

IN THE HIGH COURT OF SOUTH AFRICA(CAPE OF GOOD HOPE PROVINCIAL DIVISION)CASE NO:

SS15/2004

DATE:

11-3-2004

In the matter of:

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THE STATE

versus

1. ADAM ROY WOEST
2. TREVOR BAZIL THEYS

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J U D G M E N T

N C ERASMUS, J: On the morning of 20 January 2003, Mark Hamilton visited the Sizzler's Massage Parlour, as he had done before. He was met with one of the most gruesome horror scenes imaginable. After seeking help he returned with the police to find nine men either dead or dying. One can only imagine the stench of petrol, blood and bodies everywhere, the gurgling sound of a person drowning in his own blood, another in a pool of blood trying to kick out of his bonds. This was the aftermath of one of the worst massacres Cape Town has experienced.

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The families and friends of the nine dead men, a single survivor, the greater Cape Town and the country were expecting to hear why these men were butchered in the most violent and senseless fashion, as they were. Questions were asked, speculation was rife, but I am afraid we are still left with, as the songwriter says "*more questions than answers*". Another song rang through this court as a background to a police video that was taken shortly after the shootings, which included

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the following lyrics:

*"Tell it like it is don't be ashamed to let your conscience be your guide. Life is too short to have sorrow. We may be here today and gone tomorrow. You might as well get what you want so go on and live baby, go on and live."* so

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The two accused are charged with various charges, in total 14 of them. Accused number 1 was charged with the theft of a firearm, which firearm plus one other was used in the killing of the following nine people:

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1. Aubrey John Otgaar
2. Sergio De Castro
3. Marius Meyer
4. Warren Robert Visser
5. Stephanus Abraham Fouche
6. Travis Reade
7. Johan Joseph Meyer
8. Timothy Craig Boyd
9. Gregory Seymour Berghaus

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There was an attempt on the life of Quinton Simon Taylor.

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They are further charged with armed robbery in that they robbed the occupants of the house of cash, jewellery and other items whilst being in the possession of firearms. A further charge for the possession of two firearms and ammunition.

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Both of the accused pleaded guilty to all the charges, save that

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accused number 1 pleaded not guilty to charges 3 and 10. They both  
tendered statements in explanation of their pleas in which accused  
number 1, in a statement in terms of section 112 of the Act, gave a full  
explanation of what transpired in his view on the night in question. 5

On behalf of accused number 2 a statement that purports to be a  
confession was handed in as a statement in terms of section 112(2).  
There are authorities in our law that this is admissible and I admitted it  
as such.

On evaluating said statements I came to the conclusion that it 10  
would be appropriate to enter pleas of not guilty in terms of section 113  
of Act 51 of 1977. Section 113 reads as follows:

*"If a court at any stage of the proceedings under section  
112(1)(a) or (b) or 112(2) and before sentence is passed, is  
in doubt whether the accused is in law guilty of the offence 15  
to which he or she has pleaded guilty, or if it is alleged or  
appears to the court that the accused does not admit an  
allegation in the charge, or that the accused has incorrectly  
admitted such allegation, or that the accused has a valid  
defence to the charge, or if the court is of the opinion for 20  
any other reason that the accused's plea of guilty should  
not stand, the court shall record a plea of not guilty and  
require the prosecutor to proceed with the prosecution."*

It was clear from the contents of the statements that there were conflicts  
between the accused on the facts admitted and the allegations in the 25  
charge and, therefore, the Court was obliged to enter pleas of not guilty.

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The test for section 113, in my view, when assessing whether the contents of a statement in terms of section 112(2) of Act 51 of 1977 justifies a conviction is, if what the accused says would disclose a possible defence to the charges preferred against him. Whether the accused should be believed in what he discloses in this statement is not a relevant consideration. Both the accused stated in their statements that they feared the other accused when participating in the events that formed the basis of the charges. I have already mentioned the differences in the allegations they admitted.

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In stating as such in respect of the fear, they raised a possible defence in law of necessity. The prosecutor further did not accept the factual basis of the pleas as tendered by the accused. After the pleas of not guilty were entered, the prosecutor proceeded to present evidence on the merits of the case.

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After the close of the State's case, the defence elected not to present any evidence to rebut or qualify the admissions made, nor the evidence as led by the State. Accordingly I do not intend to summarise all the evidence led as the bulk of the evidence either amounts to common cause facts or simply facts not in dispute.

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I deal with the facts. Number 7 Graham Road, Sea Point is a single residential dwelling that was used as a male-to-male massage parlour, or an escort agency known as Sizzlers. Directly opposite on the northern side of Graham Road is a block of flats, namely Bordeaux Flats. Accused number 1 and a State witness, Jacobus Steyn, were residents in this block of flats. Steyn's apartment overlooked No. 7 Graham Road.

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Accused number 1 was employed as a manager at a local restaurant where he met accused number 2, who was a taxi driver at the time. Shortly before midnight on 19-20 January 2003, accused number 1 made a telephonic booking at Sizzlers. The plan was that both he and accused number 2 would go there. Unbeknown to the occupants at No. 7 Graham Road, the two accused had no intention of utilising the services offered by Sizzlers, but were fostering an evil and criminal intent.

Around midnight they arrived at Sizzlers, after carefully plotting their plan. Accused number 2 had stolen his brother's firearm and obtained the use of a BMW motor vehicle. They armed themselves with two firearms, a knife, rope, duct tape, a two litre container filled with petroleum, surgical gloves and balaclavas. They state that their primary goal for visiting Sizzlers was to rob the occupants. Upon their arrival the front door was opened by one of the deceased, Sergio De Castro, whereafter they were taken to a massage studio and Sergio returned to another massage studio to complete his services with a client, Berghaus. According to Quinton Taylor, the only eyewitness and sole survivor of the events, this was normal procedure. The normal procedure would have been that the workers as he called them "boys" would all be in the front room that doubled as a dormitory. They, the workers, would then present themselves one by one to the prospective clients in the massage studio. Once an election is made by the client they would then go to a vacant studio for their business.

On the night in question, however, the workers did not get the

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opportunity to present themselves to the accused. Shortly after the  
 accused entered the premises, the owner, Eric Otgaar, appeared in the  
 doorway of the dormitory with both the accused following. They were  
 now wearing surgical gloves that they did not wear when entering the 5  
 premises. Both were armed with firearms. The occupants of the house  
 were told that it was a robbery. The two accused wore no disguises.  
 Accused number 1 spoke to Eric as if they were known to each other.  
 Eric was told to open the safe in the dormitory. Cash was found that the  
 two accused shared. All those present in the dormitory were tied up by 10  
 binding the hands and feet together. They were also forced to lie face  
 down. Quinton insisted lying on his back and was allowed to do so. He  
 testified that he wanted to see if he got killed. This reminds one of the  
 famous last words of Chè Guevara when he told the person who shot  
 him, before being shot, *"I know you. You came to kill me. Shoot 15*  
*coward, you are only going to kill the man."*

All of the occupants of the dormitory were gagged by having a  
 sock stuck in their mouths and tied over with the duct tape. Their  
 personal belongings, including jewellery and watches, were taken.  
 According to Quinton Taylor, Eric and himself tried to hide their 20  
 belongings but this was spotted by accused number 1, who was taking  
 the lead, and ordered them to hand their belongings over. The two  
 accused left the dormitory and went to the kitchen. When they returned  
 accused number 1 was armed with a steak knife and accused number 2  
 had his own knife that he had earlier used to cut the rope with which the 25  
 victims were tied up.

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At this stage Sergio and Berghaus (the client) were still in the adjacent room. Accused number 2 stayed with the people in the dormitory whilst accused number 1 was wandering through the house. Judging from the photographs and the objective evidence, he must have been looking for valuables or something that he could find. In Eric's room was a second safe that was also opened according to the evidence of his brother-in-law. According to Taylor there was at least R7 000 in the safe that he brought from Knysna. The people in the dormitory asked accused number 2 if they were going to die, but the were assured that it would not happen. However, shortly thereafter both accused started to cut their throats. The accused started from opposite ends and worked their way towards the centre. According to Taylor, accused 2 was hesitant to do it but was ordered to proceed by accused number 1. Whilst this was happening and shortly thereafter, the victims were screaming and moaning as a result of the cuts to their throats.

Accused number 2 was constantly trying to calm accused number 1 and reassured the victims that they would not die. Later accused number 1 left the room and came back with the two litre container that was filled with petroleum and doused the victims with that. Thereafter, accused number 1 was walking up and down the house and it appeared as if he was talking to somebody on a cellphone. Taylor was under the impression that he was waiting for transport in order to leave.

As time went on, the bonds loosened and accused number 2 re-tied them continuously. At one stage Eric Otgaar managed to get loose, but was knocked down by accused number 1. Later again accused

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number 1 left the room whilst number 2 stayed behind with the people in the dormitory. Shots were fired in another part of the house. This must have been when Sergio and Berghaus were shot. When accused number 1 returned to the room, both him and number 2 started shooting the people in the dormitory, again starting from left and right and working their way to the centre. It is common cause that all those present were shot, execution style.

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Taylor sustained serious injuries and survived miraculously. He ran to a nearby filling station and sought help. The two accused left the premises shortly after 3 o'clock. When leaving, they covered their faces with their balaclavas and ran to the get-away car that was parked nearby. The guns were later disposed of by accused number 2.

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The arguments follow. Mr Stephen, who appeared on behalf of the State, submitted that the accused went to Sizzlers to rob and had no intention to leave any survivors, meaning that not only was the robbery premeditated, but also that the idea to massacre was preconceived. Mr Calitz, on behalf of accused number 1, submitted that the killings were executed on the spur of the moment, after Berghaus was accidentally shot, following an attack on the accused by Berghaus. Mr Ballem's submission in respect of the facts did not take the matter further, save his reference to the possibility of the complicity of others. The reference by Mr Bellam of other persons' involvement cannot be found on any direct evidence. The only indication of this comes from the evidence of Taylor where he referred to the telephone conversations that accused number 1 had. We know that they did not wait for a lift as they brought

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their own get-away car.

The possibilities stemming from the telephone conversations are legion, but to limit them to the complicity of others would be pure speculation. However, this raises certain questions that remain a mystery. In dealing with the contrary and opposing submissions made by Mr Calitz and Mr Stephen, the following factors, *inter alia*, are taken into account:

- (a) Taylor's evidence of the whereabouts of the two accused at the time of the shooting of Berghaus is uncontested, therefore it would have been impossible for Berghaus to be shot in the circumstances as submitted by Mr Calitz.
- (b) It must be accepted that accused number 1 was either known to Eric Otgaar, or the probabilities of being identified afterwards would have been good and he would have been aware of this. They took along balaclavas but never used them. Was this possibly because they knew there would be no survivors?
- (c) They took along a two litre container of petrol. Mr Calitz submits it was for the purposes of torture. Why? Why did they want to torture the people? To gain access to the money? If so, why use it after they had the money? Therefore, the purpose of the torture or the dousing of the individuals with the

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petroleum had nothing to do with robbery. The question arises why the torture, or is Mr Stephen correct in his submission that the only reasonable inference was that they wanted to obliterate the evidence.

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- (d) We know that they slit the victims' throats. Why? It could not have been with the intention to enforce submission to the robbery because at that time they had the money. Why then slit their throats? Was this to torture, as Mr Calitz has put it, or possibly to humiliate the victims, or did they have another motive?

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- (e) The robbery was completed shortly after their arrival on the scene. Why did they not leave then? The possibilities of complications must have crossed their minds. This scene was a 24-hour business venture, potential clients could arrive and in fact did arrive. Why the delay of almost three hours?

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- (f) Judging by the position of the shots, the number of shots fired at the victims, the accused had only one intention and that was to kill. The question arises why shoot to kill if you only came to rob?

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- (g) Even if the first shot that struck Berghaus was accidental, why proceed with the massacre?

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I have no doubt that the submissions by Mr Calitz on the fact that the

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primary intention was robbery, is without merit. We are of the view that the only inference is that the two accused went to the scene with the premeditated intention to kill everyone they found, and robbery.

In the light of this finding, it is consequently not necessary to deal 5  
with the fact that the accused were not together when Berghaus and De Castro were killed. They had a common purpose at all times. The Court can only further speculate about the motives for these killings. Mr Ballem attempted to argue that the theft of the firearm in count 1 and the possession of the firearms and ammunition in counts 13 and 14 amount 10  
to a splitting of charges. However, he readily conceded the absurdity of such an argument when reminded of the legal position by the Court.

For these reasons that I have furnished, the accused are convicted as follows:

Count 1 - accused number 2 is convicted of theft. 15

Count 2 - both accused are convicted of the murder of Aubrey John Otgaar.

Count 3 - both accused are convicted of the murder of Sergio De Castro.

Count 4 - both accused are convicted of the murder of 20  
Marius Meyer.

Count 5 - both accused are convicted of the murder of Warren Robert Visser.

Count 6 - both accused are convicted of the murder of 25  
Stephanus Abraham Fouche.

Count 7 - both accused are convicted of the murder of

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Travis Reade.

Count 8 - both of the accused are convicted of the murder of Johan Joseph Meyer.

Count 9 - both accused are convicted of the murder of Timothy Craig Boyd. 5

Count 10 - both accused are convicted of the murder of Gregory Seymour Berghaus.

I further find that these murders were premeditated and committed with direct intent. Therefore the provisions of the Criminal Law Amendment Act 105 of 1997 are applicable. This means that there is a minimum prescribed sentence of life imprisonment on those charges. 10

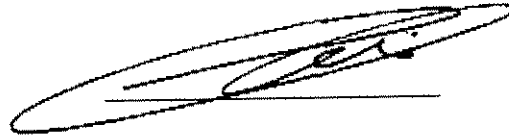
Count 11 - both accused are convicted of the attempted murder of Quinton Simon Taylor, also premeditated and with direct intent. 15

Count 12 - both accused are convicted of robbery with aggravating circumstances, again the minimum sentence is applicable, which includes cash, watches and jewellery, a gold necklace and other items unknown to the Court. 20

Count 13 - both accused were in possession of firearms. In respect of accused number 2, if he had a licence for one firearm at least he was in unlawful possession of the other and therefore they are convicted on a charge of unlawful possession of a firearm. 25

Count 14 - both accused are convicted of the unlawful

possession of ammunition.

A handwritten signature in black ink, appearing to be 'N C ERASMUS, J', written over a horizontal line.

N C ERASMUS, J

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