proven to have been stolen, the accused's conduct and the absence of explanation, or the giving of a false explanation, in relation to such property are relevant to the question whether his possession was innocent or guilty — they constitute circumstantial evidence from which an inference of guilt may be drawn<sup>19</sup>.

[109] All the circumstances of the present case, like accused failure to report to the police what happened at David's tavern, not residing or sleeping at his home, while the police were looking for him, he failed to call his mother to come and confirm that he was at home all along, attract as the only reasonable inference and the conclusion that the accused was one of the participants in the robbery of Mr Edwards firearm

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<sup>18</sup> *Zwane and another v The State* (426/13) [2013] ZASCA 165 (27 November 2013 para 12).

<sup>19</sup> See *S v Twala* (supra)

[110] Did the State prove its case beyond a reasonable doubt in the case of *S V Sithole and Others*<sup>20</sup> the court opined as follows “On the basis of this evidence it was argued that the State had at best, proved its case on a balance of probabilities but not beyond reasonable doubt. Where does one draw a line between proof beyond reasonable doubt and proof on a balance of probabilities? In our law, the classic decision is that of Malan JA in *R v Mlambo* 1957 (4) SA 727 (A). The learned judge deals, at 737F–H, with an argument (popular at the Bar then) that proof beyond reasonable doubt requires the prosecution to eliminate every hypothesis which is inconsistent with the accused's guilt or which, as it is also expressed, is consistent with his innocence. Malan JA rejected this approach, preferring to adhere to the approach which ‘. . . at one time found almost universal favour and which has served the purpose so successfully for generations’ (at 738A). This approach was then formulated by the learned judge as follows (at 738A–B).

[111] ‘In my opinion, there is no obligation upon the Crown to close every avenue of escape which may be said to be open to an accused. It is sufficient for the Crown to produce evidence by means of which such a high degree of probability is raised that the ordinary reasonable man, after mature consideration, comes to the conclusion that there exists no reasonable doubt that an accused has committed the crime charged. He must, in other words, be morally certain of the guilt of the accused.

[112] An accused's claim to the benefit of a doubt when it may be said to exist must not be derived from speculation but must rest upon a reasonable and solid foundation created either by positive evidence or gathered from reasonable inferences which are not in conflict with, or outweighed by, the proved facts of the case

[113] The approach of our law as represented by *R v Mlambo*, *supra*, corresponds with that of the English courts. In *Miller v Minister of Pensions* [1947] 2 All ER 372 (King's Bench) it was said at 373h by Denning J:

‘. . . the evidence must reach the same degree of cogency as is required in a criminal case before an accused person is found guilty. That degree is well settled. It need not reach certainty, but it must carry a high degree of probability. Proof beyond

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<sup>20</sup> 2005 JOL 16324 (T)

reasonable doubt does not mean proof beyond the shadow of a doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the cause of justice.

[114] If the evidence is so strong against a man as to leave only a remote possibility in his favour, which can be dismissed with the sentence 'of course it's possible but not in the least probable', the case is proved beyond reasonable doubt, but nothing short of that will suffice.'

[115] Therefore the State managed to prove beyond reasonable doubt that accused have participated in the robbery of Mr Edward on the 20<sup>th</sup> March 2016 and that on the following Saturday the 26 March 2016, he still had that firearm, and he went to David's tavern wherein he shot Tumelo on his shoulder, and also the deceased on his stomach and the same bullet hit Thando on his thigh.

[116] Regarding count two, that of Murder, I belief that at the time he shot Sibusiso he did not plan or premediated the shooting, Sibusiso was on his path as he was chasing Tumelo, if it was Tumelo that was shot again that will have been a different story. Therefore, I have come to the conclusion that the said offence falls under the provisions of Section 51(2) of the Criminal Law Amendment Act 105 of 1997.

## **VERDICT**

[117] As a result the court has come to the following verdict

### **Mr Skhosana is found guilty on: -**

Count 1 – Robbery with Aggravating Circumstances – as charged

Count 2 – Murder- read with the provisions of Section 51(2) of the Criminal Law Amendment Act 105 of 1997

Count 3 - Attempted Murder of Tumelo Olifant

Count 4: Attempted Murder of Thando Mfono

Count 5- Contravening the provisions of Section 3 of the Firearms Control Act

Count 6- Contravening the provisions of Section 90 of the Firearms control Act



**C K MATSHITSE**  
**ACTING JUDGE OF THE HIGH**  
**COURT, GAUTENG LOCAL**  
**DIVISION, JOHANNESBURG**

On behalf of the State:

Adv Mahommed

Instructed by:

DPP

On behalf of the Accused:

Adv Qoqo

Instructed by:

Legal Aid South Africa

Date of Trial:

29 January 2018 – 01 February 2018

Date of Judgment:

09 February 2018